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**INTERSTATE HORSE RACING
MADNESS**

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INTERSTATE HORSE RACING MADNESS

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Interstate Horse Racing Madness

While many state horse racing regulatory laws are often vague and confusing and can serve as traps for both the wary and the unwary, much the same can be said for the federal Interstate Horse Racing Act, 15 USC §§3001 et seq. which governs the acceptance of interstate off-track wagers. A quick look at racing at the New Jersey betting sites try to take wagers on races from the New York Racing Association and New York betting sites trying to take wagers on races from Freehold Raceway and the Meadowlands in New Jersey on May 15, 2002 should show the depths of the problems associated with this law.

Generally, for an out-of-state entity [guest OTB] to take a bet on a racetrack from another state [the host track], there must be a series of approvals. The host track must approve the wager; the racing commission in the host racing state must approve the wager, and the racing commission in the state of the guest OTB must approve the wager. 15 USC §3004(a).

In addition to these general requirements, in most instances, a host track in order to approve an interstate wager needs to have a contract with its horsemen's group which sets forth the terms and conditions under which the host track can consent to an interstate wager. See 15 USC §3004(a)(1)(A). Additionally, the guest