

**THOROUGHBRED HORSE RACING JOCKEYS AND  
WORKERS: EXAMINING ON-TRACK INJURY IN-  
SURANCE AND OTHER HEALTH AND WELFARE  
ISSUES**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
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**THURSDAY, NOVEMBER 17, 2005**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 1:02 p.m., in room 2322 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman) presiding.

Members present: Representatives Whitfield, Stupak, Barton (ex officio), Inslee, and Burgess.

Staff present: Tom Feddo, majority counsel; Mike Bloomquist, majority counsel; Clayton Matheson, research assistant; John Halliwell, policy coordinator; Mark Paoletta, chief counsel; Alan Slobodin, majority counsel; Peter Spencer, majority professional staff; Terry Lane, deputy press secretary; Jonathan Pettibon, legislative clerk; David Nelson, minority counsel; Elizabeth Ertel, research assistant; and Chris Treanor, staff assistant.

Mr. WHITFIELD. I would like to call this hearing to order. I am sorry we are already 2 minutes late but we have a lot of witnesses today. In fact, a total of 17 and I really do appreciate all of you taking time from your busy schedules to be with us as we explore this important issue of thoroughbred horse racing jockeys and workers, and I might add Quarter Horses, as well. And examining on-track injury, insurance and other health and welfare issues.

I would also make the comment that we have already read all of the testimony, which I thought was very good and quite thorough on all of the issues. And we are going to go on and start all of our opening statements and the reason that we are is because it looks like very soon, we are going to have two floor votes. One will be a 15-minute vote and one will be a 5-minute vote and then we are going to come right back and we will get started because we look forward certainly to the testimony of everyone on the panel today.

Many of you know that we have already had one hearing that focused upon the Jockey's Guild and its leadership. And as a result of that hearing, and not only just that hearing but other issues as well, as you probably know within the last two or 3 days the jockeys took matters into their own hands, and rightfully in my view, eliminated Mr. Gertmenien and his leadership from the Jockey's

Guild. I think that was a right decision because it was quite obvious that under his leadership, that the Jockey's Guild, they totally lost their Disability Fund. All of the funds were depleted from that Fund. They totally lost their catastrophic coverage because the Guild allowed the policies to lapse and certainly did not notify them of that. And under the Gertmenien leadership, such a bad relationship with the other players in the industry was created that the Guild lost the over \$2.2 million that went to them each year from the tracks themselves. So we are hopeful that under new leadership that the Guild can become quite effective in doing what it was set out to do, and that is to provide adequate health coverage for the members of the Jockey's Guild.

I would also say, however, that those of us on the committee do not view this to be the end of the story. Because we do feel quite strongly that this whole issue of jockey's health, the lack of a centralized data system on what causes accidents on the racetrack—some of you testified about the lack of that data that is available for a centralized place. We have the Interstate Horse Racing Act itself. I know that there is mixed feelings about how much should the Federal Government be involved in racing, should it be involved at all. The Federal Government is involved in racing because of the Interstate Horse Racing Act, which provided the framework for simulcasting. Some people have said don't touch that Act. Other people say you can use this Act as a vehicle. Some people have raised the question of why were jockeys left out of that Act? Why were horseman's groups only included in that Act? What is the difference in a trainer and a jockey? They both are independent contractors in one extent. Some trainers are owners. Some jockeys are owners. But the question was raised, should jockeys be a part of the Interstate Horse Racing Act? Should they have a split in some of those simulcasting revenues?

We have a lot of different organizations involved nationally in racing. We have got the TRA. We have got the NTRA, the HPPA, the TOBA and we know that it is a fragmented industry with a lot of different rules, depending upon which State you are in. We have great progress made by the leadership of some tracks like Magna and Churchill Downs, who voluntarily went to a \$1 million policy. We have other tracks that have \$100,000 policies to cover on-track injuries. We have the TRA that established the first program back with the Jockey's Guild many years ago, I guess many in the early fifties or late forties through Cigna. And then we have the Churchill Downs and Magna, the one through AIG.

There is a question of should there be a Federalized Workman's Comp system? When Mr. Giovanni was the head of the Jockey's Guild they established a program in New York, a Workers' Compensation program there. And Mr. Giovanni and others came to the Congress and said we would like a Federalized Workman's Comp program because these jockeys are traveling all over the country and there should be one unified system to take care of their situation. And at that time, it was not decided to pursue that so some arguments will be made to do that today.

I have already indicated that arguments are being made to revisit the Interstate Horse Racing Act. And I know that that interests many people, particular as it relates to off-shore gambling and

the loss of revenues in off-shore gambling and the conflict with the Wire Act, or perceived conflict with the Wire Act. Racing medication, race day medications definitely has an impact on racing and many of you represent groups that have been advocating a national, uniform system for medications and it still seems to be a piece meal approach on that.

A jockey's weight continues to be a big issue and it is important, I think, that there be a standard there because as jockeys go into different jurisdictions it doesn't make a lot of sense to have a lot of different weights. Knee crops—I guess California is the only State that does the knee crops program for any horse that goes down on a racetrack in California. My friend, Mr. Stupak, and others on his side wrote a letter to the NLRB and wanted to know why the NLRB was not more involved in this issue. And of course we know that historically they have taken the position that while not unrelated to commerce, it is presently local in character. Horse racing is presently local in character and therefore, they have decided not to get involved in it.

But these are just a few of the issues that are out there and I think this hearing can be productive for all of us. I mean, we are all interested and this industry has a tremendous economic impact. Just last night, a 16-year-old apprentice jockey was killed in Indiana and we know that it is a dangerous sport. So I look forward to the testimony of all of you. You all are the experts and we are trying to come up with some solutions to some of the many problems facing the industry. And yet we want to be cautious about how we move forward but we want to explore every option, look at everything and then move forward in what we hope will be the most expeditious and productive way. So with that, I would recognize the ranking minority member, Mr. Stupak of Michigan for his opening statement.

[The prepared statement of Hon. Ed Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD, CHAIRMAN, SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS

Good afternoon and welcome. Today, the Oversight and Investigations Subcommittee will continue examining a serious health and welfare matter affecting professional horse racing and interstate commerce. We will hear testimony on the possibilities of improving the health insurance situation for jockeys, exercise riders, and backstretch workers.

The level of urgency for taking action was heightened by our hearing of October 18th, which featured the tragic story of professional jockey Gary Birzer, who broke his back in a fall and became permanently disabled. When he turned to the Jockeys' Guild for help—for the catastrophic on-track insurance that he believed he had been provided by the Guild—he discovered that he and other jockeys had no coverage. To make matters worse, the Guild's Chief Operating Officer, Albert Fiss, told Mr. Birzer that Mr. Birzer was being used as a guinea pig, to put pressure on the race-tracks to provide the insurance instead of the Guild.

The Subcommittee at the October 18th hearing examined the Guild's decision to let the on-track policy lapse—allegedly for a lack of funds—and its failure to adequately notify its members of that decision. The Subcommittee also heard from Dr. Wayne Gertmenian, the President of the Guild. The Subcommittee considered Dr. Gertmenian's leadership of the Guild, the involvement of Dr. Gertmenian's consulting company, Matrix Capital Associates, and the compensation and fees that both receive.

We learned that Matrix has no employees, is based out of Dr. Gertmenian's home, and that Matrix's sole client is the Guild. We found that in 2004, the Guild paid Matrix \$335,000 in consulting fees, but that Matrix had only about \$151,000 in Guild-related expenses, leaving Dr. Gertmenian's consulting company with nearly

\$184,000. This was over and above the salary and fringe benefits provided directly to Dr. Gertmenian by the Guild. Even more troubling, an analysis of 2003 shows that the Guild paid Dr. Gertmenian's company \$412,000 in consulting fees, and Matrix had just over \$87,000 in Guild-related expenses. Thus, taking expenses into account, more than \$324,000 was still available to Matrix, and the use of these remaining funds has not been explained.

Dr. Gertmenian did little to explain or justify these payments and expenditures—which occurred while he oversaw the cut of on-track insurance coverage—such as the \$50,000 in so-called consulting expenses that benefited Dr. Gertmenian's daughter or her company in 2004. He did little to explain or justify the numbers on Matrix's corporate tax returns. Furthermore, with all that money spent on so-called consulting fees for Matrix, Dr. Gertmenian, Albert Fiss, and Lloyd Ownbey have not been able to describe what they and Matrix have accomplished for the Guild during the past four years. For that matter, the Guild's Chairman and Vice Chairman of the Board, David Shepherd and Tomey-Jean Swan, were unable to answer those questions either.

At the hearing, Dr. Gertmenian also did little to substantiate certain items on his resume. To date, we have not received the records requested during the hearing by full Committee Chairman Barton—notarized letters or statements attesting that Dr. Gertmenian served with the National Security Council and the Commerce Department, that he worked for Dr. Kissinger as “chief détente negotiator,” and that he is a distinguished professor at two universities in China.

After these questions were raised about Dr. Gertmenian, Matrix, and the Guild's current financial situation, the Guild's membership recently took some actions. Dr. Gertmenian is no longer the Guild's Chief Executive Officer. This past Tuesday, the Guild's 27 senators held an emergency senate meeting. At that meeting, they removed the Guild's board of directors, elected new directors, and fired Dr. Gertmenian and Matrix. I applaud that decision, and hope that the Guild can get back on its feet. It is my belief that a strong and financially healthy Guild is in the best interests of the industry.

Today, the Subcommittee will consider whether and how Congress might help to ensure that the horse racing industry has adequate on-track injury insurance or workers' compensation for jockeys, exercise riders, and workers on the backstretch. As we saw from video shown during the hearing on October 18th, horse racing is extremely dangerous, and serious injuries are common—indeed, in just the past month a professional jockey died after a spill during a race in Massachusetts, and several other serious spills have occurred on tracks around the country.

The horse racing industry in the United States generates a total economic impact of \$26 billion annually. Yet for all this money in the industry, there are many workers without adequate health insurance and on-track coverage, and apparently much resistance to establishing workers' compensation for some of the most important workers in the industry. Very few states—only four—provide workers' compensation programs for jockeys or exercise riders. As this Subcommittee moves forward in examining the health and welfare issues of jockeys and other workers most susceptible to serious injury in this industry, I will be interested in hearing from all of today's witnesses about whether there is a role for the federal government: Should there be a national workers' compensation fund for jockeys, exercise riders, and other freelance workers in racing? Should every racing state provide a workers' compensation program for these individuals? Should there be a national governing body to oversee the professional sport of horse racing?

Today's witnesses represent many of the various and important stakeholders in the horse racing industry. We will take testimony from a number of race tracks, both large and small, from some of the most prominent trade associations, from health and welfare organizations, from current and former Guild representatives, from state racing organizations, and from a horse trainer who has been involved with establishing New York State's workers' compensation program for jockeys and exercise riders.

Let me extend my appreciation to all of you for appearing here today. I look forward to all your testimony and think it will be most useful. I now turn to the distinguished Ranking Member, Mr. Stupak, for the purposes of an opening statement.

Mr. STUPAK. Well, thank you, Mr. Chairman. Let me begin by expressing my sympathy to the family of the 16-year-old apprentice jockey, Josh Radosevich, who was killed yesterday at Beulah Park near Grove City, Ohio. Josh's death reminded us that horse racing is a dangerous sport and we must do all we can to protect those involved in the sport.

This hearing gives us an opportunity to continue to explore some of the terrible conditions under which jockeys and exercise riders ply their trade on American's racetracks. The testimony and questions today will provide us with information that is needed to craft legislative solutions to deal with the failure of the employers, tracks, trainers and owners to provide their workers with the same on the job accident and disability insurance that many other Americans enjoy.

As you are aware, we wrote Secretary Levitt, asking for a NIOSH study of safety conditions on racetracks. I have every reason to believe that that study will be conducted and the recommendations will then be available as standards that OSHA can enforce. The Democrats on this committee also wrote to the NLRB, asking the Board to correct a grave injustice committed over 30 years ago when the NLRB, by formal rule, declined to provide protections of the National Labor Relations Act to any racetrack employees. This loophole in the law allowed one callous racetrack to ban riders that sought to act collectively to protect themselves on tracks. And sued them for damages under the Anti-Trust Laws that have not been abused in this way since the Wagner Act was passed to stop such intimidation in the 1930's.

Of course, not all tracks and horseman mistreat the riders that make their sport and their livelihoods possible. We will hear from the operator of Del Mar Racetrack in California regarding the Workers' Compensation Program and off-track health insurance in that state, as well as the efforts his track has made to minimize the dangers inherent in horseracing. California is also pioneering a study of the terrible weight and nutrition problems faced by jockeys. We will hear from witnesses that operate in New York and Maryland about the Workers' Comp Program on those States. And the admirable efforts of the Magna conglomerate to extend comparable medical and disability insurance to its tracks in those States that fail to require that riders be covered by Workers' Comp.

Delaware and Kentucky witnesses will speak of their less substantial programs to help with healthcare costs. If all States had programs like California's, we wouldn't be here today. In fact, the California tracks are losing horses to tracks in States like West Virginia, that permit the track to operate without adequate on-the-job insurance. The West Virginia tracks, Mountaineer and Charlestown, are among the richest, most profitable horseracing enterprises in the United States because West Virginia has made them into gambling palaces through the placement of slot machines.

Like other States that allow slot machines, they are licensed in commercial numbers on the grounds of racetracks and part of the slot proceeds must be spent on higher purses for the horsemen. In fact, as a matter of State law, slot machines cannot be operated at either Mountaineer or Charlestown unless a collective bargaining contract is in place for the pari-mutuel clerks. Of course, an agreement must also be in place with the horsemen, the trainers and the owners. I am not sure what the clerks get out of these racetracks but I will bet that a good on the job and off the job health insurance is among the benefits. I do know what the horsemen get, purses that have increased ten-fold, from about \$20,000 per race day to \$200,000 since the slots went in.

A look at the financial forms of the parent companies tell you that the tracks themselves are very profitable enterprises. The jockeys share about 10 percent of the purse and in return, get a nice, new hot room to sweat the water out of their bodies before weighing in and a new receptacle to regurgitate in so they can make weight. What jockeys do not receive is adequate on-track or off-track insurance. Charlestown takes in about \$1.7 million in revenues each day. It spends about \$200,000 per day in purse money. After its expenses, the pre-tax profit is about \$414,000 per racing day. What do they spend on accident insurance for the jockeys? Roughly \$1,200 per racing day.

West Virginia tracks think that the \$100,000 insurance coverage is generous. They pay no Workers' Compensation, no health insurance and very little in the way of charity for the worst victims, like our witnesses from last month's hearing, Gary Bitzer, who was paralyzed at Mountaineer Racetrack last year.

The NTRA will testify today that going from \$100,000 worth of coverage to \$1 million would cost only 50 to 75 percent more than the current \$1,200 premium. So if Mountaineer Racetrack would have spent \$600 to \$900 per race day extra, Gary Burzer could have had all rehab and other medical costs paid for by insurance. This small premium amounts to less than one-half of 1 percent of the track's daily purse but it would mean a lifetime of healthcare security for the jockeys who risk their lives so track owners can make millions of dollars.

Mr. Chairman, the exploitation of the law by some tracks comes at great human costs and give those tracks unfair competitive advantage. Just as a polluter who transfers his cost to the environment can pay for his products lower than the competitor who pays the full costs of production by cleaning up the manufacturing process. So racetracks can force the cost of on the job accidents onto the backs of its riders, can deprive the responsible track owner of better horses and of larger revenues. The competitive imbalance alone is sufficient basis for this committee, the Energy and Commerce Committee, responsible for regulating interstate commerce, to act.

For starters, we can condition the simulcasting of races, a larger source of revenue and profits than the betting on tracks actually run at most tracks under provision of a decent Workers' Compensation Benefit for all the individuals involved in horseracing. Tracks in California, New York and other States that have 20th century labor laws should not have to compete with those States that still permit these courageous athletes to be treated like second class citizens. They should be treated like any other highly skilled, professional athlete whose true value is recognized by their sport and their family.

Mr. Chairman, I look forward to working with you on solutions to the problems that we have laid out today.

Mr. WHITFIELD. Mr. Stupak, thank you very much. And at this time I would recognize the chairman of the full Energy and Commerce Committee, Mr. Barton of Texas.

Chairman BARTON. Thank you, Chairman Whitfield. And in case you didn't introduce to the subcommittee, I would like to indicate how please I am to see your wife, Connie, in the audience and have

her presence here. It has got to inspire you, as well as other members up here. Also, I missed part of your opening statement but in case you didn't mention it, I have been informed that the Jockey Guild did terminate the contract of Mr. Gertmenien earlier this week. Did you mention that in your statement?

Mr. WHITFIELD. I did, Mr. Chairman, but I would like for you to repeat it.

Chairman BARTON. Okay. I understand that the board meeting in which that was done, there were several fist fights that broke out and the police had to be called and I think even the FBI were called. I am also told that last week or this week, the disability checks that the Guild provides to disabled jockeys bounced. And I am also told that the day Mr. Gertmenien was terminated he had checks written to him for over \$217,000 that were drawn on Guild accounts and that those checks didn't bounce. Which makes you wonder why the checks to the disabled jockeys bounced but the checks that he wrote or had written to himself didn't. I am sure that the members of this subcommittee will assist law enforcement officers at the Federal and State level to bring Mr. Gertmenien and his associates to justice, sooner rather than later. And we should commend you and Mr. Stupak for the investigation that you have both led, which has resulted in some of the changes that are now being made.

But today we are here to hear from the rest of the industry and I have to commend you. We have got 18 witnesses so you pretty well covered the field. If this were the Kentucky Derby they would have to add another starting post or something to get all the horses into the gate at the time but it is an important issue.

I have trouble accepting that in a \$26 billion industry, the riders and other workers at the heart of the horseracing world, many of them have to go to work each day without adequate catastrophic injury insurance that they have been promised. I think we all agree this is intolerable and something needs to be done about it.

This subcommittee spotlighted the issue in its opening hearing, which focused on why the Jockey's Guild was no longer providing on-track injury insurance for its members. We saw the effects of Amy and Gary Birzer's life-altering encounter with the perils of competitive riding. We learned how the Jockey Guild, the organization that they thought they could trust, had flimflammed them. We heard from current and former jockeys who explained how important on-track injury insurance is to themselves and to their families. We also heard Guild representatives try to explain why they no longer offered on-track coverage and watched as they tried to lay the blame in other places.

I have chaired this subcommittee in the past and I have attended most of the Oversight Investigation Subcommittee hearings for the last 10 years and we do have people that come before us and try to obfuscate the truth. But the representatives of the Jockey Guild, in your hearing on this issue the first time, would have to take the award for the most disingenuous if not outright fraudulent testimony. They set a new standard for least believable. Just for an example, we were lead to believe by his own resume, that Dr. Gertmenien was a detente negotiator who had worked directly for Secretary of State Henry Kissinger. Dr. Kissinger himself called

this subcommittee and said in no uncertain terms that he had never heard of the man. That is just one example of the testimony that we heard at the last hearing.

I said at the last hearing that if I were a dues-paying member of the Guild, I would want new management and as I pointed out, the majority of the Guild members agreed with that and they now have new management. We have got several documents from the new management to that affect. If we have any of the Jockey Guild members in the room, I want to commend you folks and say I am proud of you for doing the right thing and we will keep back you up. That had to be a tough thing to do but you did it and the committee is proud of you.

In closing, I want to thank all the witnesses at this panel and the next panel for coming today. We do want to explore the issue of on-track injury insurance and Workers' Compensation. I know there are different opinions and we are going to hear those later today but it is my hope and I know Mr. Stupak and Mr. Whitfield share it, that following our hearing we can work together to find a solution. Hopefully, not a legislative solution and we can do it on a voluntary basis. But I would think that we would be prepared to offer a legislative framework if such a framework is necessary.

I look forward to your testimony and I thank ladies and gentlemen for you being here. Yield back.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you, Chairman Whitfield. Thank you for holding this hearing and for continuing to examine the issue of on-track injury coverage in the horseracing industry. I have trouble accepting that, in a \$26 billion industry, the riders and other workers at the heart of the horseracing world have to go to work each day without adequate catastrophic injury insurance that they were promised. This is intolerable, and I commend the Chairman for spearheading an investigation of this issue.

Last month, the Subcommittee spotlighted the issue in its opening hearing, which focused on why the Jockeys' Guild was no longer providing on-track injury insurance for its members. We saw the effects of Amy and Gary Birzer's life-altering encounter with the perils of competitive riding. And we learned how the Guild, one of the few organizations they thought they could trust, had flim-flammed them. We heard from current and former jockeys who explained how important on-track injury coverage is to them and their families. And we heard Guild representatives try to explain why they no longer offered on-track coverage and where they thought that responsibility should lie instead. I must say that people occasionally sit at our witness table and tell us things that are very hard to believe. That's usually because the things they are telling us are not completely true. It happens. But of all the questionable testimony that I've heard, I think the Guild's sworn testimony last month set a new standard for the least believable.

Today we will expand the scope of our examination and look at how the rest of the industry views the absence of on-track insurance for jockeys, exercise riders, and backstretch workers. During the course of the Subcommittee's investigation, it has become apparent that even though many in the industry have devoted considerable amounts of time and effort to this issue, they have been unable to find a solution.

I hope our panels of witnesses here today—which include representatives from all different segments of the industry—will have some constructive ideas.

Let me also add that the Jockeys' Guild left many unanswered questions last month about its management and finances. Even more importantly, it failed to produce records the Subcommittee had subpoenaed weeks before. It took a congressional hearing to pry loose some of the Guild's meeting minutes, and I understand that the Guild still has not delivered numerous email records and other documents. Also, Dr. Gertmenian, who claims to be a onetime détente negotiator working for then-Secretary of State Henry Kissinger, has yet to provide a lick of evidence to support his resume. I think we all know why.

At last month's hearing, I said that if I were a dues-paying member of the Guild, I would want new management. The Guild seems to agree. After that hearing's emotional and disturbing testimony, the Guild's members this week took back their organization. I am proud of the members who had the courage to stand up to Dr. Gertmenian, and to terminate the contracts of Dr. Gertmenian and his organization, and of Mr. Fiss, and Mr. Ownbey. Absent those actions, it seems plain that the Guild would have collapsed. I hope that the new board and new managers will now right what was wrong inside the Guild, and will dig out the records that we requested and subpoenaed.

In closing, I want to offer my thanks to today's witnesses for taking the time to help us explore the issue of on-track injury insurance and workers' compensation. It is my hope that all our witnesses, and everyone else in the horseracing industry who is following our hearing, will listen to what is discussed and will be inspired to work together to find a solution to this and other health and welfare problems in the industry.

I look forward to the testimony and yield back the remainder of my time.

Mr. WHITFIELD. Mr. Chairman, thank you very much and we appreciate the support you have given as we have looked into this important issue. And as I said earlier, I want to thank all of you for taking time from your busy schedules. I understand even Mr. Amos, that you came back from a vacation, which is quite impressive to come up. But we are now ready for this first panel and I am going to introduce the first panel. And then because this is an Oversight and Investigation hearing, we do swear witnesses in.

But before I do that, first of all we have with us today Mr. John Finamore, who is the Senior Vice President of Regional Operations for Penn National Gaming Company. Thank you for being here. We have Ms. Rose Mary Williams, who is the Director of Racing at the Mountaineer Race Track and Gaming Resort in West Virginia. We have Mr. Christopher Scherf, who is the Executive Vice-President of the Thoroughbred Racing Association. Thank you. We have Mr. D.G. Van Clief, who is the Commissioner and Chief Executive Officer of the National Thoroughbred Racing Association and it is great to see you again. We have Mr. Steve Sexton, who is the Senior VP of Kentucky Operations and President of Churchill Downs and delighted to have you here. And then of course, Mr. Don Amos, who is the Chief Operating Officer of Magna Entertainment. I am glad to have you here. And then we have Mr. Greg Fravel, who is the Executive Vice President of Del Mar Thoroughbred Club from Del Mar, California and we thank you for being here.

The gentleman to the far left, I don't see that you are a witness and I was just wondering if you might tell me—okay. Do you intend to testify? Okay. Well, in that case would you mind taking a seat back there and we do appreciate your being here very much. And at this time I would ask those of you who are going to be testifying if you would simply stand up. And as I said, you are aware that the committee is holding investigative hearing and when doing so, we have the practice of taking testimony under oath and do any of you have any objection to testifying under oath today? Okay. The Chair then advised you that under the rules of the House and rules of the committee, you are entitled to be advised by a counsel and I understand that maybe two of you do have counsel with you today. Ms. Williams, you have counsel. Is that correct? And would you give us his name again?

Ms. WILLIAMS. Mr. Stan Brand.

Mr. WHITFIELD. Mr. Stan Brand. Okay. And Mr. Amos, did you? And who is your—

Mr. AMOS. Andrew Staniusz, Mr. Amos' counsel.

Mr. WHITFIELD. Okay. Yes, sir. Okay. But none of those attorneys intend to testify. They are simply advising you? Okay.

[Witnesses sworn]

Mr. WHITFIELD. You are now under oath and you may give a 5-minute summary of your written statement. As I indicated to you, we do have 17 witnesses. We value the testimony of each person here. We have read the testimony but at this time I will call the first witness and that will be Mr. John Finamore of Penn National Gaming, recognized for 5 minutes.

**TESTIMONY OF JOHN V. FINAMORE, SENIOR VICE PRESIDENT OF REGIONAL OPERATIONS, PENN NATIONAL GAMING, INC.; ROSE MARY WILLIAMS, DIRECTOR OF RACING, THE MOUNTAINEER RACE TRACK AND GAMING RESORT; CHRISTOPHER N. SCHERF, EXECUTIVE VICE PRESIDENT, THOROUGHBRED RACING ASSOCIATION; D.G. VAN CLIEF, JR., COMMISSIONER AND CHIEF EXECUTIVE OFFICER, NATIONAL THOROUGHBRED RACING ASSOCIATIONS; STEVE SEXTON, SENIOR VICE PRESIDENT OF KENTUCKY OPERATIONS AND PRESIDENT OF CHURCHILL DOWNS; DON AMOS, CHIEF OPERATING OFFICER, MAGNA ENTERTAINMENT, INC., ACCOMPANIED BY ANDREW STANIUSZ, CORPORATE COUNSEL AND DIRECTOR OF EMPLOYEE RELATIONS; AND CRAIG R. FRAVEL, EXECUTIVE VICE PRESIDENT, DEL MAR THOROUGHBRED CLUB**

Mr. FINAMORE. Good afternoon, Mr. Chairman, and members of the subcommittee. My name is John Finamore, and I am the Senior Vice President of Regional Operations, Penn National Gaming. By way of background, Penn National is a publicly traded company. We began in the early 1970's as a small, family owned business that operated one of Pennsylvania's original thoroughbred racing licenses at Penn National Race Course outside of Harrisburg. While today Penn National operates riverboats, casino resorts and racing facilities in 13 jurisdictions across the country and in Canada, it has never forgotten, and continues to build upon, its horseracing heritage.

My role at Penn National is to oversee four of the company's racetracks, including Penn National Race Course and Charlestown Races in West Virginia. I am based at Charlestown, which provides me a continued perspective of the continued revitalization of that historic track, which began live thoroughbred racing in 1933.

Penn National purchased Charlestown Races in 1997, when it was on the verge of closing its doors. Since then, we have invested more than \$200 million in new capital into the property. Reflecting our ongoing commitment to live racing, we have renovated the grandstand and barns, built new jockey's quarters and a new paddock and began simulcasting the races around the country. Last year, Charlestown Races completed the latest phase of renovations and upgrades to the track, including adding a new surface, installing a new safety rail, banking the turns, replacing the lighting system and other significant improvements. Turning to the subject of today's hearing, at Penn National Gaming we take the issue of safety at our tracks seriously. We support working together with

the jockeys, the horsemen and the trainers to ensure that in the event of an accident, there is adequate insurance to address the injured jockey's needs.

As you know, jockeys are independent contractors who work not for the racetracks but for the horse owners. Like any other individual that is self-employed, jockeys are responsible for addressing their own insurance needs. As a long-time member of the Thoroughbred Racing Associations, we have in place at our tracks in West Virginia and Pennsylvania, accident insurance that provides jockeys with an additional \$100,000 maximum benefit toward medical expenses if they are injured while riding. In addition, the policy provides \$200 per week in Disability payments, up to 104 weeks, and includes \$50,000 in accidental death and dismemberment coverage. The racetracks pay 100 percent of the premiums, as well as the deductible for every medical claim.

Furthermore, we have been paying additional money directly to the Jockey's Guild in the form of mount fees to supplement their medical insurance coverage and to provide additional accident insurance. In 2004, this amounted to more than \$160,000 for Penn National Race Course and Charlestown Races. Looking back to 2002, the last year for which there is industry data, the collective amount racetracks contributed to the Jockey's Guild for this purpose was \$2.2 million.

It is now clear that these funds were not being used for either medical insurance or supplemental accident insurance for the jockeys. As a goodwill gesture, we have been continuing to donate these funds to the Jockey's Guild, in the hope that they will be used for the purpose they were intended. Unfortunately, the Jockey's Guild has greatly failed its membership on this issue and the jockeys themselves, as independent contractors, must find a way to address their insurance needs. We believe that helping to supplement their on-track accident insurance needs should be a collaborative effort between the tracks, the horse owners and the trainers.

As for the argument that jockeys should become employees of the track, this would forever change the nature of horseracing in this country. The tracks do not and should not exercise any degree of control over the manner in which a jockey rides or whether a jockey rides or for whom he or she rides. There is no permanence in the relationship between the track and a jockey. The integrity of racing could be called into question if a track were in a position of control over the jockeys.

In conclusion, while we understand there were five accidents out of 487,000 mounts last year where the cost of the injuries rose about the \$100,000 level in coverage, we firmly believe one disabled and destitute jockey is one too many. We will be working with the TRA to re-examine the levels of our on-track policies currently in place and we look forward to continuing to work with the horseman, the trainers and the jockeys to address this important issue.

I would like to thank you for the opportunity to testify today and would be happy to answer any of your questions.

[The prepared of John V. Finamore, Sr. follows:]

## PREPARED STATEMENT OF JOHN V. FINAMORE, SR. VICE PRESIDENT, REGIONAL OPERATIONS, PENN NATIONAL GAMING, INC.

Good afternoon, Mr. Chairman, and members of the Subcommittee. My name is John Finamore, and I am the Senior Vice President of Regional Operations for Penn National Gaming.

By way of background, Penn National is a publicly traded company. We began in the early 1970s as a small, family-owned business that operated one of Pennsylvania's original thoroughbred racing licenses at Penn National Racecourse outside of Harrisburg.

While today, Penn National operates riverboats, casino resorts and racing facilities in 13 jurisdictions across the country and in Canada, it has never forgotten, and continues to build upon, its horse racing heritage.

In addition to Penn National Racecourse and its six affiliated off-track wagering facilities, we also own Charles Town Races & Slots in Charles Town, West Virginia, and we're the joint owner of Freehold Raceway in New Jersey. Our most recent racetrack acquisitions include Bangor Raceway in Bangor, Maine, and Raceway Park in Toledo, Ohio.

My role at Penn National is to oversee these racing and gaming operations, with the exception of Freehold Raceway. I am based at Charles Town Races, which provides me a first-hand perspective of the continued revitalization of that historic track, which began live thoroughbred racing in 1933.

Penn National purchased Charles Town Races in 1997, when it was on the verge of closing its doors. Since then, we've invested more than \$200 million in new capital into the property, resulting in a premier regional entertainment center that has generated more than \$435 million in taxes to West Virginia.

Reflecting our ongoing commitment to live racing, since acquiring the track we have renovated the Grandstand and barns, built new jockey quarters and a new paddock and began simulcasting the races around the country. In addition, we have increased the number of race dates and the number of races per day. Purses have grown from \$20,000 per day to as high as \$200,000 per day, and the number of horse owners and trainers has grown from 2,400 to 13,000.

Last year, Charles Town Races completed the latest phase of renovations and upgrades to the track, including adding a new surface, installing a new safety rail, banking the turns, replacing the lighting system, and other significant improvements.

Turning to the subject of today's hearing, at Penn National Gaming we take the issue of safety at our tracks seriously. We support working together with the jockeys, the horsemen, and the trainers to ensure that in the event of an accident there is adequate insurance to address the injured jockey's needs.

As you know, jockeys are independent contractors who work not for the racetracks, but for the horse owners. The Courts have upheld this distinction. Like any other individual that is self-employed, jockeys are responsible for addressing their own insurance needs.

As a longtime member of the Thoroughbred Racing Associations (TRA), we have in place at our tracks in West Virginia and Pennsylvania—which are states where jockeys are excluded from workers' comp—insurance that provides jockeys with an additional \$100,000 maximum benefit toward medical expenses if they are injured while riding. In addition, the policy provides \$200 per week in disability payments up to 104 weeks, and includes \$50,000 in accidental death and dismemberment coverage. This long-established policy was entered into after discussions with the TRA and with the Jockey's Guild. The racetracks pay 100% of the premiums, as well as the deductible for every medical claim.

Furthermore, we have been paying additional money directly to the Jockey's Guild in the form of "Mount Fees" to supplement their medical insurance coverage and to provide additional accident insurance. In 2004, this amounted to more than \$160,000 for Penn National Race Course and Charles Town Races. Looking back in 2002, the last year for which there is industry data, the collective amount racetracks contributed to the Jockey's Guild for this purpose was \$2.2 million.

After the unfortunate accident to Mr. Birzer at Mountaineer, it is now clear that these funds were not being used for either medical insurance or supplemental accident insurance for jockeys. As a goodwill gesture, we have been continuing to donate these funds to the Jockey's Guild in the hope that they will be used for the purpose they were intended.

Unfortunately, the Jockey's Guild has greatly failed its membership on this issue and the jockey's themselves, as independent contractors, must find a way to address their insurance needs. We believe that helping to supplement their on-track accident

insurance needs should be a collaborative effort between the tracks, the horse owners and the trainers.

As for the argument that jockeys should become employees of the track, this would forever change the nature of horse racing in this country. The tracks do not, and should not, exercise any degree of control over the manner in which a jockey rides, or whether a jockey rides, or for whom he or she rides. Since the earliest days of horse racing, the track has always acted as the "neutral" party, whose role it is to hold a fair and honest meet where the owners and jockeys come to compete. There is no permanence in the relationship between the track and a jockey. The integrity of racing could be called into question if a track were in a position of control over the jockeys.

In conclusion, we recognize that some of the larger racing companies have voluntarily increased their on-track accident policies. And, while we understand there were five accidents out of 487,000 mounts last year where the cost of the injuries rose above the \$100,000 level in coverage, we firmly believe one disabled and destitute jockey is one too many. We will be working with the TRA to reexamine the levels of our on-track policies currently in place, and we look forward to continuing to work with the horsemen, the trainers and the jockeys to address this important issue.

I'd like to thank you for the opportunity to testify today and would be happy to answer your questions.

Mr. WHITFIELD. Thank you, Mr. Finamore. You were almost right on 5 minutes. Great job.

Mr. FINAMORE. Thank you.

Mr. WHITFIELD. At this time I will recognize Ms. Rose Mary Williams of the Mountaineer Race Track. Thank you.

#### TESTIMONY OF ROSE MARY WILLIAMS

Ms. WILLIAMS. Good afternoon. My name is Rose Mary Williams. I am the Director of Racing at Mountaineer Race Track in Chester, West Virginia. Thank you for the invitation to appear before the subcommittee today. I have submitted my written testimony and will be happy to answer any additional questions that the subcommittee may have. Thank you.

[The prepared statement of Rose Mary Williams follows:]

#### PREPARED STATEMENT OF ROSE MARY WILLIAMS, DIRECTOR OF RACING, MOUNTAINEER RACETRACK

My name is Rose Mary Williams and I am the Director of Racing at Mountaineer Racetrack in Chester, West Virginia. I began my career in racing in 1977 as a mutual clerk and have worked in racing ever since. I became director of racing in 1997. Mountaineer Racetrack is a mile-long thoroughbred track and has operated since 1951. By State statute, we race a minimum of 210 days per year. By contract with the Horsemen's Benevolent and Protective Association, we endeavor to race 232 days per year with ten races per day, or approximately 2,259 races per year. I am pleased to say that serious accidents are rare.

Gary Birzer's tragic accident happened at my track. But it could have happened at any racetrack in the country. While there has been no claim that the track was defective or improperly maintained, or that track conditions were a factor in causing this accident, it should be noted that, in horseracing, accidents can and do happen even at state-of-the-art facilities, though perfectly maintained, and under ideal conditions.

This is so because riding a racehorse is an inherently risky activity, no different than NASCAR racing, prize fighting, football, and other sports that entertain, amaze and delight us. During a race, thoroughbreds reach speeds of up to 40 miles per hour, and jockeys wear only a safety helmet and two-pound safety vest for protection. Jockeys, like their counterparts in other sports, accept that risk because they love what they do, and because they are highly compensated. Many jockeys earn as much as \$500,000 per year.

From those earnings, they choose to pay dues and per mount fees into their Guild for the obvious reason: they expect that Guild to provide them protection by, among other things, purchasing and maintaining on-track injury insurance. I will leave to others the relationship between the jockeys and their Guild, the allegations that Dr.

Gertmenian failed to inform the jockeys that the Guild had permitted the catastrophic insurance to lapse, and whether the insurance carrier should have notified the jockeys of the cancellation. I simply don't have first-hand knowledge that would be helpful to this Committee.

Consistent with industry custom, Mountaineer Racetrack maintains an on-track injury policy covering jockeys for up to \$100,000 per occurrence and exercise riders for up to \$25,000 per occurrence. Since May of 2000, Mountaineer Racetrack's insurer has paid more than \$1,000,000 in claims to some 89 individuals pursuant to on-track injury policies. Many of those claims were under \$1,000 and most were under \$10,000. Mr. Birzer was able to use this policy and in fact received \$100,000 in reimbursements.

Obviously, a \$100,000 policy is not sufficient for a catastrophic accident, but these policies are intended only to supplement the insurance the jockeys obtain through the Guild. It is expensive insurance. The premium is \$1,230 per race day and \$154 per training day. For 2004, Mountaineer Racetrack paid \$252,500 in premiums for on-track injury insurance. What is more, even at these premium rates there are few carriers willing to provide the coverage.

Likewise, West Virginia permits employers of trainers and jockeys engaged in thoroughbred racing to subscribe to and pay premium taxes into the state's workers' compensation fund (See WV Statutes, Section 23-2-1(b)(6)). Further, West Virginia's unredeemed pari-mutuel ticket law earmarks for a jockey's trust up to \$250,000 annually, specifically for health and disability benefits for active or disabled jockeys and their dependents (See WV Statutes, Section 19-23-13(b)(5)(C)). West Virginia law also provides that 1% of the total amount distributed for racing purses be placed into trust to help defray the cost of medical and other expenses incurred by people whose primary source of income is derived from the racing, training and care of thoroughbred horses.

As a Director of Racing, I can offer some observations concerning what racetrack owners can do to make racing as safe as reasonably possible for jockeys, recognizing that the racetrack owner has no authority to do anything between the time the horses enter the gate and the end of the race. This is so because the conduct of racing itself is controlled by the state racing commission through its on-site personnel. What then can racetrack owners do before and after a race? Some examples are:

- Properly maintain and periodically resurface the racetrack;
- Provide a committee that includes a representative of the jockeys that has periodic meetings to discuss track conditions;
- Install safety rails and place light poles and other objects a safe distance (industry custom is ten feet) beyond the rails;
- Pad indoor paddocks, the chutes leading to the track, and the starting gates;
- Provide a comfortable jockeys' room with such amenities as sauna and hot tub;
- Provide a chaplain who is readily available to minister to the needs of jockeys and backside workers;
- Install appropriate lighting for night racing;
- Limit the number of turf races and require shoes that are less likely to make the surface unsafe;
- Provide appropriate ambulance and emergency medical personnel in case of an accident;
- Provide on-track injury insurance in accordance with industry custom, to the extent such insurance remains available.

It may seem self-evident, but I believe track safety and the welfare of those who work on-track should be, and in fact are, common goals of racetrack owners, horsemen, and jockeys and trainers. Taking these steps helps limit on-track accidents to those that cannot be prevented. Preventable accidents and the failure of the system to provide for the needs of injured participants, in addition to being tragic, are bad for business—all of our businesses.

On a personal note, I know Gary and Amy Birzer. Gary rode frequently at Mountaineer Racetrack. They are a nice family and my heart goes out to them.

Mr. WHITFIELD. That was short and sweet. Thank you. At this time I will recognize Mr. Christopher Scherf, Executive V.P., Thoroughbred Racing Association.

#### **TESTIMONY OF CHRISTOPHER N. SCHERF**

Mr. SCHERF. Thank you, Mr. Chairman and members of the subcommittee. I am gratified to have the opportunity to address the issues that have prompted this hearing. As the Executive Vice

President of the TRA for the past 17 years, I have represented its member racetracks, as well as non-members, in securing a series of national insurance policies. This program has been in place since the Guild came to the TRA in 1949 to consolidate insurance from individual track policies into a national program, assuring coverage for jockeys no matter where they chose to ride. During the past 30 plus years, the Guild also has sought and received direct payments from the racetracks.

In 2001, when the Guild's members health plan became unaffordable, even with the \$2.2 million contributed by the racetracks, the Guild allocated \$440,000 of that amount to purchase an excess accident policy. I do not believe we would be here today if Dr. Wayne Gertmenien had not decided to discontinue the excess accident policy and instead, use the \$2.2 million for other purposes.

What kind of emphasis did the Guild place on accident insurance? The current policy does not have the Guild as a policyholder merely because the broker was unable to get the recent Guild leadership to even sign the policy. In States where jockeys are covered by Workers' Compensation insurance purchased by the horsemen, the tracks have purchased a complimentary injury policy providing lump sum payments to the catastrophically injured jockeys. The minimum pay-out is \$100,000 but a much higher amount, with a minimum of about \$400,000, is triggered if a jockey elects to provide the track with a waiver against suit. The Guild, though its then director, John Giovanni, first proposed this additional benefit and the waiver provision in the last 1980's and 749 jockeys took advantage of this offering. Since Dr. Gertmenien took over the Guild, only one new waiver has been received by the TRA. Obviously, accident insurance was not a Guild priority.

Another historical benefit was the Jockey Guild's Disabled Riders Fund, which provided income to permanently disabled riders. Jockeys recovering from lesser injuries received weekly Disability payments from the accident policy and the Guild matched this amount from its dues revenue. When Dr. Gertmenien took over, the Guild began making the weekly payments to the temporarily sidelined jockeys from the Disabled Jockey's Fund, which predictably soon ran out of money. This was the duly constituted Guild leadership with which the TRA had to deal. One that would deplete the existing benefits to its members as a ploy to create crisis.

Regarding basic accident coverage and the relevant circumstances of working as a jockey in this country, here are the facts. Jockeys are independent contractors by choice and enjoy the associated tax benefits, as affirmed by the IRS. Skilled, tough and fiercely competitive individuals, jockeys want to be free to negotiate riding assignments on a race by race basis, choosing those horses that offer the best chance of winning. A generally accepted estimate of jockey's earnings is 7.5 to 8 percent of their mounts' winnings. Therefore, total jockeys' earnings for the last full year we have, 2004, were between approximately \$88 million and \$94 million. There were 991 jockeys who rode at least 100 times last year, an average of only two horses a week, and they accounted for more than 95 percent of all the horses that raced. The average annual earnings for those jockeys were around \$90,000. Five hundred ninety-nine jockeys rode at least 300 mounts, which is six a week and

had average earnings of about \$138,000. Getting on a horse is recognized as being inherently risky but horseracing is the best compensated riding profession.

In 2004, there were 487,000 starters. Latest records indicate, there were 708 paid claims by the TRA policy. In recent years, the average claim has been about \$7,000. Through October 31, there have been five injuries from 2004 that have reached the \$100,000 medical maximum. The fact is, the lack of adequate coverage is a problem on in few specific instances. It is a problem that is solvable on a long-term comprehensive basis in a relatively quick fashion.

Jockeys are independent contractors. During the past 2 years jockeys have decided not to ride and have canceled racing 41 times at TRA racetracks.

Regarding safety issues, the TRA has a Safety Committee to consider jockey safety issues. The TRA and its member racetracks have been supporters of the Racing Medication and Testing Consortium, of which I am the Vice-Chairman, to promote a safe medication policy for horse and jockey. The safer racing environment is the Holy Grail for the racing industry. Injuries to horses and jockeys are horrifying to us and our fans. Turfway Park in Kentucky spent nearly \$5 million installing the new revolutionary Polytrack, which appears to be a safer racing surface and being anxiously monitored by all tracks.

Unnoticed but nonetheless true, during the past few years, minimum jockey weight assignments have been raised in California, Illinois, Kentucky, Maryland, New York and New Jersey.

Returning to the catalyst for today's hearing, is what has befallen Gary Birzer acceptable? Absolutely not. As I previously mentioned, the scope of the problem is far from insurmountable and a shrewd allocation of existing resources can provide an enduring, practical solution. The NTRA Jockey Injury Task Force, which was comprised of racetracks, horsemen and jockeys last winter, has made adequate insurance coverage an industry imperative. I am confident that a cooperative solution will be completed and implemented. This Congressional subcommittee has been very helpful in placing an increased focus on the task and situation at hand.

The tracks and horsemen understand the need for a secure safety net for all jockeys. It is well on its way to being erected as we speak, and I have every confidence the job will be completed in the timely fashion it deserves and demands. Thank you.

[The prepared statement of Christopher N. Scherf follows:]

PREPARED STATEMENT OF CHRISTOPHER N. SCHERF, EXECUTIVE VICE PRESIDENT,  
THOROUGHBRED RACING ASSOCIATIONS OF NORTH AMERICA, INC.

Thank you, Mr. Chairman, and members of the subcommittee. I am gratified to have the opportunity to address the important and complex issues that have prompted your inquiry into the tragic circumstances involving Gary Birzer and his family.

As the Executive Vice President of the Thoroughbred Racing Associations of North America for the past 17 years, I have represented its member racetracks, currently numbering 41, in discussions with the Jockeys' Guild and in securing a series of national insurance policies providing accident coverage across the broad spectrum of racetracks, encompassing TRA and non-TRA members, large and small alike. This program has been in place since the Guild first came to the TRA in 1949 to consolidate insurance from a variety of individual track policies into a national program assuring coverage the jockeys could count on no matter where they chose to ride. Jockeys then, as now, would move from state to state seeking to be retained by var-

ious racehorse owners. The insurance then available did not accommodate perfectly such mobile, individual sports professionals and insurance companies sometimes would dispute whether a claim was simply a continuing injury originally suffered at a different track with a different insurance carrier.

During the past 30-plus years, the Guild also has sought and received direct payments from the racetracks, using those funds to subsidize 65 to 75 percent of the cost of the family health plan offered to members of the Jockeys' Guild. The Guild's health plan included the unusual provision of covering work-related injuries and provided reimbursement for medical costs in excess of the \$100,000 track accident policy. In 2001 when the health insurance became unaffordable even with \$2.2 million from the racetracks, the Guild's previous leadership allocated \$440,000 of that amount to purchase an excess accident policy.

I do not believe we would be here today if not for Dr. Wayne Gertmenian and his leadership of the Guild. In 2002, under Dr. Gertmenian's leadership, the Guild decided to discontinue the excess accident policy, which would have cost approximately \$490,000, and instead used the \$2.2 million in track contributions for unknown other purposes. The bottom line is the racetracks were providing base medical coverage and adequate direct financial support to provide for up to \$1 million in accident coverage, but Dr. Gertmenian and his management group diverted those dollars to other purposes.

The new management of the Guild, under Dr. Gertmenian, never exhibited concern or even understanding of the accident coverage. Through the years, the TRA and the Jockeys' Guild were listed as co-policy holders, along with the track actually purchasing the coverage. This entitled both organizations to important accident data.

The current policy, however, does not have the Guild as a policyholder because the broker was unable, despite repeated attempts, to get the Guild leadership to even sign the document.

In New York, New Jersey, Maryland, and California—where jockeys are covered by workers' compensation insurance purchased by horsemen—the tracks have purchased a complementary injury policy that provides lump sum payments to the jockey ranging from \$100,000 to almost \$1.5 million in the event of a catastrophic accident, either fatal or resulting in a total permanent disability, such as some form of plegia. The minimum payout is provided to any jockey, but the much higher compensation is triggered if a jockey elects to provide the track with a waiver against suit. The Guild, through its then director John Giovanni, first proposed this additional benefit and the waiver provision in the late 1980s when New York, New Jersey, and Maryland brought jockeys under some type of workers' compensation fund. Under Mr. Giovanni and his Guild management's encouragement, 749 jockeys signed the waiver to assure themselves a benefit ranging from \$400,000 to \$1.5 million. Since Dr. Gertmenian took over the Guild, this option apparently has not been recommended by the Guild and only one waiver has been signed and received by TRA... in November of 2001. So much for current Guild management's abiding concern for member protection.

Another historical benefit was the Jockeys' Guild's Disabled Riders fund, which was started by John Giovanni to provide supplemental income to permanently disabled riders. Jockeys recovering from lesser injuries received weekly disability payments from the TRA-endorsed policy, which the Guild matched for its members as a form of "your dues dollars at work for you." When Dr. Gertmenian took over, the Guild began paying even temporarily sidelined jockeys from the Disabled Jockeys Fund, thereby diverting those dues dollars revenue to other purposes. This and a mysterious transfer of dollars out of the Fund is what quickly depleted the Disabled Riders Fund. On behalf of its member racetracks, the TRA requested, in 2003 and thereafter, an accounting of the use of their contributions to the Jockeys' Guild, but never has received a remotely adequate response from Dr. Gertmenian and his associates.

Regarding basic accident coverage and the relevant circumstances of working as a jockey in this country, here are the facts:

- Jockeys are independent contractors by choice, have been deemed to be so both legislatively and in some states by judicial ruling, and enjoy the concomitant tax benefits, as affirmed by the IRS. As skilled, tough, and fiercely competitive individuals, jockeys want to be free to take riding assignments on a race-by-race basis so as to choose those mounts that offer the best chance of winning.
- Jockeys rode in races worth almost \$1.2 billion in purses in 2004. While jockeys are free to negotiate their compensation levels above state-regulated minimums, a generally accepted estimate of actual jockeys' earnings is 7.5 to 8.0 percent of his or her mounts earnings. Therefore, total jockeys earnings were between approximately \$88-\$94 million.

- There were 1,856 jockeys who rode in at least one race in 2004. There were 991 jockeys who rode at least 100 times, an average of two a week. Those jockeys accounted for more than 95% of all rides and this used to be the minimum requirement for active Jockeys' Guild membership and benefits. The average annual earnings for those jockeys was in the \$87,000-\$93,000 range. The 599 jockeys who rode at least 300 mounts (six a week and representing more than 80% of all starters), had average earnings of \$134,000-\$142,000.
- All equine activity—racing and non-racing, professional and amateur—is recognized as being inherently risky. People making a living riding horses usually have a passion for it, as evidenced by Gary Birzer's return to that activity in a recreational mode. At the same time, race riding is the best compensated riding profession available.
- In 2004, there were 487,416 starters. Through June 30, 2005, the latest loss report available, there were 708 paid claims by the TRA insurance policy. In recent years, the average claim has been about \$7,000. Through October 31, 2005, there have been five injuries that have reached the \$100,000 medical maximum. We don't know how much above that figure each person's medical expenses went, except for Gary Birzer.
- The salient fact is any lack of insurance coverage is a problem only in a very few specific instances. It is a problem that is solvable on both a short-term and long-term, comprehensive basis in a relatively quick fashion.

The TRA and its member racetracks have a long history of productive dialogue with the jockeys and the Guild. Jockeys are independent contractors, but the Jockeys' Guild has been an effective liaison with track management, representing riders in instances ranging from the riders deciding not to race for various weather or track surface-related safety issues on certain days (41 at TRA tracks during the past two years) to the jockey room environment, which can range from Spartan to game rooms and, at Monmouth Park, even a swimming pool.

In February of 2004, months before the Gary Birzer accident, the TRA formed a Safety Committee to constantly monitor and review jockey safety-related items and agreed to work in consultation with The Jockeys' Guild to promote the best and latest safety practices.

The TRA and its member racetracks have been supporters of the Racing Medication and Testing Consortium to promote a uniform and safe medication policy for horses that will ensure the safety of the horse and jockey. Horse and rider safety are why state racing commissions mandate pre-race veterinary inspection of each entrant.

The safer racing environment is the Holy Grail for the racing industry. Injuries to horses and jockeys are horrifying to our fans. Turfway Park spent \$5 million installing the revolutionary Polytrack surface and a new rail around it this year and the rest of the industry is anxiously watching the encouraging early results to make sure the synthetic material will withstand the various extremes of climate and weather conditions.

Over the years, gooseneck rails constructed of materials designed to withstand the impact of a horse have replaced rails that shattered and had straight uprights as support. Distance-marking poles have been placed at a safe distance from the inside rail so as not to pose a danger to horse or jockey. Rider safety vests have been mandated as essential equipment not to be counted against the impost (weight) assigned to a horse.

Safety standards are an ever-evolving issue and, consequently, the TRA and its racetracks always have safety-related items on their business agenda.

Jockey health issues also are of continuing discussion and refinement within the industry. Unnoticed, but nonetheless true, a quick survey by the TRA revealed that during the past few years minimum jockey weight assignments have been raised in several major racing jurisdictions (California, Illinois, Kentucky, Maryland, New York, and New Jersey comprise an incomplete list) and are not the same as 100 years ago or even 10 years ago. It is a complex issue, however, that must also take into account the optimum safety of the horse.

Attesting to industry desire to have a healthy population of jockeys, the California racing industry solicited a proposal for a comprehensive study in August to utilize in developing a wellness program that will aid jockeys in maintaining a healthy lifestyle while meeting the rigorous physical demands of their profession. In September, the TRA and other industry groups met with the collegiate research team to refine the study so it can be undertaken in the coming year and become an industry benchmark for future policies.

Returning to the principal reason we're here today:

Is what has befallen Gary Birzer acceptable? Absolutely not.

What assurances can we give you that the racing industry is willing and able to rectify the situation in near-immediate fashion?

As I previously mentioned, the scope of the problem is far from insurmountable and the shrewd allocation of existing industry resources can provide an enduring, practical solution.

The NTRA Jockey Injury Task Force, which was comprised of racetracks, horsemen, and jockeys last winter, has put everyone on record as making adequate insurance coverage in the event of a catastrophic injury an industry imperative. I'm confident there is a cooperative solution that will be devised and implemented.

This Congressional subcommittee has been helpful in placing an increased focus on the task at hand. Furthermore, your work may help restore a long and valuable working relationship between the Jockeys' Guild, under a responsible new leadership, and other industry groups.

In any event, the tracks and horsemen understand the need for a secure safety net for all jockeys. It is well on its way to being erected as we speak and I have every confidence the job will be completed in the timely fashion it deserves and demands.

Mr. WHITFIELD. Thank you, Mr. Scherf. Mr. Van Clief, you are recognized for 5 minutes.

#### **TESTIMONY OF D.G. VAN CLIEF, JR.**

Mr. VAN CLIEF. Thank you, Mr. Chairman. As Commissioner of the National Thoroughbred Racing Association, I thank Chairman Whitfield and the members of the subcommittee for this opportunity to address the issues of jockey safety and insurance.

The NTRA as a member-based trade association comprising horse owners, breeders, trainers, racetracks and other horseracing organizations. The corporation represents its members in marketing and television contracts, public relations, government affairs, sponsorship sales and product development programs. It also produces the Breeders Cup World Thoroughbred Championships, a day of championship level racing that takes place at a different racetrack each year.

From time to time, the NTRA serves as a convening authority to address issues of natural importance to our industry. Over the years, the organization has empanelled industry groups to address topics such as equine medication and drug testing, wagering technology and technology security and most recently, jockey insurance. The NTRA does not contract with jockeys, back stretch workers or exercise riders. However, we and our members were shocked and dismayed upon hearing the story of Gary Birzer and the failure of the Jockey's Guild to provide catastrophic insurance for its members. It is not our role or intent to intervene in the Guild's management issues but we have grave concerns that the organization's apparent disarray has jeopardized the health and welfare of hundreds of riders. The Guild was once a trusted partner in vital business-to-business relationships within our industry, involving millions of dollars and affecting hundreds of families in the racing community. It must institute comprehensive reforms to regain that status. And Mr. Chairman, as you have noticed, it appears to be well under way in that regard.

The NTRA has and will continue to work cooperatively with our member associations, with jockeys, with horsemen and with other industry stakeholders, as well as insurance service providers and legislative and regulatory agencies to identify equitable, cost-effective solutions to the problem of lapsed catastrophic coverage for riders.

In 2004, upon learning that the Guild's catastrophic injury insurance had been allowed to lapse, the NTRA formed a 33-member taskforce on jockey accident insurance. The panel included a cross-section of insurance providers, jockeys, racetrack representatives and horsemen. They assembled the relevant facts, such as existing levels of accident coverage, the mechanisms used by each jurisdiction to find this coverage and examined Workers' Compensation Programs currently in place in major racing jurisdictions; California, New York, New Jersey and Maryland. In its findings, the panel endorsed a minimum insurance level of a half a million dollars and recommended furthermore a \$1 million optimum level. The panel also identified a private insurance solution through AIG, which has since developed a program for North American Thoroughbred Racetracks. With AIG, most tracks can purchase \$1 million of limits for 50 to 75 percent more than what they were paying to obtain \$100,000 in coverage previously.

NTRA member tracks, excluding those in States where jockeys are already covered under Workers' Compensation, represented 3,452 race days in 2004. According to AIG, 25 NTRA racetracks, including those of Magna entertainment and Churchill Downs, our two largest racetrack operators, have purchased jockey on-track accident insurance coverage. Most have insured at the \$1 million level. These tracks represented 2,316 days in 2004, thus 67 percent of NTRA member exposure, if you will, is now ensured under the program. Several other NTRA member tracks are considering the AIG program and if they do bind that coverage, more than three-quarters of our member exposure will be insured at or above the minimum level recommended by our Jockey Insurance Task Force. Those outside this group remain with the program negotiated by the Thoroughbred Racing Associations. In short, despite the Guild's actions or I should say perhaps their failure to act in allowing coverage to lapse, virtually all tracks offer an on-track coverage for jockeys ranging from \$100,000 to \$1 million.

We believe that our industry, in concert with State regulatory agencies and a reconstituted, credible jockey's organization, will ensure that our sport continues to operate in a manner that will protect both its participants and its public. Not to do so we think is unacceptable. Thank you, Mr. Chairman.

[The prepared statement of D.G. Van Clief, Jr. follows:]

PREPARED STATEMENT OF D.G. VAN CLIEF, JR., COMMISSIONER, NTRA AND  
PRESIDENT, BREEDERS' CUP LIMITED

Thank you for this opportunity to address the Subcommittee on Oversight and Investigations regarding the issues of jockey safety and insurance.

The NTRA is a member-based trade association that represents owners, breeders, horsemen, racetracks and other horse racing interests. In addition to managing certain events, including the Breeders' Cup World Thoroughbred Championships, the association represents its members in marketing and television contracts, public relations, government affairs and sponsorship sales and development programs.

As a trade association, the NTRA serves from time to time as a "convening authority" to address national issues. Over the years, the organization has empanelled industry groups to address equine medication and drug testing, wagering technology, and, most recently, jockey insurance.

The NTRA does not contract with jockeys, backstretch workers or exercise riders. However, like all members of the racing community, we recognize the important role that these individuals play in our industry and the risks that they incur each year while discharging their duties in connection with the care, exercising and riding of

some 74,000 race horses participating in 58,000 races and making a combined total of 487,000 starts.

The recent media reports of alleged misappropriations by the management of the Jockeys' Guild, reports that its health care plan is in arrears, as well as the Guild's decision in 2002 to allow its policy for on-track catastrophic insurance for jockeys to lapse, create grave concerns that the Guild's actions have jeopardized the health and welfare of hundreds of riders.

It is not our role or intent to intervene in the Guild's management issues. However, given the organization's apparent financial and administrative disarray, the racing industry cannot continue to work with it until the Guild institutes comprehensive reforms.

At the same time, NTRA has and will continue to work cooperatively with our member associations, jockeys, horsemen and other industry stakeholders, as well as insurance service providers and the appropriate legislative and regulatory agencies to identify cost-effective and equitable solutions to the problem of lapsed catastrophic coverage for riders.

In 2004, upon learning that the Guild had allowed its catastrophic injury insurance for its members to lapse, the NTRA formed a 33-member Task Force on Jockey Accident Insurance (see attached announcement). The panel included a cross section of insurance providers, jockeys, racetrack representatives and horsemen. They assembled the relevant facts, such as existing levels of accident insurance coverage for jockeys; the mechanisms used by each jurisdiction to fund this coverage; and examined workers' compensation programs currently in place in major racing jurisdictions such as California, New York, New Jersey and Maryland.

The panel endorsed a minimum insurance level of \$500,000 and recommended a \$1 million level (see attached news release). The group also identified a private insurance solution through AIG, the nation's largest underwriter of commercial and industrial insurance, which has since developed a program for Thoroughbred racetracks throughout North America. In most cases, racetracks can purchase \$1 million of limits for 50% to 75% more than they were paying for \$100,000 worth of coverage with the CIGNA program available through the trade association known as the Thoroughbred Racing Associations of North America.

NTRA member tracks, excluding those in states where jockeys are covered under workers' compensation (New York, Maryland, California, New Jersey and Idaho), represented 3,452 race days in 2004. According to AIG, 25 NTRA member tracks, including those of Magna Entertainment and Churchill Downs Incorporated, have purchased the Jockey On-Track Accident program. These tracks represented 2,316 race days in 2004. Thus, 67 percent of the NTRA member track "exposure" is now insured under this program. Several other NTRA member tracks have requested and received an AIG proposal. If they bind, more than three-quarters of our member exposure will be insured at the level recommended by the Jockey Insurance Task Force, with the majority at the \$1 million level. The remaining tracks are with the TRA, whose CIGNA program offers \$100,000 in coverage.

AIG will also provide an excess policy on top of the \$1 million of coverage for all individual jockeys riding at tracks that purchased the underlying \$1 million worth of coverage. Jockeys would be able to buy coverage at very competitive rates due to the high deductible carried by—the participating tracks. AIG has indicated that Guild reform will be needed before it will be confident enough to use the organization as a means of channeling this option to jockeys nationwide. We remain optimistic that these reforms will be carried out shortly and that jockeys will have access to this added coverage.

In addition to providing on-track catastrophic insurance for jockeys at levels ranging from \$100,000 to \$1 million, North American racetracks work to ensure that the racing environment is safe for both equine and human athletes as a matter of routine. The safety features may vary between jurisdictions but generally include:

- Pre-race inspection exams by state-licensed veterinarians for all race-day equine competitors
- Post-race equine drug testing under an industry-sponsored program
- Track maintenance that includes harrowing, soil conditioning and watering as needed to produce a safe and consistent surface
- Safety rails designed to minimize injuries to horses and riders should a racing accident occur
- Engineered racing surfaces such as Polytrack, which are designed to reduce the incidence of on-track injuries for horses
- An ambulance that follows each racing field from starting gate to finish
- Padded starting gate stalls and professional handlers for each horse in the starting gate
- On track alarms to alert jockeys in the event of an emergency during a race

- Protective helmets and vests for jockeys

Twenty-six industry stakeholder organizations support the Racing Medication and Testing Consortium that develops model rules for race-day medication and drug testing. The RMTTC also funds university-level research into equine drugs.

Members of the industry meet regularly to exchange ideas and information regarding numerous issues, including racetrack safety. These industry conferences include the University of Arizona's annual Symposium on Racing, the Asian Conference on Racing; the International Federation of Racing Authorities; the American Association of Equine Practitioners' annual convention and conferences conducted by the Association of Racing Commissioners International and North American Pari-Mutuel Regulators Association, among others.

Numerous industry organizations provide assistance for jockeys and other members of the racing community, including the Jockey Club Foundation, established in 1943 to assist industry workers, including injured jockeys; the Shoemaker Foundation, formed in 1991 with a mission to provide financial assistance to any individual in the racing industry who has suffered a catastrophic illness or accident after exhausting available workers' compensation and insurance benefits; and the Don Macbeth Memorial Jockey Fund, providing a wide range of assistance to riders from purchasing medical equipment to providing monetary assistance. Numerous benevolent groups exist among horsemen's associations to assist backstretch workers in need, while organizations such as the Winners Federation and the Race Track Chaplaincy provide substance abuse counseling and other social services.

Equine medical research, focusing on equine health and safety, is funded largely by the industry itself through the Grayson-Jockey Club Research Foundation, the world's largest private funder of equine medical research. Additionally, UC-Davis conducts a racehorse necropsy program funded by the racing industry to determine the nature of catastrophic injuries to horses and develop injury prevention strategies. Ongoing scientific research into racetrack injuries is aimed at identifying causal factors for injuries with the goal of reducing the incidence and severity of equine injuries and so indirectly ensuring the safety of jockeys and exercise riders.

In closing, I would like to thank the Committee for its work on the important issues of jockey insurance and safety. The racing industry is committed to a shared and speedy resolution to the jockey insurance issue and believes that with requisite levels of accountability, transparency and professionalism, the Guild can resume its role as a facilitator for jockey health and safety programs. The apparent lapse in Guild management that the Committee's investigation has helped to expose is, we believe, an aberration in the organization's 65-year history of service to riders.

We look to our industry, in concert with state regulatory agencies and a reconstituted, credible jockeys' organization to ensure that our sport continues to operate in a manner that will protect both its participants and its public.

Mr. WHITFIELD. Thank you, Mr. Van Clief. As I told you when we started this hearing we were going to have two votes and we have 7 minutes left in the first vote so we are going to recess. We will be back in, I would say, about 25 minutes and then we will pick up with you, Mr. Sexton, and Mr. Amos and Mr. Fravel. So if you all will excuse us, we will recess for 20 minutes and we will be back. Thank you.

[Brief recess.]

Mr. WHITFIELD. I will call this hearing back to order and Mr. Stupak is on his way but rather than delay any longer, I will recognize Mr. Sexton for his 5-minute opening statement.

#### TESTIMONY OF STEVE SEXTON

Mr. SEXTON. Chairman Whitfield, Representative Stupak and member of the committee, good afternoon. My name is Steve Sexton and I am the President of Churchill Downs Racetrack, which for 131 years has been home of America's premiere horserace, the Kentucky Derby. Churchill Downs parent company, Churchill Downs, Incorporated or CDI, owns and operates world renowned horseracing venues throughout the United States. Our six race-tracks in Florida, Illinois, Indiana, Kentucky and Louisiana, host many of North America's most prestigious races. Churchill Downs

Racetracks have also hosted five Breeders Cup World Thoroughbred Championships and Churchill Downs is scheduled to once again host the event in 2006.

Churchill Downs is committed to maintaining a standard of excellence in all aspects of our operations, including those concerning the health and welfare of the jockeys and exercise riders. At present, CDI tracks run approximately 6,000 races each year and the overwhelming majority of these races are conducted without incident. CDI and its family of racetracks stand with the entire horseracing industry in the belief that there must be an industry-wide effort to ensure the availability of adequate on-track insurance coverage to jockeys and to eliminate avoidable racing hazards. CDI has already taken steps on its own, as well as in conjunction with these other stakeholders, to rectify the jockey health and welfare issues currently confronting the horseracing industry today.

For several decades, racetracks in the United States that are members of the Thoroughbred Racing Association or TRA, including CDI tracks, have contributed substantial funds each year to secure on-track catastrophic injury insurance for jockeys. As you know, jockeys are not employees of the racetracks but are hired by horse owners or trainers to ride on a horse by horse basis. These horse owners or trainers negotiate the terms by which jockeys are compensated. Further, the individual States establish the racing rules and regulations governing jockeys and their work-related activities on a racetrack.

Nonetheless, motivated by a desire to protect the best interests of jockeys, since the early 1970's CDI and other TRA Racetracks, have provided jockeys with on-track accident insurance coverage. CDI and other member tracks have additionally paid per-race day and per-mount fees to the Jockey's Guild, with the understanding that the Guild would in turn use these funds to purchase health insurance and supplemental catastrophic injury insurance for its member jockeys. Thus, historically each racetrack provided \$100,000 in on-track injury coverage for each jockey and collectively paid \$2.2 million annually in fees to the Guild. Until Dr. Wayne Gertmenien took over the Guild in 2001, the Guild used that money to obtain \$1 million in insurance coverage for on-track catastrophic injuries to supplement the \$100,000 first layer of insurance provided by the racetracks. The next year, the Guild failed to renew the supplemental catastrophic coverage for jockeys. Many in the horseracing industry, including jockeys, only became aware that this on-track policy had lapsed after the tragic accident at Mountaineer Park in July 2004.

As jockeys, horsemen and racing companies across the company began asking questions about why Guild management had terminated that coverage, we wrote the Guild in December 2004 seeking an accounting for the more than \$1 million that CDI tracks have given to the Guild since Dr. Gertmenien had taken over the organization. At the time we wrote this letter, North American Racetracks as a group had provided more than \$7 million to the Guild during Dr. Gertmenien's tenure, funds that we understood that would be used by the Guild to pay for the on-track insurance coverage for jockeys. We never received a response to our letter.

Accordingly, for the 2005 racing season, we decided on our own to use the money CDI otherwise would have paid the Guild to purchase additional on-track insurance coverage for jockeys racing at CDI tracks. The policy obtained by our company affords jockeys a catastrophic injury benefit of \$1 million, as well as a disability quotient for both temporary and permanent disabilities, a significant increase over the \$100,000 first level coverage typically provided by individual racetracks.

We are also working to provide a long-term, comprehensive and equitable solution to provide adequate insurance coverage for jockeys and others who work in our industry. CDI is actively working with all members of the horseracing industry to support the extensive of State Workers' Compensation programs not only to the jockeys but also to the apprentice jockeys and exercise riders who previously were not covered. In Kentucky, for example, I represented by home tracks, Churchill Downs and Ellis Park, on the Blue Ribbon Panel created by Governor Ernie Fletcher in February 2005, to study the issue of Workers' Compensation for jockeys and others who suffer work-related injuries while mounting, riding or dismounting a horse.

Throughout the summer of 2005, members of the panel who represent all constituencies within Kentucky's horseracing industry, met with representatives of groups within and outside the horse industry in Kentucky to hear their concerns and suggestions. Although Kentucky recognizes that certain horse industry workers, including jockeys, are independent contractors, the Blue Ribbon Panel voted unanimously to recommend the Workers' Compensation coverage of jockeys, apprentice jockeys and exercise riders. The panel also recommended unanimously that the cost of the Workers' Compensation Fund be shared by racetracks, horse owners and jockeys, with a portion of the premium to come from winning purses. We applaud Kentucky for moving forward on this issue and believe this is a model that would be implemented in all states.

CDI is committed to maintaining the highest standards of safety at its racetracks. CDI actively participates in a number of task forces created to study various jockey safety issues and assists in formulating recommendations to be made to State regulators. As a member of the TRA Safety Committee created in January 2004, CDI took the lead in discussions with Jockey's Guild members concerning a range of such safety issues. Issues that include the quality of the racetrack surface, the use of various types of railing on the inner track and the possibility of mandating the use of safety reins, which are believed to assist jockeys in maintaining control of the horse should a rein break.

In our view, what safety standards should be in place are questions best left to State regulators who have substantial experience and expertise, in consultation with the jockeys, the racetracks and the horse owners. This is because in the context of horseracing, there is no one size fits all solution to safety. Care must be taken to ensure that a safety feature intended to avoid one danger will not inadvertently introduce other dangers.

In our experience, State regulators take their obligation to regulate track safety extremely seriously. For example, on any given race day at Churchill Downs there are five to seven Kentucky regu-

lators onsite monitoring and directing racing activities. For these reasons, States are uniquely qualified to assess the desirability of implementing a particular safety standard for tracks in their jurisdiction.

CDI is committed to continuing to work with all segments of the racing industry, including jockeys, horse owners, trainers and the National Thoroughbred Racing Association, to develop a viable, comprehensive and equitable solution to the jockey health and welfare issues confronting our sport today. Thank you.

[The prepared statement of Steve Sexton follows:]

PREPARED STATEMENT OF STEVE SEXTON, PRESIDENT, CHURCHILL DOWNS  
INCORPORATED

I. INTRODUCTION.

Chairman Whitfield, Representative Stupak and Members of the Committee, Good Afternoon. My name is Steve Sexton and I am the President of Churchill Downs racetrack, which for 131 years has been the home of America's premier horse race, the Kentucky Derby. Churchill Downs' parent company, Churchill Downs Incorporated ("CDI"), owns and operates world-renowned horse racing venues throughout the United States. Our six racetracks in Florida, Illinois, Indiana, Kentucky and Louisiana host many of North America's most prestigious races. Churchill Downs racetracks have also hosted five Breeders' Cup World Thoroughbred Championships, and Churchill Downs is scheduled to once again host the event in 2006.

As a leader in the horse racing industry, Churchill Downs is committed to maintaining a standard of excellence in all aspects of our operations, including those concerning the health and welfare of the jockeys, apprentice jockeys and exercise riders. The Company's efforts in this regard are evident, in part, in our track safety records. At present, CDI tracks run approximately 6,000 races each year, and the overwhelming majority of these races are conducted without incident.

CDI recognizes, however, that horse racing is an inherently dangerous sport and that the jockeys exposed to these risks play an integral role in the Company's live racing operations. Accordingly, CDI and its family of racetracks stand with the entire horse racing industry in the belief that there must be an industry-wide effort to ensure the availability of adequate on-track insurance coverage to jockeys and to eliminate avoidable racing hazards. CDI is pleased to join other racetracks, owners, trainers, jockeys, state regulators, and the National Thoroughbred Racing Association, in developing a viable, comprehensive, and equitable solution to these issues. Indeed, as I will discuss in more detail shortly, CDI has already taken steps on its own as well as in conjunction with these other stakeholders to rectify the jockey health and welfare issues currently confronting the horse racing industry.

II. EVENTS LEADING TO THE CURRENT JOCKEY ON-TRACK INJURY INSURANCE COVERAGE  
CHALLENGES AND CHURCHILL DOWNS' EFFORTS IN RESPONSE.

For several decades, racetracks in the United States that are members of the Thoroughbred Racing Association ("TRA"), including all of the tracks owned by CDI, have contributed substantial funds each year to secure on-track catastrophic injury insurance for jockeys. As you know, jockeys are not employees of the racetracks, but are hired by horse owners or trainers to ride on a race-by-race basis. These horse owners or trainers negotiate the terms by which jockeys are compensated for riding horses in races. Further, the individual states establish the racing rules and regulations governing jockeys and their work-related activities while at a racetrack.

Nonetheless, motivated by a desire to protect the best interests of jockeys, since the early 1970s CDI and other TRA racetracks have provided jockeys with on-track accident insurance coverage. CDI and other member tracks have additionally paid per-race day and per-mount fees to the Jockeys' Guild, with the understanding that the Guild would in turn use these funds to purchase health insurance and supplemental catastrophic injury insurance for its member jockeys. Thus, historically, each racetrack provided \$100,000 in on-track injury coverage for each jockey, and collectively paid \$2.2 million annually in per-race day and per-mount fees to the Guild.

Up until recently, the Guild fulfilled its primary mission of providing insurance and support to jockeys. With the \$2.2 million in funds contributed annually by the racetracks, as well as annual dues and per-mount fees contributed by member jockeys, the Guild obtained \$1 million in insurance coverage for on-track catastrophic injuries to supplement the \$100,000 first layer of insurance coverage afforded by the

racetracks. In 2001, the Guild was taken over by Dr. Wayne Gertmenian. The next year, the Guild failed to renew the insurance policy that provided supplemental catastrophic coverage for jockeys.

Many in the horse racing industry, including jockeys, only became aware that this on-track policy had lapsed after the tragic accident at Mountaineer Park in July 2004. As jockeys, horsemen and racing companies across the country began asking questions about why Guild management had terminated that coverage for its members, we wrote the Guild in December 2004 seeking an accounting for the more than \$1 million that CDI tracks had given to the Guild through the per-race day and per-mount fees since Dr. Gertmenian had taken over the organization. At the time we wrote this letter, North American racetracks as a group had provided more than \$7 million to the Guild during Dr. Gertmenian's tenure—funds that we understood would be used by the Guild to pay for the on-track insurance coverage for the jockeys.

We have never received a response to our letter.

Accordingly, for the 2005 racing season, we decided on our own to use the monies CDI otherwise would have paid the Guild to purchase additional on-track insurance coverage for jockeys racing at CDI tracks. The policy obtained by our Company affords jockeys a catastrophic injury benefit of \$1 million, as well as a disability quotient for both temporary and permanent disabilities—a significant increase over the \$100,000 first-level coverage typically provided by individual racetracks.

We are also working with all members of the horse racing industry in order to provide a long-term, comprehensive, and equitable solution to rectify the lack of adequate insurance coverage for jockeys and certain other independent contractors, such as exercise riders, that work in our industry.

To that end, CDI actively supports the extension of state workers' compensation programs not only to the jockeys who previously were protected by the catastrophic injury policy in place until 2002, but also to the apprentice jockeys and exercise riders who previously were not covered. In Kentucky, for example, I represented my home tracks, Churchill Downs and Ellis Park, on the Blue Ribbon Panel created by Governor Ernie Fletcher in February 2005 to study the issue of workers' compensation for jockeys, apprentice jockeys, and exercise riders in the Commonwealth who suffer work-related injuries while mounting, riding, or dismounting a horse.

This panel includes representatives of all constituencies within Kentucky's horse racing industry. Throughout the summer of 2005, members of the Panel convened numerous times to discuss the spectrum of issues relating to the group's mission. During these meetings, representatives of groups within the horse industry in Kentucky and outside the industry appeared to present concerns, suggestions, solutions, and various alternatives as to how the state should address this situation.

Although Kentucky recognizes that certain horse industry workers, including jockeys, are independent contractors, the Blue Ribbon panel has recommended that these workers be afforded access to workers' compensation benefits for work-related injuries. Specifically, on September 1, 2005, the Panel voted unanimously to recommend coverage of jockeys, apprentice jockeys, and exercise riders under a workers' compensation scheme in Kentucky. Further, by unanimous vote, the Panel recommended that the cost of the workers' compensation fund be shared by racetracks, horse owners and jockeys, with a portion of the premium to be gleaned from winning purses.

We applaud Kentucky for moving forward on this issue and believe this is a model that could be implemented in all states.

### III. REGULATION OF THE HORSE RACING INDUSTRY.

CDI is committed to maintaining the highest standards of safety at its racetracks, and continuously monitors the development of innovations that might reduce or eliminate risks in the inherently dangerous sport of horse racing. Among its efforts in this area, CDI actively participates on a number of task forces created to study various jockey safety issues and assists in formulating recommendations to be made to state regulators. Indeed, as a member of the TRA's Safety Committee, created in January 2004, CDI took the lead in discussions with Jockeys' Guild members concerning a range of such safety issues. CDI is thus aware of the concerns raised by Guild members and others regarding certain safety issues that arise on tracks throughout this country—issues that include the quality of the track surface, the use of various types of railing on the inner track, and the possibility of mandating the use of safety reins which are believed to assist jockeys in maintaining control of the horse should a rein break.

In our view, what safety standards should be in place are questions best left to state regulators—who have substantial experience and expertise—in consultation

with the jockeys, the racetracks and the horse owners. This is because, in the context of horse racing, there is no one-size-fits all solution to safety issues. Rather, risk assessment is a highly complex undertaking that requires consideration of a multitude of variables including the peculiarities of each particular racetrack according to its geographic region and climate. Further, care must be taken to ensure that a safety feature intended to avoid one danger will not inadvertently introduce other dangers. Thus, a track surface that is ideal in an arid part of California might pose problems in Louisiana; or a safety rein that might permit a jockey more control under one set of circumstances might, during a different incident, entangle a horse's legs and, failing to break, cause the horse to fall on a fallen jockey. The racing commissions of the individual states have an extensive history of regulating horse racing and have the expertise and resources to study all relevant factors and develop safety standards tailored to the unique needs of the tracks which they govern. The individual states, including Kentucky, take their obligation to regulate track safety extremely seriously. For example, on any given race day at Churchill Downs, there are five to seven Kentucky regulators on site monitoring and directing racing activities. For these reasons, states are uniquely qualified to assess the desirability of implementing a particular safety standard for tracks in their jurisdiction.

#### IV. CONCLUSION.

CDI is committed to continuing to work with all segments of the racing industry, including jockeys, horse owners, trainers, and the National Thoroughbred Racing Association, to develop a viable, comprehensive, and equitable solution to the jockey health and welfare issues confronting our sport today.

Mr. WHITFIELD. Thank you, Mr. Sexton. At this time we recognize Mr. Amos for his 5-minute opening statement.

#### TESTIMONY OF DON AMOS

Mr. AMOS. Chairman Whitfield and distinguished members, it is an honor to appear before this subcommittee to help you become informed on these matters to the horseracing industry.

My name is Don Amos and I am the Executive Vice President and Chief Operating Officer of Magna Entertainment Corporation. I am accompanied by Andrew Staniusz, who is a corporate counsel with MEC and has worked closely with me in the development of MEC's jockey accident insurance program. At this time I wish to speak briefly on some of the points touched upon in my written testimony.

As of June of this year, all jockeys riding at MEC's six tracks in non-Workers' Compensation States have been covered under a \$1 million accident/medical insurance program. The implementation of this coverage is a result of the process that began with the NTRA, organizing a jockey's medical insurance panel in November of last year. MEC's participation in this panel led to it working with Churchill Downs and the AIG firm in the development of an accident insurance policy that could be utilized by all tracks in the United States.

As outlined in my written testimony, the program being implemented by MEC is a co-pay model, with the track paying a minimum of 70 percent, owners paying a maximum of 20 percent and the Jockey's Guild paying 10 percent of the premium required to maintain the \$1 million coverage. This translates to a mount fee of \$5 for the owner and \$2,50 for the Guild. MEC is attracted to a co-pay model because of MEC's firm belief that people have a different attitude to something when they pay a portion of it, or as opposed to get something for nothing.

MEC further believes that any program must be designed to stand the test of time. Medical care costs will increase over time.

Today, \$1 million of coverage seems appropriate. In the future, this is likely to be insufficient. By pre-determining the contribution of the 70/20/10 percent basis, MEC believes that this is a sustainable model on a long-term basis or until such time that an alternate program is developed. It is MEC's position that an appropriate level of coverage is only a starting point. The key is to use accident experience data for frequency and severity to develop comprehensive analyses of root causes of accidents, which in turn will develop loss control initiatives based on objective facts.

From the outset, MEC has looked to its insurance carrier, AIG, to develop a body of loss experience data to begin this process of loss control. As recently as November 10, 2005, Mr. Staniusz met with AIG representatives to discuss the status of the development of loss control initiatives. These discussions, AIG reviewed with MEC the fact that it has been utilizing experience data to evaluate safety factors such as starting gates, rails, lighting, weather, visibility and jockey equipment. AIG will be commencing loss control inspections of MEC facilities covered by this insurance program beginning in the new year. Accordingly, this program is well on the way of becoming a comprehensive risk management program designed to enhance the safety of jockeys riding at our facilities.

Mr. Chairman and distinguished members, in conclusion I firmly believe this industry is moving in the right direction regarding the specific issue of jockey accident insurance. As in any process, industry leaders must show the way. MEC believes that it and Churchill took a responsible approach to addressing the immediate needs arising from inadequate jockey insurance. If all stakeholders are willing, adequate medical insurance is affordable for every race-track.

MEC encourages all stakeholders to work within the broad principles of the approach we developed to obtain a viable solution at the local level. MEC firmly believes that the stakeholders in this industry will reach an affable solution in short order.

At this time I wish to restrict my oral remarks to the issue of jockey accident insurance. As you are aware, my written testimony touched upon several issues on which I or Mr. Staniusz would be pleased to field any questions that you may have. As is clear from my written testimony, I am personally passionate about this sport. My passion extends to the magnificent animals, the talented trainers and the courageous athletes who ride them. This industry has had to face many challenges in recent years. It is MEC's belief that by having all stakeholders; owners, trainers, jockeys, breeders and the tracks working together and balancing their respective interests, this industry can meet all of its challenges.

Thank you, Chairman Whitfield and distinguished members for your kind attention.

[The prepared statement of Don Amos follows:]

PREPARED STATEMENT OF DON AMOS, EXECUTIVE VICE-PRESIDENT AND CHIEF OPERATING OFFICER, MAGNA ENTERTAINMENT CORP.

Chairman Whitfield and distinguished members, it is an honor to appear before this Subcommittee to help you to become informed on these important matters to the horse racing industry.

My name is Don Amos and I am the Executive Vice-President and Chief Operating Officer of Magna Entertainment Corp., ("MEC"). As an executive officer of a

public corporation, my responsibility is to act in the best interests of our shareholders. In MEC's judgment, the best way to do this is to work with all stakeholders in our industry: owners, jockeys, trainers and breeders; to achieve the common good of improving horseracing in a very competitive landscape.

I have been associated with horses since childhood, showing Shetland Ponies in county fair competitions in rural Ontario, Canada. This evolved into owning and driving standardbred horses as a young adult. My association with the thoroughbred industry began in 1977 in Toronto, Canada. Currently, I am the owner and breeder of 16 thoroughbreds. Throughout my association with, and continuing education about, horseracing, I have come to admire many individuals. Talented trainers, who can develop young horses into high performance athletes will always have my greatest admiration. Further, as someone who at one time was an aspiring jockey, I must admit to this Subcommittee that I consider those who ride these animals to be fine tuned athletes, exhibiting great courage and respect for their competitive colleagues.

In my testimony, I will share with this Subcommittee the approach that MEC has taken in working with industry stakeholders to deal with the issues being investigated in these hearings. MEC believes that this approach is beneficial to the industry, especially to jockeys riding at MEC's tracks, and will ultimately be beneficial to our shareholders.

This testimony will begin with some background of MEC, its history, vision and operating principles. This will be followed by a summary of the steps taken in developing a one million dollar accident insurance program for jockeys. I will use the term "program" because this testimony will show that an appropriate level of coverage is only the starting point in promoting jockey safety. Finally, this testimony will briefly provide MEC's perspective on some of the other issues that have been raised in these hearings.

#### BACKGROUND OF MEC

MEC was formed in 1999 as a subsidiary of Magna International Inc. ("Magna"), currently the fourth largest manufacturer of automotive systems in the world. The Magna story began in 1957 when its founder, Frank Stronach, began a tool and die shop out of a garage in Toronto, Canada. The Company's revenues in the first year were Cdn \$13,000. Today, Magna is a US \$20 billion company, employing 81,000 employees worldwide.

Over the years, Frank Stronach became a major owner and breeder of thoroughbreds. As a businessman and entrepreneur, he saw an opportunity to transform thoroughbred racing into a global industry through the utilization of satellite and internet communication. This vision led to Magna's purchase of Santa Anita Park in 1998.

MEC became a public company in 2000 with Magna as its controlling shareholder. In 2003, Magna spun off its interest in MEC.

Today, MEC remains a publicly traded company, with Frank Stronach as its Chairman. Accordingly, the original vision for MEC continues today.

#### MEC'S PRINCIPLES

The fact that MEC began as a subsidiary of a manufacturing company exposed it to approaches not common to the racing industry. The foremost of these is a systematic approach to quality control and continuous improvement. The manufacturing environment, especially in automotive, is driven by measurables and auditing. Out of this environment Magna migrated these features into non-production areas such as employee relations and environmental management through the introduction of: Employee Opinion Surveys; Health and Safety Audits and Inspections; and Environmental Audits and Inspections.

All of these vehicles drove the development of action plans for continuous improvement.

Further, Magna came to a common sense conclusion that success was based on balancing the interest of the stakeholders in a business: customers, investors and employees. The only way of achieving this balance is by respecting each stakeholder through open communications.

Finally, with its employees and managers, Magna emphasized one fundamental point: "No government, no company, no union can guarantee you job security. The best recipe for job security is for employees and management to work together in harmony, to provide a better product at a better price for our customers." This meant fostering collaboration and diffusing confrontation. As in the case of any successful relationship, whether as spouses, friends, parent—child, maintaining this approach is hard, but satisfying, work.

Mr. Chairman and members of this Subcommittee, this background has formed part of this testimony to answer one question. We are all products of the values we are taught and the experiences we have in life. The same is true in the life of a corporation. Throughout this testimony, some of you may wish to ask "Why did MEC decide to do that?" The answer I believe is found in knowing our background.

#### OPERATING IN TODAY'S RACING INDUSTRY

Although MEC is confident in its vision to revitalize horseracing, the fact remains that this effort costs money.

As a result of the decline of horseracing over the last two decades, the tracks MEC acquired require significant capital expenditure. This has caused significant impact to MEC's bottom line. But these expenditures are necessary to revitalize racing in our markets.

With respect to the state that horseracing has found itself in as an industry, there can be much discussion. The bottom line is there is no one cause; there is no one culprit; there is no value in finger pointing. We prosper together as an industry, we suffer together as an industry. All stakeholders have to bear some burden for the state this industry finds itself in.

The one basic point of the situation the industry finds itself in is that horseracing will never achieve greater prosperity if its stakeholders are confrontational. The only chance for this industry to revitalize itself is if all stakeholders, including ourselves, try to work together, balancing our respective interests, for the greater good of the industry.

On this note, the approach MEC has taken with respect to allocating our resources is in keeping with this philosophy.

Currently, MEC has made significant expenditures to modernize facilities such as Gulfstream Park to excite the consumer about our industry. But no Corporation can modernize all of its facilities at once. Accordingly, in our facilities that are not being overhauled, MEC's first priority with respect to capital spending is to ensure compliance with regulatory requirements. In our industry, this primarily centers on environmental issues, such as, the control of wastewater from the backstretch.

The next priority with respect to capital expenditure centers around the safety of both the horse and rider, whether it be by improvements to track surfaces, starting gates or equipment.

The fact is that as any corporation, MEC must prioritize its capital expenditures. Accordingly, our efforts must be gradual; with improvement being implemented on a steady and consistent bases. MEC is confident that this approach is ultimately viable and beneficial to customers, employees, jockeys, trainers and the horses at our facilities.

#### MEC OPERATIONS

As stated previously in this testimony, MEC has drawn upon its roots as a subsidiary of a manufacturing company to implement quality control and auditing programs.

Commencing in 2002, MEC launched a program which included: Employee Opinion Surveys; Horsemen's Surveys; Periodic Meetings with Employees and Horsemen; Environmental Audits and Inspections; and Health and Safety Surveys.

Just as in the case of the Magna experience, these initiatives resulted in the development of action plans to address deficiencies.

As in the case of any new initiative, there are many challenges to achieving successful implementation. But by maintaining our focus, MEC is beginning to see the start of a culture of continuous improvement. As in all things that achieve lasting effect, these initiatives are part of a sustained process of gradual change.

With respect to our health and safety audits, these are conducted by MEC's, workers' compensation carrier, Liberty Mutual, and are primarily focused on the safety of our employees. However, the sensitivity to safety being cultivated by this process extends to all of those at our facilities. As will be discussed in greater detail later in the testimony, our Jockey Accident Insurance carrier will be conducting loss control inspections commencing in 2006. MEC has every expectation that these inspections will have the same effect on improving jockey safety as have Health and Safety Audits on employee safety.

#### JOCKEY ACCIDENT INSURANCE

During 2004, the issue of the adequacy of jockey accident insurance became one of the key issues of this industry as a result of Gary Birzer's tragic accident.

MEC was invited to the Jockey Accident Insurance Summit organized by the National Thoroughbred Racing Association ("NTRA") which was held at Turfway Park

outside of Cincinnati on November 22, 2004. Andrew Staniusz, Legal Counsel and Director of Employee Relations Programs for MEC, attended on the Company's behalf.

During this summit, a consensus emerged that the appropriate level of coverage at this time would be one million dollars. Further, the key issue that emerged was not availability of insurance, but how to make such coverage affordable. Finally, it was decided to engage the AIG firm, which provided workers' compensation coverage to jockeys in California, to explore the possibility of developing a program.

The NTRA held a second meeting in Chicago at Arlington Park in January 5, 2005 with representatives from AIG. What came from this meeting was an agreement by Churchill Downs Inc. ("CDI") and MEC to work together with AIG in trying to develop a program providing one million dollar coverage.

Over the next weeks, an approach was developed by CDI and MEC that was communicated to the NTRA group at Turfway Park on February 25, 2005. The approach presented provided for a co-pay structure whereby a track would pay a minimum of 70% of the total premium of a million dollar policy, and with horse owners and the Jockeys' Guild combined contributing a maximum of 30% of the cost.

MEC was attracted to a co-pay model because it is MEC's firm belief people have a different attitude to something they have to pay a portion for as opposed to something they get for free. By having to make a payment each time a horse is raced, the owner is reminded of the fact that there is a cost for a lack of safety.

The thinking behind having the remainder of the cost paid by the Guild rather than the Jockey is two-fold. First, there was cognizance of the fact that a mount fee would be a hardship to jockeys racing at smaller market tracks. Second, the Jockey Guild was receiving a mount fee from each track. Historically, these mount fees contributed towards the accident coverage that had been discontinued by the Guild.

From AIG's perspective, it is fair to say that it did not care how this policy was funded. It was prepared to provide enhanced coverage to all tracks in the U.S.

Although this is in no way an endorsement of AIG, there are distinct advantages in MEC's view of having at this time one major player in providing this coverage.

It is MEC's position that an appropriate level of coverage is only a starting point. The key is to use accident experience data, both frequency and severity, to develop comprehensive analysis of root causes of accidents which will develop loss control initiatives based on objective fact, rather than on anecdotal information.

One of the greatest obstacles to appropriate loss control with respect to jockey accidents historically has been the lack of appropriate information gathering of loss experience. By having one major player at this time, a body of loss experience data can be established to begin the process of loss control. Whether such loss control measures would be in equipment improvements, track modifications or new practices, it is only through objective analysis can this industry create a safer racing environment.

MEC encourages other insurers to enter this field. After all, competition is healthy. For the time being, however, the relationship with AIG is beneficial to the safety of jockeys.

As stated previously, a joint presentation was given by CDI and MEC to the NTRA group at Turfway Park on February 25, 2005. During this presentation the co-pay model was brought forward as a near term solution. As expected, the approach met resistance from those groups who were being asked to contribute. The meeting concluded on the basis that additional coverage was available through AIG and that industry stakeholders should continue to explore funding approaches.

#### MEC'S DECISION REGARDING JOCKEY ACCIDENT INSURANCE

After further study, MEC decided to implement a one million dollar medical coverage policy for jockeys on a co-pay model with the affected track paying a minimum 70%, owners paying a maximum 20% and the Guild paying a maximum 10%. Our analysis determined that a mount fee of \$5.00 for the owner and \$2.50 for the Guild would achieve the 20% and 10% levels. Any surplus would be applied to next year's contributions of owners and the Guild. If there were insufficient mounts at a track to realize the appropriate level of co-pay from the owners and the Guild, the track would make up the short fall. This is what we mean by a minimum contribution of 70% by the track.

MEC believes that any program must be designed to stand the test of time. Medical care costs will only increase over time. Today, one million dollars coverage seems appropriate. In the future it is likely to be insufficient. By predetermining the contributions on a 70/20/10 basis, MEC believes this is a sustainable model on a long term basis or until such time an alternate program is developed.

Commencing June 15, 2005, MEC began implementing this policy at each of its six (6) tracks in non-workers compensation states as each track commenced its live racing meet. As part of this process, MEC has sat down with owners and trainers in each affected State to review this approach. The goal was to achieve consensus beforehand.

Where my other responsibilities did not allow me to meet with these groups prior to the commencement of the racing meet, MEC decided to implement the coverage on a temporary basis without requiring a co-payment. Accordingly, jockeys at MEC facilities have been riding with one million dollar accident coverage at the following locations as of the following dates: Great Lakes Downs (MI), June 15, 2005; Thistledown (OH), June 15, 2005; Lone Star Park (TX), June 15, 2005; Remington Park (OK), August 5, 2005; and Portland Meadows (OR), October 22, 2005.

The remaining track MEC has in a non-workers' compensation state is Gulfstream Park in Florida which will begin its live meet in January 2006.

Where state regulations precluded a mount fee approach, MEC has agreed to look at alternative mechanisms, such as payment from purse accounts, for an equivalent contribution. At the present time, a co-pay approach has been established in Michigan and Ohio. Discussions are ongoing in Texas and Oregon. MEC will be scheduling discussions with Florida Horsemen shortly and with Oklahoma Horsemen in the new year. MEC is also currently in discussions with the Jockey's Guild.

#### FUTURE INITIATIVES

As recently as November 10, 2005, Mr. Staniusz met with AIG representatives to discuss the status of the development of loss control initiatives. From these discussions, it was apparent that AIG has been utilizing its experience data to analyze safety factors such as starting gates, rails, lighting, weather, visibility and equipment such as helmets and vests. It is anticipated that AIG will commence loss control inspections of MEC facilities covered by this program beginning in the New Year. Accordingly, the program is now ready to take the next level.

#### OTHER ISSUES

##### *1. Exercise Riders*

At the time of the NTRA summit, there was discussion of a program to include exercise riders. The AIG program covers jockeys whether they are hurt in a race or exercising a horse in the morning. The policy does not cover pure exercise riders.

At the time this program was being developed, there was simply insufficient experience data for the insurance industry to determine appropriate costs. Whenever insurers do not have sufficient information, they hedge their bets by raising their quotes. Since the pressing issue at the time was the situation of jockeys, it was determined to exclude exercise riders.

MEC believes that as insurers become more educated about the risk factors associated with exercise riding and as more experience data becomes available, this issue of exercise riders could be addressed.

##### *2. Workers' Compensation*

Many believe that workers' compensation is the solution to the issue of Jockey Accident Coverage. It well may be.

I would caution all participants in these hearings that workers' compensation is not free. The costs associated with workers' compensation regimes in the major racing states are expensive, even after one takes account of subsidies, preferred premiums and other mechanisms employed to reduce costs.

The approach tabled jointly by CDI and MEC in February was designed to be affordable at every track in the United States. Experience has shown that the costs associated with a Workers' Compensation regime, whether borne by tracks, trainers or other stakeholders, will be far more onerous and quite likely unaffordable in smaller racing markets.

##### *3. The "Jockey as Employee" Issue*

The Jockey is licensed by the State Racing Commission. Provided he or she has not committed any misconduct, a licensed jockey has access to the track, its backstretch and the jockeys' room.

It is the trainer who retains a jockey to ride a horse. It is the trainer who pays the mount fee to the jockey. The jockey receives his / her purse money usually on a customary basis of 10% of the purse for a win, 7% for place (2nd) and 5% for show (3rd). However, this customary basis for purse payment is subject to negotiation between the trainer and the jockey.

If a jockey is not retained to ride by any trainer, would the jockey be entitled to payment of the minimum wage from the track? If the jockey is an employee, that would be the case.

But a jockey who cannot get any rides is an underperformer. An employer is usually able to discharge an underperforming employee. In the case of jockeys, however, it is the state regulator who determines qualification.

Further, what happens if this "jockey as employee" is fired by the "track as employer" for non-performance but is given a mount by a trainer the next day? Can the track dictate to a trainer that the trainer cannot retain this jockey? Can the track avoid terminating this "jockey as employee" by forcing trainers to give him rides?

This is simply one hypothetical example that MEC submits should cause this Subcommittee, and any other body, such as the NLRB, reviewing this issue, to take pause before going too far down the road in concluding that "jockeys as employees" is the solution to all the difficulties jockey face.

#### 4. NIOSH

As outlined in this testimony, MEC has demonstrated its commitment to safety. The issues raised in this Subcommittee's letter to Secretary Leavitt, however, involve issues of complexity which are of interest to trainers and horse owners, not just only to jockeys and the tracks.

MEC would encourage NIOSH to seek input from all stakeholders groups in conducting any evaluation of standards.

#### CONCLUSION

Mr. Chairman and distinguished members, in conclusion, I firmly believe that this industry is moving in the right direction regarding the specific issues of jockey accident insurance. As in any process, industry leaders must show the way. MEC believes that it and CDI took a responsible approach to addressing the immediate needs arising from inadequate jockey accident insurance. Pointing fingers as to how this situation arose does not help any injured jockey or his or her family.

A federal law providing workers' compensation will in all likelihood take years; but jockeys will be riding horses tomorrow. What is available today should meet the needs of all stakeholders in non-workers compensation jurisdictions.

If all stakeholders are willing, adequate medical insurance is affordable for every track. MEC encourages all stakeholders to work with the broad principles of our approach to obtain a viable solution at the local level. MEC believes that the stakeholders in this industry will reach an optional solution in short order. To suspend this process to await federal legislation will not be in the best interests of the jockeys.

In conclusion and on a personal note, I am sincerely grateful to have found myself in a position of responsibility where I could contribute to the safety and security of jockeys and their families.

Mr. WHITFIELD. Thank you, Mr. Amos. And Mr. Fravel, you are recognized for 5 minutes.

#### TESTIMONY OF CRAIG R. FRAVEL

Mr. FRAVEL. On July 24, 2004, Alex Solis was riding a mare named Golden KK at Del Mar when an apprentice rider cut him off along the rail. Golden KK clipped heels with that riders' horse and fell. Alex rolled under the safety rail and remained there motionless. Within 30 seconds an ambulance following the race, with two emergency medical technicians on board, was at Alex's side. Alex was immobilized and taken to an onsite medical clinic where he was attended by a physician, who ordered that Alex be transported to a local hospital. While Alex was being transported, the race was resumed with a back-up ambulance following the race.

Under the rules of the California Horseracing Board, Alex was covered by a policy of Workman's Compensation and his medical expenses were fully covered with no deductible or co-payment. He was also entitled to temporary Disability Benefits and had he been unable to return to work, he would have been entitled to perma-

ment Disability Benefits and supplemental Job Displacement Benefits.

Under two programs initiated by horse owners and California tracks, the cost of Workers' Comp is subsidized through a variety of funds derived from wagering. In addition, every California track pays for supplemental catastrophic injury insurance through a TRA sponsored group program that pays significant benefits in the event of permanent disability or death. A program that has been continually funded by the tracks, despite the fact that the agreement with the Jockey's Guild, which contemplated the additional coverage, lapsed several years ago.

California is 1 of 5 States that mandates Workers' Compensation coverage for jockeys and exercise riders and is one of two that provides funding to pay for health insurance for jockeys and their dependents. California racetracks, horsemen and representatives of the riders have worked together for years to develop legislative and regulatory standards for track safety and to contribute significant funding to the Disabled Jockeys Endowment. Del Mar was the first racetrack in the United States to install the Fontana safety rail.

We have also worked with the CHRB and Barry Broad, formerly counsel of the Jockey's Guild, to pass AB 1180. That new law memorializes a number of safety and health initiatives for the benefit of California riders. Including a peer reviewed academic, nutritional and health assessment designed to provide a scientific basis for future policy decisions concerning the jockey's scale of weights, as well as nutrition and health weight management programs. We are in the final stages of evaluating a proposal from Dr. Dan Benardot of Georgia State University to conduct the study. And are working with various industry groups, including the TRA, Thoroughbred Owners of California, California Thoroughbred Trainers, National HBPA, THA, Racing Commissioners International and the NTRA to fund the study on a national basis.

California is the only State in the country to require a post-mortem examination of every horse that dies on the grounds of a licensed racetrack or auxiliary training center. That requirement has enabled us to conduct research into the causes of catastrophic injuries to horses, conducted by the University of California at Davis. And to implement programs to reduce the incidence of injuries amongst racehorses.

In 2005, Del Mar spent in excess of \$1.2 million maintaining the quality and consistency of its dirt and turf tracks during its 7-week meet. We work with the California Thoroughbred Trainers to monitor track conditions from the trainer perspective and to sponsor research into new methods of evaluating track hardness, surface consistency and base conditions, which are being developed by Dr. Mick Peterson of the University of Maine and Dr. Wayne McIllwraith of Colorado State University. That research has provided us with new insights into track maintenance techniques and has assisted in the adaptation of diagnostic tools, such as ground penetrating radar to evaluate sub-surface conditions. We are also evaluating the new polymer coated silica sand surface developed in the United Kingdom and presently being used at Turfway Park and Keeneland, called Polytrack, which promises to further reduce injuries to racehorses.

I started this testimony with a story of Alex Solis. It has a happy ending, as he returned to riding in early 2005. There is however one aspect of the story that does not have a happy ending. Had Alex suffered similar injuries off the track, it is unclear whether his health insurance would have been adequate to cover his expenses, which would not be covered by Workers' Comp. That inadequacy would not be the result of any failure of the California industry to fund health insurance for riders. It has done that. But from the fact that the health insurance for California riders is part of a national self-insurance program managed by the Jockey's Guild, a program whose financial health is in serious doubt. I encourage this committee to continue to work with the industry to remedy this situation and to ensure that racetracks, owners, trainers and regulators have a responsible party representing the interests of riders. One that will work with us, rather than against us, in addressing safety and health constructively. Thank you.

[The prepared statement of Craig R. Fravel follows:]

PREPARED STATEMENT OF CRAIG R. FRAVEL, EXECUTIVE VICE PRESIDENT, DEL MAR THOROUGHBRED CLUB

On July 24, 2004, future Hall of Fame rider Alex Solis was riding a dark brown four-year old mare named Golden KK in a \$32,000 claiming race at Del Mar, the seaside race track built by Bing Crosby and Pat O'Brien in 1937. Although Alex's mount was fading from contention in the race and in seventh position, an apprentice rider likewise out of contention cut Alex off along the rail. Alex's horse clipped heels with the apprentice's horse and fell to the ground. While Golden KK got immediately to her feet and ran off with the field, Alex rolled under the safety rail near the quarter pole and remained there motionless as his training and instincts led him to do. In less than 30 seconds, an ambulance following the race with two emergency medical technicians on board was at Alex's side. Alex was carefully placed onto a board and immobilized for transport to an on site medical clinic at Del Mar where he was immediately attended by a physician who determined that Alex should be transported to a local emergency room for further evaluation. While Alex was being transported, the races resumed with a backup ambulance following each race.

Alex was eventually diagnosed with a fractured vertebra and three broken ribs and operated on at the University of California, San Diego Medical Center. He was unable to return to work for six months yet still managed to rank ninth nationally in total purse earnings in 2004 with \$11,554,851. While this is an unfortunate story, the silver lining in it is the fact that the trainer of the horse Alex was riding was required by the rules and regulations of the California Horse Racing Board to maintain a policy of workers compensation insurance. That policy covered Alex to the same extent as any other worker in California would be covered in the event of a work-related injury. Under the terms of that policy and California law, Alex's medical expenses were covered to the extent required to cure or relieve the effects of the injury with no deductible or co-payments by Alex as the injured worker. He was also entitled to temporary disability benefits to partially replace lost wages and had he been unable to return to his profession he would have been entitled to permanent disability benefits and supplemental job displacement benefits. The cost of that workers compensation insurance was paid by the trainer of Golden KK and in the case of a rider billed to the owner of the horse. Under two programs authorized by Sections 19605.73, 19605.75, and 19607.4 of the California Horse Racing Law the cost of that insurance is subsidized by racetracks and horsemen through a variety of funds derived from wagering on California races. In addition, every California track pays for supplemental Catastrophic Injury Insurance through a TRA sponsored group program that would pay significant benefits in the event of permanent disability or death. That program is available only to TRA tracks in states where workers compensation is available for injured riders and has been continually funded by those tracks despite the fact that the agreement with the Jockeys Guild, which contemplated the additional coverage, lapsed several years ago.

As you will hear in more detail later today from Richard Shapiro of the California Horse Racing Board, what this story illustrates is the leadership role California has assumed in the Thoroughbred racing industry with regard to jockey safety and

health issues. It is one of five states that mandates workers compensation coverage for jockeys and exercise riders and one of two that provides funding through wagering dollars to pay for health insurance for jockeys and their dependents. Racetracks, horsemen and representatives of the riders have worked together for years to develop legislative and regulatory standards for track safety and to contribute significant funding to the Disabled Jockeys Endowment. Del Mar was the first racetrack in the United States to install the Fontana safety rail on its dirt racetrack, an innovation that has undoubtedly saved lives and prevented serious injury since its installation. More recently, we have worked closely with the California Horse Racing Board and Barry Broad; formerly counsel to the Jockeys Guild, to pass AB 1180, recently signed into law by Governor Schwarznegger. That new law memorializes a number of safety and health initiatives for the benefit of California riders including a peer reviewed academic nutritional and health assessment designed to provide a scientific basis for future policy decisions concerning the jockey scale of weights and nutrition and weight management programs. We are in the final stages of evaluating a proposal from Dr. Dan Benardot, PhD of Georgia State University to conduct the study and are working with various industry groups including the TRA, Thoroughbred Owners of California, California Thoroughbred Trainers, National HBPA, THA, Racing Commissioners International and the NTRA to fund the study on a national basis.

Moreover, California is to my knowledge the only state in the country to require a postmortem examination of every horse that dies on the grounds of a licensed racetrack or auxiliary training center. That requirement has enabled the industry to support and benefit from research into the causes of catastrophic injuries to horses conducted by the University of California at Davis School of Veterinary Medicine. That research most recently led to the adoption of a regulation limiting the use of horseshoes with toe grabs on California racing surfaces based upon findings that there is a significant correlation between the use of medium and high toe grabs and the incidence of catastrophic limb failure in horses while racing or training. Similar research has and will continue to contribute significantly to our ability to increase safety for horses and riders, as we are more able to confidently identify the causes of injury and attempt to prevent them before they occur.

It is undoubtedly true that these programs come at a cost. I would be remiss if I did not inform you that California operates at a serious competitive disadvantage to other states where the cost of owning and training horses is significantly less. Simply put, horses are our product and the quantity and quality of horses available for racing translates into higher wagering activity. For a number of years now California has been losing horses to other states where the cost of doing business is lower. Nonetheless, I am not aware of any advocate in California for reducing or eliminating the level of benefits provided riders at present. I firmly believe that when any rider in California suffers an injury while riding in a race the industry takes pride in the fact that they are assured adequate medical care and disability benefits.

Despite the competitive factors that have affected us in recent years, California racetracks continue to invest heavily in track maintenance and safety. When I came to work at Del Mar in 1990 after spending eight years practicing law, the first thing I did was to spend a day with Steve Wood, the track superintendent at Del Mar, Santa Anita and Fairplex. Steve's day begins at around 4:30 am and can extend late into the evening while tractors, harrows and earthmovers groom and maintain the dirt surfaces used for training and racing. In 2005, Del Mar spent in excess of \$1.2 million maintaining the quality and consistency of its dirt and turf tracks to ensure safe riding surfaces for horses and jockeys during its seven week meet. We have also worked with the California Thoroughbred Trainers to monitor track conditions from the trainer perspective and to sponsor research into new methods of evaluating track hardness, surface consistency and base conditions being developed by Dr. Mick Peterson, PhD of the University of Maine working with Dr. Wayne McIlwraith, DVM of Colorado State University Veterinary School. That research has provided us with new insights into track maintenance techniques and has assisted in the adaptation of diagnostic tools such as ground penetrating radar to evaluate subsurface conditions. We are also evaluating along with Drs. Peterson and McIlwraith and Dr. Sue Stover of the UC Davis Veterinary School a new Polymer coated silica sand surface developed in the United Kingdom and presently being used at Turfway Park and Keeneland in Kentucky called Polytrack. I firmly believe that this surface will eventually replace virtually every dirt track in the United States and result in dramatic improvements in track safety for both horse and rider. Preliminary results from both Keeneland and Turfway Park indicate that this prediction can be substantiated both empirically and anecdotally.

I started this testimony with a description of an unfortunate incident that occurred at Del Mar to my friend Alex Solis. Accidents seem to go hand in hand with riding horses and some of those incidents, like the one experienced by Alex, are difficult if not impossible to prevent. We are, however, working hard to do more to prevent injuries through scientific research, educational efforts and communication within the industry and the industry has an obligation to expend the resources to do that, not just in California but everywhere.

Alex's story has a happy ending as he returned to riding early in 2005 and currently ranks 14th nationally with purse earnings in excess of \$8.8 million for the year. There is, however, one aspect of the story that does not have a happy ending as of yet. Had Alex Solis suffered similar injuries in a car crash, it is unclear whether his health insurance would have been adequate to cover his expenses since that would not be covered by workers compensation. That inadequacy would not be a result of any failure of the California industry to adequately fund health insurance for riders—it has—but from the fact that health insurance for California riders is part of a national self insurance program managed by the Jockeys Guild, a program whose financial health is in serious doubt given the pattern of obfuscation practiced by the management of the Jockeys Guild in the face of inquiries by the California Horse Racing Board and the Thoroughbred Owners of California, indeed in the face of inquiries from its own members. I would encourage this committee to continue to work with the industry to remedy this situation and to ensure that racetracks, owners, trainers and regulators have a responsible partner representing the interests of riders; one which will work with us rather than against us in addressing safety and health issues constructively.

Mr. WHITFIELD. I thank you, Mr. Fravel, and thank all of you for your testimony. Mr. Fravel, you had mentioned that in California there is presently a nutrition and health peer-reviewed study that has been initiated and you are now working with a professor at Georgia State to conduct that. Is that correct?

Mr. FRAVEL. That is correct. We have been through two drafts of a proposal to finalize the terms of that study and will be—and have met with a variety of industry participants that I mentioned in my comments, to finalize the terms of that and then work on funding for the proposal.

Mr. WHITFIELD. What funding is available for that? Is there anyone out in California, any entity or—

Mr. FRAVEL. Well, no one has been asked formally for any funding because we haven't had a full budget for the proposal at this point.

Mr. WHITFIELD. Right.

Mr. FRAVEL. But as soon as we have a full budget most of the industry participants that we have discussed this with have shown an interest in participating and saw the value in the project.

Mr. WHITFIELD. And why is a study like that important?

Mr. FRAVEL. Well, there has been a lot of discussion of the jockey's scale of weights, which I suppose you have heard some of in your discussions. And we worked very closely with Barry Broad, who is counsel of the Jockey's Guild in California, to develop a scientific basis for future decisions on matters relating to the scale of weights. We felt that there was a lot of anecdotal evidence about things that jockeys engage in to maintain their weight levels but very little scientific evidence. And so we began to search for someone who is capable of doing the kind of in-depth academic research that would provide a basis for those decisions in the long-term.

Mr. WHITFIELD. Is there anyone else on the panel today aware of any similar initiative in the area where you operate? Mr. Scherf?

Mr. SCHERF. Yes. The initiative that Mr. Fravel is talking about has been presented to national groups. So I mean, that is moving from a California scope to a national scope.

Mr. WHITFIELD. Right.

Mr. SCHERF. The study now contemplates surveying jockeys in various jurisdictions and various national groups have been brought into those meetings for defining a meaningful study.

Mr. WHITFIELD. Mr. Amos, in his testimony, mentioned the fact that there was a lack of accident experience data in a centralized form. And it seems to me when you talk about safety issues relating to racetracks, it would be helpful to know why accidents occur. Is it due to a horse failure? Is it due to—what causes the issue? Is there a centralized data system on accidents on racetracks that is available to people at this time?

Mr. AMOS. To my knowledge, no. The information we have is by racetrack and we keep the records by racetrack because we—

Mr. WHITFIELD. So Magna, you keep your own records?

Mr. AMOS. Records. It is our initiative.

Mr. WHITFIELD. And what categories are covered?

Mr. AMOS. The most immediate one is that if a horse goes down where, at what point in the racetrack did that occur? Because there is things you can't see as far as the base and other factors, as far as composition of the soil.

Mr. WHITFIELD. Right.

Mr. AMOS. So if you get more than one or two in that particular area, you have got to take a real close look.

Mr. WHITFIELD. Right.

Mr. AMOS. Scrape down to the base.

Mr. SCHERF. Mr. Chairman, there is—the TRA policy does have loss data and that is what I was referring to when I said the importance of having the Jockey's Guild as a co-policyholder that entitled them to that data. I have every accident that has occurred on that policy. Magna has not been under that policy. They have been with AIG for several years because their corporate group has had an AIG policy. But everybody else has been under this and has the same type of information, where it occurs. It is evident and when John Giovanni was in charge of the Guild, he used to get those reports. And we know where problem areas are, for instance the start is probably the most dangerous part.

Mr. WHITFIELD. The start?

Mr. SCHERF. The start where horses are in a confined area and then they are trying to go from zero to 40 in a couple of seconds. And they take—you know, they may lunge or may take a bad step. That is generally the most dangerous part of a race. Solving that is a little more difficult but there is that kind of records being kept.

Mr. WHITFIELD. And how many racetracks are insured through the CIGNA program that you initiated?

Mr. SCHERF. Well, up to this year, almost all of the except the Magna tracks over the course of the years. Because the jockeys, the reason they came to the TRA was, each track would have a different carrier. And a jockey may ride 1 day in Kentucky and get injured and then the Kentucky season would end and he would go to Florida and injure the same part of the body. And Florida had a different carrier and then the jockey was stuck between com-

peting carriers disallowing the claim. One was saying it was a recurrence of the previous injury and the other one saying now, you were completely healed. It is the Florida carrier's fault. So that was the reason for a national program so that jockeys did not get caught in the switches between carriers.

Mr. WHITFIELD. But Ms. Williams and Mr. Finamore, you have your policies through the CIGNA and TRA?

Mr. SCHERF. All racetracks have then through the TRA policy. It is a TRA/Jockey's Guild endorsed policy that was sold to the racetracks as a preferred policy.

Mr. WHITFIELD. Okay.

Mr. SCHERF. At times during the years there might be one or two tracks that would move to a different carrier but generally all racetracks in the country had the TRA/Jockey's Guild policy.

Mr. WHITFIELD. Okay. But Mr. Sexton and Mr. Amos have talked about the AIG policy. That is different than the CIGNA policy, correct?

Mr. SEXTON. The AIG policy is the one that we stepped forward and took out in March 2005.

Mr. WHITFIELD. And how many racetracks are covered by the AIG policy?

Mr. SEXTON. All of our six tracks in five States.

Mr. WHITFIELD. And all of the Magna tracks?

Mr. AMOS. In all non-Workers' Comp States. We are in Maryland we are also in California but they are Workers' Comp States. So in every one of those other States, they are insured.

Mr. WHITFIELD. Okay. But from your view, Mr. Scherf, is that because of the national policy that has been in effect since 1949, that you have all the data you need to determine safety issues on—

Mr. SCHERF. I have from 1990 on.

Mr. WHITFIELD. And now, California is the only State that conducts a necropsy if a horse goes down?

Mr. FRAVEL. As far as I am aware, California is the only State that—

Mr. WHITFIELD. Are there any other States that conduct necropsy exams? DO you view that as important to do or not important to do or not important to do? Or would you all respond to that? Ms. Williams?

Ms. WILLIAMS. I mean, I think it is something that we will look at as an industry.

Mr. WHITFIELD. Now, what would be the reason that you would not do that? Would it be cost or would it be unproductive? I mean, what I have read in California for example, these toe grabs or I don't know what the proper term is. But they have basically banned certain kinds of shoes because there are studies at U.C. Davis indicates that many horses go down that have them above a certain height. So why would you not have a necropsy policy in effect?

Ms. WILLIAMS. Well, those issues are regulated by the West Virginia Racing Commission. They actually dictate to us what type of shoes are able to be used.

Mr. WHITFIELD. But they would have to decide about necropsy? You would not be able to implement that on your own?

Ms. WILLIAMS. Right. We could take it to them but they would have to decide.

Mr. WHITFIELD. You cannot implement it on your own?

Ms. WILLIAMS. No. In fact, when—we just changed our turf shoes and we had to have a representative from the West Virginia Racing Commission in that meeting.

Mr. WHITFIELD. Okay.

Ms. WILLIAMS. And it was agreed to.

Mr. WHITFIELD. Mr. Finamore?

Mr. FINAMORE. No, I have nothing to add to that, Mr. Chairman. That is correct. The Commission would mandate that.

Mr. WHITFIELD. Mr. Sexton?

Mr. SEXTON. We would certainly support a Kentucky Racing Authority initiative to make that occur in Kentucky because that would be of interest to us.

Mr. WHITFIELD. Yes. If a horse goes down on your track right now, how is it disposed of? I mean, it is incinerated? Do you take it to a landfill? Does it go for—what happens?

Mr. FINAMORE. At our racetrack in Charlestown a renderer removes the horse.

Mr. WHITFIELD. A renderer? Okay.

Ms. WILLIAMS. At our racetrack in Mountaineer, actually the State vet examines the horse and then it is removed to, I believe, a landfill.

Mr. WHITFIELD. Yes, okay. And then—

Mr. SEXTON. Similar efforts at Churchill Downs and Ellis Park. I am not as familiar to our other racetracks.

Mr. WHITFIELD. Yes. Magna?

Mr. AMOS. California is the same as what Craig said.

Mr. WHITFIELD. Right.

Mr. AMOS. And the others, the same procedure.

Mr. WHITFIELD. Now, you had mentioned this Workman's Comp Program out in California and one of the ways—I may be wrong in this. But it is my understanding that one of the ways that is financed is through uncashed tickets. Is that true or is that not true?

Mr. FRAVEL. That is not actually accurate. The history of the Workman's Comp dates back to the 1950's when there was a court decision that determined that for Workman's Comp purposes, jockeys were employees of the trainer, who instructed them on how to ride the race essentially. And that was the basis of that decision. And since that time, the Workman's Comp insurance has always been carried on the trainer's insurance policy.

Mr. WHITFIELD. Okay.

Mr. FRAVEL. The last 3 years, as you have probably read about in the newspaper reports, there has been a dramatic increase in the cost levels of Workman's Comp and the State of California.

Mr. WHITFIELD. All right.

Mr. FRAVEL. And in order to try and really stop the outflow of horses from California because it was becoming prohibitively expensive to train horses there. We got together with the horsemen and passed some legislation that set up two different funds that would help to offset the cost of insurance, one of which was used to basically form a captive insurance company, which is then re-insured through AIG. And then a second fund that is really a direct

subsidy and it is kind of complicated where those come from but they are essentially functions of the wagering dollars, the different funds that have been created to subsidize rates.

Mr. WHITFIELD. Now, the HBPA does not represent the horsemen in California. Is that correct?

Mr. FRAVEL. California is a little different than most places. We now have an organization called the Thoroughbred Owners of California that is responsible for most of the negotiating issues with racetracks in California.

Mr. WHITFIELD. Okay.

Mr. FRAVEL. And a second organization called the California Thoroughbred Trainers that represents the trainers' interests.

Mr. WHITFIELD. Okay. And well, my time is expired and we will probably have a second round so at this time, I would recognize Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. Scherf, when you have your testimony here you said that jockeys rode in races worth \$1.2 billion in 2004?

Mr. SCHERF. Yes.

Mr. STUPAK. How much did the industry take in that year?

Mr. SCHERF. The industry?

Mr. STUPAK. \$26 billion or something?

Mr. SCHERF. Well, no. I don't know where that figure came from. I have heard it here but it—the handle is \$15 billion. That is the transaction figure. Of that take-out, which is what funds the industry, the horse industry, is about on average 20 percent.

Mr. STUPAK. Well, if it is \$15 billion, they take in \$1 billion so that is about one fifteenth.

Mr. SCHERF. They would take in—I would say average, it would take in about \$3 billion and then you pay the States commissions out of that.

Mr. STUPAK. Now, wait a minute now.

Mr. SCHERF. You would take a percent of—

Mr. STUPAK. What do you mean, average? Jockeys rode in races worth almost \$1.2 billion.

Mr. SCHERF. The way the take-out works, you would have \$15 billion, you have 20 percent take-out and—

Mr. STUPAK. What is 20 percent for?

Mr. SCHERF. That is actually, the 80 percent of that figure is recirculated among the bettors.

Mr. STUPAK. Okay. What—okay. So 20 percent left. So you—

Mr. SCHERF. There is 20 percent left. That goes to fund the industry and the States.

Mr. STUPAK. And that is about \$3 billion?

Mr. SCHERF. That would be about \$3 billion. This is very rough math.

Mr. STUPAK. Okay.

Mr. SCHERF. And then you would figure that the—I am not sure exactly what the State figures would be but I would guess probably about \$400,000,000. I am not sure really what the taxes would be. But the horsemen's share of it, which is generally on a 50/50 split with the racetracks and that is a very rough thing but it is close enough.

Mr. STUPAK. Okay. Well, if I am understanding, you said total jockey—

Mr. SCHERF. At one point—

Mr. STUPAK. [continuing] earnings were between \$88 and \$94 million.

Mr. SCHERF. Yes.

Mr. STUPAK. So that is about 10 percent?

Mr. SCHERF. That is based on 7.5 to 8 percent.

Mr. STUPAK. Okay. And then you put down what these jockeys earn. Now, that is their gross amount, right?

Mr. SCHERF. That is their gross amount.

Mr. STUPAK. Okay. So do you have to take an agent fee out of that?

Mr. SCHERF. You have to take a 25 percent agent fee out of that.

Mr. STUPAK. Okay. So let us use \$90,000. It might be a little easier for me. So that \$90,000, you have got minus 25 percent, right, for the agent?

Mr. SCHERF. Right.

Mr. STUPAK. And then they have to pay other people?

Mr. SCHERF. They pay a valet.

Mr. STUPAK. How much? What percentage is that?

Mr. SCHERF. I believe it is 10 percent but I—they could answer that better than I could.

Mr. STUPAK. And then they have got to pay their taxes, right?

Mr. SCHERF. Yes. I don't know what their tax—they are independent contractors so they do have—

Mr. STUPAK. They pay taxes themselves. No one pays it for them. There is no contribution from anyone else?

Mr. SCHERF. Oh, correct. Yes.

Mr. STUPAK. Okay. And let us see. What else? Don't they have to pay their Guild something?

Mr. SCHERF. If they belong to the Guild, they do.

Mr. STUPAK. Okay. So this—use the \$90,000 figure. By the time you get done with 25, 10, taxes probably about 28 percent. I will be generous. Say 28 percent. They don't have a heck of a lot. At least over 50, almost 60 percent of that money is already eaten up before a jockey ever sees it, right?

Mr. SCHERF. If that is what you are figuring out. Now, I am also talking about jockeys—that was based on only 100 mounts a year, which is two a week.

Mr. STUPAK. Okay.

Mr. SCHERF. That is most—you know, jockeys who ride—

Mr. STUPAK. Sure.

Mr. SCHERF. [continuing] 400 mounts account for 80 percent of the rides.

Mr. STUPAK. Well, let me ask you this. What is your salary?

Mr. SCHERF. My salary is \$205,000.

Mr. STUPAK. Do they pay your health insurance?

Mr. SCHERF. Yes, they do, partially.

Mr. STUPAK. Pay your disability insurance?

Mr. SCHERF. Yes.

Mr. STUPAK. Pay your Workers' Compensation?

Mr. SCHERF. Yes, they do.

Mr. STUPAK. Are you part of a union?

Mr. SCHERF. No.

Mr. STUPAK. Okay. Is your job inherently risky?

Mr. SCHERF. I don't think so other than at this moment.

Mr. STUPAK. I was going to say, in light of the last hearing, maybe after this hearing. The point I am trying to make, and I am not trying to—I am glad you do well. But it appears from research we have seen, they make at most about \$35,000 a year and they have all the risk and they have all the danger. And what I said in my opening, if you would only increase a little bit more money, we could have had a million-dollar policy, as opposed to a \$100,000 policy. It just doesn't seem fair to us, at least to me, that the jockeys are having all this difficulty. And I agree, you said that the average injury was only about \$7,000 but you have had what, five in the last year that have been well over that.

Mr. SCHERF. In excess, yes.

Mr. STUPAK. What is Gary Birzer's medical, do you know?

Mr. SCHERF. I heard him say \$800,000, I believe.

Mr. STUPAK. Okay. Ms. Williams, I said in my opening that the profits for Charlestown is 1.7—I am sorry. Not profits. Revenue is 1.7 million a day and profit is about \$414,000? Is that correct?

Ms. WILLIAMS. I would have no idea about Charlestown.

Mr. STUPAK. I am sorry. I am sorry. You are?

Ms. WILLIAMS. Mountaineer.

Mr. STUPAK. Mountaineer, okay. Do you know what is your gross revenue a day at Mountaineer?

Ms. WILLIAMS. On horse racing? I can tell you for the year.

Mr. STUPAK. Oh, no. I want slots and everything. That is all tied in, isn't it?

Ms. WILLIAMS. No, I wouldn't—no, I am actually just Director of Racing, over the racing end of it.

Mr. STUPAK. Okay. You are just Director of Racing.

Ms. WILLIAMS. Yes, sir.

Mr. STUPAK. Right. Mr. Finamore is with them. Let me ask you then, Mr. Finamore, \$1.7 million? Is that your gross per day?

Mr. FINAMORE. I believe your number.

Mr. STUPAK. Pardon?

Mr. FINAMORE. I am not sure.

Mr. STUPAK. Okay. So beyond the \$100,000 insurance policy, how much has your track then contributed to the Birzer family rehab bills and living expenses since the accident? Do you know?

Mr. FINAMORE. Wrong track.

Mr. STUPAK. Yes, I know. Sorry. Ms. Williams? Besides the \$100,000 policy, how much has Mountaineer contributed to the Birzer family?

Ms. WILLIAMS. Offhand, I can't tell you because I know we have done numerous fundraisers with the horsemen and the jockeys. I do know that when the accident first happened I talked to his agent, Jimmy Isabelle, and we did make his house available, you know, with ramps and handicapped accessible.

Mr. STUPAK. Okay. And in your position, do you get health insurance from your employer?

Ms. WILLIAMS. Yes, I do.

Mr. STUPAK. Do you get Workers' Comp?

Ms. WILLIAMS. Yes, I do.

Mr. STUPAK. Do you get disability insurance?

Ms. WILLIAMS. No, sir.

Mr. STUPAK. Not quite equal benefits between the jockeys and management then?

Ms. WILLIAMS. Well, I can't say that because like I said, they were covered with \$100,000 under our policy and it was assumed that the Guild had the policy in place for the catastrophic accident.

Mr. STUPAK. How much is your disability policy, do you know?

Ms. WILLIAMS. I don't have one, sir.

Mr. STUPAK. Okay. You have health insurance, though?

Ms. WILLIAMS. Yes, I do.

Mr. STUPAK. Okay. Didn't Mountaineer turn down the insurance policy from AIG, was my understanding from the testimony earlier?

Ms. WILLIAMS. No, sir.

Mr. STUPAK. As \$100,000 being too expensive?

Ms. WILLIAMS. No, sir. We have \$100,000.

Mr. STUPAK. Okay. But did you—the offer was to go to \$1 million and you guys turned that down?

Ms. WILLIAMS. We actually went back to our broker and asked for them to look at that and they would not quote us on that.

Mr. STUPAK. Was that AIG?

Ms. WILLIAMS. No, it wasn't.

Mr. STUPAK. Mr. Scherf, how many—you said you had 40 some tracks with you, in your umbrella organization?

Mr. SCHERF. Yes.

Mr. STUPAK. How many tracks are there in the United States?

Mr. SCHERF. Roughly 100.

Mr. STUPAK. About 40 percent of them then?

Mr. SCHERF. Yes, I have most of the major racetracks as members.

Mr. STUPAK. Okay. Mr. Finamore, in your testimony you stated that like any other individual that is self-employed, jockeys are responsible for addressing their own insurance need. Is this what you told Shannon Campbell, the jockey that became quadriplegic on your track?

Mr. FINAMORE. I haven't had a conversation with her, Congressman.

Mr. STUPAK. Okay. You provide the jockeys \$100,000 maximum benefit toward medical expenses if they are injured while riding, right?

Mr. FINAMORE. Correct.

Mr. STUPAK. You state that this is long established policy that was entered into after discussions with the TRA and the Jockey's Guild. Exactly whom did you talk to at TRA and the Guild that you are implying that you have this agreement with?

Mr. FINAMORE. That would pre-date my time with the company, Congressman. But in addition to the \$100,000, we also continue to pay the mount fees to the Guild. The money that was earmarked for the additional insurance.

Mr. STUPAK. How much is a mount fee, \$8?

Mr. FINAMORE. It is—from Charlestown races on an annual basis, it is about \$90,000 a year and from Penn National Race Racecourse it is about \$70,000. So it is \$160,000 combined between

the two tracks per year and we have continued to pay that through the current invoice statement, which was September.

Mr. STUPAK. So you paid \$160,000?

Mr. FINAMORE. Per year.

Mr. STUPAK. Per year. Right. I think you said in your testimony you spend \$200 million upgrading your facilities, right?

Mr. FINAMORE. That is correct. Um-hum.

Mr. STUPAK. I have never been there but it sounds like it must be a pretty nice facility.

Mr. FINAMORE. It is.

Mr. STUPAK. Did you make those improvements because you needed to make an old track safer, cleaner and more appealing for your visitors?

Mr. FINAMORE. Well, a portion—I did mention also, a portion on that \$200 million went into the track directly. Approximately \$8 million most recently, last summer, to put in a new track surface, new safety rail, new riding system. So the commitment is there to make the racetrack safe.

Mr. STUPAK. But most of the \$200 million went into the gaming operation, right?

Mr. FINAMORE. Most of it. Um-hum.

Mr. STUPAK. Okay. How many race days per year are run at Charlestown?

Mr. FINAMORE. This year there will be 245.

Mr. STUPAK. Two hundred forty-five?

Mr. FINAMORE. Um-hum.

Mr. STUPAK. Okay. Somewhere I thought I saw in there about 210 to 235, is that about right, what you try to do each year in races?

Mr. FINAMORE. It is 245 this year. It will be 220 next year.

Mr. STUPAK. Okay. So if I am doing my math right and I am not math major. But with a conservative estimate of \$357 million per year, that is sort of what I come up with, don't you think you could afford an additional \$189,000? I am taking 210 days times \$900 more and I am going with \$900. Maybe the testimony was \$600 to \$900, to get to that million policy, \$189,000 it would cost you. And don't you think you could afford that?

Mr. FINAMORE. Congressman, I think the point is we thought we had that and we have continued to pay to that level of insurance. In retrospect, we tried to do the right thing and that is not to hurt the Guild.

Mr. STUPAK. So starting today, you are going to do the right thing? You are going to pay that extra money?

Mr. FINAMORE. If you will let me finish, Congressman?

Mr. STUPAK. Sure.

Mr. FINAMORE. We felt we were doing the right thing in that we continued to make the payments to the Guild. We didn't want to damage or hurt the Guild in any way. In retrospect, as we learn about what happened with Dr. G., we question whether we made the right decision. And apparently some of the other tracks went in a different direction but the point is, we have continued to pay that money to get the \$1 million policy.

Mr. STUPAK. Okay. But the point was, they got Dr. G., because they said they could no longer afford insurance and my impression

and maybe the Chairman's too at the last hearing was, they are disappointed because they had no health insurance so here comes this guy who offered all kinds of other policies that didn't work out. You all know that. And we also know that, like last night, we lost another apprentice jockey but you lost another jockey. Don't you think with the amount of profit, the amount of money you make, you invest heavily to get the gaming in there and I have nothing against gaming. But I would think for just a little bit more, you could help out these people and you guys all seem to be taken care of in your jobs with health insurance and everything. And without the jockeys, you have no racing and I would think you would be able to do it. So if you want to do the right thing you could start today by putting in that extra \$189,000 over the next year and take care of this.

Mr. FINAMORE. According to the Guild, this \$1 million policy costs approximately \$450,000 a year.

Mr. STUPAK. Don't hide behind the Guild. You are the one who said you want to do the right thing. We are up here giving you this opportunity to do the right thing. We would hope you would take our hint and do the right thing. Would you be opposed to the jockeys coming together and collectively bargaining with the tracks to get some benefits?

Mr. FINAMORE. That is a decision between them and their employers.

Mr. STUPAK. Okay. Well, would you object to the—you claim they were an independent contractor. If they got together, they would join in a union or an association or whatever and they would collectively bargain with you. Would you be in favor of allowing them to do that?

Mr. FINAMORE. Congressman, it is a decision between them and their employers. We really don't have an opinion. We are not their employers.

Mr. STUPAK. Okay. Mr. Chairman, it looks like my time is over. Thank you for your courtesy.

Mr. WHITFIELD. At this time I will recognize the gentleman from Washington, Mr. Inslee, for questions.

Mr. INSLEE. Thank you. My name is Jay Inslee. I am from the State of Washington. I am not an expert in your industry. I have only been to the track one time where I did not place a bet on a horse called Praise "J" in the Longacre's mile and it held the record for 30 years in the Longacre's mile. So I am not an expert in your industry. So I do have some kind of general questions. To me, looking at this, it just seems astounding to me that we have Americans who are working in a very high-risk industry, committing their professional lives to a situation, who really don't have tremendous bargaining power and are naked in the face of these tremendous risks. You know, I think of folks in other industries, choker setters in the woods, fisherman, people in the hazardous agricultural industries. They all have coverage. They have protection. It is just such a fundamental American concept. And yet, this small group of people are just bare of—it is just amazing to me. So I wanted to ask for questions of you of why you perceive that is the case. Now, I understand this archaic common law considered them "independent contractors", which is just—I don't think of them as contractors like

Halliburton or Bechtel, issuing these big contracts. You know, they just don't have much bargaining authority and they are scattered about various tracks. So I guess the first question I have is, there are four States that have, has I understand it, some meaning Workers' Comp system. California, Maryland, New York and one other? You will be familiar with that? New Jersey? The first question, has the adoption of some system of that mechanism, has that damaged the sport or the industry in any way in those four States? Has it disadvantaged them, vis-&-vis West Virginia or other States at all? That is the first question. Any takers on that one? Can anybody posit a suggestion why those States have been—

Mr. FRAVEL. I wouldn't suggest that those States have been damaged directly. I mean, I think it is a positive for us that people are covered by Workman's Comp and it puts a lot of issues aside when somebody gets hurt. You don't have to worry about a lot of things, like how somebody is going to get taken care of. It has been, particularly in recent years—I would say 10 years ago it probably wasn't much of an issue because the cost of Workman's Comp in California was relatively consistent with costs across the country. And the incremental inclusion of jockeys in those policies was not that prohibitive. Within the last 5 years, it became a serious competitive issue and the industry had to get together and find ways to help pay for it because the people who were paying the bills directly, were simply unable to afford it. It was putting them out of business. And I would say that there are other organizations sitting at this table who own tracks in California who were parts of those solutions, as well. So you know, it is both a disadvantage and an advantage. I think a rider recently came to California from Kentucky and said that he didn't know why anybody would ride anywhere else because the benefits to riders in California were so great. And 3 months later, he left because he could get more mounts in other States so sometimes it doesn't make all that much sense but it cuts both ways.

Mr. INSLEE. Well, I guess a fair statement is the adoption of this basic American safety mechanism certainly hasn't destroyed the industry in any of those four States. That is a fair statement. Everybody agree with that?

Mr. FRAVEL. Yes.

Mr. INSLEE. I see everybody shaking hands. Second question, is there anything about the transient nature of the business, where jockeys are going from State to State, track to track. Does that argue for a national system in any way or as a State, if you are going to go to a Workers' Compensation model, can it be maintained on a State to State basis? Or is there something intrinsic about the nature of the industry that suggests we ought to have a national system of one sort or another?

Mr. VAN CLIEF. Congressman, I believe I will take a shot at that. I don't know that there is anything intrinsic about the establishment of Workers' Comp Programs on State to State basis that would be inhibitive in our industry's ability to continue doing business as it does. Obviously, those programs, as Mr. Fravel just suggested, are very beneficial where they work. As they rise in expense to the individual operators, they become somewhat inhibitive in terms of their ability to compete. But I would like to point out

that what we think we are experiencing today as an industry is frankly, an aberration. We had a system with the Jockey's Guild where these riders, as transients, were covered under the Jockey's Guild's policy up until Mr. Gertmenien's management and it seems to have fallen apart during the past 4 years. So as our task force identified, we think there are ways, both short-term and long-term, to provide adequate coverage. The AIG solution has been adopted by 67 percent of our tracks representing 67 percent of the days they run within our membership. That at least is a short-term solution and I think with a credible Jockey's Guild with which to work, we can reestablish the sort of framework that protects these individuals, that was in place previously.

Mr. INSLEE. Anyone else like to address that?

Mr. SCHERF. I would, Congressman. National Workers' Compensation, I think one of the problems would be that there is a huge dichotomy of scale in the horse and racing business. To get one-size fits all solution would be extremely difficult and could be damaging in certain States. What we are talking about here today is we have in essence, major league and minor league racing and we are trying to take care of everybody equally. That is the system we had in place previously with the insurance with working with the Jockey's Guild. That is a system we can put in place together but to put an enduring comprehensive plan that will take care of large and small tracks and get everybody under one umbrella so we can afford the basic coverage—and we hear what you are saying. And we agree with you that, you know, we need to take care of injuries completely and totally. That can be done. But putting it under a national program, a mandate, I think my fear would be you would simply use some racetracks and lose thousands of jobs, including the jobs of some jockeys and I just don't think it is the best way of going.

Mr. INSLEE. Well, just one person talking, I would just tell you my reaction to this, it is just absolutely incredible that these people in this high-risk situation don't have a fundamental statutory protection. I respect all of your efforts to try to solve this on a voluntary basis but I think this sorry situation and others leads to the conclusion that it is just not close enough. And I don't know what the solution is. I am asking honest questions here. But it appears to me that these ought to be perhaps the first people in the country to have some assured statutory protection and right now they appear to be the last. And maybe they shouldn't be first. Maybe choker setters and fireman and policeman should be the first. Maybe they should be fourth. But having this group unprotected is just incredible to me and I hope that some of you may give us ideas on how to move forward. Thank you. Thank you, Mr. Chair, for holding this hearing.

Mr. WHITFIELD. Thank you, Mr. Inslee. And I think all of us feel a lot of frustration as it relates to jockeys because in many senses, jockeys do move around the country a lot. They really don't have a base of operation, per se and they really don't have strong advocates. Now, I want to just toss something out here and I would just like to get your all's reaction to it because this really is an exploratory hearing. And when the Interstate Horseracing Act was passed in 1978, it said that a horsemen's group would negotiate

with the tracks for the simulcasting issue and the horsemen's group had veto power over that agreement. And I know that this is not a totally accurate statement but the perception is, among many people, that the horsemen's group represents owners and trainers. Maybe some groups represent more owners, some groups represent more trainers. And as a result of their negotiating under the Interstate Horseracing Act, they get 1.5 percent or 2 percent or whatever the figure is of the purse. And that is generally the HBPA or it is the Thoroughbred Owners and Breeders Group or it is some other group that represents horsemen in a particular state. Why would jockeys, the Jockey's Guild as their entity, why would they not be included in that and why would they not have a right to negotiate on that, as well? What would be the arguments against that and sharing that 1.5 or 2 percent fee, for example? Anybody have any comments on that or thoughts on it?

Mr. SCHERF. Mr. Chairman, it is my understanding when the Interstate Horseracing Act first was passed, it was to address a problem that there be fair compensation from the place that took the bet to the place that produced the race. And it stemmed from taking bets on the Kentucky Derby without any compensation to that industry. The investors in that industry in every instance are the racetracks and the horsemen. The horsemen ran for about \$1.2 billion in purses last year but they spent probably twice that amount. So the figure you always hear is 90 percent of all horsemen lose. So that was to ensure that people were fairly compensated of the two main groups that had to then put on the show, so to speak. That requires hiring a lot of people to put that show on, from mutuel clerks to administrative people, to assistant starters to tractor drivers, to jockeys to trainers to grooms.

Mr. WHITFIELD. What I am talking about, I am not talking about interfering with the tracks' percentage of that. I am talking about the horsemen's group, that percentage, which is different for different entities, I—I notice that Mr. Maline in his testimony said that the fee of the Kentucky HBPA is like 1.5 percent of the purse that they negotiate the simulcasting rights for. And so my question is, what would be the argument against allowing jockeys to participate in that 1.5 percent?

Mr. SCHERF. Well, they do participate in that. That goes to fund purses and that is where the jockeys make their money. The jockeys, you know, right now 87 percent of all handle is coming through simulcasting.

Mr. WHITFIELD. Eighty-seven percent?

Mr. SCHERF. Right.

Mr. WHITFIELD. Okay.

Mr. SCHERF. That is why purses in—I have the figure—in 1991 before simulcasting really took off was \$699 million.

Mr. WHITFIELD. Six hundred ninety-nine?

Mr. SCHERF. Yes. In 2004, it was \$1.1 billion.

Mr. WHITFIELD. Okay.

Mr. SCHERF. That is a 56 percent increase in purses in this country. Jockeys ride for a set percentage of that so they should have the same increase from that growth and business so they are cut in for a share of that growth.

Mr. WHITFIELD. Okay. Anybody else have any comments on it? Okay. Okay. Let us see here. Do you have anything else, Bart, of this panel?

Mr. STUPAK. Okay. Jockeys may have picked up more in light of there is a larger purse so they may get a little bit more but they have expenses that are not picked up by anybody but themselves, right?

Mr. SCHERF. As independent contractors, which is their choice, as well.

Mr. STUPAK. I don't think it is their choice. NRLB made that decision 30 years ago for them.

Mr. SCHERF. No, they are pretty quick to remind you that they are independent contractors. They don't work for you.

Mr. STUPAK. That is not what our hearing showed us last week, or last month. Excuse me. Ms. Williams or Mr. Finamore, how much money does the State of West Virginia receive from all this gaming? Do you know, like in a year?

Mr. FINAMORE. From the total lottery?

Mr. STUPAK. Sure.

Mr. FINAMORE. Last year it was about \$500 million.

Mr. STUPAK. That is the total lottery and not just horse?

Mr. FINAMORE. That is lottery. That is the slot machines. That is limited lottery. That is the total number.

Mr. STUPAK. You don't know how much just from the horse-racing?

Mr. FINAMORE. I don't know the answer to that. Sorry.

Mr. STUPAK. I am just trying to find another pot of money. It is more money on the table.

Mr. FINAMORE. Rose Mary may know but I don't know that.

Ms. WILLIAMS. Offhand, I do not know. We could get those figures for you.

Mr. STUPAK. Ms. Williams, Mr. Finamore testified before that they paid the mount fees of like it was \$160,000, I think he said.

Mr. FINAMORE. Between the two racetracks, Penn National and Charlestown, right.

Mr. STUPAK. Yes. Does your track pay your mount fees?

Ms. WILLIAMS. No, they currently do not.

Mr. STUPAK. Okay. And your track was the one where Gary Bitzer got hurt, right?

Ms. WILLIAMS. Gary Birzer, yes.

Mr. STUPAK. Birzer. How come you don't pay the mount fees if a competitor track in West Virginia does?

Ms. WILLIAMS. From what I understand, legal looked into that and we do not have a contract covering that.

Mr. STUPAK. SO if the Guild would offer you a contract, you are going to cover it?

Ms. WILLIAMS. I am not the legal representative but—

Mr. STUPAK. Was your track, if you know, was your track ever contacted and said hey, would you pay the mount fees? If you know.

Ms. WILLIAMS. I know they have received invoices but there is no agreement in place to pay those invoices.

Mr. STUPAK. So you received the invoice but since there is no agreement, they didn't pay them?

Ms. WILLIAMS. That is correct.

Mr. STUPAK. Mr. Finamore, do you got a written contract to force the mount fees or you guys just do it when you get your invoice?

Mr. FINAMORE. Congressman, I don't know of a written contract that exists. We are invoiced each month at both of our tracks.

Mr. STUPAK. Right.

Mr. FINAMORE. We have continued to pay those fees. And as I said earlier, we are current through September and that has been going on since, as far as I can tell, 1997, if not before.

Mr. STUPAK. Can anyone tell me why one track would pay and another doesn't then, if there is no formal agreement? Trying to do the right thing?

Mr. FINAMORE. I was saying earlier that we made the decision to keep paying. I can't speak for the other tracks.

Mr. STUPAK. Mr. Scherf, if you have got 40 some tracks, do they all pay their mount fees when they come in? When they get their bill?

Mr. SCHERF. I am not sure if they have in the past year or year and a half.

Mr. STUPAK. How about 2 years ago, did they?

Mr. SCHERF. Yes, they did. Then the TRA sent a letter to Dr. Gertmenien—

Mr. STUPAK. Right.

Mr. SCHERF. [continuing] asking for an accounting when it was brought to our attention by jockeys and agents who were concerned about what was happening with the money. We asked what is being done with this and we never did receive a response. That was conveyed back to the member racetracks and then each racetrack then makes its own decision whether they were pouring money down a sinkhole or not.

Mr. STUPAK. If anyone can answer this, do jockeys move around? Do they try to follow the more lucrative races? The better jockeys obviously do.

Mr. SCHERF. Yes, they do.

Mr. STUPAK. So some of the testimony we have had about getting hurt in one State and then saying well, that was an injury you received in another state, really sort of begs for like some kind of national or interstate solution to this thing then, if jockeys are having these problems. Saying well, that is an aggravation of a previous injury you did in Florida.

Mr. SCHERF. But that hasn't happened since 1949.

Mr. STUPAK. Since 1949?

Mr. SCHERF. Right, when the TRA then worked with the Jockey's Guild and formed a national program and got everybody onto a single insurance program so the jockeys didn't run into that program. Working together, we have had that problem solved for more than 50 years.

Mr. STUPAK. So you are saying that problem doesn't happen at all now?

Mr. SCHERF. I am not aware of any instances.

Mr. STUPAK. Okay. So you don't know or you are just not aware of any?

Mr. SCHERF. Well, I am pretty certain. I would hear.

Mr. STUPAK. Okay. Okay. Mr. Fravel, you were talking about California and the problem with Workers' Comp there. Were you talking about that or was it Mr. Amos?

Mr. FRAVEL. I discussed the cost problems in California.

Mr. STUPAK. And is that unique just to the jockeys or is it to other—

Mr. FRAVEL. No. That is a statewide issue related to runaway medical costs, essentially. And there were a number of legislative efforts at the end of the Davis administration, beginning of the Schwarzenegger administration to address the problems on a statewide basis. And I think on a statewide basis it is coming back, slowly but you know, when we were trying to place insurance for Workers' Comp, including jockeys, as of 2 years ago there was only one carrier that would actually write insurance in the State in that category. And that is true in a number of other construction areas, as well but that is a statewide problem. We just—because of the mobility of the horse industry, I guess.

Mr. STUPAK. Sure.

Mr. FRAVEL. There are trainers and jockeys and everybody else. It becomes more pronounced because it is easier to pick up and go.

Mr. STUPAK. Okay. Ms. Williams, just two more questions, ma'am. Do you think Mountaineer should have a \$1 million policy for jockeys? Do you think they should?

Ms. WILLIAMS. As I said before and in my testimony, I have said that we went to the broker and asked them about the million dollars and they won't quote us on that.

Mr. STUPAK. Why wouldn't they quote you on that?

Ms. WILLIAMS. I can't answer that. I don't know.

Mr. STUPAK. Okay. As the track manager, could you get back with us and tell us why? Get us back in writing because we would like to know that.

Ms. WILLIAMS. I will. Absolutely.

Mr. STUPAK. Is it because of accidents? Is it because of cost? What is it?

Ms. WILLIAMS. I will ask the broker to send something to us on that.

Mr. STUPAK. You operate, what, 210, 235 days? Something like that?

Ms. WILLIAMS. This year, we will have 232 days of racing.

Mr. STUPAK. Is this year a good day in racing, I take it? You get more days in? Weather-wise or—

Mr. FINAMORE. It fluctuates, based on different factors. We are required by the State to race 220 days.

Mr. STUPAK. Okay.

Mr. SCHERF. Mr. Stupak?

Mr. STUPAK. Yes.

Mr. SCHERF. If I can help on this issue of the insurance?

Mr. STUPAK. Sure.

Mr. SCHERF. Because I deal with this a lot. When you are talking about a million dollar pay-out at one track, an insurance company tends to look at that and say that is my risk and, you know, I can lose this and how much premium am I going to charge when I can lost a million? It is one reason a group program where you have shared risk among 100 tracks where you can control that and you

share the risk. And the insurer comes in and knows good experience is going to balance out bad experience, is what is going to preserve a long-term insurance program.

Mr. STUPAK. But any track can give you a \$1 million claim, right?

Mr. SCHERF. Any track but if you have, for instance, you have 70 tracks or 100 tracks and they are paying a combined premium of "X" million dollars—

Mr. STUPAK. Sure. Sure.

Mr. SCHERF. [continuing] the insurance industry is much more interested in that.

Mr. SCHERF. Absolutely. That is why we should put you all together and make you provide health insurance, Workers' Compensation, off-duty/on-duty insurance. And if you all came together at 100 tracks and did it, it would be a lot cheaper for everybody, right?

Mr. SCHERF. Well, I would agree with you on the accident insurance.

Mr. STUPAK. Well, health insurance, too. The more people you have in a health insurance policy usually, right?

Mr. SCHERF. That is true. I think we still have the independent contractor question that we probably differ on.

Mr. STUPAK. That is true but you know, even if they are independent contractors, if you wanted to you could still do it. You could still provide that as a benefit for riding at the tracks. California does it, Maryland, some of the other States we mentioned here today. So I think it could be done if there was a willingness and I think the independent contractor is just—

Mr. SCHERF. Maryland doesn't provide health benefits.

Mr. STUPAK. Right. But they do provide Workers' Comp and others.

Mr. SCHERF. Right, which is accident coverage.

Mr. STUPAK. Right. Right. Mr. Van Clief? Is that how you say it?

Mr. VAN CLIEF. Van Clief. Yes, sir.

Mr. STUPAK. Van Clief. You are the one who talked about AIG insurance, right?

Mr. VAN CLIEF. That is correct, sir.

Mr. STUPAK. You know of any reason why they won't insure Mountaineer?

Mr. VAN CLIEF. I don't know what their reasons would be.

Mr. STUPAK. Yes. Is that unusual or—

Mr. VAN CLIEF. Well, as I mentioned, our member tracks—

Mr. STUPAK. How many tracks do you have, sir?

Mr. VAN CLIEF. We have about 70 tracks that are members.

Mr. STUPAK. Seventy and there is forty. One hundred twenty tracks.

Mr. SCHERF. They are the same. Our 40 are in their 70.

Mr. STUPAK. Okay.

Mr. VAN CLIEF. That would probably be a near complete overlap.

Mr. STUPAK. Okay.

Mr. VAN CLIEF. As I mentioned, our member tracks, if you look at it as race days—

Mr. STUPAK. Yes.

Mr. VAN CLIEF. [continuing] are 67 percent covered by the AIG coverage that came out of our working group study in late 2004.

Mr. STUPAK. Sure. So just a curiosity, why would a track be turned down? Why would a track be turned down and now—

Mr. VAN CLIEF. Why would a track be turned down?

Mr. STUPAK. Yes, for this million dollar policy?

Mr. VAN CLIEF. I am not aware of any that are turned down. Tracks would certainly be rated differently based on their accident experience.

Mr. STUPAK. Accidents and things like that. Sure.

Mr. VAN CLIEF. So obviously, the experience would create different ratings depending on higher or lower accident rates. So I am aware that the cost may vary from track to track but I am not aware of any track that has been excluded from taking the policy if they could afford it and so desired.

Mr. STUPAK. Okay. Thank you.

Mr. WHITFIELD. Let me follow up on these uncashed tickets. Of course, in Kentucky they go to the Kentucky Health and Welfare Fund, uncashed tickets. In California, where does it go?

Mr. FRAVEL. You know, Mr. Chairman, there are so many different recipients of various funds in California from different parts of the take-out. Uncashed refunds, uncashed tickets. I can precisely remember where those go.

Mr. WHITFIELD. Okay.

Mr. FRAVEL. I mean, every one of them has a home somewhere.

Mr. WHITFIELD. What about in West Virginia?

Ms. WILLIAMS. The uncashed tickets go to the Breeder's Association. They have a 10/10/10 program, which they are part of that. And then if there is uncashed tickets, it goes to the racetracks for capital improvements and it also goes to the jockeys if there is any funds available. I think \$250,000 goes into that fund, if available.

Mr. WHITFIELD. From uncashed tickets?

Ms. WILLIAMS. Uncashed pari-mutual tickets.

Mr. WHITFIELD. And I guess Kentucky, would it be fair to say Kentucky would have one of the largest amounts of money from uncashed tickets? I mean, that is around \$2 million or so.

Mr. SEXTON. Mr. Chairman, it is between \$2- and \$2.5 million a year, primarily related around the Kentucky Derby.

Mr. WHITFIELD. So people just don't cash those Derby tickets? They just keep them?

Mr. SEXTON. They may keep them as souvenirs or they may be unaware that an inquiry light was posted and the result was changed.

Mr. WHITFIELD. Yes.

Mr. FRAVEL. Mr. Chairman, if I could, Mr. Shapiro has told me that the uncashed refunds in California are what fund the health insurance program for riders. A lot of these—

Mr. WHITFIELD. What, it funds—

Mr. FRAVEL. I am sorry?

Mr. WHITFIELD. It funds the health insurance for riders?

Mr. FRAVEL. It funds the health insurance program.

Mr. WHITFIELD. Okay.

Mr. FRAVEL. A lot of these funds like uncashed tickets, uncashed refunds, were things that used to escheat to the State of California after a period of time.

Mr. WHITFIELD. Okay.

Mr. FRAVEL. And what happened was, when times were better and there weren't massive State deficits, I think the industry managed to convince the—along with the Guild, to convince the State that those uncashed tickets or refunds could be used for more productive sources within the industry.

Mr. WHITFIELD. Right.

Mr. FRAVEL. So we managed to keep those at home but I am not sure we could do that again.

Mr. WHITFIELD. Okay. Okay. Well, I want to thank you all very much for your time today and we look forward to continuing to talk with you about this issue. I might just say for your information that Mr. Gertmenien still has not responded to subpoenas and other efforts of our committee relating to Matrix and so we may be taking up additional maybe Contempt proceedings against Matrix and him personally. But that is something that we haven't decided completely yet. But your testimony has been quite helpful and thank you very much for your input. The panel is dismissed.

At this time we will call up the second panel. Mr. Metzger, who is the President of the Thoroughbred Owners and Breeders Association. We have Mr. John Roark, who is the President and Chairman of the National Horsemen's Benevolent and Protective Association. We have Mr. Marty Maline, who is the Executive Director of the Kentucky Horsemen's Benevolent and Protective Association. We have Mr. Richard Riedel, who is the Executive Director of the Kentucky Racing Health and Welfare Fund. We have Mr. John Giovanni, who is the former National Manager of the Jockey's Guild. And we have Mr. Richard Violette, who is Chairman of the Board of Directors of the New York Jockey Injury Compensation Fund. We have Mr. Bernard Daney, Chairman of the Delaware Thoroughbred Racing Commission. Mr. Richard Shapiro, Commissioner of California Horse Racing Board. Mr. Dick Monahan, who is the Director and Racing Council Chairman for the American Quarter Horse Association. And we have Mr. Darrell Haire, who is the Interim National Manager of the Jockey's Guild.

So welcome all of you and I would ask you—okay. Okay. We will give you time to set up here. Okay, great. I guess it is a little crowded but everybody is in anyway. Is Mr. Roark here?

Mr. METZGER. He is on his way, Mr. Chairman.

Mr. WHITFIELD. Okay. Thanks. We will wait for Mr. Roark and then we will just swear everybody in at once.

Mr. ROARK. Excuse me, Mr. Chairman.

Mr. WHITFIELD. That is all right, Mr. Roark. Thank you for being with us today. Well, all of you are aware that this is an investigative hearing and when doing so, we have the practice of taking testimony under oath. Do any of you object to testifying under oath? Okay. Under the rules of the House and the rules of the committee, you are entitled to be advised by legal counsel. Do any of you desire to be apprised by legal counsel today?

Mr. VIOLETTE. I have counsel with me.

Mr. WHITFIELD. Okay. And what is his name or her name?

Mr. VIOLETTE. Robert P. Benson, Jr.

Mr. WHITFIELD. And will Mr. Benson be testifying?

Mr. VIOLETTE. No.

Mr. WHITFIELD. Okay. All right. In that case—oh, yes, sir.

Mr. RIEDEL. I have also legal counsel, Mr. Frank Becker. He will not—

Mr. WHITFIELD. Frank Becker, okay. Okay. And what is the name? Okay. But he will not be testifying? Okay.

[Witnesses sworn]

Mr. WHITFIELD. Okay. You are now under oath and each of you will be called upon to give your 5-minute summary of your written statement. And the first opening statement will be given by Daniel Metzger, President of the Thoroughbred Owners and Breeders Association and, Mr. Metzger, thank you for being with us. You are recognized for 5 minutes.

**TESTIMONY OF DANIEL J. METZGER, PRESIDENT, THOROUGH-BRED OWNERS AND BREEDERS ASSOCIATION; JOHN O. ROARK, PRESIDENT AND CHAIRMAN, NATIONAL HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION; MARTIN A. MALINE, EXECUTIVE DIRECTOR, KENTUCKY HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, INC.; RICHARD RIEDEL, EXECUTIVE DIRECTOR, KENTUCKY RACING HEALTH AND WELFARE FUND; JOHN GIOVANNI, FORMER NATIONAL MANAGER, THE JOCKEYS' GUILD; RICHARD A. VIOLETTE, JR., CHAIRMAN OF THE BOARD OF DIRECTORS, NEW YORK JOCKEY INJURY COMPENSATION FUND; BERNARD J. DANNEY, CHAIRMAN, DELAWARE THOROUGH-BRED RACING COMMISSION; RICHARD B. SHAPIRO, COMMISSIONER, CALIFORNIA HORSE RACING BOARD; DICK MONAHAN, DIRECTOR AND RACING COUNCIL CHAIRMAN, AMERICAN QUARTER HORSE ASSOCIATION; AND DARRELL HAIRE, REGIONAL MEMBER REPRESENTATIVE, THE JOCKEYS' GUILD**

#### **TESTIMONY OF DANIEL J. METZGER**

Mr. METZGER. Thank you, Chairman Whitfield and distinguished members of the subcommittee. I am honored to have the opportunity to appear before you and try to address some of these important issues and challenges facing our sport of horseracing.

I have been the President of TOBA for the last 6 years. TOBA is a national trade association that represents owners and breeders, with a mission to improve the economics, the integrity and the pleasure of the sport, on behalf of owners and breeders. TOBA oversees a number of important industry programs, the most known being the American Graded Stakes Committee. TOBA has also been a leader in the industry in the areas of integrity, both at the racetrack and at the public auctions.

However, TOBA is not a recognized horsemen's association in any State and has not been directly involved in the independent contractor accident insurance issue. We do, however, have a direct interest in the safety and well-being of the jockeys and other workers. Owners recognize the vital contribution made by these individuals, as they are part of a team that will hopefully lead to the Winners Circle.

We would like to preface our remarks by stating a fundamental belief of our organization. Jockeys are independent contractors. They are free to choose at what track they will ride, what day they will ride, what race they will ride and what horse they will ride. A majority of jockeys retain agents to line up their business. This is not a status unduly imposed by others. Jockeys have fought to maintain their independent contractor status, especially when it comes to advertising.

In the spring of 2004, prior to the Kentucky Derby, racing's most popular day, jockeys sued the Kentucky Horse Racing Authority and took the position that they were independent contractors with the right to exhibit commercial advertising on their pants during the running of the race.

The industry is here today because of a decision by the management of the Jockey's Guild to not renew its \$1 million accident insurance policy it carried for its members. The Guild claimed that it could not afford the annual premium. Yet the Thoroughbred Racing Association, as you heard earlier, the TRA, under agreement with the Guild, continued to pay the Guild \$2.2 million per year so that it could buy the additional accident insurance and supplement its medical insurance coverage.

TOBA participated in the Jockey Accident Insurance Summit organized by the National Thoroughbred Racing Association in response to the Guild created crisis and the Gary Birzer tragedy. That 33-person panel, comprised of representatives from each industry stakeholder group, recommended accident insurance level of \$1 million and endorsed the minimum level of a half million dollars.

With the additional coverage comes additional cost and all participants on the panel, with the noted exception of the Jockey's Guild, agreed to help pay for the increased insurance coverage. While jockeys are independent contractors, horse racing has been very supportive of their insurance needs, from Workers' Compensation programs in five States to the recommended \$1 million accident insurance coverage at many of our racetracks. Thoroughbred owners, trainers and breeders should have adequate injury coverage for their full-time employees and most racing States mandate, and most employees are provided, with such coverage.

Jockeys are independent contractors and, as mentioned, have fought to maintain that status. As an independent contractor, it is up to the individual to provide their accident insurance. We had a framework in place through the Guild with the financial assistance of the TRA to provide individuals accident insurance until the Guild chose not to renew it. Despite its belief that this issue has been created by the Guild, TOBA will continue to work with other industry organizations to find an equitable, long-term and comprehensive solution in the near future.

TOBA has been at the forefront of the sport in its support of enhanced drug testing and research and will continue to do so. The health and safety of our human and equine athletes are of paramount importance to all owners.

I would like to thank Chairman Whitfield and the entire subcommittee for its time and efforts on this very important issue of insurance and safety. All segments of our sport, including owners,

tracks, trainers, jockeys and the State regulatory agencies will work together to bring a solution to this issue.

[The prepared statement of Daniel J. Metzger follows:]

PREPARED STATEMENT OF DANIEL J. METZGER, PRESIDENT, THOROUGHBRED OWNERS AND BREEDERS ASSOCIATION

The Thoroughbred Owners and Breeders Association is a trade organization of owners and breeders and is concerned with common national business interests and issues of its 3,000 members. TOBA is a service organization and has no authority to mandate participation in any insurance program. Because TOBA is not a recognized horsemen's association in any state, it has not been directly involved in the independent contractor and backstretch worker accident insurance issue.

We would like to preface our remarks by stating a fundamental belief of our organization. Jockeys are independent contractors. Jockeys are free to choose at what track they will ride, what day they will ride, what race they will ride, and what horse they will ride. Most jockeys retain agents to line up business for them and will often break a commitment to an owner at a moments notice if a better mount becomes available in a race. Independent contractors in Thoroughbred racing, like in all other industries, are responsible for their own insurance.

On the other hand, most Thoroughbred racing states require trainers or owners to carry accident insurance for their full-time employees. TOBA fully supports enforcement of this requirement to ensure employees are protected.

The industry is here today because of a unilateral decision by the management of the Jockeys' Guild to not renew the \$1,000,000 accident insurance policy it carried for its members. The Guild claimed it could not afford the annual premium of approximately \$450,000 per year, yet the Thoroughbred Racing Association (TRA), under an agreement with the Guild, was paying the Guild \$2.2 million per year so that it could purchase additional accident insurance and supplement its medical insurance coverage. Because of the Guild's apparent mismanagement leaving its members underinsured, other industry stakeholders, including owners, now have to step in and find a solution to the problem they created.

In states where jockeys are not covered by workers' compensation insurance, racetracks carry accident insurance typically with a \$100,000 cap on medical benefits. With the Guild choosing not to renew its policy for additional coverage, we have the heartbreaking story of Gary Birzer. To cover this deficiency, 17 tracks over the past year have voluntarily increased the coverage on medical benefits to \$1,000,000. In the five states where jockeys are covered by workers' compensation insurance, TRA-member racetracks provide additional coverage of up to \$1.4 million. This coverage costs the member tracks \$1 million per year and this is in addition to the \$7 million per year horsemen pay in workers' compensation premiums.

In the fall of 2004, the National Thoroughbred Racing Association formed its Jockey Medical Insurance Panel to determine if additional solutions to this problem exist. As a member of the panel, TOBA supported the recommendations made, but because of the difference in the size of the industry from state to state, any solutions will have to be tailored to the economic structure in each Thoroughbred racing state.

Thoroughbred owners, trainers, and breeders should have adequate injury coverage for their full-time employees. Most Thoroughbred racing states require workers' compensation insurance to cover backstretch employees of trainers and owners. Jockeys are independent contractors and have fought to maintain that status. For example, when the advertising issue arose in the spring of 2004 prior to the Kentucky Derby, the jockeys took the position that they were independent contractors with the right to exhibit commercial advertising on their pants for compensation during the running of the race. A benefit of the independent contractor status is the ability to maximize one's earnings and set one's own hours. One perceived drawback to self employment is the individual is responsible for their own health and accident insurance. The jockeys, and more specifically the Guild, have abdicated their responsibility. Despite its belief that this problem has been created by the Guild and should be solved by the Guild, TOBA will continue to work with other industry organizations to find an equitable solution in the near future.

TOBA has been at the forefront of the sport in its support of enhanced drug testing and research. TOBA is a founding member of the Racing Medication and Testing Consortium, an industry-wide effort to promote a safe and uniform medication policy across the United States. The health and safety of both the horse and jockey are of critical importance to all owners.

We thank you for your interest in our industry and concern on this issue.

Mr. WHITFIELD. Thank you, Mr. Metzger. At this time, Mr. Roark, you are recognized for your 5-minute opening statement.

#### TESTIMONY OF JOHN O. ROARK

Mr. ROARK. Thank you, Mr. Chairman and members of the subcommittee. The National Horsemen's Benevolent and Protective Association appreciates this opportunity to address this subcommittee on safety insurance and other problems related to jockeys.

The National HBPA represents about 48,000 licensed thoroughbred and quarter horse owners and trainers, their employees and families, by way of 33 affiliated offices in various States and Canada. The National HBPA horsemen and horsewomen run over 325,000 horses over 4,500 cumulative racing days each year. And through our local affiliates, provide between \$5 and \$6 million in benevolence programs to those folks that work on the back side of the racetrack, in the form of low cost or free medical care, dental coverage, mobile dental clinics. We have substance abuse programs on the backside of racetracks. We support the Chaplaincy organizations and we also do scholarships, housing and funeral assistance and have backstretch recreational programs around the country. We also have, in two of our state, we have daycare centers for the folks and their families and for racetrack employees.

As this committee has heard, jockeys have historically been treated as independent contractors, a position supported by the National HBPA. As a member of the NTRA's Task Force on jockey accident insurance, the HBPA has reviewed a number of different insurance programs for riders. We also produced our own Workers' Compensation white paper in 2003. And based upon that and the research we have done, we believe a self-insured or captive approach is the most viable and incentive industry members to control their costs and loss and enforce compliance.

California admitted a partially self-insured program known as the California Horsemen's Safety Alliance in December 2002, which as Mr. Fravel commented, covers all the backstretch workers with some fairly generous benefit levels. Their approach came after several years of trying to find a solution to rising Workers' Compensation costs and a similar program is just being enacted as we speak in Louisiana that is much like that program. It is going to be a captive. Insurance coverage should transcend from State to State and track to track to the benefit of racetracks and horsemen. The National HBPA therefore, calls for injury protection coverage for all jockeys, exercise riders, backside workers and we ask all the industry stakeholders to join us in pursuit of that reform.

The best manner of achieving that reform is not to nationalize Workers' Compensation, nor to reverse the NLRB's longstanding policy regarding independent contractors and their position regarding the racing industry. Congress has long recognized the primacy of State regulatory authorities over our industry. The Interstate Horseracing Acts' indirect mode of regulating interstate commerce with respect to horseracing is the best methodology of addressing Congress' limited national interest concerning our industry. The Interstate Horseracing Act preserves States primacy in the area and encourages stakeholders to cooperate with each other to reach

industry-wide agreements to resolve vital issues, such as those now facing jockeys, exercise riders, et cetera.

The Interstate Horseracing Act, for example, would provide a ready mechanism to encourage States and industry stakeholders to reach appropriate voluntary efforts to resolve issues of safety and health hazards within the industry. As well as to induce stakeholders to address the adequacy of injury insurance against unavoidable risk, inherent to the sport of horseracing, for jockeys and exercise riders.

Pursuant to the IHA, owners and trainers by and through their horsemen's groups, have the authority to negotiate with racetracks on a periodic basis, to reach agreements addressing a number of issues between them, including racetrack safety and backside safety conditions. Many of the national HBPA affiliates around this country routinely contract with their racetracks about such conditions, along with a host of other terms and condition that go into the regular contractual process between tracks and between horsemen's groups. And these agreements ultimately contain the grant of horseman statutorily required consent to interstate off-track wagering. These racetrack horsemen's groups agreements are customary in the industry and are required by the IHA and ultimately, are overseen and approved by State racing commissions, whose consent to interstate off-track wagering is statutorily required, as well.

The National HBPA firmly believes that working together with State regulators, the racing industry is clearly best suited to develop the best practices needed to make racetrack facilities as safe as possible for fans and participants. Through State racing commissions and other local controls, a ready mechanism already exists for encouraging industry stakeholders to establish and enforce health and safety standards.

The National HBPA is involved in numerous programs to encourage safety and raise the level of professionalism among horsemen. We are very proud that we were the founder of the Groom Elite Program, which educates grooms and odd workers on the backside of race tracks as to horse safety and horse conditions, as well as other safety benefits. The Groom Elite Program provides a continuous equine education for backstretch licensees and also provides training in barn safety, first aid and life skills.

The National HBPA is also an active participant and Board member of the North American Racing Academy, which is a national racing school for jockeys being developed by industry leaders and led by retired Hall of Fame jockey, Chris McCaren. Working within the Kentucky Community and Technical College system, NARA sees its role as providing the racing industry with a national accredited vocational program designed to provide students with coursework in various racing industry fields, in addition to race riding.

We believe that the racing industry is best served by increased education for its members and voluntary programs designed to ensure the health and safety of racing participants.

Thank you for allowing me to address this committee and I will invite any questions.

[The prepared statement of John O. Roark follows:]

PREPARED STATEMENT OF JOHN O. ROARK, PRESIDENT AND CHAIRMAN, NATIONAL HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, INC.

Thank you for the opportunity to address the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce regarding issues of jockey safety, adequate injury insurance protection for horseracing participants and other current issues facing the horseracing industry. As a part of, or perhaps a result of this Subcommittee's investigations and hearings, it has come to the attention of the National Horsemen's Benevolent and Protective Association, Inc., (NHBPA) that some members of this Subcommittee have called upon the National Labor Relations Board (NLRB) to reconsider the NLRB's policy decision, pursuant to Section 14(c) of the National Labor Relations Act (NLRA), 29 U.S.C. § 164(c)(1), to decline asserting jurisdiction over labor disputes involving the horseracing and dog racing industries. See 29 C.F.R. § 103.3. The NHBPA wishes to submit this testimony to Congress pertaining to the issues of jockey safety, insurance protection, and the potential for federal governmental involvement in the horseracing industry.

As background, the NHBPA is a service organization founded in 1940 which represents the interests of over 48,000 licensed thoroughbred and quarter horse owners and trainers, their employees and families via 33 affiliated offices across the U.S. and Canada. Among other things, the NHBPA assists its affiliated offices and member horsemen by disseminating and communicating vital information on critical issues; representing horsemen at industry gatherings and on national boards and committees; organizing bi-annual conventions to promote an exchange of ideas and information and to provide national fire and disaster and owner/trainer liability insurance programs.

NHBPA horsemen and horsewomen run over 324,000 horses over 4,500 cumulative racing days each year and, through their local offices, provide approximately \$4 million—taken from a percentage of their purses—in benevolence programs which assist over 5,000 licensees with medical and dental coverage; substance abuse prevention and chaplaincy programs; scholarship, housing and funeral assistance and backstretch recreational programs. The NHBPA also provides a national voice for horsemen on matters of national policy and of national interest and promotes the preservation and enhancement of live racing in North America. Thus, the NHBPA submits the following.

Since 1950 and earlier, the NLRB has declined to assert jurisdiction over labor disputes in the horseracing industry. *In re Los Angeles Turf Club*, 90 NLRB 20 (1950). The rationale was that the operations of the racing industry, "While not unrelated to commerce, are essentially local in character." *Id.* at 20. This same rationale was re-iterated again by the NLRB after Congress enacted Section 14(c)'s specific provisions authorizing the NLRB discretion to decline jurisdiction over certain classes of employers. See *In re Hialeah Race Course, Inc.*, 125 NLRB 388, 391 (1959) ("racetrack operations are essentially local in nature"). The NLRB added another significant point to its rationale in the *Hialeah* case, "[g]iven the character of racetrack operations, which are permitted to operate by special State dispensation, and are subject to detailed regulation by the States, we can assume that the States involved will be quick to assert their authority to effectuate such regulation as is consonant with their basic policy." *Id.*

In 1979, the NLRB re-affirmed its longstanding policy, after formal promulgation of the rule set out in 29 C.F.R. § 103.3 (1973) and after Congress enacted the Interstate Horseracing Act of 1978, 15 U.S.C. § 3001 *et seq.* See *In re American Totalisator, Inc., et al.*, 43 NLRB 314 (1979). The NLRB's majority observed: "Congress is well aware of the Board's historic stance of declining to assert jurisdiction over horseracing", and if Congress had wished to modify this it could easily have done so by using less restrictive language in enacting the "Interstate Horseracing Act of 1978..." *Id.* at 314. The NLRB's minority opinion looked at the legislative history to the Interstate Horseracing Act and concluded Congress itself considered the horseracing industry to have significant impact upon interstate commerce because thousands were employed in the industry and they could/should be subjected to NLRB jurisdiction. *Id.* at 315.

The Interstate Horseracing Act (IHA) contains a succinctly stated and restricted role for the federal government in the horseracing and off-track betting industries. The majority in *American Totalisator* quoted from these congressional findings in the IHA reciting the confined interests of the federal government with respect to horseracing as follows:

(1) The States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) The Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) In the limited area of interstate off-track wagering on horse races, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

243 NLRB at 314, quoting 15 U.S.C. § 3001(a)(1)-(3).

The IHA's stated findings and restricted policy role for the federal government in the horseracing industry was founded upon the findings of the Commission on the Review of the National Policy on Gambling, a Commission that rendered its report to Congress in the mid-1970's. See S. Rept. No. 95-1117, 95th Cong., 2nd Sess. 6, *reprinted in* 1978 U.S. Code Cong. & Admin. News 4144, 4149. This Commission warned that passage of legislation at the national level concerning horseracing and legalized gambling thereon, unless carefully structured, could amount to "an unwarranted intrusion by the Federal Government into an area of regulation better left to the States." S. Rept. No. 95-554, 95th Cong., 1st Sess. 14 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 4132, 4142 (Views of Messrs. Cannon & Stevenson), *quoting from the* Commission on the Review of the National Policy on Gambling.

Section 4 of the IHA, 15 U.S.C. § 3003, outlaws all forms of interstate off-track wagering on horseracing without the consent of each of the following: (1) The "host racing association" (which cannot give its consent without having the consent of its horsemen/women via an agreement with their representative "horsemen's group"); (2) The "host racing commission;" and (3) The "off-track racing commission." 15 U.S.C. § 3004(a). Accordingly, the IHA gives a prominent role to the affected States (i.e., two of the three requisite consents) in regulating the horseracing industry. Without State regulatory oversight and consent, there would be absolutely no interstate simulcasting in this country. The IHA gives civil damage remedies for the violation of its provisions, and grants those remedies to, among others, the "host State." 15 U.S.C. § 3005. The IHA, therefore, embodies a significant, indeed, plenary role for the States over the horseracing industry and preserves their traditional and significant regulatory authority over the industry.

Pursuant to States' plenary authority over horseracing, the NLRB's observation in its decision in *Hialeah Race Course, Inc.*, 125 NLRB 388 (1959), is still accurate today: "[R]acettrack operations . . . are permitted to operate by special State dispensation, and are subject to detailed regulation by the States." *Id.* at 391. Unquestionably, the horseracing industry has significant impact on interstate commerce. However, the NLRB's policy in 29 C.F.R. § 103.3 is informed by more than just the industry's impact on commerce. The NLRB's policy embodies Congress' national policy toward gambling, to wit: That the primary regulators of horseracing should be the States which in fact control all aspects of the industry including the licensing of all its personnel such as owners, trainers, jockeys, exercise riders, grooms, veterinarians, etc., and which possess a significant revenue interest in the industry's success sufficient to ensure labor stability under state laws.

By virtue of their plenary authority over horseracing, some States have taken dead level aim at resolving labor disputes before they ever erupt into a disruption of commerce. For example, the State of California passed specific legislation concerning the labor relations of backstretch workers. See Cal. Bus. & Prof. Code, Div. 8, Ch. 4, Art. 2.5 § 19455-19455.4. Under the California Code, specific rights and responsibilities are delineated for workers, employers, and unions. Section 19455(b) provides the basis for enacting these labor relations laws: "The Legislature finds that the National Labor Relations Board has formally declined to assert jurisdiction over horseracing because of extensive state control over the industry, the dominant pattern of sporadic short-term employment which poses problems for effective enforcement of the National Labor Relations Act, and a unique and special relationship that has developed between the states and the industry." The Code further sets out the State's interest in such laws: "It is the intent of the Legislature to establish an orderly procedure for backstretch employees. . . to organize a labor union, in order to reduce the prospect of any strikes, disruptions, or economic action that would interfere with the operation of horseracing meetings in California." *Id.* at § 19455(c).

State law initiatives such as California's to deal with potential labor disputes before they arise in the horseracing industry are authorized under federal law pursuant to Section 14(c)(2) of the NLRA (29 U.S.C. § 164(c)(2)). These state law initiatives, however, will be completely preempted and rendered nugatory if the NLRB were to reverse its policy in 29 C.F.R. § 103.3. See *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) (the so-called "Garmon preemption" doctrine which prohibits states from regulating activities protected by § 7 or prohibited by § 8 of the NLRA, 29 U.S.C. §§ 157 & 158).

The industry itself is working with State regulators to address the concerns of jockeys about insurance protection afforded to injured jockeys and/or exercise riders, etc. The NHBPA is keenly interested in jockeys (as a group and as a constituency) attaining a level of proactive involvement in the industry. Furthermore, jockeys should have and have been accorded the utmost respect of the industry. Jockeys and their immediate families should have no reason to worry about their well-being and should not have to concern themselves each time they ride with an issue of health coverage which might affect their livelihood and their ability to take care of those families. Presently, only California, New York, New Jersey, and Maryland have workers' compensation benefits for jockeys with varying levels of work benefits. Jockeys are automatically covered in these States and pay no fees as they are considered employees for workers' compensation purposes. All jockeys qualify.

In other states, jockeys are considered independent contractors—not employees—and are covered by an accident and health (A&H) policy offering, in most cases, \$500,000 to \$1,000,000 worth of on-track accident insurance. Our research also indicates that insurers have approached jockeys' representatives about offering excess coverage, which could easily be made available to individual jockeys for a very reasonable premium at racetracks that purchased the full \$1,000,000 limit. To date, current jockeys' representation has not shown a willingness to put in place an excess coverage plan.

Nationally, on-track A&H coverage ranges from \$100,000 to \$1,000,000 with the vast majority of tracks in the \$500,000-\$1,000,000 range. This coverage is first dollar, no deductible applies. All jockeys qualify.

There are pros and cons to either the workers' compensation or on-track A&H approaches. Key factors include cost to tracks and horsemen, compliance, and protection against future increases. The NHBPA, in its 2003 Workers' Compensation White Paper, cites the self-insured or captive approach as being most sensible in the long-run (pp. 18-19), in that industry stakeholders, by investing or having a stake in their coverage program, would be incentivized to control costs and loss and enforce compliance. California implemented a partially self-insured program, known as the California Horsemen's Safety Alliance (CHSA) in December of 2002 which covers all of its backstretch workers (jockeys and exercise riders included) at relatively generous benefit levels. The CHSA approach came after several years of trying to find a solution to rising workers' compensation costs and a similar program is also being considered in Louisiana.

By partially self-insuring, industry stakeholders could, in a sense, "inoculate" themselves against future dramatic price hikes as was evidenced in California. Key to any successful program, however, will be strict maintenance of valid workers' compensation certificates of insurance for all racing stables; improved payroll reporting systems; better training and higher licensing standards of licensees and the creation of a national on-track accident database modeled after the national highway patrol system.

It is respectfully submitted, therefore, that the NLRB's longstanding policy under Section 14(c)(1) of the NLRA, 29 U.S.C. § 164(c)(1), embodied in 29 C.F.R. § 103.3, is a correct exercise of discretion with respect to the horseracing industry. If Congress were nonetheless to direct the NLRB to overrule its policy, what continuing authority will States play in the regulation of labor disputes attendant to their plenary regulation of the horseracing industry? Will States such as California have to completely forfeit their carefully balanced statutory provisions that regulate labor relations for backstretch workers, racetracks, unions, and employers (including horse owners and trainers)? Furthermore, what gaps in regulatory authority over the industry might be created by virtue of the NLRA's preemption of States' plenary authority? As this body knows, the NLRA does not extend to employees "employed as an agricultural laborer" (29 U.S.C. § 152(3)), nor to "any individual having the status of an independent contractor" (*id.*).

The legal relationship between racetracks and jockeys is considered by many authorities not to be that of employer/employee, but rather independent contractor. See, e.g., *Thompson v. Travelers Indemnity Co.*, 789 S.W.2d 277 (Tex. 1990); *Simmons v. Kansas City Jockey Club*, 334 Mo. 99, 66 S.W.2d 119 (1933); *Haggard v. Industrial Comm'n*, 71 Ariz. 91, 223 P.2d 915 (1950); *Munday v. Churchill Downs, Inc.*, 600 S.W.2d 487 (Ky. Ct. App. 1980). In a number of jurisdictions, however, jockeys have been found to be employees of the horse owner, e.g., *Biger v. Erwin*, 57 N.J. 95, 270 A.2d 12 (1970); *Drillon v. Industrial Accident Comm'n*, 17 Cal.2d 346, 110 P.2d 64 (1941), although some jurisdictions draw a distinction between "contract jockeys" and "freelance jockeys," e.g., *Munday v. Churchill Downs*, 600 S.W.2d at 487.

If Congress were to direct the NLRB to reverse its policy in 29 C.F.R. § 103.3, then the first question that arises is whose "employees" are the jockeys? If jockeys

are permitted to unionize, they will gain exempt status under the antitrust laws and can “strike,” but against what “employer” may they strike? Do they strike against racetracks (by most accounts not considered their “employers”), against horse owners or trainers (in some jurisdictions considered their “employers,” but not in all circumstances) or against their State’s regulatory authorities? A major disruption in the delicate balance that now exists between racetracks, horsemen’s groups and State regulatory authorities will be affected by any reversal in the NLRB policy.

Furthermore, the NLRA’s broad exemption for “agricultural laborer[s]” is likely to leave a large regulatory gap and fail to benefit many of the individuals whom this Subcommittee may, at first blush, think would be benefited by a reversal of 29 C.F.R. § 103.3. Congress has long defined “agricultural laborer” for purposes of the NLRA the same as the “agriculture” exemption under the Fair Labor Standards Act, 29 U.S.C. § 203(f). See *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 397 (1996) (since 1946). The Department of Labor has issued regulatory guidance on the agricultural exemption for the horseracing industry, at 29 C.F.R. § 780.122: “Employees engaged in the breeding, raising, and training of horses on farms for racing purposes are considered agricultural employees.”

While Congress can clearly direct the NLRB to reconsider its policy toward the horseracing industry, the NLRB will nonetheless be prohibited from exercising jurisdiction over numerous workers in the industry as “agricultural laborers.” True, some “employees engaged in the racing, training, and care of horses and other activities performed off the farm in connection with commercial racing” may not qualify as “agricultural” (see 29 C.F.R. § 780.122), but thousands of workers such as grooms, hot walkers, or exercise riders who are employed on breeding or training farms will remain out of reach of the NLRB despite performing some of their work at racetracks because they are employed by racehorse “farmers.” Cf. *Baldwin v. Iowa Select Farms, L.P.*, 6 F. Supp.2d 831 (N.D. Iowa 1998) (employees in the hog raising business are “agricultural” even though some operations do not occur on a farm); see *Holly Farms Corp. v. NLRB*, 517 U.S. 392 (1996) (discussing two-part test of what is “agricultural” activities, some of which may occur on or off the farm); *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755 (1949) (establishing the two-part test for “agriculture”); see also 29 C.F.R. § 780.105(b) & (c) (same); 29 C.F.R. § 780.122 (raising racehorses is “agriculture”).

On balance, given the significant legal ramifications that would occur if the NLRB reversed its policy in 29 C.F.R. § 103.3, it would be very disruptive to interstate commerce for the NLRB to start asserting jurisdiction over the horseracing industry. States that have utilized their plenary regulatory authority over the industry (usually through state racing commissions) will have to forfeit significant control in the regulation of the industry in favor of the NLRB, a federal bureaucracy, which will have exclusive oversight of labor relations issues in horseracing. Regulatory gaps will emerge due to the NLRA exemptions, but such gaps do not currently exist in state regulators’ ability to reach and protect workers in the industry.

The status quo need not be tolerated, however, given the significant problems that have surfaced with respect to the Jockeys’ Guild’s failure to continue carrying adequate insurance for injured jockeys. Indeed, this Subcommittee may have requested the NLRB to reconsider its policy with respect to the horseracing industry, in part, because of frustration with the Jockeys’ Guild and its assertions that it is not legally answerable to member- (or non-member-) jockeys pursuant to the statutorily derived “duty of fair representation” that attaches to “labor organizations” authorized pursuant to the NLRA.

The Jockeys’ Guild has defended lawsuits brought against it by injured jockeys claiming the Guild inappropriately failed to protect their interests while purporting to exclusively negotiate away their “publicity” rights vis-à-vis racetracks on the technical ground that the Guild is not a labor organization within the meaning of the federal labor laws (in part due to the policy of 29 C.F.R. § 103.3). See Brief for Defendant-Appellee Jockeys’ Guild, Inc. in *Sidney Underwood v. Atlantic City Racing Ass’n*, 3rd Cir.Ct. App. No. 96-5578, at pp. 14-15, found at 1997 WL 33554410 (submitted Sept. 9, 1997). While the Jockeys’ Guild’s legal position in the *Sidney Underwood* case (and similar cases) is regrettable for the injureds’ sake, the answer is not to reverse the NLRB’s longstanding policy in 29 C.F.R. § 103.3. The remedy of extending NLRB oversight into the horseracing industry raises far more concerns than it solves.

The day-in and day-out working conditions at racetracks at which jockeys as well as grooms, hot walkers, exercise riders and the like perform their work, are matters better left to state regulators and the industry as a whole, and which are currently being addressed in a concerted effort.

Moreover, with the advent of video lottery machines and other forms of gaming at racetracks, small-market tracks are able to compete with large-market tracks in

areas of purse distribution and stakes events. With that dynamic in place, it is now more meaningful than ever that jockeys be able to participate across state lines and around the nation. It is in the interest of all industry stakeholders to support jockeys in this new paradigm. Insurance coverage should transcend from track-to-track and state-to-state to the benefit of racetracks and horsemen. The NHBPA, therefore, calls for injury protection coverage for all jockeys, exercise riders and backside workers. It is vitally important that the industry support this cause and we ask all the industry stakeholders to join us in pursuit of this reform.

The best manner of achieving this reform is not to nationalize workers' compensation, nor to reverse the NLRB's longstanding policy in 29 C.F.R. § 103.3. Congress has long recognized the primacy of State regulatory authorities over the industry. This State primacy is far preferable to the federal government asserting a direct regulatory oversight role over the industry, or a federal bureaucratic agency's assertion of jurisdiction over it. The IHA's indirect mode of regulating interstate commerce with respect to horseracing is the best methodology of addressing Congress' limited national interests concerning the industry. The IHA preserves States' primacy in the area and encourages stakeholders to cooperate with each other to reach industry-wide agreements to resolve vital issues such as those now facing jockeys, exercise riders, etc.

This body certainly has the authority under the Interstate Commerce Clause to legislate concerning the horseracing industry, but to do so, would usurp the States' traditional and longstanding plenary role over the industry. It is respectfully submitted that this body should not, therefore, encourage the NLRB or any other federal agency to assume the States' primacy over horseracing, and instead, encourage State regulators to work with racetracks, horsemen/women, jockeys, and backside personnel to find acceptable solutions to the issues about which this Subcommittee is concerned. Encouragement from this Subcommittee will go a long way toward catalyzing the industry and their State regulators to promptly reach a resolution to the vital issue of adequate injury protection insurance for jockeys, exercise riders, etc.

#### *Safety & Health of Jockeys, Exercise Riders, and Backstretch Workers*

The Subcommittee has also called upon the Secretary of Health and Human Services, and in particular the Occupational Safety and Health Administration (OSHA) to look into doing a comprehensive inventory of safety hazards in the horseracing industry, and for the National Institute of Occupational Safety and Health (NIOSH) to provide a set of recommended standards under which racetracks should operate. The NHBPA agrees that a comprehensive study into what steps can be taken to minimize safety hazards in the horseracing industry is advisable. The NHBPA would encourage all its affiliates to work with any such investigation and inventory, and welcome the opportunity to give input into the development of recommended standards of safety.

Pursuant to the authority of the Secretary under Section 21(d) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 670(d), the Secretary is to establish and support "cooperative agreements with the States under which employers subject to [the Act] may consult with State personnel with respect to—(A) The application of occupational safety and health requirements under [the Act]...; and (B) Voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment." *Id.* The Secretary may furthermore "condition [] receiving funds under such [cooperative] agreements, for contributions by States towards meeting the costs of such agreements." *Id.*

This Subcommittee can and should encourage the Secretary to enter into "cooperative agreements" with state regulators of the horseracing industry with respect to occupational safety and health issues, as referred to in Section 21(d) of the Act, 29 U.S.C. § 270(d). Funding for "voluntary efforts" as referred to in the Act could be provided for by the Secretary and the Secretary could condition receipt of funds upon contributions by the States in meeting the costs of such agreements. The Interstate Horseracing Act (IHA), 15 U.S.C. § 3001 *et seq.*, would provide a ready mechanism to encourage States and industry stakeholders to reach appropriate "voluntary efforts" to resolve the issues of safety and health hazards within the industry as well as induce stakeholders to address the adequacy of injury insurance against unavoidable risks inherent in the sport of horseracing for jockeys, exercise riders, etc.

Specific areas of safety and/or potential hazards in the sport may be of concern to this Subcommittee. Limitations in the structure of the horseracing industry make safety issues a challenge to address. For instance, OSHA is directed toward "employers" and requires them to provide a safe work environment. Of course, racetracks do not generally "employ" jockeys or exercise riders, etc. Small

businesspersons, *i.e.*, the owners and trainers of the athletes in the sport (the horses), are frequently considered either the employer or contractor of workers on the backside of the racetrack. Owners and trainers do not control the safety hazards of a racetrack or its backside.

Pursuant to the IHA, owners and trainers by and through their “horsemen’s groups” have the authority to negotiate with racetracks on a periodic basis to reach agreements addressing a number of issues between them, including racetrack safety and backside safety conditions. Many of the NHBPA affiliates around the country routinely contract with their racetracks about such conditions along with a host of other “terms and conditions” that go into the “regular contractual process” between tracks and horsemen/women, and which agreements ultimately contain the grant of horsemen’s statutorily required consent to interstate off-track wagering. *See* 15 U.S.C. § 3002(21), (22) & § 3004(a)(1). These racetrack-horsemen’s group’s agreements are customary in the industry, required by the IHA, and ultimately overseen and approved by State racing commissions whose consent to interstate off-track wagering is statutorily required as well. *See* 15 U.S.C. § 3004(b) & (c).

A ready mechanism already exists for encouraging industry stakeholders to comply with occupational safety and health standards that may be appropriately developed by NIOSH. The NHBPA applauds this Subcommittee’s efforts to encourage the Secretary of Health and Human Services and NIOSH to develop such standards, and suggests that such might be accomplished pursuant to the Secretary’s authority under Section 21(d) of the Act, 29 U.S.C. § 670(d)’s authorization of “cooperative agreements” between the States and industry stakeholders.

As to specific issues of occupational safety and health, an appropriate investigation and analysis of the industry needs to be conducted by NIOSH. Many unsupported safety concern allegations abound and unfounded safety “fixes” have been circulated in the industry. A thorough and scientifically based investigation and analysis of safety concerns and hazards, looking toward the development of sound occupational safety and health standards, is indeed warranted. While other industries akin to horseracing involving similar “track” type hazards (such as drag racing or stock car racing) have not apparently been extensively regulated heretofore by OSHA, the dearth of safety and health oversight in these industries does not mean that the investigation and recommendation of safety standards in this industry is unwelcome.

As a starting point with regard to some of the specific safety concerns alleged to exist in the horseracing industry, the NHBPA offers the following:

#### *Weights and Body Fat of Riders*

The issue of maintaining minimum weight levels is primarily centered on the professional jockeys. Exercise riders are not required to maintain a minimum weight, although those who “work” horses (full speed maintenance exercise) are generally expected to weigh a more lenient 125-135 lbs.

During the past two years, the Jockeys’ Guild has presented a proposal to raise the minimum weight—in some cases up to 126 lbs. from the existing generally accepted average minimum of 112 lbs.—and to put tighter restrictions on minimum body fat standards for riders. Using body fat measurements could also be misleading in that an otherwise healthy jockey could have virtually the same body fat index as an unhealthy jockey. Most horsemen will agree that, due to better living conditions and nutrition, today’s jockeys are generally bigger than 20 or 30 years ago. It is, of course, in the horsemen’s best interests that the jockeys they hire are in the best possible physical condition.

However, there are equally as many licensed, competent and skillful jockeys who *DO NOT* have to engage in extreme weight loss techniques and have been able to apply the necessary dietary and nutritional practices they need to perform. Being a professional jockey, like being a professional racecar driver, is a specialized profession limited to certain individuals who possess the necessary physical and mental skills and who readily assume the related risks.

The California horse racing industry (owners, breeders, horsemen and track operators), led by Del Mar Thoroughbred Club Vice President Craig Fravel, proposed a well researched alternative to the Jockeys’ Guild plan which was approved by the California Horse Racing Board.<sup>1</sup> In general, the California plan would mandate a minimum weight of 118 (a more reasonable 6-8 lbs. above the current minimum) as compared to the 126 lb. minimum proposed by the Jockeys’ Guild. In our view,

<sup>1</sup> Blood-Horse Magazine; CHRHB Rejects Increase in Jockey Weights by Jack Shinar; April 28, 2005

a 126 lb. minimum would negatively impact the health and safety of horses at full (race) speed.

Furthermore, Mr. Fravel has taken the lead, along with other industry stakeholders including the NHBPA, in considering a proposal for research titled "Athletic Performance in Jockeys: A Baseline Study of Physiological and Nutritional Factors". If funded, this study would be led by noted researcher, Dan Benardot, PhD, who heads the Laboratory for Elite Athlete Performance at Georgia State University.

In order to make more informed long-term decisions with regard to jockey weights, the NHBPA would encourage a.) That our affiliate leadership endorse the compromise minimum weight proposal adopted by the California racing industry and; b.) To support Dr. Benardot's comprehensive research proposal cited earlier.

#### *Track Conditions*

The maintenance of a horse racing surface is very specialized and can vary greatly from state to state and region to region. While there may be instances where heavy rains, temperature changes and other situations have impacted the safety of a racing surface, we feel the best way of effectively dealing with track safety is through regular communication.

We endorse the common (and successful) practice used by the vast majority of racetrack operators (typically through their Director of Racing and Track Superintendent) and representatives of the local horsemen and jockeys, which is to a.) Keep in constant communication with the track superintendent regarding track conditions on a day-to-day basis and; b.) In the event of severe weather, to meet prior to the start of a racing card and physically inspect the surface and make a unified decision of whether to race or not.

The racing industry, during the past 20 years, has invested heavily in proven safety measures, most notably the Fontana Safety Rail system which is now in place throughout the large majority of tracks and many major training centers. This rail system forms a trampoline surface, which directs a falling rider away from dangerous rail posts toward the infield. Likewise, the multi-million dollar research and development into new and improved racing surfaces is on-going and can best be evidenced with the launch of Polytrack, a revolutionary new synthetic surface which blends fibers and recycled rubber and wax covered silica on top of a vertical drainage system and which recently replaced Northern Kentucky's Turfway Park Race-track's conventional one-mile dirt track and received rave reviews.<sup>2gT1,3</sup>

Keeneland Race Course, which co-owns Turfway Park began using Polytrack on its five-eighths-mile training track in September 2004 as a test. Keeneland has partnered with Martin Collins International as the North American distributor of the product.

#### *Safety Equipment*

Jockey and exercise riders' helmets and safety vests are required to be SEI (Safety Equipment Institute) certified and to meet specific ASTM (American Society for Testing and Materials) standards (F-1163 in the case of safety equipment).

The development of safety gear for jockeys and exercise riders, which has only been mandatory since in the early 1950's, mirrors similar safety advances in professional football—which did not require solid helmets in the early years of the sport. Thanks to government urging in the early years, both sports have taken it upon themselves to aid in the development (through proper testing and research) and then require the use of ever-improving safety equipment for its athletes. Despite the relative danger of both sports, industry efforts at improving safety gear have clearly resulted in countless lives being saved.

In recent years, a company by the name of Sure Lines, Inc. has been promoting the mandatory use of a new type of safety rein. The safety reins are reinforced by a wire and designed to hook on to the horse's bridle and have a breaking point of 360 pounds over nine minutes (vs. 300 for regular leather or nylon reins).

Ultimately, the added cost of new safety reins would be borne by horsemen. It has been estimated that Sure Lines reins would cost an additional \$15-\$20 more than standard reins.

Standard leather reins are normally \$70 and nylon approximately \$20. Refitting an entire racing stable of 30 horses would cost horsemen an additional \$1,200 to \$2,700—a substantial financial burden for the small to midsize market racing oper-

<sup>2</sup>Blood-Horse Magazine; Early Returns: Polytrack Experience Pays Off by Tom LaMarra; September 7, 2005

<sup>3</sup>Blood-Horse Magazine; Turfway Park First to Install Polytrack on Main Track by Amy Whitfield; April 27, 2005

ation without clear evidence that doing so would have the hoped for safety improvement.

No current regulations or model rules have been enacted by industry regulators such as the Association of Racing Commissioners International (ARCI) and the North American Pari-Mutuel Regulators Association (NAPRA). NHBPA agrees with regulators that rein failure (or failure of other critical equipment such as saddles, stirrups, stirrup leathers and girths) should be properly researched and, if indicated by independent data, be upgraded first on racing bridles (used during the actual running of races) and then phased in over time on training equipment.

Certainly, riders would be well within their rights to provide their own reins to the trainer if they so desired. However, in the end, clear research is needed. For example, what is the ratio of broken reins to the 350,000 horses that NHBPA horsemen run each year? What are the failure rates between leather reins and the often used nylon reins? Is the critical need more for racing conditions versus morning exercising (which would require trainers to purchase fewer sets of reins)? This also begs the question: Is the Federal Government going to also regulate the equipment being used by nearly 2 million horse owners across the U.S. who own and ride the 3.9 million horses used in recreational activities across the U.S.?

#### *Conditions of the Horses*

The NHBPA supports the industry-wide efforts currently underway at enhancing current state-by-state medication regulations into uniform national medication policies being undertaken by the Racing Medication and Testing Consortium (RMTC) whose mission is to develop, promote and coordinate, at the national level, policies, research, and educational programs which seek to ensure the fairness and integrity of racing and the health and welfare of racehorses and participants, and protect the interests of the betting public.

The RMTC currently includes representatives of all major horseracing and breeding organizations—including the NHBPA—from the Thoroughbred, Quarter Horse and Standardbred industries including: Track operators, regulatory bodies, horsemen's associations, breeders' associations, breed registries, jockeys and other key stakeholders.

The NHBPA membership agrees that more effective regulation must start by "leveling the playing field" and arriving at agreeable national uniform standards that do not penalize responsible use of therapeutic medication. Testing lab accreditation, specific regulatory levels and withdrawal time guidelines are just a few of the critical areas currently being developed through the RMTC, which has recently circulated a set of proposed model rules to state racing regulators (many have already adopted the rules into their racing statutes).

#### *Track Work Rules*

As previously addressed (pp. 9-12) the NHBPA firmly believes that working together with state regulators, the racing industry is clearly best suited to developing "best practices" needed to make racetrack facilities as safe as possible for fans and participants.

For example, the issue of limiting field sizes is regularly addressed and most racing departments limit field size in turf races due to the tighter turns involved. Churchill Downs implemented a limit to 20 horses in the Kentucky Derby due to safety concerns after 23 runners participated in the 1974 Kentucky Derby. Does OSHA limit the size of the field of racecars in the Indianapolis 500?

The mandatory use of multiple cameras (front stretch head-on; backstretch head-on and pan angles) at every licensed racetrack is further evidence that racing is the most regulated sport in the U.S. Every step of every race is caught on video and available to a board of stewards one of whom is, typically, a retired jockey.

Adding additional \$30,000 video cameras will not solve the problem of reckless riding. Better education, training and stiffer licensing standards will. The NHBPA was a founding member of the Groom Elite Program (GEP) whose mission is to provide horsemen an opportunity for professional and personal growth, by increasing their understanding of the horse with which they work and enhancing their professional skills ([www.thehorsemeneliteprogram.com](http://www.thehorsemeneliteprogram.com)). GEP goes from state to state and track to track providing continuing equine education for backstretch licensees while also providing training in barn safety, first aid and life skills (i.e. substance abuse prevention) in cooperation with industry support groups such as the Winners' Foundation and the Race Track Chaplaincy of America.

The NHBPA is also an active participant and Board member of the North American Racing Academy (NARA) ([www.naracingacademy.com](http://www.naracingacademy.com))—a national racing school for jockeys being developed by industry leaders and led by retired Hall of Fame jockey Chris McCarron. NARA's mission—"to develop and operate a world-

class racing school which will provide students with the education, training and experience needed to become expert horsemen skilled in the art of riding racehorses and knowledgeable in the workings of the racing industry as a whole”—fits well within our view that better safety begins with better training and higher standards. NARA would be in the business of preparing better jockeys and horsemen. Working within the Kentucky Community and Technical College System, NARA sees its role as providing the racing industry with a national accredited vocational program designed to provide students with coursework in various racing industry fields such as: Regulation and officiating, track management, and life skills (i.e. substance abuse prevention, nutrition and exercise, etc. . . .) in addition to race riding.

While some might believe that mandatory drug and alcohol testing programs might be the answer, we believe that education is the key.

The NHBPA would work with the ARCI and NAPRA in developing uniform national model rules which would mandate higher licensing requirements—including training in barn safety, first aid and substance abuse prevention—for all critical licensees such as jockeys, exercise riders and grooms. This approach would have the most immediate effect on track safety and help to reduce accident/workers' compensation insurance costs.

*On-Track Injury Insurance / Workers' Compensation*

As indicated in our May 19, 2005 written response to Rep. Whitfield's request for information (see attached) and as cited previously (pp. 5-6), the NHBPA has spent a great deal of time researching the issue of on-track injury / workers' compensation insurance, forming an industry task force in 2002—2003 designed to study possible solutions. We encourage the committee to review NHBPA's attached December, 2003 Report entitled "Workers' Compensation Mechanisms for Jockeys" and our Workers' Compensation White Paper and Task Force Report which are available on NHBPA's web site: [www.nationalhbp.com](http://www.nationalhbp.com).

The NHBPA Workers' Compensation Task Force outlined the findings of the three task force groups that were formed to investigate solutions to the crisis in workers' compensation. The common goal was to ensure the long-run stability and affordability of insurance in the racing industry. These groups believe insurance rates can be reduced by (1) Increasing the use of effective plans to cover athletic participants, namely jockeys and exercise riders; (2) Forming self-insured or partially self-insured "captive" plans to make the industry more attractive to insurers; (3) Developing a national database for reporting on-track accidents and injuries; (4) Enforcing better compliance and reporting practices and loss controls among horsemen and; (5) Establishing better education and testing requirements for licensees on the backstretch to promote a safer, more competent workplace.

California was able to implement a well-designed partially self-insured program while Louisiana is looking to follow suit. Other states, such as New York, New Jersey and Maryland have already implemented workers' compensation plans and Kentucky, pending legislative approval, should have a similar plan in place shortly. This notwithstanding, the large majority of racetracks has \$500,000-\$1,000,000 on-track injury coverages in place. The key here is that state racing industries may have differing needs and therefore might have differing, yet effective, approaches to the issue of on-track accident coverage.

We feel that the federal government's most useful role would be in assisting and encouraging states in getting the local enabling legislation needed in order to "lay the groundwork" on which they can build an affordable program that is fair to all racing industry stakeholders.

Mr. WHITFIELD. Thank you, Mr. Roark. Mr. Maline, you are recognized for 5 minutes.

**TESTIMONY OF MARTIN A. MALINE**

Mr. MALINE. Thank you, Mr. Chairman and members of the committee. My name is Martin Maline. I am the Executive Director of the Kentucky Horsemen's Benevolent and Protective Association, a position I have held since February 1976. The KHBPA is a trade association representing the interests of approximately 6,000 owners and trainers of thoroughbred horse racing in Kentucky. In addition, we also administer to the needs of thousands of stable workers.

Susan Bunning is the current President of the KHBPA and she, along with the ten-member Board of Directors, is elected by a vote of the entire membership every 3 years. Susan, incidentally, is the daughter-in-law of Senator Jim Bunning of Kentucky. The KHBPA is an affiliate of the National HBPA, which as John mentioned, represents approximately 48,000 horsemen in the United States and Canada.

The KHBPA negotiates contracts with various racing associations to assure that an equitable share of wagering revenue adequately funds purses so that the racing industry will thrive for horsemen in the State of Kentucky. One and a half percent of the horsemen's share of wagering revenue is allocated for the funding of the KHBPA. The organization is audited on an annual basis by the accounting firm of Deming and Malone.

In addition, the contracts specifically address myriad issues that confront workers at racetracks. They include the basic living needs of workers at the tracks and matters to make a difficult and strenuous work environment a bit more tolerable. These are issues of great importance to these tireless workers and except for the efforts of the HBPA, may be neglected.

Through our affiliation with the National HBPA, the KHBPA provides free fire and disaster insurance. This has been especially important to the horsemen stabled at Ellis Park in Henderson, Kentucky, where a tornado touched down on November 6. Fortunately, there was no loss of human life at the racetrack but several horses were killed or severely injured and horsemen workers living at the track lost everything. As is the custom of an organization that was built on the adage of horsemen helping horsemen, we were there to support and offer secure to the horsemen in need.

The havoc wreaked by the tornado occurred as the KHBPA was in the midst of helping other horsemen afflicted by hardship. There was a tragic trailer fire that killed four small children of stable employees at Churchill. This loss, combined with the damages at Ellis Park, gave a hastily planned fundraiser a new sense of urgency. Horsemen struggled to come to terms with losses that their fellow horsemen were being forced to endure.

The KHBPA provided benevolence to horsemen and stable workers in need. In addition to medical benefits, housing, emergency travel and legal advice, the HBPA employs a Hispanic service coordinator to help our large Spanish-speaking workforce navigate through barriers that at times can be somewhat overwhelming. In many ways the backstretch community is a microcosm of society where work conditions are hard and living comfortably can be a challenge. As often, where these types of conditions exist in society, drug and alcohol problems are perhaps exacerbated. While the KHBPA has championed recreation and social programs and provides financial support for full-time Chaplains at each racetrack, there are still people that struggle with addictive behavior.

For this reason the KHBPA, in conjunction with the Kentucky Racing Health and Welfare Fund, developed the Thoroughbred Addiction Counsel of Kentucky in an effort to arrive at a solution that fits the unique problems of the sometimes nomadic existence of the racetrack community. TACK has been recognized by former President George Bush's Thousand Points of Light program and received

the Governor's Aware of Excellence. The only expenditure of TACK are for the counselors, a bookkeeper and maintenance of the Concord House, a halfway facility for recovering racetrack workers. The rest of us volunteer our time to this worthwhile project.

The KHBPA has actively lobbied for legislation advantageous to the racing industry. The Backstretch Improvement Commission, developed by legislation and spearheaded by the KHBPA, assures that improvements that address living conditions for backside workers remain a priority. The KHBPA has taken a firm stance on the horseracing industry's efforts to address the health and welfare of the sport's jockeys, exercise riders and backstretch workers, including the issue of on-track injury insurance and Workers' Compensation and other health and welfare issues faced by the industry's workers.

The KHBPA supports the requirement that trainers carry Workers' Compensation on their employees. Unfortunately, many trainers in compliance with the regulation requiring Workers' Compensation insurance have been caught in the web of the Associated Industries of Kentucky insurance collapse. The dilemma concerns independent contractors working in various capacities at racetracks and training centers in Kentucky and throughout the United States. This includes jockeys, freelance exercise riders, pony people, horse trainers, veterinarians, blacksmiths, feed suppliers and other workers in various capacities on no one's particular payroll. Workers' Compensation coverage applies only to actual employees and not to the various independent contractors working at the racetracks.

The KHBPA understands and appreciates the committee's interest in addressing what is perceived as a tremendous oversight on the part of the racing industry, allowing jockeys to ride without adequate insurance. We listened to Gary Birzer's testimony in front of this committee and we are deeply saddened by his plight. His story is a tragic one but horse trainers who are likewise usually self-employed share this problem. Let me share with you the stories of two horse trainers, both of whom were severely injured in riding accidents this past year.

The first individual licensed as a horse trainer was exercising a horse. The rein broke and the horse veered into the rail. The trainer lost his arm due to the accident. Another trainer was injured while astride one of her own horses when the horse unexpectedly stumbled. She is now confined to a wheelchair and will never walk again. Trainers are expected to carry their own insurance. One did have limited coverage but the other did not.

There are no easy answers but one consideration would be to have the Racing Authority, the regulatory arm of the racing in Kentucky, require everyone working as an independent contractor to show proof of accident and disability insurance prior to receiving a license. This approach would help to alleviate an obvious deficiency and would assure that everyone working on the backstretch of racetracks are receiving adequate coverage.

I have appreciated the opportunity to address you and I thank you for your interest and concern.

[The prepared statement of Martin A. Maline follows:]

PREPARED STATEMENT OF MARTIN A. MALINE, EXECUTIVE DIRECTOR, KENTUCKY HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION

My name is Martin Maline. I am the Executive Director of the Kentucky Horsemen's Benevolent and Protective Association (KHBPA), a position I have held since February, 1976. The KHBPA is a trade association representing the interests of approximately 6,000 owners and trainers of thoroughbred horses racing in Kentucky. In addition, we also administer to the needs of thousands of stable workers.

Susan Bunning is the current President of the KHBPA and she, along with the ten-member Board of Directors, is elected by a vote of the entire membership every three years. Susan, incidentally, is the daughter-on-law of Senator Jim Bunning from Kentucky.

The KHBPA is an affiliate of the National HBPA, which represents approximately 40,000 horsemen in the United States and Canada. For a three year period during the 1980s, in addition to my duties as the KHBPA Executive Director, I served as the interim Executive Director of the National HBPA.

The KHBPA negotiates contracts with the various racing associations to assure that an equitable share of wagering revenue adequately funds purses so that the racing industry will thrive in the state of Kentucky. The agreements, which vary from racetrack to racetrack, include provisions addressing the split of sponsorship revenues, potential media rights, and revenue generated from the simulcasting of and wagering on Kentucky's races in other locations outside the state. One and one half percent of the horsemen's share of wagering revenue is allocated for the funding of the KHBPA. The organization is audited on an annual basis by the accounting firm of Deming, Malone, Livesay and Ostroff.

In addition, the contracts provide for the implementation of funded horsemen's committees that specifically address myriad issues that confront workers at racetracks. These committees address the basic living needs of workers at the track, and matters to make a difficult and strenuous work environment a bit more tolerable. The committees address such needs and lifestyle issues as housing, shower and restroom facilities, cable television, recreation and social programs, and the overall maintenance of the backstretch community and the racing surface. These are issues of great importance to the tireless workers, and except for the efforts of the HBPA, may be neglected.

The main office of the KHBPA is in Louisville, Kentucky in proximity to Churchill Downs. The KHBPA also maintains satellite offices at each of the five thoroughbred racetracks in Kentucky and at the two largest training centers in Lexington and Louisville. This allows us to have very hands-on and day-to-day contact with our constituency and the racing workforce.

Through our affiliation with the National HBPA, the KHBPA provides free fire and disaster insurance. This has been especially important to the horsemen stabled at Ellis Park in Henderson, Kentucky, where a large section of the barn area was obliterated by the tornado that hit on November 6. Fortunately, there was no loss of human life at the racetrack, but several horses were killed or severely injured and horsemen and workers living at the track lost everything. As is the custom of an organization that was built on the adage "Horsemen helping Horsemen," we were there to offer support and succor to the horsemen in need. We provided housing to everyone displaced and began the tedious process of assisting horsemen with the information required by the insurance company. In addition to the fire and disaster insurance coverage, as a member of the National HBPA Emergency Assistance Committee I plan to apply to the committee, on behalf of the Ellis Park horsemen, for financial help for the unfortunate victims of this natural disaster.

The havoc wreaked by the tornado occurred as the KHBPA was in the midst of helping other horsemen afflicted by hardship; we held a fundraiser on Monday, November 7 that was originally scheduled to assist the Louisiana horsemen displaced by Hurricane Katrina. While we were arranging this event there was a tragic trailer fire that killed four small children of stable employees at Churchill. This loss, combined with the damage at Ellis Park, gave the fundraiser a new sense of urgency. Horsemen struggled to come to terms with the losses that their fellow horsemen were being forced to endure.

The KHBPA provides benevolence to horsemen and stable workers in need. We work closely with the Kentucky Racing Health and Welfare Fund (KRH&WF) to assure that assistance is provided when there is need. In addition to medical benefits, housing, emergency travel and legal advice, the KHBPA employs a Hispanic Services Coordinator to help our large Spanish-speaking workforce navigate through barriers that at times can be somewhat overwhelming. We are proud to say that hundreds have been assisted in obtaining H-2 work visas and the process continues daily.

In many ways the backstretch community is a microcosm of society, where work conditions are hard and living comfortably can be a challenge. Workers are usually transients, and the place they and their family must call home often consists of one small room. The restroom and shower facilities are, in some instances, a long walk from the living quarters. As often where these types of conditions exist in society, drug and alcohol problems are perhaps exacerbated. While the KHBPA has championed recreation and social programs and provides financial support for full-time chaplains at each racetrack, there are still people that struggle with addictive behavior. For this reason, the KHBPA, in conjunction with the KRH&WF, developed the Thoroughbred Addiction Council of Kentucky (TACK). KRH&WF Chairman Don Ball challenged me and KRH&WF Executive Director Richard Riedel to explore various options in an effort to arrive at a solution that fits the unique problems of the sometimes nomadic existence of the racetrack community. We accessed the local communities surrounding the various racetracks to locate counselors familiar with the in-patient treatment centers in that specific region. As a horseman moves from track to track, the counselors communicate, informing each other of the special needs of the individual.

TACK has been recognized by former President George Bush's Thousand Points of Light program and received the Governor's Award of Excellence. The majority of funding for TACK is through a generous contribution from the KRH&WF. TACK is a 501-C3 non-profit program and is audited annually. The only expenditures of TACK are for the counselors, a bookkeeper, and maintenance of the Concord House, a halfway facility for recovering racetrack workers. The rest of us volunteer our time to this worthwhile project.

The KHBPA has actively lobbied for legislation advantageous to the racing industry. The Backstretch Improvement Commission, developed by legislation and spearheaded by the KHBPA, assures that improvements that address living conditions for backside workers remain a priority. Stabling and shipping expenses and purse enhancements are also KHBPA legislative initiatives designed to assist horsemen.

The KHBPA has taken a firm stance on the horse racing industry's efforts to address the health and welfare of the sport's jockeys, exercise riders, and backstretch workers, including the issue of on-track injury insurance and workers' compensation, and other health and welfare issues faced by the industry's workers. The KHBPA supports the requirement that trainers carry workers' compensation insurance on their employees, and we facilitate that process by providing the names of carriers that specialize in the equine industry.

The dilemma concerns independent contractors working in various capacities at racetracks and training centers in Kentucky and throughout the United States. This includes jockeys, free lance exercise riders, pony people (individuals who exercise horses while astride another horse), horse trainers, veterinarians, blacksmiths, feed suppliers, and others working in various capacities on no one's particular payroll.

The KHBPA understands and appreciates the committee's interest in addressing what is perceived as a tremendous oversight on the part of the racing industry: allowing jockeys to ride without adequate insurance. We listened to Gary Birzer's testimony in front of this committee and we are deeply saddened by his plight. I had the opportunity to observe Gary earlier in his career at racetracks in Ohio and Kentucky, it was obvious that he loved being a jockey. His story is a tragic one, but horse trainers, who are likewise usually self-employed, have similar problems. Let me share with you the stories of two horse trainers, both of whom were severally injured in riding accidents.

The first individual, licensed as a horse trainer, was exercising a horse for a friend and fellow horse trainer. The rein broke and the horse veered into the rail. The trainer lost his arm due to the accident. Another trainer, an accomplished horsewoman and horse trainer, was injured while astride one of her own horses when the horse unexpectedly stumbled. She is now confined to a wheelchair and will never walk again. The KHBPA is in the process of purchasing a motorized wheelchair for her, but it has been a tremendous emotional struggle for her to accept.

Trainers are expected to carry their own insurance. One did have limited coverage, but the other did not.

There are no easy answers, but one consideration would be to have the Kentucky Racing Authority, the regulatory arm of racing in Kentucky, require everyone working as an independent contractor in Kentucky to show proof of insurance prior to receiving a license. Currently, trainers are required to have workers' compensation at time of licensing, but this is not strictly enforced. In addition, workers' compensation coverage applies only to actual employees, and not to the various independent contractors working at racetracks.

Mr. WHITFIELD. Thank you. Mr. Riedel, you are recognized for 5 minutes.

**TESTIMONY OF RICHARD RIEDEL**

Mr. RIEDEL. Thank you, Mr. Chairman. Obviously the focus of these hearings is on jockey's on-track insurance. As you will hear from my testimony, the Kentucky Racing Health and Welfare Fund is specifically excluded by statute from making payment on those types of claims. However, this hearing is also about other health and welfare issues faced by the industry's workers.

I have been asked to testify how the Kentucky Racing Health and Welfare Fund assists backstretch workers, including jockeys, working in Kentucky. The payment of revenue from Kentucky thoroughbred uncashed pari-mutuel tickets for the Health and Welfare Fund was established by the Kentucky General Assembly in 1978 to provide health and welfare benefits for Kentucky's thoroughbred racing industry. We are not a State agency. However, we do function within the perimeters of Kentucky Revised Statute 230.374. We have an annual audit, which is sent to the Kentucky Horse Racing Authority. We maintain minutes, have open Board meetings and are responsive to all public and private inquiries.

I am going to paraphrase from the Statute, which will explain how we are funded and what we can provide and to whom. One, All net uncashed thoroughbred racing tickets reported to the Kentucky Horse Racing Authority shall be paid to the Kentucky Racing Health and Welfare Fund, Inc. Two, the Kentucky Racing Health and Welfare Fund is a non-profit, charitable corporation. Three, it is organized for the benefit, aid, assistance and relief of thoroughbred owners, trainers, jockeys, valets, exercise riders, grooms, stable attendants, pari-mutuel clerks and other thoroughbred racing personnel employed in connection with racing and their spouses and children.

Four, These individuals must demonstrate their need for financial assistance connected with death, illness or off-the-job injury. Five, the assistance that these individuals receive may not be otherwise covered by union health and welfare plans, Workers' Compensation, Social Security, public welfare or any type of health, medical, death or accident insurance. Six, the Fund shall receive payment on or before December 31, provided that the Kentucky horse Racing Authority and the Kentucky State Auditor's office are satisfied that the Fund is, in all respects, being operated for the charitable and benevolent purposes set forth in this section. The Fund has always received the annual payment provided in the Statute.

Under the leadership of our Board of Directors, whose members generously donate their expertise and time, the Fund has developed a number of innovative health and welfare benefits. We do much more than just pay medical bills. Our staff is made up of dedicated individuals who execute their duties with respect, dignity and humanity, while attending to the needs of our clients, medical providers and other agencies. We have a presence at Kentucky Thoroughbred Race Tracks and at the major training centers.

Our staff assists in completing the application. They assist in making appointments with a variety of medical professionals and

are involved in arranging after-care and prescription medication. Generally, the client is seen by the medical professional at no charge to them, as the provider invoices the Fund directly.

Currently our annual maximum benefit is up to \$20,000 with most medical charges under that amount being paid at 100 percent. I have an exhibit that shows every disbursement for a health related benefit made in 2004. Here you will find the approved requests of approximately 1,024 individuals who contacted us over 4,400 times, while submitting approximately 10,000 invoices for payment. Of those 4,400 approved and paid contacts, approximately 3,700 or 83 percent were stable employees, the largest working class and those in the greatest need at any racetrack.

For fiscal year 2004, the Fund received \$2.7 million. During that year, the Fund spent \$2.2 million in health-related benefits, granted \$500,000 for the Kentucky Racetrack Retirement Plan, while spending \$534,000 on the Fund's administration and an additional \$17,000 for the retirement plan administration. In total, the Fund spent \$3.6 million, primarily for health-related and retirement benefits. In addition, staff was able to negotiate down or redirect and additional \$587,000 in medical charges that would have been otherwise paid by the Fund and \$178,000 that would have been the responsibility of our clients for payment.

In addition to our popular health and retirement program, we participate in several other programs. The Fund provides majority funding for the drug and alcohol counseling program, the Thoroughbred Addiction Council of Kentucky or TACK. The Old School Apartments, this was the conversion of a 100-year old elementary school into 40 apartments for racetrack workers and others who are low-income, who are at least 55 years of age or disabled. The facility also contains office space for the Fund, the TACK office, the Kentucky HBPA and our health service center.

The Kentucky Racing Health Service Center is a joint venture with the University of Louisville Schools of Nursing and Medicine. This is a program that we hope to duplicate at other Kentucky racing centers in an effort to promote healthier living and control medical related expenses.

The redirection of a portion of our funding source to finance a part of the jockey's Workers' Compensation insurance cost in Kentucky has been discussed lately. I feel that this would be unwise and very damaging to backside employees, who are at the bottom of racing's economic scale. Our funding is already threatened. We already live paycheck to paycheck. For the Fund to be able to perpetuate our mission of helping the most economically challenged of Kentucky's thoroughbred racetrack workers, we must stay focused on soaring medical costs, diverse demands for our services, modulations in the workforce on Kentucky's backstretches, changing State and Federal laws and the tightening budgets of other charities and public and private agencies.

We monitor with uncertainty the unpredictable revenue source from which we operate. Fueled by reports of substantial declines in the pari-mutuel wagering in Kentucky, advancements in electronic wagering, slots and/or casino gambling in Indiana and West Virginia and the speculation of alternative forms of gambling in Kentucky, all of which may further reduce our source of revenue.

Thank you for this opportunity.  
 [The prepared statement of Richard Riedel follows:]

PREPARED STATEMENT OF RICHARD RIEDEL, EXECUTIVE DIRECTOR, KENTUCKY  
 RACING HEALTH AND WELFARE FUND, INC.

I am Richard Riedel, Executive Director of the Kentucky Racing Health and Welfare Fund, Inc. I have been asked to explain how the Fund receives its funding, how our income is dispensed, to whom, and the methods by which the Fund is administered, as well as our relationship with the Kentucky H.B.P.A. and other racing associations in Kentucky.

I would like to start by explaining our funding mechanism and advance from there.

The payment of revenue from Kentucky Thoroughbred uncashed pari-mutuel tickets to the Kentucky Racing Health and Welfare Fund, Inc. was established by the Kentucky General Assembly in 1978 to provide health and welfare benefits to Kentucky's Thoroughbred industry. We are not a state agency; however we do function within the perimeters of Kentucky Revised Statute 230.374. We are limited by the scope of this statute and strive on a daily basis to uphold the letter and intent of the law.

I am going to paraphrase from the statute; which will explain how we are funded and what we can provide and to whom.

1. All net uncashed Thoroughbred racing tickets reported to the Kentucky Horse Racing Authority shall be paid to the Kentucky Racing Health and Welfare Fund, Inc.

2. The Kentucky Racing Health and Welfare Fund is a non-profit charitable corporation.

3. It is organized for the benefit, aid, assistance and relief of Thoroughbred owners, trainers, jockeys, valets, exercise riders, grooms, stable attendants, pari-mutuel clerks, and other thoroughbred racing personnel employed in connection with racing, and their spouses and children.

4. These individuals must demonstrate their need for financial assistance connected with death, illness, or off-the-job injury.

5. The assistance that these individuals receive may not be otherwise covered by union health and welfare plans, worker's compensation, Social Security, public welfare, or any type of health, medical, death, or accident insurance.

6. The Fund shall receive payment on or before December 31 provided that the Kentucky Horse Racing Authority and the Kentucky State Auditor's office are satisfied that the Fund is in all respects being operated for the charitable and benevolent purposes set forth in this section.

The Fund has always received the annual payment provided in the statute.

As stated earlier, we are a Kentucky non-profit charitable corporation and under the leadership of our Board of Directors, whose members generously donate their expertise and time, the Fund has developed a number of innovative health and welfare benefits and a compassionate set of guidelines by which they are administered.

Currently the make up of the Board is:

Mr. Don Ball, Chairman. Mr. Ball is the appointee of the Chairman of the Kentucky Horse Racing Authority. He is a successful Lexington homebuilder, long time racehorse owner and breeder, and philanthropist. He has been on the Board 17 years.

Mrs. Susan Bunning, Vice Chairman. Mrs. Bunning serves on the Board via her position as the President of the Kentucky H.B.P.A. She is a lawyer for a large regional bank dealing in equine related matters, and is a third generation horsewoman. She has been on the Board since June 2002.

Mr. Dale Romans, Treasurer. Mr. Romans serves on the Board via his position as the Vice President of the Kentucky H.B.P.A. He is a second generation horseman and as of the end of October was the 9th leading trainer in purses earned in the United States. He also has been on the Board since June 2002.

Mrs. Carol Hebel, Secretary. Mrs. Hebel is the Governor of Kentucky's appointee to our Board. She is a prominent Louisville realtor, 2nd generation owner and breeder, and past president of the Louisville Orchestra and Kentucky Derby Festival. She has been on the Board since June 2002.

Dr. Randy Scheen, Member. Dr. Scheen is a prominent Louisville Dermatologist and long time race horse owner who regularly donates his time at the health fairs held on the backstretches of Kentucky's racetracks each year. He joined the Board in 2004.

The organization strives to be transparent while leaving a lengthy paper trail of its activities. The Board meets at least four times a year, minutes of each meeting

are taken and submitted to Board members prior to the next meeting. They are then reviewed and voted on at the next meeting. The minutes are open for public review and are kept in the top drawer of a file cabinet on the right as you enter my office. Each year's minutes are bound in black binders.

We are as financially prudent as possible. We have a check signing policy. Board members are sent copies of monthly bank statements, monthly activity reports and quarterly activity reports. They are also sent case summaries every two weeks.

We are audited annually by an independent auditor and submit our audit to the Kentucky Horse Racing Authority.

We have a policy of sending out an RFP every five years to various investment firms to determine who will manage our accounts. We meet regularly with the regional Director of Investments of our portfolios. We also retain an independent financial advisor to monitor our investment's performance on an annual basis.

Over the years the Board has developed a guideline manual that contains all of the standards of eligibility and benefit allowances and limitations. This manual is referred to on a daily basis by staff to determine eligibility for requests for assistance.

We do much more than just pay medical bills. Our staff is compassionate and dedicated, two of whom are bi-lingual. All execute their duties with respect, dignity and humanity while attending to the needs of our clients, medical providers, and other agencies. We have offices located at Kentucky's racetracks, namely: Churchill Downs, Keeneland, Ellis Park, Turfway Park, and The Thoroughbred Center, a large training center which is owned by Keeneland.

Our staff assists with the completion of the application process and authenticates the client's participation in racing by verifying their Kentucky racing license and compensation. Once satisfied that the individual is eligible, staff then makes an appointment with the medical professional that is needed, be it the client's own medical professional or a Fund referred professional. Our staff is involved in arranging aftercare and prescription medication for the clients. In most cases, the patient receives treatment and pays nothing, with the medical provider invoicing the Fund. We generally pay providers within two weeks of being invoiced.

The Fund also assists those who have already incurred medical charges but do not have the resources for payment. We also reimburse the clients who have used medical services that demanded payment at the time of service. Any request for assistance that exceeds \$4,500 is reviewed by the Board prior to payment being made. Our policy is to return all phone calls the same day that they are received and to respond to written letters within five working days.

I have been a lifelong fan of horseracing, attending the races for the first time when I was eight years old. I have been the Executive Director of the Fund for 18 years, following a career of five years as a full time stable employee, five years as a Thoroughbred race horse trainer, and five years as an administrative assistant with the Kentucky H.B.P.A. Along the way I earned an ABA in Business Administration, have been happily married for 29 years, and raised a lovely daughter who worked her way through college while working in the racing industry.

When I was asked to serve as the Executive Director of the Fund in 1987 the maximum benefit available for any one individual on an annual basis was 50% of the medical charges up to \$4,000. At the time we did not assist in making doctor and dental appointments for the clients. All prescriptions had to be purchased by the client, who then sought reimbursement.

Currently our annual maximum benefit is up to \$20,000, with up to an additional \$5,000 for continuing medication in chronic cases. Most incurred medical charges under that amount are paid at 100 percent. It has been personally fulfilling to witness this organization mature and bring to fruition the promise for which the Fund was created.

For Fiscal Year 2004 the Fund received \$2.7 million in uncashed tickets. During that year the Fund spent \$2.2 million dollars in health related benefits, granted \$500,000 for the Kentucky Race Track Retirement Trust, while spending \$522,000 for the Fund's administration and an additional \$17,000 for the Retirement Plan administration.

In total, the Fund spent \$3.6 million, primarily for health related and retirement benefits. In addition, staff was able to negotiate down or redirect an additional \$587,000 in medical charges that would have otherwise been paid out by the Fund and \$178,000 that would have been the responsibility of our clients for payment.

I have an exhibit that shows every disbursement for a health related benefit made in 2004. Here you will find the approved requests of approximately 1,024 individuals who contacted us over 4,400 times while submitting approximately 10,000 invoices for payment. Of those 4,400 approved and paid contacts, 3,700 or 83 percent were stable employees, the largest working class and those in the greatest need at any

race track. Staying in compliance with HIPAA requirements, the names of all individuals and their Social Security numbers have been blacked out.

In addition to our popular health and retirement programs, we participate in several other programs:

\* The Fund provides majority funding for a drug and alcohol counseling program, the Thoroughbred Addiction Council of Kentucky or otherwise known as TACK. It owns its own sober living facility, the Concord House, located within a two minute walk of Churchill Downs. The Fund's Board of Directors was the originator of this project and the Fund has been the main financial supporter of TACK since 1989.

\* Six years ago we began a project in which we were the sponsors of what was to become The Old School Apartments. This was the conversion of a 100 year old elementary school into forty apartments for racetrack workers and others who are low income and who are at least 55 years of age or disabled. The facility also provides office space for the Fund, the Thoroughbred Addiction Council of Kentucky, the Kentucky H.B.P.A., and our Health Service Center. The site is located one block from Churchill Downs. In 2004 the building earned the Ida B. Willis Award, Kentucky's most prestigious historical preservation award.

\* Six years ago the Kentucky Race Track Retirement Plan was established by the Kentucky General Assembly. It is a defined contribution plan which is designed to benefit long term full time trainers, assistant trainers, and stable employees in Kentucky's Thoroughbred racing industry. As of December 31, 2004 the plan had 894 active members.

\* The Kentucky Racing Health Service Center, which is a joint venture with the University of Louisville Schools of Nursing and Medicine and the Kentucky Racing Health and Welfare Fund, Inc. The Health Service Center is a clinical setting of approximately 3,000 square feet where medical services are provided for free, with a minimum of paperwork to the client, by medical professionals and students. This program averaged 8.8 clients per session during its first 6 months of operation. It is open three days a week. This is a program that we hope to duplicate at other Kentucky racing centers in an effort to promote healthier living and control medical related spending.

\* We have an ongoing outreach program in which we provide bi-lingual newsletters delivered to all workers in each barn three times a year. We also publish a bi-lingual guideline summary and resource manual booklet that is distributed throughout each stable area and we provide bi-lingual signage of upcoming Fund sponsored events in each barn. We maintain an up-to-date website.

The Fund is also working, in conjunction with the chaplain at Keeneland, on a curriculum that would serve as an orientation program that will be held at the beginning of each race meet in Kentucky to acquaint new stable employees and horsemen to the various agencies and departments that are available at each particular track and the benefits that are available. This will also serve to reacquaint ourselves to those who have been on the track for a while. To my knowledge this will be the first such program of its kind in the country.

We have ongoing relationships with several organizations and associations in Kentucky racing such as:

\* Kentucky Horse Racing Authority—We submit our annual audits to the Authority, I attend their monthly meetings and have made several presentations to this body concerning the Fund. We have had Authority members and representatives attend our meetings, which are always open to the public. We are in communication with the Authority's staff to verify current Kentucky license information and once a year they provide a complete list of the prior year's license information for trainers, assistant trainers, and stable employees which is vital in administrating the Kentucky Race Track Retirement Plan.

\* Kentucky H.B.P.A.—We have a close working relationship with this organization whose initials are well known throughout the entire racing community for their assistance to backstretch personnel and trainers. When a client reaches his maximum benefit with the Fund or for some reason is not eligible for benefits with the Fund his or her request is often referred to the H.B.P.A. They also provide assistance that the Fund does not provide such as: emergency housing, travel, and food assistance. We also work with other H.B.P.A. affiliates in our region to co-ordinate benefits for traveling clients who incur large medical invoices or have ongoing prescription medication needs when they are racing outside of Kentucky.

\* The Kentucky Race Track Chaplaincy—There are four track chaplains in Kentucky and between them, the Fund's staff is in communication with one or more of them on a near daily basis. They walk the stable area everyday; they know the people and see their problems. They can often encourage a reluctant or unknowing individual to utilize our services with a heartfelt referral. In addition to spreading God's Word, they spread information regarding the Health and Welfare Fund.

\* The Kentucky Thoroughbred Association—The KTA is one of two horsemen's organizations in Kentucky with whom we work closely and also has an interest in seeing that the Health and Welfare Fund benefits the backstretch workers for whom it is intended. Representatives of the KTA attend our Board meetings, display our brochures and newsletters in their field office, and their Executive Director is the vice-chairman of the Thoroughbred Addiction Council of Kentucky.

What follows are four abridged vignettes of how these organizations interfaced within the last four weeks:

\* A tornado touched down at Ellis Park at 2:00 a.m. on Sunday, November 6, it destroyed 10 barns, part of the grandstand, and the joint office we share with the Kentucky H.B.P.A. I learned of the disaster about 8:30 a.m. I contacted Mr. Marty Maline, Executive Director of the Kentucky H.B.P.A., who was already in route to Ellis Park from his home in Northern Kentucky, about a 4 hour drive away. I asked him to contact me if there was an immediate need that the Fund could fulfill. Fortunately, only one stable employee living at the track was injured. The next day he called me from Ellis Park. He was standing with a stable employee who had been working at the track. He was in need of regular prescription medications that the Fund had been purchasing for him for the past several years. Mr. Maline told me that the gentleman wanted to come to Louisville and he was arranging transportation for him. He had enough medication left to last him for a couple of days. While the Red Cross provided food and water, the H.B.P.A. provided a hotel room for the gentleman. The next day the chaplain from Ellis Park drove him to Churchill Downs, about a two hour drive. He came to our office and we authorized payment for his prescriptions which were filled at a nearby pharmacy. He has friends in Louisville that he is staying with and it is my understanding that he is now at Churchill Downs seeking employment. The Fund's representative at Ellis Park is now working out of the track kitchen on an as needed basis to help the displaced horsemen who are now training at Henderson, Kentucky area training centers.

\* On October 25, a fire in a mobile home killed four children in Louisville. The parents, two separate families, of all four children were stable employees at Churchill Downs. The chaplain at Churchill Downs, representatives from the Kentucky H.B.P.A. and the Churchill Downs Racing Committee, as well as others from the racing community and the Louisville area, worked with the families, medical personnel, the coroner's office, and emergency authorities in translating and providing whatever assistance was needed. The Health and Welfare Fund staff stayed in communication throughout with the chaplain and the H.B.P.A. Local horsemen and business owners provided free hotel space for the families and then a free apartment with donations of furniture, clothing and food. A local funeral home donated its services, as did a cemetery for three of the children. The body of the fourth child was flown to Mexico for burial. The Fund's staff assisted in making international arrangements and guaranteed payment for the remains to be flown home and a headstone. We will assist with the funeral charges in Mexico. The Kentucky H.B.P.A. arranged for roundtrip airfare for the parents.

\* During the last week of October, a former jockey, and now very experienced exercise rider, was thrown hard from a horse she was exercising at The Thoroughbred Center. She was galloping the horse on which she was injured in a "free lance" capacity. She was in and of consciousness for several days. One concerned horseman contacted me and asked if the Fund could provide assistance. Since it was work related the Fund could not. One of his concerns was that the trainer of the horse did not have worker's compensation and that the trainer had shipped his horses out of Kentucky immediately after the accident. I told this horseman that I would try to find out if there was insurance. With the assistance of the Kentucky Horse Racing Authority and Keeneland's chaplain we were able to verify that the trainer did have insurance and secured the name of the company. This information was passed along to family members. The lady is now out of the hospital and in a Lexington rehabilitation center where she is relearning to walk.

\* On October 20, a groom at Keeneland was about to be barred and ejected from the track for his inappropriate behavior when abusing alcohol. Working with track security, the chaplain, the TACK counselor at Keeneland, and the TACK counselor from Louisville, the gentleman elected to enter the TACK counseling program, a 13 month program of total abstinence. This arrangement was agreeable with track security and they sought no further action. The gentleman was allowed to retain his Kentucky racing license. The TACK counselor from Louisville transported him from Lexington to Louisville where he entered a detoxification program for 15 days. He was then enrolled in an Intensive Outpatient Program and became a resident at the Concord House, our transitional sober living facility. Two days after entering the Concord House he secured employment at Churchill Downs while continuing IOP classes and AA meetings. This was all done at no cost to the client.

The backstretch of a racetrack is a magical and complex place. It is a highly dangerous workplace for both the skilled and the unskilled worker while being an active community which provides living quarters for many who cannot afford housing or would otherwise be homeless and unemployed as they cannot afford to travel with their jobs.

The redirection of a portion of our funding source to finance a part of the jockey's workers compensation insurance costs in Kentucky has been discussed lately. I feel that this would be unwise and very damaging to the backside employees, who are at the bottom of racing's economic scale. Our funding is threatened already.

For the Fund to be able to perpetuate our mission of helping the most economically challenged of Kentucky's Thoroughbred racetrack worker with a variety of programs that increase their standard of living and quality of life, which ultimately provides an established and healthy workforce, the administration of the Fund must stay focused on soaring medical costs, diverse demands for our services through changing medical technology, modulations in the work force on Kentucky's backstretches, changing state and federal laws, and the tightening budgets of other charities and public and private agencies.

We monitor with uncertainty the unpredictable revenue source from which we operate; fueled by reports of substantial declines in the pari-mutuel wagering in Kentucky, advancements in electronic wagering, slots and/or casino gambling in Indiana, and West Virginia; and the speculation of alternative forms of gambling in Kentucky, all of which may further reduce our source of revenue.

Thank you for this opportunity.

Mr. WHITFIELD. Thank you. Mr. Giovanni, you are recognized for 5 minutes and welcome back.

#### **TESTIMONY OF JOHN GIOVANNI**

Mr. GIOVANNI. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, distinguished members of the subcommittee. My name is John Giovanni. I am the former National Manager and Secretary of the Jockey's Guild and I would like to thank you for inviting me here again today to testify on these matters of importance to the racing industry.

For over 40 years, I have dealt with Workers' Compensation and racetrack accident insurance for jockeys and exercise riders. I have done so both as a jockey subject to the benefits of these very programs and also as the administrator of a national organization charged with negotiating and providing benefits for its members. I am experienced with these programs as they relate to the racing industry, not as an expert on Workers' Compensation. I was, however, substantially involved with crafting the New York Workers' Compensation for jockeys, a very successful solution to the problem. And so I shall endeavor to render my opinion regarding both the programs presently in place and those proposed.

Four States provide definitive Workers' Compensation plans to cover jockeys. The other 34 racing States use a patchwork of different insurance policies based upon an on-track accident program that was once traditionally negotiated between the Guild and the Thoroughbred Racing Associations, the TRA. I am not referring to the \$1 million supplemental on-track insurance that the Guild used to have, but rather the basic on-track insurance that the racetracks purchased. To the best of my knowledge, the last of these Guild/TRA contracts was signed in 1999 and expired in 2002. The failure to renew this contract left what had been at best an antiquated system in total disarray. I do not believe there presently exists a data base that can provide a list of tracks that are insured, companies with which they are insured, eligibility for coverage or exactly

what the benefits are provided. This is truly a system in need of major repair and overhaul.

The four States, which provide Workers' Compensation Benefits for jockeys each approached the matter in a different manner. California's plan is the oldest and most traditional in that trainers are considered to be the employers of jockeys and responsible for providing the Workers' Compensation Benefits. The plan is extremely expensive and if I am not mistaken, in recent years it began receiving some form of State subsidy.

The Maryland plan was enacted by the State Legislature in 1985 as a program originally designed to cover jockeys while riding races and exercising horses during training hours. The plan was capitalized by owners, who made contributions to a special fund each time they started a horse in a race. Any owner from any state, even a part owner, must pay a flat fee to the program in order to race in the state. Through the intense lobbying efforts of the Maryland Horsemen's Benevolent and Protective Association, the plan was later amended to exclude coverage for jockeys during training hours. Hence, jockeys are covered by owners through their fund while riding in races but horse trainers are obliged to pay for individual plans to cover injuries to those same jockeys during training hours. In short, the plan is inexpensive for horse owners, expensive for horse trainers and to my knowledge, there is no mechanism in place to guarantee that every trainer provides the required coverage.

New Jersey has a Workers' Compensation program that combines features from the Maryland plan and traditional Workers' Compensation. Basically, both owners and trainers must contribute to the New Jersey fund. That is, the money in the fund comes out of purses unless they can show employee coverage for their employees through another business or Workers' Compensation plan. The New Jersey plan left open for interpretation the eligibility of jockeys under certain other compensation plans that cover employees performing in a different capacity and they were accepted in lieu of contributions to the New Jersey Fund. I do not know if this problem has ever been addressed or rectified.

The Commonwealth of Kentucky is considering a program of Workers' Compensation in the racing industry. From the news accounts that I have read and from a jockey's perspective, the proposal is seriously flawed. Traditionally, employers pay for the insurance and employees accept the benefits as the exclusive remedy for an occupational injury. The Kentucky proposal would have jockeys, horse owners and track operators share the expense. Track operators would contribute a set amount, relatively close to what they now pay for an on-track accident policy. Horse owners would contribute \$20 per starter and jockeys would pay 10 percent of what they earn from a winning ride.

By assessing only the winning rider, the plan penalizes excellence and could lead to jockeys considering a move to other States where they are more fairly compensated for their work. As an example, the Kentucky Derby carries a \$2 million purse with 60 percent paid to the owner of the winning horse. Ten percent of that sum is paid to the winning jockey. Under this proposed scheme, the winning owner would pay \$20 to the insurance fund and the win-

ning jockey would pay \$12,000. This huge disparity plays out through the entire purse structure. Equally unfair to the jockeys is being forced to pay a premium for their own coverage and then forfeiting the right to litigation over an injury that may well be the responsibility of an owner, trainer or racetrack operator. There are several other problems inherent in this plan and in my humble opinion, it needs more study.

The New York plan was an effort during my tenure leading the Jockey's Guild to provide Workers' Compensation coverage to all licensed jockeys, apprentice jockeys and exercise riders in the State of New York. The object was to provide benefits at the lowest cost, close all the loopholes and eliminate litigation. And this was accomplished by legislation providing for a fund that for insurance purposes is the employer of all licensed jockeys, apprentice jockeys and exercise riders, with all licensed owners and trainers contributing to the fund. Anyone who rides, no matter who they are actually employed by, are covered under this plan, even exercise riders who are freelance and considered independent contractors. In lieu of the hundreds of individual policies, the fund purchases one policy at considerable savings and by virtue of the occupations of those covered under the plan, it isolates the greatest risk. Certainly, trainers and stable employees receive injuries. It is inherent in the business. But when an ambulance leaves the racetrack, far more often than not the occupant is a rider.

The program in New York is called the New York Jockey Injury Compensation Fund and I am very proud of my work in initiating the plan. The ultimate goal was to see this plan become a flagship for the entire industry covering not just riders but all backstretch employees. Several years after its adoption in New York, Dan Fick, who at the time was Executive Director of the American Quarter Horse Association, and I brought a proposed Federal plan based on the New York model to Washington. However, we couldn't generate enough interest to see it through to fruition.

It was and still is my belief that by amending the Longshoremen and Harbor Workers Act, a national Workers' Compensation plan can be put in place to best serve the needs of the racing industry. I know it can be done at a reasonable expense. Regional offices already exist around the country to handle claims and the licensing data bases of Racing Commissioners International and the North American Pari-Mutuel Regulators Association would provide excellent weapons to deter fraud and abuse.

In closing, Mr. Chairman, I respectfully recommend that this subcommittee review the proposed national plan. It may be of assistance to this committee in finding a viable solution to the varied and woefully inadequate circumstances that exist today.

Thank you for your time and your patience. If you have any questions, I will be more than happy to answer them.

[The prepared statement of John Giovanni follows:]

PREPARED STATEMENT OF JOHN GIOVANNI, FORMER NATIONAL MANAGER AND SECRETARY, JOCKEYS' GUILD, INC.

Good afternoon Mr. Chairman and distinguished members of the Subcommittee. My name is John Giovanni, I am the former National Manager and Secretary of the Jockeys' Guild, Inc. And I would like to thank you for inviting me here again today to testify on these matters of great importance to the racing industry.

For over 40 years I have dealt with workers' compensation and race track accident insurance for jockeys and exercise riders. I have done so both as a jockey subject to the benefits of these varied programs, and also as the administrator of a national organization charged with negotiating and providing benefits for its members. I am experienced with these programs as they relate to the racing industry, not as an expert on workers' compensation. I was, however, substantially involved with the crafting of New York's workers' compensation for jockeys—a very successful solution to the problem—and so, I shall endeavor to render my opinion regarding both the programs presently in place and those being proposed.

Four states provide definitive workers' compensation plans to cover jockeys, and the other thirty-four racing states use a patchwork of insurance policies based upon an ontrack accident program that was once traditionally negotiated between the Guild and the Thoroughbred Racing Associations (TRA). I am not referring to the \$1 million *supplemental* on-track insurance that the Guild used to have, but rather the basic on-track insurance that the race tracks purchased. To the best of my knowledge, the last of these Guild/TRA contracts was signed in 1999 and expired in 2002. The failure to renew this contract left what had been at best an antiquated system in total disarray. I do not believe that presently there exists a database that can provide a list of tracks that are insured, companies with which they are insured, eligibility for coverage, or exactly what benefits are provided. This is truly a system in need of major repair and overhaul.

The four states which provide workers' compensation benefits for jockeys each approach the matter in a different manner. California's plan is the oldest and most traditional, in that trainers are considered to be the employers of jockeys and are responsible for providing workers' compensation benefits. The plan is extremely expensive, and my understanding is that in recent years it began receiving some form of state subsidy.

The Maryland plan was enacted by the state legislature in 1985, as a program originally designed to cover jockeys while riding races and exercising horses during training hours. The plan was capitalized by horse owners who made contributions to a special fund each time they started a horse in a race. Any owner from any state—even a part owner—must pay a flat fee to the program in order to race in the state. Through the intense lobbying efforts of the Maryland Horsemen's Benevolent and Protective Association the plan was later amended to exclude coverage for jockeys during training hours. Hence, jockeys are covered by horse owners through their fund while riding in races, but horse trainers are obliged to pay for individual plans to cover injuries to those same jockeys during training hours. In short, the plan is inexpensive for horse owners, expensive for horse trainers, and to my knowledge there is no mechanism in place to guarantee that every trainer provides the required coverage.

New Jersey has a workers' compensation program that combines features from the Maryland plan and traditional workers' compensation. Basically, both owners and trainers must contribute to a New Jersey fund—that is, the money in the fund comes out of purses—unless they can show employee coverage through another business or workers' compensation plan. The New Jersey plan left open for interpretation the eligibility of jockeys under certain other compensation plans that cover employees performing in a different capacity and that were accepted in lieu of contributions to the New Jersey Fund. I do not know if this problem has since been addressed and rectified.

The Commonwealth of Kentucky is considering a program of workers' compensation in the racing industry. From the news accounts I have read, from a jockey's perspective the proposal is seriously flawed. Traditionally, employers pay for the insurance and employees accept the benefits as the exclusive remedy for an occupational injury. The Kentucky proposal would have jockeys, horse owners, and track operators share the expense. Track operators would contribute a set amount (relatively close to what they now pay for an ontrack accident policy), horse owners would contribute \$20.00 per starter, and jockeys would pay 10% of what they earn from a winning ride.

By assessing only the winning rider, the plan penalizes excellence and could lead to jockeys considering a move to other states where they are more fairly compensated for their work. As an example, the Kentucky Derby carries a \$2,000,000 purse with 60% paid to the owner of the winning horse. Ten per cent of that sum is paid to the winning jockey. Under the proposed scheme the winning owner would pay \$20.00 to the insurance fund and the winning jockey would pay \$12,000.00. This huge disparity plays out through the entire purse structure. Equally unfair to the jockeys is being forced to pay a premium for their own coverage and then forfeiting the right to litigation over an injury that may well be the responsibility of an owner,

trainer, or track operator. There are several other problems inherent in this plan, and in my humble opinion it needs more study.

The New York plan was an effort during my tenure leading the Jockeys' Guild to provide workers' compensation coverage to all licensed jockeys, apprentice jockeys, and exercise riders in the state of New York. The object was to provide benefits at the lowest cost, close all the loopholes, and eliminate litigation. This was accomplished by legislation providing for a fund that, for insurance purposes, is the employer of all licensed jockeys, apprentice jockeys, and exercise riders. All licensed owners and trainers contribute to the fund and the Fund is deemed, for insurance purposes, the employer of all licensed jockeys, apprentice jockeys and exercise riders. Anyone who rides, no matter who they are actually employed by, is covered under this plan—even exercise riders who are freelance and considered independent contractors. In lieu of hundreds of individual policies, the fund purchases one policy at considerable savings, and by virtue of the occupations of those covered under the plan it isolates the greatest risk. Certainly, trainers and stable employees receive injuries—it's inherent in the business; but when an ambulance leaves the race track, far more often than not, the occupant is a rider.

The program in New York is called "The New York Jockey Injury Compensation Fund" and I am very proud of my work in initiating the plan. The ultimate goal was to see this plan become a flagship for the entire industry covering not just riders, but all backstretch employees. Several years after its adoption in New York, Dan Fick, who at the time was Executive Director of the American Quarter Horse Association, and I brought a proposed federal plan based on the New York model to Washington. However we couldn't generate enough interest to see it through to fruition.

It was and still is my belief that by amending the Longshoremen and Harbor Workers Act a national workers' compensation plan can be put in place to best serve the needs of the racing industry. I know it can be done at reasonable expense. Regional offices already exist around the country to handle claims, and the licensing databases of Racing Commissioners International and the North American Parimutuel Regulators Association would provide an excellent deterrent to fraud and abuse.

In closing, Mr. Chairman, I would respectfully recommend that this Subcommittee review the proposed national plan. It may be of assistance to this committee in finding a viable solution to the varied and woefully inadequate circumstances that exist today.

Thank you for your time and your patience. If you have any questions I will be happy to answer them.

Mr. WHITFIELD. Thank you, Mr. Giovanni. And at this time I recognize Mr. Violette for his 5-minute opening statement.

#### **TESTIMONY OF RICHARD A. VIOLETTE, JR.**

Mr. VIOLETTE. Thank you. Thank you, Mr. Chairman, for asking me to be here today. I am Richard Violette, Jr. I am first and foremost a thoroughbred racehorse trainer and have been training in New York for the last 20 years. I am also Chairman of the New York Jockey Injury Compensation Fund and have been so for the last 10 years.

Prior to 1990, the Fund did not exist. A lot of the situations that have been discussed today, the disputes between whether riders were independent contractors or employees, the dispute on who was actually the employee, whether it was an owner or trainer. Even though New York was already a Workers' Compensation State for the riders, these disputes continued. Lots of time and money was wasted at hearings and litigation and during all this time, riders and their families went without benefits while the disputes were ongoing.

In 1990, legislation was passed creating the New York Jockey Worker Compensation Fund. It took a couple of years to get off the ground. The Fund it a seven-man Board. Six of the members are

appointed by the two horsemen's groups within the State and the seventh member is elected by the local New York Jockey's Colony.

For Workers' Compensation purposes only, the Fund is considered the employer of all the jockeys and apprentice jockeys and the exercise riders. The Fund yearly bids out the premium. For the last 8 years we have actually procured the insurance from the New York State Insurance Fund. They are the biggest provider for Workers' Compensation and disability insurance in New York State. We also are governed and have to supply assessments and regulations to the State Racing and Waging Board on a yearly basis.

The owners and trainers are assessed on a three-tier system. The owners have a portion of the purses earned every race. This year it was .7 percent of the purses earned. The trainers are assessed on a per-stall fee for stalls allocated throughout the year and there is an up-front premium and that is paid, which is \$660 and it will be for next year, as well. The cost of insurance has increased over the last 10 years. The up-front premium used to be \$150 but like everything else, Workers' Comp certainly has kind of gone through the roof.

Here to report that it has been working, it seems to be a cost-saving mechanism for both owners and trainers. Owners do not have to acquire their own Workers' Compensation policy, as they did before 1990. They are automatically in the Fund. The Workers' Compensation Board assesses a value to one entity and bases their Workers' Comp amount on the one entity, which is the Fund. And I have to say we are pretty proud of the work we have done. I have been blessed to be surrounded by a number of Board members that are incredibly talented and kind-hearted and motivated. Unfortunately, we lost one this week. Gordon Wooten passed away. He was on-board since day one for the last 12 years. He was a breeder of Silver Charm who won the Kentucky Derby.

But in a nutshell, the question certainly is out there from the workers whether jockeys are independent contractors or employees. But pragmatically and prudently to try to protect a very valuable group within our industry, we basically stepped forward and we did the right thing, I believe. And I will be available for any questions. Thank you.

[The prepared statement of Richard A. Violette, Jr. follows:]

PREPARED STATEMENT OF RICHARD A. VIOLETTE, JR., CHAIRMAN, NEW YORK JOCKEY INJURY COMPENSATION FUND, INC.

#### INTRODUCTION

Thank you Chairman Whitfield and the members of the House Subcommittee on Oversight and Investigations for your invitation to appear before you today and to discuss how we in the New York racing industry address on-track workers' compensation issues for jockeys, apprentice jockeys and exercise riders.

My name is Richard A. Violette, Jr. I am a professional thoroughbred race horse trainer and have been one for more than 20 years. I began my career as a trainer in New England at Suffolk Downs and Rockingham Park. I am currently based at Aqueduct Race Track in Queens, New York. My current stable consists of approximately 60 horses.

I am Chairman of the Board of Directors of the New York Jockey Injury Compensation Fund, Inc. I have had the pleasure to serve as the Fund's Chairman and as a member of the Fund's Board of Directors for more than 10 years.

In addition to being the Fund's Chairman, I have also been President of the National Thoroughbred Horsemen's Association since 2000 and have been a member

of the Board of Directors of the New York Thoroughbred Horsemen's Association since 1990. I serve, as do all of the members of these Boards, on a pro bono basis. I was one of the founders in 2000 of the New York Groom Education Program, which educates backstretch workers on horse grooming techniques and English as a second language.

I am pleased to report to you that the New York Jockey Injury Compensation Fund has been successful in its mission to obtain workers' compensation coverage to assure indemnity and medical payments to injured jockeys, apprentice jockeys and exercise riders in New York and be cost effective in the process.

BACKGROUND AND PURPOSE OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC.

Prior to the establishment of the Fund, jockeys, apprentice jockeys and exercise riders were often challenged in their claims for workers' compensation benefits as being independent contractors and thus, were not entitled to benefits.

The fact is that jockeys are a unique type of employee. It is not unusual for them to be employed by several different employers (owners or trainers) in the course of a day at the race track and in fact, within a single hour. When pressed for coverage after an accident, it would sometimes be argued that the trainer was the jockey's employer. Such cases were pending before the New York Workers' Compensation Board prior to the establishment of the Fund. This situation created special and unusual problems from those encountered by an average employee regarding identification of coverage and employment.

Similar problems arose with regard to the identification of which employer is responsible for an injury because of the unusual and distinctive jockey work environment. It is possible that a jockey may have an injured back after riding for an hour, and it may be impossible to determine which ride caused the injury even before getting to the question whether the owner or trainer was the jockey's employer.

The result of such disputes was that the jockey and his family were without means of income when there were disputes to determine which employer was responsible or when the independent contractor defense was raised. These problems resulted in wasted time and money by the Workers' Compensation Board in hearing after hearing to evaluate and determine cases and resulted in delays of benefits intended to be paid under the New York Workers' Compensation Law.

Chapter 346 of the Laws of 1990 of New York was enacted and, in addition to establishing the Fund, clarified the status of jockeys, apprentice jockeys and exercise riders as employees under the Workers' Compensation Law and established the Fund to procure workers' compensation coverage for them. Chapter 386 embraced the concept of one employer (the Fund) created by statute to provide coverage for a particular group of workers, in this case, the jockeys, apprentice jockeys and exercise riders who are injured on specified race tracks in New York State. Employers are also the owners and trainers who pay their assessed fee to the Fund each year.

By statute, the Fund was created as a not-for-profit corporation. The Fund purchases coverage at a reduced rate, protecting owners and trainers and benefiting all jockeys, apprentice jockeys and exercise riders licensed for thoroughbred and quarterhorse racing on specified tracks in New York. It permits the Workers' Compensation Board to make an award against a single entity regardless of which owner or trainer was responsible and never to have resort to the New York Uninsured Employers Fund. With the New York Jockey Injury Compensation Fund, coverage will always be in place. It is not, however, authorized to obtain workers' compensation coverage for stable employees and other backstretch workers at the race tracks.

Workers' compensation coverage obtained by the Fund is written by licensed insurance carriers and is issued on a blanket basis. The Fund currently obtains its worker's compensation coverage through the New York State Insurance Fund, the largest workers' compensation and disability benefits carrier in the state. The Fund does not issue workers' compensation coverage nor does it assume any risks.

Workers' compensation premiums are paid from annual assessments of all licensed owners and trainers racing in New York under Section 213 of the New York Racing, Pari-Mutuel Wagering and Breeding Law. Each year, the Fund determines the total funding necessary to acquire workers' compensation coverage and advises the New York State Racing and Wagering Board of the assessment to be made for the ensuing year.

To assure for the equitable distribution of payments from owners and trainers, the Fund establishes payment schedules that account for certain factors including, where appropriate and applicable, (i) the geographic location of a racing association or corporation at which the owner or trainer participates, (ii) the duration of such

participation, (iii) the amount of purse earnings, (iv) the number of horses involved, and (v) such other factors as may be determined by the Fund to be fair, equitable and in the best interest of the racing industry. In addition, by law, the amount is to be deducted from an owner's share of purses may not exceed 1% per year.

The New York State Racing and Wagering Board requires any racing association, including non-profit and quarterhorse racing associations, to have each trainer utilizing the facilities of the association and each owner racing a horse there, place on deposit with the horsemen's bookkeeper of such association the amount to be established and paid in the manner determined by the Fund.

The Fund is governed by a seven member Board, six of whom are appointed by horsemen's organizations. The six board members who are appointed by the horsemen's organizations serve two year staggered terms. The effect of this structure is that no more than two members are subject to reappointment in any two year period, assuring a continuity of experienced representation on the Fund's Board. As a result of recently enacted New York legislation, the seventh Board member is elected every two years by a vote of all licensed New York jockeys and apprentice jockeys. Some Board members have accepted reappointments to their positions for two year terms on multiple occasions.

The Board is responsible for the transaction of all Fund business and the exercise of its powers and functions. The vote of four Board members is necessary for the transaction of any Fund business. Board members serve without compensation and are reimbursed for their expenses incurred in the performance of their official duties.

The Fund is subject to the regulation and examination of the State Racing and Wagering Board and is required to submit to the State Racing and Wagering Board annually a financial report and a report of its activities during the preceding year.

#### CONCLUSION

Since the Fund began its operations in 1991, it has made great strides in assuring the availability of workers' compensation coverage, thereby allowing injured jockeys, apprentice jockeys and exercise riders to receive indemnity and medical payments without unnecessary delay.

I am very proud of what we at the New York Jockey Injury Compensation Fund have accomplished. I have been blessed to serve with members of our Board that are incredibly intelligent, kind-hearted and motivated. Without them, none of our accomplishments would have been possible. On this note, this week Gordon Wooten, a long time Board member, passed away. His input and insight will be dearly missed and impossible to be replaced.

The Fund looks forward to continuing its mission working with the New York racing industry to obtain workers' compensation for jockeys, apprentice jockeys and exercise riders.

I would be pleased to answer any questions you may have.

Thank you.

Mr. WHITFIELD. Okay. Thank you, Mr. Violette. Mr. Daney, you are recognized for 5 minutes.

#### TESTIMONY OF BERNARD J. DANAY

Mr. DANAY. Thank you. My name is Bernard Daney. I am Chairman of the Delaware Thoroughbred Racing Commission. I am also Chairman Elect of the Association of Racing Commissioners International and Board Member of the National Racing Compact. In 1998, the State of Delaware, in conjunction with the Jockey Guild, passed a law, which set \$175,000 from the purse account and \$175,000 from the Delaware Racing Association, which is the racetrack, in a fund to be administered by the Jockey Guild. And the funds were to be deposited annually in a trust fund in Lexington, Kentucky. The Thoroughbred Racing Commission signed an agreement with the Guild on October 1, 1998, outlining 16 points of agreement that we would operate with the Guild and quickly it came to fruition because we had in Delaware an injured jockey, Julie Snellings, who was paralyzed. She was drawing \$250 a month from the Jockey Guild. We were able to increase that to about

\$1,000 a month. About a year later we increased it to \$2,000 a month. But there was a sad story. Because of her injuries, she passed away at a very young age. What the program did, we were able to help a young lady when she was in need.

The good relationship with the Guild continued. The attorney in New York, Mr. Kennedy, came to Delaware on many occasions to explain the Fund, the operation of the program with the Guild and we had no problems operating with Mr. Kennedy.

Sometime during 2001, the Guild moved their office to California. The Commission lost all contact with responsible employees in the Guild office. We made numerous requests for data concerning coverage, et cetera. We got some replies but many, many incomplete answers.

Because of the complete frustration with the Guild, the Delaware jockeys presented a petition to the Commission to remove the funds from the Guild, "because they have not managed the financial affairs of the Guild appropriately." That was May 23, 2003.

As a result of that petition, we went to the Legislature and had them change the law. We took the funds out of the hands of the Guild and we set up a Jockey Health and Welfare Board. It consists of one of the Commissioners, a representative from the Horsemen's Association, a representative from Delaware Park, two jockeys and myself as an ex-officio member. And because of doing this, we were able to do a little better with the operation of the fund. The funds were taken out of the bank in Kentucky and moved under the control of the Department of Finance in Delaware.

We had no meetings with the Guild with the jockeys to explain the program and programs of the Guild. The jockeys just kind of floundered. A lot of them would come to us asking us questions. We just had no answers for them because we couldn't extract it out of the Guild.

At our Commission meeting on October 19, Mr. Fiss informed us that all health plans would be suspended on October 21, 2005 and they were not going to accept any new jockeys from Delaware. We had at least 15 jockeys who met our requirements in 2005 and have not been insured by the Guild under our plan. We do not know if they have any coverage to this day. It is very disturbing to us and the people who are putting these funds up. Mr. Fiss even said at that time, the Guild is kind of running of money. Delaware is trying to help the Guild get some extra coverage and help to our jockeys and we get little or no cooperation from the Guild.

Remember, we have many jockeys who have high earnings. They can buy their own insurance. They have enough money to do it. They are in the top one-third. Look at the poor jockeys who are in the middle income and the lower income. They need help from us and they need help from the Guild. We believe it is time for us to help the middle and the low-income jockeys. We hard how 25 percent of the fee goes to the agent, 10 percent of the fee goes to the valet. They have families to raise and some of them are not making enough money, not to buy food, let alone health insurance.

Sorry if I get a little bit excited about helping the jockeys. I can tell you a true story. About 25 years ago my wife and I were in Pamlico. We watched a jockey fall and our horse went down. He laid paralyzed on the ground and he has been paralyzed to this

day. He walks with two crutches and luckily he is a steward at one of the tracks along the East Coast so I have a personal responsibility to these young men. Sorry.

Mr. WHITFIELD. Mr. Daney, thank you very much. And at this time, we recognize Mr. Shapiro.

Mr. DANNEY. I can continue, if you don't mind?

Mr. WHITFIELD. Oh, okay. You are not through. Okay. Excuse me.

Mr. DANNEY. Delaware, California, Maryland and other States supply funds to help the jockeys. Delaware Park has a million-dollar policy to cover jockey on-track injuries. All States should have a supplement, as Delaware does to help support medical, dental and vision policies of the Guild members. I believe each track should follow the lead of Delaware Park and provide the million-dollar policy for on-track.

I believe the industry should supply funds for the welfare of the jockeys, similar to the millions that they are supplying to the NTRA. Some of these funds should go for the safety and welfare of the jockeys.

And last, I believe that the leading jockeys in this country must stand up and take the leadership of the problems of the middle and lower income jockeys. They must take the leadership and take back the Guild. And I guess they have taken my advice and have taken back the Guild. The Guild should be run by people with experience and knowledge of the problems of the jockeys. The leading jockeys must do this. Thank you.

[The prepared statement of Bernard J. Daney follows:]

PREPARED STATEMENT OF BERNARD J. DANNEY, CHAIRMAN, DELAWARE  
THOROUGHBRED RACING COMMISSION

RELATIONSHIP WITH THE JOCKEYS GUILD

1.) Statute became law June 1998. \$175,000 from purse account of the Delaware Horseman's Association and \$175,000 from the Delaware Racing Association (race track). Fund to be administered by the Jockeys Guild (the Guild) and funds were deposited annually in trust account in Lexington, Kentucky bank.

2.) The Delaware Thoroughbred Racing Commission (the Commission) signed an agreement with the Guild October 1, 1998, outlining 16 points of agreement.

3.) Good relationship with the Guild and their New York attorney, Mr. Kennedy. Meeting held with the jockeys to explain the program at Delaware Park by attorney, etc.

4.) Sometime during 2001 the Guild moved their office to California. The Commission lost all contact with any responsible employees in the Guild office. We made numerous requests for data concerning coverages, etc. We got some replies but many incomplete replies.

5.) Because of complete frustration with the Guild, Delaware jockey's presented a petition to our Commission to remove funds from the Guild "because they have not managed the financial affairs of the Guild appropriately." (May 23, 2003)

6.) We then went to the Delaware Legislature and requested and received a new statute setting up a *Delaware Jockeys Health and Welfare Benefit Fund*. The Jockeys Health and Welfare Benefit Fund shall be administered by a Board, known as the Jockeys Health and Welfare Benefit Board, comprised of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 101 of Title 3 or Chapter 4 of Title 28, 1 member of the Delaware Horsemen's Association, and 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Commission shall serve as an ex officio member and vote on matters in the event of a tie vote on any issue. Members shall be appointed by the Commission and shall serve 2-year terms. In addition to providing funding for jockey health and other welfare benefits, the fund may expend reasonable expenses for administrative purposes.

Funds were to be transferred from the contract of the Guild to Department of Finance in Dover, DE.

7.) No meetings by Guild with jockeys to explain our program or other programs of the Guild.

8.) At our Commission meeting of October 19, 2005, Mr. Albert Fiss informed us that all health plans would be suspended on October 21, 2005 and they would not accept any new Delaware jockey's. We had at least 15 jockeys who met our requirement in 2005 that have not been insured by the Guild under our plan. We do not know if they have any coverage. It is very disturbing.

9.) Delaware is trying to help the Guild to get some extra coverage and help to our jockey's—we get little or no cooperation from the Guild.10.) Remember, we have many jockeys who have high earnings; they can buy the best coverage in the world. We also have “middle income” jockeys and have “low income” jockeys who need help with insurance costs. I believe it is time for us to help the middle and low income jockeys.

#### WHAT TO DO

1.) Delaware, California, Maryland and other states supply funds to help the jockeys. Delaware Park has a policy of \$1,000,000 to cover each jockey for on-track racing injuries.

2.) All states should have a jockey supplement fund (as Delaware) to help support the medical, dental, vision policies of the Guild members.

3.) I believe each track should follow the lead of Delaware Park and provide the \$1,000,000 policy for on-track racing injuries.

4.) I believe the industry should supply funds for the welfare of the jockeys similar to the millions that they supply to NTRA. Some of these funds should go for the safety and welfare of the jockeys.

#### LAST

1.) I believe the leading jockeys in this country must stand up and take some leadership in the problem of the “middle income” and “low income” jockeys. They must take the leadership and take back the Jockey Guild from outside interest and have the Guild run by people with experience and knowledge of this problem of the jockey's.

#### OR,

2.) The leading jockeys must form a new jockeys association and have all jockeys resign and abandon the Guild as it is now constituted.

Mr. WHITFIELD. Absolutely. And you should have told them to do it earlier than you did.

Mr. DANEY. I am glad they listened to me.

Mr. WHITFIELD. Mr. Shapiro.

#### TESTIMONY OF RICHARD B. SHAPIRO

Mr. SHAPIRO. Mr. Chairman and members of the committee, thank you in inviting me to testify before you. Fortunately, this week the members of the Jockey's Guild voted to terminate Dr. Gertmenien, Albert Fiss and Matrix Corp. For this reason, I will not delve into the details with the problems the California Horse Racing Board has had. I do however, sincerely hope that those people are held accountable for their actions in every sense of the law.

I would like to assure all of our jockeys that California stands ready to assist the Guild and its members to return to sound financial footing and maintain the much needed health insurance they deserve. I have already spoken to members of the Guild and offered my assistance and the California assistance that we can lend to them during this difficult time of transition. I hope that all tracks and associations will step up and help the Guild rebuild itself.

California provides approximately \$1 million a year for jockeys health and welfare insurance. These monies are derived from un-

cash refunds of pari-mutuel tickets. This program began in 1997 and to date, has resulted in over \$4.4 million being given to the Jockey's Guild through 2004. As we speak, we have approximately \$1.5 million available to continue to pay toward jockey health insurance.

We have also obtained initial quotes for alternative health insurance from Blue Cross/Blue Shield and we will look forward to working with the new managers of the Guild to determine the best possible coverage for our riders.

California backside workers, including the jockeys, are also covered by Workman's Compensation Insurance. To offset the high cost of this insurance, the California Horsemen's Safety Alliance was formed and incorporated into California racing law. Since 2002, tracks and horsemen have contributed approximately \$22 million toward Workman's Comp insurance.

If Gary Birzer's accident had occurred in California, he would have been entitled to unlimited medical care, unlimited disability payments and unlimited rehabilitation. Further, had he signed a waiver of the liability under the TRA program funded by California tracks, he would have received additional catastrophic injury insurance. In my opinion, it is unacceptable for any track in any State to provide any less than what California provides to our valued jockey partners.

In addition to the California Health and Welfare Plan and Workman's Compensation Insurance, California also provides the following to backside workers and jockeys: Medical and dental clinics through the California Thoroughbred Horsemen's Foundation. California Thoroughbred Trainers administer a pension program for backside workers and trainers with net assets, with current assets, of \$33 million. The Disabled Jockey Endowment and Don McBeth Jockey Fund receive charitable race day proceeds from all thoroughbred racing associations. Ultimately \$2 million will be set aside for disabled riders. Recreational programs and facilities are provided at each track by the Gregson Foundation and the California Thoroughbred Trainers. Drug and alcohol counseling is provided by the Winners Foundation and religious services are provided by the Racetrack Chaplaincy of America.

The California Horse Racing Board, in conjunction with the Thoroughbred Owners of California, CTT and all of our thoroughbred tracks, have initiated a comprehensive health study to determine optimum health conditions for jockeys. This comprehensive study is intended to lead us to a better approach to establish safe riding weights for riders based on scientific principles, such as body composition, height, gender, age and other variables that the current approach does not take into account. We cannot continue to accept the notion that one size fits all. The industry needs to ensure that weight management is done safely and in a manner that maximizes athletic performance. It is critical, however, that all tracks adopt a uniform scale of weights. It is my hope that the entire racing community, including the jockeys, will participate with us in this national study.

Racing throughout the country is facing a transformation. Many jurisdictions, including California, are facing very difficult times. With the advent of casino-style gaming at racetracks in many juris-

dictions those without the alternative gaming are fighting for their economic lives. In California alone, two of our five major tracks have been sold and are likely to cease operating as racetracks. The result of this disadvantage has been that our purses cannot keep pace with gaming States and consequently, we are losing horses and horsemen to other States throughout the country. Our existence is in jeopardy.

Racing needs help to regulate issues that reach farther beyond one state's borders. With the advent of simulcasting, advance deposit wagering and the Internet, we face a host of problems that need to be addressed. Illegal offshore wagering today is estimated at hundreds of millions of dollars. This money is not reaching our betting pools and therefore doesn't benefit the horsemen, the tracks or the States where racing is being conducted. We need your help to stop this illegal activity. If we can bring that money back to our racing pools, there will be more money available to pay for new track surfaces, better insurance programs and better health and welfare plans.

I know that some people in horseracing will not like to hear me advocate any Federal oversight but I look to you to not constrain us but to help an industry in transition. I ask that you help preserve the billions of dollars invested by tracks, horse owners, trainers and all participants in a sport they love. I ask that you help us save the tens of thousands of jobs created by this industry. We are at the beginning of a new century, yet we are a sport of tradition, pageantry and a rich history. We are a sport made up of wonderful people from all walks of life. Please help us find a way to insure and employ all our participants profitably. Help us have an incentive to not tear down tracks but build tracks. Help us root out those that try and cheat us and take our product beyond our borders. Help us establish common limitations and guidelines on medications to protect our horses.

Racing needs your support to adapt to changing times so it can be healthy for centuries to come. Again, thank you for all the work that you are doing.

[The prepared statement of Richard B. Shapiro follows:]

PREPARED STATEMENT OF RICHARD B. SHAPIRO, COMMISSIONER, CALIFORNIA HORSE RACING BOARD

Mr. Chairman and Members of the Committee, thank you for inviting me to testify before you on "Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury Insurance and Other Health and Welfare Issues."

My testimony is intended to cover four specific topics. They are;

1. Issues and Challenges with the Jockeys' Guild
2. California's Efforts to Provide Health and Welfare Coverage for Jockeys and Backstretch Workers
3. Track Safety
4. Competitive Factors and Federal Oversight

JOCKEYS' GUILD

In October 2004 I became a Commissioner on the California Horse Racing Board. It was about that time that I read of the horrible situation where Gary Birzer, a jockey I had met one time at Mountaineer Park had been rendered paralyzed in a racing incident. I recall when I met Gary I was very impressed with his work ethic—working horses in the mornings, racing in the evening—always with a smile on his face.

When I heard that unlike California there was no adequate accident insurance in place to cover his expenses, I was outraged. How could this possibly be? I placed on our monthly agenda an item for discussion to insure something like this could never occur in California. I specifically asked that Dr. Gertmenian appear to address our concerns. He didn't show up. Mr. Albert Fiss did attend the meeting, but when asked what steps the Guild was taking to make certain that all of our jockeys were insured, I was given evasive and non-responsive answers.

Things only got worse from there. You see, California does provide Workman's Compensation coverage for its backside workers, including the riders, and further, California provides over a million dollars a year to the California Health and Welfare Plan, specifically for jockeys that ride at least 50 races in California and 100 races in a calendar year (Exh.1). But when I asked Mr. Fiss if the Jockeys in the jockeys' room had all registered for the coverage, he never answered my question as he didn't know. This was unacceptable to me. The Jockeys' Guild should know so.

The Guild receives approximately \$1 million each year from California for insurance coverage for the California riders. The health plan insuring riders in California is part of a Guild self directed or self insurance plan, that covers all riders in the country. The money derived from California is to be used only for the California riders. We, along with the TOC, have asked repeatedly for the Guild to show that our money is being used for its intended purpose, and to address many concerns related to the Guild (Exh. 2). They have failed to do so. We are not satisfied that our money is being spent for purposes that it was intended, and we are concerned it is being co-mingled with other Guild funds and jockey payments for health insurance. We are unconvinced that we are not subsidizing health insurance for riders in other states.

We are also very concerned, given the Guilds' apparent financial straits, that there is insufficient funding to pay for claims, particularly in the event of a bankruptcy. The Guild has not even collected almost \$1 million of dues from its own members, including large sums from its current Board members. Given the pattern of misrepresentation by the Guild, it is questionable that the Symetra excess policy (Exh. 3) may not be enforceable. We also are alarmed that within one year of the current Guild management taking over, the Jockey Disabled fund has been depleted from \$1,327,083 in 2001 to \$0 in 2003. We still don't know where that money went, and how disability expenses increased to over \$850,000 in 2002 versus \$194,000 in 2001 (Exh. 4).

The Guild is required to provide to us and the Thoroughbred Owners of California, who are also party to the agreement, audited statements for each year's actual expenditures. The Guild has failed to timely comply with this requirement, and only when we insisted that it be done, did we finally receive audits on September 9, 2005, for the years ending 2003 and 2004 (Exh. 5). Those reports highlighted varying concerns of its own auditors, as contained in the Management Letters from the auditors. Concerns included lack of proper controls, allocation of funds, and other procedures that should have been implemented by the Guild (Exh. 6).

Additionally, we note that of the approximate \$1 million dollars contributed by California, approximately 51% of the money provided to the Guild is used for Administrative expenses (Exh. 7). The Guild retains a plan administrator, but they also claim approximately 15%, or \$150,000 for Guild administrative expenses. We need to know why nearly 50 cents of every dollar is not going to our jockeys' health benefits. It is also interesting to note that since 1997 the self directed health plan of the Guild has increased in cost by 83% as compared to the CalPERS increase of 67.2% for the same period. (Exh. 8)

In early 2005, we advised the Guild that we wanted to see alternative health insurance quotes from outside insurance companies. We asked that they competitively bid the insurance coverage. As we sit here today, the Guild has not only failed to seek out any competitive bids, but we have asked for census data so we could obtain alternative bids, and they have failed to provide that information to us, despite repeated requests. Just this past week, I called the Guild asking to speak with Dr. Gertmenian or Albert Fiss, their controller, neither of them were available. I was told that David Shepard, their Chairman was there, but he never returned my call. The purpose of my calling was to simply ask them to authorize the company that administers the health insurance plan to release census data to an insurance broker who specializes in racing related health insurance. I do not want to see this Guild implode and render our jockeys without health insurance.

Notwithstanding their total lack of efforts, I have obtained preliminary quotes for medical insurance from Blue Cross or Blue Shield for our California jockeys (Exh. 9). But without the census data we cannot get firm quotations. I ask you to ask Dr. Gertmenian to sign the release of information (Exh. 10) I have before me, so that

we can protect our jockeys. If he really cares about these men and women and their families, I can't imagine he wouldn't immediately sign this document.

At your hearing on October 18th, Dr. Gertmenian testified that California had conducted an audit of the Guild and was satisfied. Let me be very clear with respect to his testimony. His statement was completely untrue, and he knows it. We have never been satisfied with the Guild's performance, and the California Horse Racing Board in an open meeting voted unanimously to proceed with a forensic audit of the Guild as a result of that dissatisfaction. (Exh. 11)

As a result of our ongoing problems, and the non responsiveness and untimely performance of the Guild, we have determined that we will have the State of California Department of Finance undertake a forensic audit of the Guild, which is commencing as we speak (Exh. 12). Until such time that we are satisfied that the money provided to the Jockey Guild is being spent appropriately and for its intended purpose, it will be my recommendation to the California Horse Racing Board that all future payments be withheld from this Jockeys' Guild.

All of the California racing industry is dedicated to the welfare of our valued riders. It is unconscionable what happened to Gary Birzer. It is unacceptable that this Guild would not provide replacement wheelchair wheels to a paralyzed rider by the name of Gary Donahue. It is unacceptable that riders who asked questions were thrown off their Board of Directors. And it is horrifying to hear that guild management refers to Gary Birzer as a "casualty of war". There is no war; Gary Birzer is only a casualty of the inept management of this organization.

If Gary Birzer's accident had occurred in California, he would have been entitled to unlimited medical care, disability payments and rehabilitation. Further, had he signed a waiver of liability under the TRA program funded by California tracks, he would have received additional catastrophic injury coverage. In my opinion, it is unacceptable for any track, in any state, to provide any less than what California provides for our valued Jockey partners.

I am convinced that with real Guild leadership—not a group of people looking to wage war—all of the racing industry can and will come together to take care of the riders who put their lives on the line every time they mount a horse.

#### CALIFORNIA'S EFFORTS TO PROVIDE HEALTH BENEFITS FOR ITS BACKSTRETCH WORKERS:

As mentioned previously, California provides approximately \$1 million dollars a year for Jockeys Health and Welfare Insurance. These monies are derived from uncashed refunds of pari-mutuel tickets. This program began in 1997, and to date has resulted in over \$4,411,000 (Exh. 13) being given to the Jockey's Guild through 2004 for Jockey Health Insurance.

California backside workers, including the jockeys, are covered by Workman's Compensation insurance (Exh. 14). To offset the high cost of this insurance, the California Horsemen's Safety Alliance was formed and incorporated into California Racing Law. Since 2002 and through 2005 approximately \$11,250,000 has been contributed by tracks and horsemen to offset the cost of Workman's Compensation expenses. In 2004, an additional section was added to California Racing Law, which provided that an additional .5% of the takeout on exotic wagers would be used to further defray the high cost of Workman's Compensation Insurance. Since May of 2004 and through October 2005, an additional \$11,300,000 of monies has been collected for costs associated with Workman's Compensation Insurance for our backstretch workers and jockeys.

In addition to the California Health and Welfare Plan, and Workman's Compensation Insurance, California also provides the following monies and services for jockeys and backside employees:

1. Medical and dental care is provided to all backstretch workers by the California Thoroughbred Horsemen's Foundation.
2. Backstretch workers and trainers participate in a pension program administered by the California Thoroughbred Trainers Association. Current assets under management are \$33 million.
3. Disabled Jockey Endowment and the Don McBeth Jockey fund are funded from charitable race day proceeds from all Thoroughbred racing associations. Ultimately, \$2 million will be set aside for these disabled riders. Between 2003 and 2005 to date approximately \$425,000 has been donated to these causes.
4. Recreational programs and facilities at each race track are provided and sponsored by the California Thoroughbred Trainers, the Gregson Foundation, the Racetrack Chaplaincy, and each of our racing associations.
5. Drug and alcohol counseling is provided to all backside workers by the Winners Foundation.

6. Religious services and ministry services are provided by Race Track Chaplaincy of America.

The California Horse Racing Board in conjunction with the Thoroughbred Owners of California, California Thoroughbred Trainers and all of our thoroughbred tracks, have also initiated a comprehensive health study to determine optimum health conditions for jockeys. This comprehensive study, a draft of which is attached to my written testimony, is entitled "Athletic Performance in Jockeys: A Baseline Study of Physiological and Nutritional Factors." (Exh.15) This study is intended to lead us to a better approach to establishing safe riding weights for riders based on scientific principles such as body composition, height, gender, age and other variables that the current approach does not take into account. We cannot continue to accept the notion that "one size fits all". The industry needs to develop better nutritional training and monitoring practices to ensure that weight management is done safely and in a manner that maximizes athletic performance.

It is my hope that the entire racing community, including jockeys, will join with us and participate in this study to determine not only optimum and minimum standards for riders, but also establish a reasonable scale of riding weights that is implemented throughout the country.

#### TRACK SAFETY

All of our race tracks in California are maintained in excellent condition. Our horsemen's organizations including the California Thoroughbred Trainers (CTT) and Thoroughbred Owners of California (TOC) are vigilant in working with our race tracks to insure the safest possible conditions for both horses and riders.

I believe that the California Horse Racing Board was the first regulatory agency to adopt track safety regulations and require track maintenance plans and inspections. Let me just cite a couple of the racing law and regulations that are in existence in California:

Horse Racing Law:

(Section 19481) required the CHRB to adopt safety standards governing track base and racing surface, rails, gaps, turf access, lighting, equipment, drainage, communications, veterinary services, medical and ambulance services, track inspection procedures, housing regulations for workers and inspection of housing facilities.

California Horse Racing board Regulations were adopted specifically:

(Section 1468) governs emergency procedures, communications, and ambulance services.

(section 1469) governs safety of race course

(section 1471) establishes track safety standards and inspections requirements

(section 1472) establishes rail construction and track specifications

(section 1473) governs renovation of dirt track

(section 1474) governs maintenance of dirt track and requires written track safety maintenance program

Prior to the issuance of any license to conduct any race meeting, the CHRB conducts inspections and the racing association must satisfy the CHRB that all procedures are in place before the granting of the license. It is also customary for track safety to be discussed between the representative groups, jockeys, and the California Horse Racing Board to insure that the track surface is safe at all times. When and if there are concerns, it is the policy of the California Horse Racing Board, and all of our tracks, to immediately address the problem and if the track is deemed to be unsafe for any reason, racing will not be permitted until the problem has been remedied.

California, through UC Davis and a variety of organizations, has participated in a variety of studies to maintain and develop the safest possible track surfaces. As evidence of this commitment to track safety, just recently Hollywood Park determined that its new Turf Course was not fit for racing, and all turf racing at the meeting that just commenced was cancelled.

#### COMPETITIVE FACTORS AND FEDERAL OVERSIGHT

Racing throughout the country is facing a transformation. As part of this process many jurisdictions, including California are facing very difficult times. With the advent of casino style gaming at racetracks in many jurisdictions, those without the alternative gaming are fighting for their economic lives. In California alone, two of our five major tracks have been sold and are likely to cease operating as race tracks. Unfortunately, California only has casino style gaming on Indian lands. The result of this disadvantage has been that our purses cannot keep pace with gaming states, and consequently we are losing horses and horsemen to other states throughout the country. (Exh. 16)

But aside from California, racing needs help to regulate issues that reach farther beyond one states borders. With the advent of simulcasting, advance deposit wagering, and the internet, we face a host of problems that need to be addressed. Illegal off shore wagering today is estimated at hundreds of millions of dollars. This money is not reaching our betting pools, and therefore doesn't then benefit the horsemen, tracks or the states where racing is being conducted. We need your help to stop this illegal activity. If we can bring that money back to our racing pools, there will be more money available to pay for new track surfaces, better insurance programs and better health and welfare plans.

We need consistent racing laws and rules that apply to all jurisdictions to insure a safe and level playing field. Uniform medication rules, uniform scale of weights, uniform minimum standards for riders and uniform insurance coverage, including Workman's Comp coverage in all states.

I know that some people in the horse racing industry will not like to hear me advocate any federal oversight, but I look to you not to constrain us, but to help an industry in transition. I ask you to help preserve the billions of dollars invested by tracks, horse owners, trainers, and all participants in a sport they love. I ask that you help us save the tens of thousands of jobs created by this industry. We are at the beginning of a new century, yet we are a sport of tradition, pageantry, and a solid historical background. We are a sport made up of wonderful people from all walks of life. Please help us find a way to insure and employ all of our participants profitably. Help us have an incentive to not tear down tracks, but build tracks. Help us root out those that try and cheat us and take our product beyond our borders. Help us establish common limitations and guidelines on medications to protect our horses. Racing needs your support to adapt to changing times, so it can keep the sport healthy for centuries to come

Again, I would like to thank you for taking the time to conduct this hearing and inviting me to address you.

#### APPENDIX

All attachments to Mr. Shapiro's testimony can be viewed online at the Committee's hearing website: <http://energycommerce.house.gov/108/Hearings/11172005/hearing1709/hearing.htm>

Mr. WHITFIELD. Thank you, Mr. Shapiro. And at this time, Mr. Monahan, we will recognize you for 5 minutes on behalf of the Quarter Horse.

#### TESTIMONY OF DICK MONAHAN

Mr. MONAHAN. Mr. Chairman, thank you for the opportunity to appear at this hearing on behalf of the American Quarter Horse Association. I am currently an AQHA National Director and Chairman of the AQHA Racing Committee and Racing Council, which governs quarter horse racing throughout the United States.

I have been involved in American Quarter Horse Racing as an owner and breeder since 1970 and since 1975 have been involved in the management of small racetracks in the State of Washington where I live. I am a trial lawyer in Walla Walla, Washington to pay for my horse habit.

Issues involving the health and welfare of jockeys and other workers at racetracks are of utmost important to the AQHA and AQHA members involved in racing. Just what is an American Quarter Horse? If you have ever seen a horse in one of rodeo's timed events, been along for work on a ranch or watched a Western on a big or small screen, nine times out of ten you have witnessed an American Quarter Horse.

Located in Amarillo, Texas, AQHA remains the world's largest equine association, registering more than 4.5 million American Quarter Horses and serving currently more than 350,000 members. The Association has more than 1.2 million active owners. According to the recently completed study by the American Horse Council, the

National Economic Impact of the Horse Industry on the United States, American Quarter Horses made up approximately 15 percent of the 845,000 horses racing or breeding for racing in the U.S. And account for about 6 percent of the \$10.7 billion direct economic impact of racing in the United States. About \$340 million is wagered each year on American Quarter Horse racing.

I share these figures so that the committee will understand where American Quarter Horse racing fits within the horseracing industry in the U.S. While we are not a large segment of the racing industry, the leadership role AQHA plays and has played in the industry is vital. We are committed to the safety of the jockeys, exercise riders and other backstretch workers and the horses involved in our product. AQHA has always done its part to benefit all of the horseracing and those who participate and the membership stands ready to do that as well, now.

Over the years, AQHA Racing Committee and Council has discussed track safety and issues to ensure the safety and fairness of racing. Since 2002 alone, AQHA has invested more than \$600,000 working with other industry associations on various issues such as a racetrack surface study. We participated heavily in the Racing Medication and Testing Consortium and conduct regularly assistant starter workshops to assist gate workers with properly handling horses behind and in the gate, to protect horses, jockeys and the wagering public, to ensure safety and fairness.

Since 1960 and thanks in large part to our generous members, AQHA and the American Quarter Horse Foundation has contributed more than \$5 million in research grants to colleges and universities to study various issues and diseases that affect all breeds of horses, not only racing American Quarter Horses.

With respect to the jockeys and exercise riders, almost all of those who ride American Quarter Horses also ride other breeds. For this reason, they are included in any agreements reached regarding insurance, be it health insurance or catastrophic insurance and any jockey can join the Jockey's Guild who chooses to do so.

AQHA has never been directly involved in the negotiations that produced agreements regarding insurance in the past. Rather we have relied on the Jockey's Guild and the Thoroughbred Racing Association to finalize all of those agreements. This does not indicate any lack of interest or concern, only recognition that other organizations were able to reach acceptable agreements in the past that include American Quarter Horse racing. We have always participated in and utilized the final product and appreciated the efforts of all concerned to protect these individuals.

As did many others, we watched with concern as the leadership of the Jockey's Guild changed, causing a strain in the traditional processes and relationships. As the committee has learned, the path to the current situation in the racing industry regarding protection of our jockeys has been unfortunate but we do not believe it is permanent.

Efforts to resolve this issue were started some time ago and a great deal of work has gone into it. We are confident that the industry can resolve this issue, as it has done in the past. The will always has been there but new circumstances have changed the

regular order. We believe that this too will change and that the previous order will be restored.

The industry makes every effort to make racing as safe as possible. Racing surfaces are groomed between every race to keep surfaces in the best shape. Races are canceled when condition, weather or jockeys raise concerns. New surfaces are being explored and used all the time.

At AQHA, we believe these issues can be resolved by the industry by working together. The process has begun and the industry is working on a resolution. That may involve a new paradigm but it will happen and AQHA will be involved.

We appreciate your committee's involvement in this important process. Clearly, it has already spurred some changes. We expect that such change will continue and the jockeys and other workers will be protected and insured as before, if not better. Thank you very much for the opportunity to participate in these hearings.

[The prepared statement of Dick Monahan follows:]

PREPARED STATEMENT OF TESTIMONY OF DICK MONAHAN, AMERICAN QUARTER HORSE ASSOCIATION

Good afternoon. Thank you for the opportunity to appear at this hearing on behalf of the American Quarter Horse Association. I am Dick Monahan, Chair of the AQHA's Racing Council.

I have been involved in American Quarter Horse Racing as an owner and breeder since 1970. Since 1975 I have been involved in the management of small racetracks in eastern Washington.

I am currently an AQHA National Director and Chairman of the AQHA Racing Committee, a 90-member oversight committee, and the Racing Council, a 9-member steering committee.

I am a trial lawyer in Walla Walla, Washington to pay for my horse habit.

Issues involving the health and welfare of jockeys and other workers at racetracks are of utmost importance to AQHA and AQHA members involved in racing.

Just what is an American Quarter Horse? If you have ever seen a horse in one of rodeo's timed events, been along for work on a ranch or watched a Western on the big or small screen, 9 times out of 10 you have witnessed an American Quarter Horse.

These heavily muscled, compact horses could and can run a short distance over a straightaway faster than any other horse. The fastest were called Celebrated American Quarter Running Horses by—English colonists in the 1600s.

The American Quarter Horse established a reputation as the greatest cattle roundup and trail driving horse in history and were also popular with early American racing enthusiasts. To ensure the unique qualities of this breed be preserved, a group of American Quarter Horse enthusiasts met in Ft. Worth, Texas in 1940 to establish what has to become the largest equine breed registry in the world, the American Quarter Horse Association.

Located in Amarillo, Texas, AQHA remains the world's largest equine Association, registering more than 4.5 million American Quarter Horses and serving more than 350,000 worldwide members. The Association has more than 1.2 million active owners.

AQHA functions as the official record keeping and governing body of the American Quarter Horse industry. AQHA records all American Quarter Horse ownership, processes, approved show and race results, catalogs performance and produce data on all American Quarter Horses, maintains association funds and publicizes the American Quarter Horse industry through three magazines.

In addition, AQHA maintains current statistics on ownership in each state and country as well as American Quarter Horse population figures. With nearly 161,000—new registrations in 2004, AQHA's role in preserving the integrity of the breed is expanding on a daily basis. Whether American Quarter Horses are still being used in traditional ranching operations, for showing, racing or pleasure, AQHA strives to provide services beneficial to all Association members and ultimately the American Quarter Horse.

## AQHA MISSION STATEMENT

\* To record and preserve the pedigrees of the American Quarter Horse while maintaining the integrity of the breed.

\* To provide beneficial services for its members that enhances and encourages American Quarter Horse ownership and participation.

\* To develop diverse educational programs, material and curriculum that will position AQHA as the leading resource organization in the equine industry.

\* To generate growth of AQHA membership via the marketing, promotion, advertising and publicity of the American Quarter Horse.

*AQHA Racing Mission Statement*

\* To insure the long-term viability of American Quarter Horse racing by increasing racing opportunities and developing, as well as retaining, new owners in state and international venues.

\* To record complete race results, records, past performance information and related racing statistics for the American Quarter Horse racing industry.

\* To recognize the worthwhile achievements of American Quarter Horses in racing.

AQHA supports and promotes American Quarter Horse racing, which is authorized in twenty-five states, although a good portion of that is at state and county fairs with only a few days of racing at each fair.

According to the recently completed study by the American Horse Council, the *National Economic Impact of the Horse Industry on the United States*, American Quarter Horses make up approximately 15% of the 845,000 horses racing or breeding for racing in the U.S. and account for about 6% of the \$10.7 billion dollars direct economic impact of racing in the U.S. About \$340 million is wagered each year on American Quarter Horse racing.

I share these figures so that the Committee will understand where American Quarter Horse racing fits within the horse racing industry in the U.S. While we are not a large segment of the racing industry, the leadership role AQHA plays in the industry is vital. We are committed to the safety of the jockeys, exercise riders, other back stretch workers and the horses involved in our product. AQHA has always done its part to benefit all of horse racing and those who participate, and the membership stands ready to do so now.

Over the years the AQHA Racing Committee and Council has discussed track safety and issues to insure the safety and fairness of racing. Since 2002 alone, AQHA has invested more than \$600,000 working with other industry associations on various issues such as: 1. Racetrack Surface Study to determine the effects of various surfaces on horses legs and how to reduce or eliminate catastrophic injuries, 2. The Racing Medication and Testing Consortium whose mission is to develop, promote and coordinate, at the national level, policies, research, and educational programs which seek to ensure the fairness and integrity of racing and the health and welfare of racehorses and participants, and protect the interests of the betting public; and 3. Conducting assistant starter workshops to assist gate workers with properly handling horses behind and in the gate to protect horses, jockeys and the wagering public to insure safety and fairness.

Since 1960, and thanks in large part to its generous members, AQHA and the American Quarter Horse Foundation has contributed more than five million dollars in research grants to colleges and universities to study various issues and diseases that affect all breeds of horses, not only racing American Quarter Horses.

Today, there are no racetracks that exclusively offer American Quarter Horse racing. Instead, it is offered in a mixed format with other breeds, primarily Thoroughbreds, American Paint Horses and Arabians.

With respect to the jockeys and exercise riders, almost all of those who ride American Quarter Horses also ride other breeds. For this reason, they are included in any agreements reached regarding insurance, be it health insurance or catastrophic insurance and any jockey can join the Jockeys' Guild who chooses to do so.

AQHA has never been directly involved in the negotiations that produced agreements regarding insurance in the past. Rather we have relied on the Jockeys' Guild and the Thoroughbred Racing Association to finalize such agreements. This does not indicate any lack of interest or concern, only recognition that other organizations were able to reach acceptable agreements in the past that include American Quarter Horse racing. We have always participated in and utilized the final product and appreciated the efforts of all concerned to protect these individuals.

As did many others, we watched with concern as the leadership of the Jockeys' Guild changed, causing a strain in the traditional processes and relationships. As the Committee has learned, the path to the current situation in the racing industry

regarding the protection of our jockeys has been very unfortunate. But we do not believe that it is permanent.

Efforts to resolve this issue were started some time ago and a great deal of work has gone into it. We are confident that the industry can resolve this issue as it has done in the past. The will always has been there, but new circumstances have changed the regular order. We believe that this too will change and that the previous order will be restored.

The industry makes every effort to make racing as safe as possible. Racing surfaces are groomed between every race to keep surfaces in the best shape. Races are cancelled when conditions, weather or jockeys raise concerns. New surfaces are being explored and used - all the time.

At AQHA, we believe these issues can be resolved by the industry by working together. The process has begun, carriers have been contacted, and the industry is working on a resolution. That may involve a new paradigm, but it will happen and AQHA will be involved.

We appreciate your Committee's involvement in this important process. Clearly it has already spurred some changes. We expect that such changes will continue and that jockeys and other workers will be protected and insured as before, if not better.

Thank you very much for the opportunity to participate in these hearings.

Mr. WHITFIELD. Thank you, Mr. Monahan. And at this time we recognize Mr. Haire, who I understand you are the interim head of the Jockey's Guild. Is that right, Mr. Haire?

Mr. HAIRE. Yes.

Mr. WHITFIELD. Glad to have you here. You are recognized for 5 minutes.

#### **TESTIMONY OF DARRELL HAIRE**

Mr. HAIRE. Thank you. Thank you, Mr. Whitfield. Mr. Chairman and members of the subcommittee, I am Darrell Haire and I am the former National Member Representative for the Jockey's Guild and presently, effective 2 days ago, I am the organization's temporary national manager. Before going to work for the Guild, I was an active rider for 15 years.

First of all, I would like to thank the committee for inviting me to testify and to thank you for conducting these hearings. Your willingness to take a hard look at our industry, including uncovering mismanagement at the Guild has been eye opening to say the least. The letters that you have sent to Federal agencies asking them to look into establishing health and safety standards for jockeys have been circulated to every jockey's room in the country. I can't tell you how much it means to the jockeys around the country that the U.S. Congress has shown such an interest in our welfare.

Today, I am here to give you four concrete steps that we need to help us. A jockey's life is tough and the job is very, very dangerous. Except for the top jockeys, the pay is not great. The average jockey makes about \$35,000 a year. Why do we do it? Plain and simple, because we love the sport and we are professional athletes dedicated to our craft.

Of the thousand or so active riders around the country, every year some of us will be killed or made quadriplegics. You met Gary Birzer last month and in just the last 2 weeks, Michael Lapannese died as a result of an on-track accident at Suffolk Downs. And yesterday, 16-year-old apprentice jockey Josh Radosevich was fatally injured as a result of a spill at Beulah Park in Ohio. And in the last 2 years, Michael Rowland and Christopher Quinn died as a result of injuries on the track. In addition to Gary Birzer, jockeys Shannon Campbell and Remi Gunn sustained injuries so severe

that they were left paralyzed. While we understand and accept the dangers that we face on the job, what we can't understand is why, in an industry so wealthy, we do not enjoy the same basic protections that virtually every other worker in this country, including almost all professional athletes, have enjoyed for the last 100 years.

Except in four States, California, New York, Maryland and New Jersey, jockeys are not covered by Workers' Compensation insurance. If we are injured, we must somehow get by with the mere \$100,000 in medical coverage at many tracks and at some tracks, \$1 million in coverage. One track, Mount Pleasant Meadows in Michigan, provides no on-track coverage at all and all the jockeys there are required to waive their rights as a condition of working. What coverage that exists is not guaranteed and can be cutoff at any time. Such coverage is plainly inadequate. Workers' Compensation does provide lifetime medical coverage for a work-related injury, indemnity benefits if you are permanently disabled and temporary wage replacement, while you are recovering from your injuries.

Whatever else you can say, our little union cannot afford to shoulder the burden of the inevitable on-track injuries, the cost of healthcare for our families and providing for the permanently disabled. It is breaking the back of the Jockey's Guild. It is simply an impossible burden for us to bear.

We need your help desperately. We need you to make the horseracing industry accept the burden that all other industries shoulder by amending the Interstate Horse Racing Act to require that, as a condition of broadcasting a signal, Workers' Compensation coverage must be in place.

The California Supreme Court recognized jockeys' workers rights in 1941 and the Commonwealth of Kentucky is considering requiring such coverage now. However, the horseracing industry in Kentucky wants the jockeys to help pay for their own Workers' Compensation coverage. This violates the basic principle of the Workers' Compensation Law, that workers give up the right to sue for their injuries in order to receive coverage in a no-fault, no-cost system. We put up our lives. They need to put up the premium.

Four States out of 38 racing States require Workman's Compensation coverage and that must change. Second, we need Congress to amend the Interstate Horse Racing Act to include jockeys in the provisions that the racing signal cannot be broadcast unless the horsemen have in place agreements to compensate them for their media rights. Jockeys were left simply out of this requirement when the law was passed and it is critical that we, as professional athletes, are given the same rights as all of the other elements of the industry. We deserve to have a revenue stream that fairly and adequately compensates us for the value of our image and the talent that we bring to horseracing.

Third, we need national health and safety standards for jockeys. This means uniform standards for appropriate jockey minimum weights, track conditions and emergency response. The California tracks owners and trainers, as well as the California Horse Racing Board, are working in cooperation with us to study jockey health, with an aim of coming up with weight standards that don't require

jockeys to do terrible things to their bodies to make weight. As you know, every day in this country, jockeys make themselves vomit, sit in sweatboxes for hours and take diuretics to lose weight. Just last Saturday, Chris Herrel, a 31 year old jockey riding at Churchill Downs in Kentucky died suddenly after a history of engaging in extreme, but all too common, weight reduction practices. He is not the only one. Six months ago, 21-year-old jockey Emmanuel Sanchez, who was riding at Colonial Downs in Virginia, died in similar circumstances.

One far-thinking State like California cannot do it alone or it will create an unfair, competitive balance between racing States. The weight standards in this country need to be medically sound, not arbitrarily based on the body size of jockeys in the middle of the 19th century. Every day across the country, our members get on horses dizzy, sick, hungry and dehydrated because of what they do to themselves. Surely together we can come up with a national standard for weight that is safe for us and won't hurt the horses.

The same thing is true for track conditions and emergency response. Today there are still places in this country that lack properly equipped ambulances and trained personnel who can administer advanced life support to downed jockeys. Precious minutes are allowed to pass before jockeys receive appropriate emergency medical treatment. Those moments can be the difference between life and death.

With regard to track conditions, there is no reason why there should not be a national minimum standard for track safety rails, safety reins or safety equipment, established through the OSHA system.

Fourth, the National Labor Act needs to be amended explicitly to recognize our collective bargaining rights. The NLRB's decision to exclude horseracing from its jurisdiction leaves a gap in labor law enforcement that works to the detriment of the jockeys. The Guild has been collectively bargaining on behalf of the jockeys for years but has no protection against unfair labor. The NLRB must be called into play.

Mr. Chairman, jockeys, tracks and horsemen needs to be working together for the betterment of our industry. Our members love this sport and have dedicated their lives to it. We believe that if we all put our heads together, we can solve our mutual problems for the betterment of the sport.

Mr. Chairman, that concludes my opening statement. I am available to answer any questions you may have.

[The prepared statement of Darrell Haire follows:]

PREPARED STATEMENT OF DARRELL HAIRE, INTERIM NATIONAL MANGER, JOCKEYS'  
GUILD

Mr. Chairman and Members of the Committee: I'm Darrell Haire, and I'm the Interim National Manger of the Jockeys' Guild. Before going to work for the Guild, I was an active rider for 15 years.

First of all, I would like to thank the Committee for inviting me to testify and to thank you for conducting these hearings. Your willingness to take a hard look at our industry, including uncovering mismanagement at the Guild, has been eye opening—to say the least. The letters that you have sent to federal agencies asking them to look into establishing health and safety standards for jockeys have been circulated to every jockeys' room in this country.

I can't tell you how much it means to the jockeys around the country that the United States Congress has shown such an interest in our welfare. Today, I am here to give you four concrete steps that we need to help us.

A jockeys' life is hard and the job is very, very dangerous. Except for the top jockeys, the pay is not great. The average jockey makes about \$35,000 a year. Why do we do it? Plain and simple, because we love the sport and we are professional athletes dedicated to our craft.

Of the thousand or so active riders around the country, every year some of us will be killed or will be made quadriplegics. You met Gary Birzer last month, but in just the last two weeks, Mike Lapannese died as a result of an on-track accident at Suffolk Downs. And in the last two years, jockeys Michael Rowland and Christopher Quinn died as a result of injuries sustained at the track and, in addition to Gary Birzer, jockey Shannon Campbell and Remi Gunn sustained injuries so severe that they were left quadriplegics. Many more jockeys, like Gary Boulanger, Rick Wilson, Myra Truitt, Jim Burns, Ron Warren, and Tony D'Amico have suffered severe or career ending injuries in just the last several years. While we understand and accept the dangers that we face on the job, what we can't understand is why, in an industry so wealthy, we do not enjoy the same basic protections that virtually every other worker in this country—including almost all professional athletes—have enjoyed for the last 100 years.

Except in four states—California, New York, Maryland and New Jersey—jockeys are not covered by workers' compensation insurance. If we are injured, we must somehow get by with a mere \$100,000 in medical coverage at many tracks and, at some tracks, a million dollars in coverage. One track, Mt. Pleasant Meadows in Michigan, provides no on-track accident coverage at all and jockeys are required to waive all rights as a condition of working. What coverage exists is not guaranteed and can be cut off at any time. Such coverage is plainly inadequate. Workers' compensation provides lifetime medical coverage for a work-related injury, indemnity benefits if you are permanently disabled, and temporary wage replacement while you are recovering from your injuries.

Whatever else you can say, our little union cannot afford to shoulder the burden of inevitable on-track injuries, the cost of health care for our families, and providing for the permanently disabled. It is breaking the back of the Jockeys' Guild. It is simply an impossible burden for us to bear.

We need your help desperately. We need you to make the horseracing industry accept the burden that all other industries shoulder and require that every state, not just the far thinking states that have already stepped up to the plate, to provide workers' compensation coverage for jockeys and exercise riders. *This can be accomplished by amending the Interstate Horseracing Act to require that, as a condition of broadcasting a signal, workers' compensation coverage must be in place.*

The California Supreme Court granted workers' compensation coverage to jockeys in 1941 and the Commonwealth of Kentucky is just considering requiring such coverage now. However, the horseracing industry in Kentucky wants the jockeys to help pay for their own workers' compensation coverage. This violates the basic principle of workers' compensation law: that workers' give up the right to sue for their injuries in order to receive coverage in a no fault, no cost system. We put up our lives, they need to put up the cost of the premium. Four states out of 38 racing states require workers' compensation coverage and that must change.

*Secondly, we need Congress to amend the Interstate Horseracing Act to include jockeys in the provisions that the racing signal cannot be broadcast unless the horsemen have in place agreements to compensate them for their media rights.* Jockeys were simply left out of this requirement when the law was passed and it is critical that we, as professional athletes, are given the same rights as all of the other elements of the industry. We deserve to have a revenue stream that fairly and adequately compensates us for the value of our image and the talent that we bring to horseracing.

*Third, we need national health and safety standards for jockeys.* This means uniform standards for appropriate jockey minimum weights, track conditions, and emergency response. The California tracks, owners, and trainers as well as the California Horse Racing Board are working cooperatively with us to study jockey health with an aim of coming up with weight standards that don't require jockeys to do terrible things to their bodies to make weight. As you know, every day in this country jockeys make themselves vomit, sit in sweatboxes for hours, and take diuretics to lose weight. Just last Saturday, Chris Herrel, a 31 year old jockey riding at Churchill Downs in Kentucky, died suddenly after a history of engaging in extreme—but all too common—weight reduction practices. He is not the only one. Six months ago, 21 year old jockey Emmanuel Sanchez, who was riding at Colonial Downs in Virginia, died suddenly in similar circumstances.

One far-thinking state, like California, cannot do it alone or it will create an unfair competitive balance between racing states. The weight standards in this country need to be medically sound, not arbitrarily based on the body size of jockeys in the middle of the 19th century. Every day across this country, our members get on horses dizzy, sick, hungry, and dehydrated because of what they do to themselves. Surely, together we can come up with a national standard for weight that is safe for us and won't hurt the horses.

The same is true for track conditions and emergency response. Today, there are still places in this country that lack properly equipped ambulances and trained personnel who can administer advanced life support to downed jockeys. Precious minutes are allowed to pass before jockeys receive appropriate emergency medical treatment. It can be the difference between life and death.

With regard to track conditions, there is no reason why there should not be national minimum standards for track safety rails, safety reins, or other safety equipment established through the OSHA system. It is ironic that the kitchens and heat plant and parking lot are covered by uniform OSHA standards, but the race track itself, is not.

*Fourth, the National Labor Relations Act needs to be amended to give us real collective bargaining rights.* Not only is horseracing in general exempted from the NLRA, but as an organization of so-called "independent contractors", we have no bargaining rights. We have no means of collectively negotiating our rights or compensation, while the rest of the industry collectively negotiates purse agreements and other agreements that affect us. We cannot even get together lawfully to call the regulators or protest unsafe track conditions. This isn't right.

Mr. Chairman, jockeys, tracks, and horsemen need to be working together for the betterment of our industry. Our members love this sport and have dedicated their lives to it. We believe that, if we all put our heads together, we can solve or mutual problems for the betterment of the sport.

Mr. Chairman, that concludes my opening statement. I am available to answer any questions you might have.

Mr. WHITFIELD. Thank you, Mr. Haire, and thank all of you for being so patient and listening to all of this testimony. It is quite obvious that everything is fragmented and it is difficult to kind of get your arms around all the different aspects of this issue.

One comment that Mr. Metzger, you made, you made the comment that you are not a recognized horsemen's group. Is that in the context of the Interstate Horse Racing Act or—

Mr. METZGER. That is correct, Mr. Chairman. The recognized horsemen's groups would be the HBPA, the THA and the TOC.

Mr. WHITFIELD. And who determines which group is recognized?

Mr. METZGER. I may defer. I know an overview. I defer to my colleague right here.

Mr. ROARK. Mr. Chairman, the horsemen at a live race meet have the right to determine who represents them but contractually by practice it has been TOC in California, THA in New York, Maryland, New Jersey, Delaware. I believe that is all. And then we are in the other racing States. Now, HBPA used to be all racing States but that is no longer the case.

Mr. WHITFIELD. Well now in Kentucky, Mr. Maline, it is my understanding that in some tracks you all represent the horsemen and in other tracks, that David Sweitzer group represents the horsemen. Is that right or not?

Mr. MALINE. Well not exactly, Chairman Whitfield. We represent the horsemen at every racetrack. We are the majority horsemen's group in the State of Kentucky. We do have a shared contract at Keeneland where we each, we share equally in the funding mechanism. And at Churchill we receive the majority funding but KTA does receive a small portion of that funding.

Mr. WHITFIELD. And what does it take to be a member of the Kentucky HBPA?

Mr. MALINE. Well, the bylaws state that if you run a horse in the State of Kentucky, you are a member unless you choose otherwise. We also have a provision whereby we do have signed cards by our members.

Mr. WHITFIELD. So you don't have to pay dues.

Mr. MALINE. No, you do not.

Mr. WHITFIELD. So if you are a licensed trainer in Kentucky, then you are considered to be a member, right?

Mr. MALINE. That is correct, unless you choose otherwise.

Mr. WHITFIELD. Now in your testimony, I noticed that you said 1.5 percent of the horsemen's share of wagering revenue is allocated for the funding of the KHBPA.

Mr. MALINE. Right.

Mr. WHITFIELD. And approximately how much would that be per year?

Mr. MALINE. Approximately about \$900,000 a year.

Mr. WHITFIELD. Now, I would ask either you or Mr. Roark the question, would there be any—I had asked this question earlier and I am not sure what answer I received. But what would you say to the fact that if the Interstate Horse Racing Act was amended to include representatives of the jockeys as being an entity that would also negotiate with the track on the simulcast issue? How would you all respond to that?

Mr. MALINE. Well first of all, Chairman Whitfield, the Interstate Horse Racing Act in our opinion addresses two issues. That being the funding that horsemen and the racetracks receive, approximately 3 to 4 percent when our signal is sent to a specific area. We receive 3 or 4 percent back, of which we share equally with the racetrack. Now, as it was mentioned by, I believe, Mr. Scherf, that from that revenue that is received for purses, jockeys are—they receive 10 percent, as well as our trainers receive a same 10 percent of that revenue when they receive purse money. The second reason that the HBPA is involved in the Interstate Horse Racing Act is that there was concern back in 1978 that the racetracks would have a different priority as far as sending signals to other locations. That perhaps when they sent to another location that location would choose to just simulcast racing and not have live racing anymore.

Now the racetracks, their concern would be the bottom line, most likely. They are not concerned in another State whether or not you have live racing. Horsemen are because we are transient. We do travel to those other locations. So the Federal Legislature at the time felt horsemen were better suited to determine if racing in those various locations would be protected. So for instance in Kentucky, when we decide to send our signal, it is our concern that there maintains live racing in that jurisdiction.

Mr. WHITFIELD. But you all would then—your organizations would be opposed to any effort to change the Interstate Horse Racing Act in that respect?

Mr. MALINE. Yes, we would. Yes, because we feel they are—they do receive revenue from that.

Mr. WHITFIELD. Now Mr. Haire, what do you say to that?

Mr. HAIRE. Well, I believe that in other sports athletes get a good piece of the revenue and we are asking just for a small percentage,

where other football or baseball, these athletes receive 30 to 40 percent of the revenue. I believe we should get a piece of it.

Mr. WHITFIELD. Mr. Shapiro, you mentioned in your comments that—and I made mention to this in my opening statement. That the Federal Government getting involved in racing creates immediate problems for a lot of people. We are involved to the extent that we passed the Interstate Horse Racing Act, which in the simulcasting is not providing about 85 percent of the purse money. But you specifically said that you feel like that there should be more Federal oversight. Would you expand on that comment?

Mr. SHAPIRO. Well, I think you can take a look at California, where we at one point were perhaps the greatest racing state. We don't have the advantage of slot assisted or slot revenues to assist our purse pools. Consequently, racing in California has been disadvantaged tremendously and I believe that with the advent of simulcasting and Internet wagering and other wagering that is not taking place on track, that California has been plunged into a disadvantage across the board. And despite our efforts to provide the best health insurance and Workman's Compensation insurance and everything else that we do, we are losing our tracks and we are losing our horsemen. I believe that there has to be some Federal oversight and regulation to try and level the playing field so that States that don't have gaming can compete and can save their horses.

You just take a look at what is happening when a track like Mountaineer Park, which has higher purses than we do in California. We have people that are raiding our barn areas, stealing—not stealing but claiming our horses and taking them to places like West Virginia because our purses don't keep pace. We are losing our jockeys. And so consequently, it is critical in my mind that there needs to be some Federal oversight on a lot of issues, including medication, including a scale of weights and including some of the wagering issues that are traveling beyond just California's borders.

Mr. WHITFIELD. Is there a uniformity of weights around the country or is each State different?

Mr. SHAPIRO. No. No. And in fact, as California, we have one of the higher weight scales and there is—we are disadvantaged there, too. We recognize that jockey weights have risen and we have voluntarily raised the scale of weights. But when trainers and owners look that they can go to Kentucky and other jurisdictions and race with less weight, there is this perception that it is going to hurt the horses with more weight, so we are further disadvantaged.

Mr. WHITFIELD. Now, Mr. Monahan—oh, did somebody else want to make comment? Mr. Monahan, the Quarter Horse group, I know you all race at a lot of different tracks around the country but I guess there is not exclusive Quarter Horse racing per se. Is there or is there?

Mr. MONAHAN. I suppose as close as we have to a straight Quarter Horse track is Las Alamedas in California.

Mr. WHITFIELD. Okay.

Mr. MONAHAN. It is certainly driven by the Quarter Horses. But for the most part, we race in mixed meets.

Mr. WHITFIELD. Right. Now, has your organization supported this effort of the NTRA and other groups for a uniform medication rule as to what can be given to horses on race day?

Mr. MONAHAN. Absolutely, Congressman, and I think you will find that the group that was put together to take care of that has done it. I mean, virtually every State has not adopted those rules. Is that correct? I think every State has now adopted the rules that was put together by the Consortium.

Mr. WHITFIELD. Twenty-eight? Twenty-eight States. Okay. Okay.

Mr. MONAHAN. I am not aware of any that haven't that race horses.

Mr. WHITFIELD. Okay. Okay. Mr. Giovanni, in your testimony you talked about the New York program, which seemed to be a pretty good program. You all actually came to Congress at some point in time and it was not adopted but could you just elaborate on the way that program worked in New York for the Compensation?

Mr. GIOVANNI. The legislation provides for a committee, which is basically the employer—or Fund, rather, which is basically the employer of all licensed jockeys, exercise riders and apprentice jockeys. The way it is set up is that an owner at the beginning of the year makes a contribution and so much is paid out of purses. There is a small percentage that comes out of purses. Trainers pay so much per day per stall. That covers the entire fee. Nobody falls through the cracks. If somebody is hurt and they are licensed, they are covered and I can give you a perfect example.

There was a retired jockey who was exercising horses. His name was Antonio Viscarondo. He was employed by one particular trainer. Another trainer asked him when you are finished with your job, would you come by and work my horse out of the starting gate? I need to get him approved out of the gate. So he said he would do it and he went over when he finished his regular job. He was killed working a horse out of the starting gate, unfortunately. He was clearly not employed by this person. He was casual labor, independent contractor. However you want to categorize it. All of his medical expenses were paid. He left a 9-year-old son, who I believe is collecting \$500 a week until he is 18 or 24 if he goes to college.

And I cite that example because that is what needs to be done. Everybody who gets on horses, everybody on the backside needs to have some sort of protection, some sort of coverage. This plan works.

Mr. WHITFIELD. Most people on the backside don't have much of anything.

Mr. GIOVANNI. Exactly. They have basically nothing. Somebody needs to step up to the plate and take care of these people.

Mr. WHITFIELD. I mean, they may be eligible for Medicaid or something like that but—

Mr. GIOVANNI. That is it. That is surely it. Most of them are.

Mr. WHITFIELD. Mr. Violette, do you administer the program that he is talking about?

Mr. VIOLETTE. Yes, sir.

Mr. WHITFIELD. Okay. Do you have any comments on it?

Mr. VIOLETTE. I believe that is has worked quite well. Owners have saved money. Trainers have saved money. The trainers have

been able to extract the group that is at a higher risk out of their own policy, which they have to provide for the rest of their backstretch help, for the hot walkers and grooms. And by extracting that, their entry rate has gone down so they have saved money on their own policy for the rest of them. While they have kind of passed along the high risk group into a larger fund, where we have also been able to save money because we are a large group.

Mr. WHITFIELD. But all these people are considered employees of this entity?

Mr. VIOLETTE. Correct.

Mr. WHITFIELD. Okay. Well, Mr. Stupak, I will recognize you for questions.

Mr. STUPAK. Thank you, Mr. Chairman. First of all, I ask for unanimous consent that other members may submit their opening statements. Some of them could not be here.

Mr. WHITFIELD. Without objection, it is ordered.

Mr. STUPAK. And I take it we are going to keep the committee open to submit some written questions, also?

Mr. WHITFIELD. Yes, we will keep it open for the normal time.

Mr. STUPAK. Okay. Thank you. Mr. Giovanni or Mr. Violette, you said that jockey has to be licensed, right, in order to belong to this Fund?

Mr. VIOLETTE. Yes, sir.

Mr. GIOVANNI. The jockey, the apprentice jockey or the exercise rider has to be licensed within the state.

Mr. STUPAK. What do they have to do to be licensed?

Mr. VIOLETTE. Actually, John can answer better, as far as a jockey.

Mr. STUPAK. Right. I want to make sure there is no gap here where people fall through for a couple years while they are trying to get licensed.

Mr. GIOVANNI. No. If somebody needs a license, they just apply to the New York State Racing and Wagering Board for a license. They may ask you, have you ridden before or where have you ridden. If you haven't ridden, you would be licensed as an exercise rider or in some other capacity. When first applying for a jockey's license, what they do is give you a temporary license but still a license. They allow you to ride one or two races under the scrutiny of the stewards to make sure that you are qualified and competent enough to hold a professional license and then they provide you with your license. So nobody would fall through the cracks.

Mr. STUPAK. Mr. Haire, what is the best State to race in if you are a jockey?

Mr. HAIRE. The best State would be California, I would say.

Mr. STUPAK. You mean, because of their—

Mr. HAIRE. The Workman's Comp, of course. And they—California just seems to go out of their way to accommodate the riders, safety-wise.

Mr. STUPAK. And the reason Mr. Shapiro said that they were actually not doing well in California and losing money because of simulcast, right? Is that right?

Mr. SHAPIRO. What I am saying is, that we are struggling to survive because we are economically disadvantaged because we don't have slot revenues.

Mr. STUPAK. The gaming, right?

Mr. SHAPIRO. Yes.

Mr. STUPAK. Mr. Haire, what is the worst State besides Michigan to ride in?

Mr. HAIRE. Well—

Mr. STUPAK. You can say Kentucky. The Chairman won't be mad. No, I am only teasing. Only teasing. What would be a bad State besides Michigan, because I have taken from your testimony an example of Mount Pleasant, Michigan.

Mr. HAIRE. Well, I would say West Virginia, absolutely.

Mr. STUPAK. And why is that?

Mr. HAIRE. West Virginia, for whatever reason unknown to me, just don't seem to really want to take care of the riders as far as safety-wise. We have had a difficult time over the years.

Mr. STUPAK. Okay.

Mr. HAIRE. There are a lot of accidents there.

Mr. STUPAK. In the last panel I think one testimony was about 1,500, almost 1,600 jockeys around the country. Would that be a fair estimate?

Mr. HAIRE. There is about 1,800 licensed, yes.

Mr. STUPAK. Okay. Do all the States require them to have a license to race?

Mr. HAIRE. Yes, sir.

Mr. STUPAK. So this New York model could sort of be duplicated in other States then?

Mr. HAIRE. Yes, sir.

Mr. STUPAK. Okay. Do the jockeys want to be independent contractors? Or do you think they—I am asking for your opinion. You were a jockey for what, 15 years, you said. You are obviously active in the organization. Do they want to be independent contractors or do you think they would like to come together, form some kind of collective bargaining agreements or something with whoever are their owners? What would they rather be?

Mr. HAIRE. We would like to be able to have collective bargaining and be able to, you know, have an agreement with these racetracks to work with us to do the right thing.

Mr. STUPAK. Okay. What is the status of the Jockey Guild as of this afternoon? I mean, we had some testimony or statements I guess by us, that new leadership is in place and there has been some struggles there. But what do you think the future of the Jockey Guild is?

Mr. HAIRE. I believe the riders, Mr. Stupak, have taken control of the organization again and we are—with the help of the riders and a new Board, we are getting things under control. It has been—really it has been a real mess but we are getting our arms around it. We have a lot of support and we will turn it around and we have very—it is a positive atmosphere now.

Mr. STUPAK. Okay. The last panel, we were asking about these mount rides and I was getting Charlestown and what was the other one?

Chairman BARTON. Mountaineer.

Mr. STUPAK. Mountaineer goofed up but one was paying the mount fees and the other wasn't paying mount fees and they said they would just get a bill and they would pay the mount fees. Is

there a formal agreement with the tracks? Anything in writing saying you get a bill from the Guild and you pay these mount fees?

Mr. HAIRE. No, sir.

Mr. STUPAK. In your knowledge, has there ever been one?

Mr. HAIRE. No, sir. They did have an—they signed a TRA agreement but not all racetracks, sir, are TRA racetracks.

Mr. STUPAK. Are covered.

Mr. HAIRE. So for instance Delaware, we don't receive any money from Delaware for mount fees and they have slots in Delaware.

Mr. STUPAK. Right. Mr. Violette, in New York how many claims have been made for like, over 100,000 and how many have been up to a million?

Mr. VIOLETTE. Well, we have an exercise rider who is a paraplegic, a young lady who was injured about 5 years ago and right now, her reserve is at \$3 million.

Mr. STUPAK. Her reserve? So there will be a time when she will exceed that amount and then?

Mr. VIOLETTE. Yes and it is a projection. I mean, she is a young lady Mr. STUPAK. Right.

Mr. VIOLETTE. And we could be—you know, the Fund or the State Insurance Fund could be supporting her for the next 40 or 50 years so those reserves are pretty high.

Mr. STUPAK. So once she exceeds \$3 million, then—

Mr. VIOLETTE. No, she is still for the rest of her life. There are no limits on the medicals, the rehabilitation or the weekly stipend.

Mr. STUPAK. Okay. Mr. Shapiro, the California Horse Racing Board provides annual maintenance audits of the tracks. Is that right?

Mr. SHAPIRO. Yes. What we do is prior to the—we issue licenses to racing associations annually. So prior to the issuance of any license, we have a review where we inspect the entire backside for the living conditions.' Mr. STUPAK. Sure.

Mr. SHAPIRO. And we inspect the track, as well. And California has adopted minimum safety standards that are outlined in my written testimony and every track must adhere to those. You may note that if there is an unsafe riding surface, such as just recently at Hollywood Park the all turf racing was canceled because the Racing Association came forward and said they had concerns and so all turf racing was canceled.

Mr. STUPAK. I am going to ask this question. I don't know who wants to answer it. Maybe Mr. Shapiro if you know. Can I go on the Internet and watch a race somewhere else and place a bet on the Internet?

Mr. SHAPIRO. Absolutely. Absolutely. You have—

Mr. STUPAK. So when I am in California and if I want to bet on someplace in—

Mr. SHAPIRO. There are a number of different providers that you can go to. You can go back to your office, log on the Internet and you can just go to TVG, You Bet, Express Bet and you can bet something like 80 different tracks around the country. You just have to open an account.

Mr. STUPAK. And that stream of revenue, how do we tap into that to take care of some of the concerns that have been raised here these last couple hearings?

Mr. SHAPIRO. Well, there are different agreements in place between the simulcast providers and the tracks and those are negotiated between the simulcast providers and the individual racing associations.

Mr. STUPAK. I see.

Mr. SHAPIRO. And so there are fees that are paid to the host track and also the track that then is importing the races.

Mr. STUPAK. But California law would not allow you to access this Internet gaming, right?

Mr. SHAPIRO. Well, we do receive revenues from it.

Mr. STUPAK. From that?

Mr. SHAPIRO. But it is reduced revenues.

Mr. STUPAK. It is reduced revenue. Right. Sure.

Mr. SHAPIRO. Right. Because there is—a racetrack in California makes approximately 17 cents on every dollar that is wagered at a live racetrack. Now, that 17 cents is then split between the track, the State and the horsemen.

Mr. STUPAK. Right. Right.

Mr. SHAPIRO. But it is much less for simulcast revenues.

Mr. WHITFIELD. And there is some offshore gambling that you wouldn't receive any benefit from.

Mr. SHAPIRO. Well, that is one of the big problems that is facing racing today, is there are hundreds of millions of dollars from signals that are being pirated that are offshore. And all the tracks in the States are suffering because those revenues are not coming into our mutual pools. And so consequently, tracks aren't getting that money and they are not rebuilding their track surfaces as much as they should and they need to. And horsemen, including jockeys, aren't getting the benefit of that revenue, either and of course, the States don't get that money. So it is a serious and major problem that is pretty much going unchecked and that is why perhaps looking at the Interstate Horse Racing Act and ways to modify that would be very helpful.

Mr. WHITFIELD. Is there anybody on the panel that understand the Wire Act? And I have been told that the Wire Act conflicts with the Interstate Horse Racing Act in some regard and that there is some question about whether or not—does anybody know what I am talking about?

Mr. ROARK. Kind of.

Mr. WHITFIELD. Mr. Roark?

Mr. ROARK. All I can tell you is, the Wire Act of 1930 something had to do with telephone wagering and there has been positions taken that based on the Wire Act, simulcast wagering may or may not be legal. At this point we are doing it and it—well, it is our position that it is legal. I would like to comment, if I may, Mr. Chairman, on something Mr. Shapiro said.

Mr. WHITFIELD. Yes?

Mr. ROARK. I don't want this committee to be left with the impression that all offshore wagering is being done and pirated from us.

Mr. WHITFIELD. Right.

Mr. ROARK. We have contracts in place with racing jurisdictions around the world, as well as organizations and racetracks that provide some revenue to us. There are a lot of places that aren't doing

that. The Interstate Horse Racing Act could not apply to that because they are foreigners and in foreign countries. But based on treaties and based on other things, we are working on solving that problem and we hope to have something in place in the next year or two to get something done about that.

Mr. STUPAK. As long as the race is run in the United States, we would have something to say about it, whether bets are placed offshore or not.

Mr. ROARK. We should have, Congressman.

Mr. STUPAK. We will have.

Mr. ROARK. We should have. Yes, sir.

Mr. STUPAK. We will have.

Mr. ROARK. Sir?

Mr. STUPAK. We will have.

Mr. ROARK. Yes, sir. I agree. I hope so.

Mr. STUPAK. Mr. Roark, why don't more States do what New York does? Why would there be objection to a model like New York has?

Mr. ROARK. To me, it is not a matter of objections, Congressman. The problem is the funding because as horsemen, we spend a couple of billion a year on either buying horses or having training them and all the expense factor of getting horses ready to race.

Mr. STUPAK. Sure.

Mr. ROARK. And we are getting revenue back less than \$1.5 billion so we are losing—only about 3 percent of thoroughbred race owners make a profit. So you would say why do you do it? The love of the sport. The majority of us lose money. I practice law. As Mr. Monahan said, I am a trial lawyer so I can afford to have my horses. But the problem is revenue and the owners are always asked to help fund whatever. Like on the Racing Medication Task Force, the research is being done and they are asking us to provide so much a mount all over the country to fund that research. Second, the—

Mr. STUPAK. What is the most lucrative part of horseracing then? Is it the gaming?

Mr. ROARK. The what?

Mr. STUPAK. The most lucrative. Where do you make the most money?

Mr. ROARK. Who, me?

Mr. STUPAK. Who gets the most money? The tracks? The people placing bets? Where is the money in horseracing if there is \$26 billion—

Mr. ROARK. I would say the really good breeders that breed the best horses, mostly in eastern Kentucky and in other States of course, as well as the grade one racetracks. They make more money than anyone else does, in my opinion.

Mr. STUPAK. Well, our problem is what I am seeing here is, you know, you can't have horseracing without the horses. You can't have horseracing without the jockeys. You can't have horseracing without the tracks. Everyone is protecting their own turf. Everyone says it is an inherently dangerous sport. Everyone says we do it for love of the sport. But when you get injured, love ain't going to get you very far.

Mr. ROARK. Well, we are the engine that drives the train, Congressman. We are the owners that race the horses. Without our horses, the tracks would have no reason to be open.

Mr. STUPAK. Sure.

Mr. ROARK. And our asset is transportable, you know. We can move from track to track. Our problem is that—and we are glad that the jockeys are getting almost \$94 million of our purses annually, which is almost 10 percent and that comes out of the owner's pocket. And then the trainer's share comes out of the owner's pocket. And the tracks and I don't agree with each other about where the funding should come from. I made them a proposition more or less. I said look, as soon as you pay \$94 million in insurance premiums around the country, we will split with you over and above that whatever the cost of insurance is.

Mr. STUPAK. Yes, but they have a—you know, as the horse owners, if you take the example we had in testimony here in the Kentucky Derby. If I own a horse and my horse wins and that only happens once a year, obviously, but that is quite a bit of money and the jockey doesn't get that opportunity to make that kind of money.

Mr. ROARK. The jockey of the winning Derby horse?

Mr. STUPAK. Well, okay, you get \$600,000. They get what, \$120,000? Ten percent of that?

Mr. ROARK. The Derby winner gets \$1.2 million. The jockey gets \$220,000 of that.

Mr. STUPAK. \$120,000, yes. Yes.

Mr. ROARK. And that owner probably has spent \$10 million getting the horse to where he could even run in the Derby, or more.

Mr. STUPAK. Yes, but then they have the stud fees and everything else from that winner, don't they?

Mr. ROARK. Maybe. Hopefully, they do. It depends on the horse's breeding, actually. Some horses will win the Derby, they will end up commanding a big stud fee compared to others.

Mr. STUPAK. Sure. All right. Well, we are looking for a revenue source because we have got to take care of these folks.

Mr. WHITFIELD. Mr. Violette, let me just ask a couple other questions. You are a trainer?

Mr. VIOLETTE. Yes, sir.

Mr. WHITFIELD. And I might just make a comment then. The horseracing industry, I know there are exceptions to the rule but it seems like the trainers have more to say about horseracing than anybody. I mean, a lot of owners that I know are kind of hands off and the trainers basically seem to be in control. But you are a trainer and you have other experiences in this industry. How important do you think this scale of weight issue is for jockeys and uniformity on that one issue? Is that a big deal?

Mr. VIOLETTE. From a health issue, it is obviously very important. We don't want ill jockeys riding on horses. We don't want jockeys starving themselves to death.

Mr. WHITFIELD. Right.

Mr. VIOLETTE. On the flip side, weight is significant as far as contributing to injuries on horses. We can't have 150-pound jockeys in the afternoon. And I think everything has to be done educationally for riders on how to take care of their bodies, how to eat properly, how not to damage—and maybe we have to have a minimum

fat standard as far as being able to ride. Suddenly in New York the scale of weights has gone up about four or five pounds the last year. They have been very quiet. The actual allowances, once you start with a top weight going down, they used to have—you know, if you hadn't won a race in such a such a date, you were allowed nine pounds. Those allowances have disappeared so the scale has actually gone up.

Mr. WHITFIELD. Um-hum.

Mr. VIOLETTE. But there has to be a line somewhere as to how heavy you can be in order to be a jockey or how light you have to be. And I think once you establish a line, there is always going to be some segment of the community, it might be me, that if it is 140 pounds, maybe I am going to half-starve myself to get down to 140 pounds.

Mr. WHITFIELD. Yes.

Mr. VIOLETTE. So I think a good deal of common sense has to be involved. Our horses are very brittle these days. They don't seem to take the training or the number of racing starts that we used to, I don't get out of our racehorses. Do I think there is a fine line there? There has to be some common sense. There has to be some responsibility accepted by the riders to try to eat responsibly and try to limit their weight. And you know, if you are 6'1", maybe you should be playing basketball and not trying to be a jockey.

Mr. WHITFIELD. Yes. I am just going to go down here real quickly and then we are going to conclude this hearing. But we have heard a lot about medication today and I have heard some major jockeys who have retired have said that one of the reasons they retired was not knowing what has been given to the horse. And therefore, not knowing whether or not there may be an accident or so forth. I would just like to just go down and ask each one of you individually, do you think that illegal medications or illicit medications do contribute significantly to horseracing being a dangerous business? Mr. Metzger?

Mr. METZGER. I don't believe there is enough research to document this at that time but I do believe the industry has come together to put the research together through the Racing Medication and Testing Consortium. Through the new project announced, the EDRI through Dr. Caitland's lab at UCLA. I think the industry is going to put the research in there instead of speculating it.

Mr. WHITFIELD. Okay.

Mr. METZGER. Our organization has been out, we believe, at the forefront of the integrity issues to ensure that. But at this time, I don't think we have the evidence and the research but we are moving in that direction with the amount of money that has been committed to the EDRI and the Racing Medication and Testing Consortium.

Mr. WHITFIELD. Okay. Mr. Roark?

Mr. ROARK. I agree with Mr. Metzger, Mr. Chairman, but also I would say I don't think it is that significant, as far as illegal medications are concerned.

Mr. WHITFIELD. Okay.

Mr. ROARK. I think they get a lot of publicity but I don't think it is that significant around the country.

Mr. WHITFIELD. Okay.

Mr. ROARK. It does exist. We all know that and sometimes on a daily basis.

Mr. WHITFIELD. Okay.

Mr. ROARK. But I don't think it is that significant, comparatively speaking.

Mr. WHITFIELD. Okay. Mr. Maline?

Mr. MALINE. Well, I totally agree. I don't think it is that significant. I think it is important that research be continued throughout the country. I also feel that therapeutic medication is important for horses, just as it is for human beings. And we propose the most stringent testing but at the same time we feel research is necessary to determine if indeed therapeutic medication is a help or hindrance.

Mr. WHITFIELD. Mr. Riedel, do you have a comment?

Mr. RIEDEL. Well, just to say that I last trained racehorses 25 years ago and I have been far away from that. But I do believe racehorses do need therapeutic medication.

Mr. WHITFIELD. Okay. Mr. Giovanni?

Mr. GIOVANNI. Mr. Chairman, first of all let me say that I think Mrs. Whitfield has done a wonderful job in Kentucky with the Kentucky Medication Committee. They have put together some standards, threshold levels, trace levels. That is important. It has always been my belief that injuries to horses equates to injuries to jockeys. Pain is the early warning system for the horse. When the horse doesn't feel pain, they extend themselves and they get hurt and they fall and when that happens, jockeys get hurt.

So I really appreciate the work that she has done and the work that the Consortium has done but I still think there is a lot more work to be done.

Mr. WHITFIELD. Mr. Violette?

Mr. VIOLETTE. I think for a while this was on the back burner within the industry but the last three or 4 years it has really been on the front burner with the pilot turned way up. Between the Racing Consortium and the aggressive nature that different racing and wagering boards have taken, we are not really, maybe not ahead of the curve. But the industry is being very, very aggressive these days and trying to establish very, very low tolerance levels for anybody trying to cheat the system and trying to improve the testing to have it all state-of-the-art.

Mr. WHITFIELD. Mr. Daney?

Mr. DANNEY. We are very aggressive in our testing and continue to be in support.

Mr. WHITFIELD. Okay. Mr. Shapiro?

Mr. SHAPIRO. I do believe that there is a place for therapeutic but I also believe that there are medications that are being abused throughout the sport. And I believe that all tracks need to be vigilant and I think uniform testing and no tolerance penalties should be instituted and it is necessary to protect the integrity of the game.

Mr. WHITFIELD. Mr. Monahan?

Mr. MONAHAN. Congressman, I think the Consortium, I mean, all of the areas of the industry have come together with that Consortium and when it is finished, it is going to be taken care of. It real-

ly is. The threshold levels of pain medications and testing for illegal medications, that is a real, real good program.

Mr. WHITFIELD. Mr. Haire?

Mr. HAIRE. Congressman Whitfield, I am a proud member, a charter member, of the Consortium and I—you know, we made so much progress the last few years. I firmly believe that these horses should have limited medication so these jockeys can feel what they have underneath them, like they used to years ago when there was no medication. It is very important when a jockey warms up his horse or they can feel that animal. They are athletes, too. They know if there is a problem coming on, if they warm up out of it or not. So I believe hay, oats and water. That is all they need in their system and get back to how racing used to be when it was that way.

Mr. WHITFIELD. I would ask unanimous consent that we submit this binder into the record with all the exhibits. And I want to thank all of you for your patience as you have been here. We spent a lot of time together today and I don't know if you all have enjoyed it as much as we have or not. But it is a complicated issue and we look forward to working with all of you on an individual basis or collectively to try to address some of these issues. So thank you very much and I hope you have a great weekend and hope to see you again soon. Thank you. And the record will remain open for 30 days for additional questions and this meeting is adjourned.

[Whereupon, at 5:25 p.m., the subcommittee was adjourned.]

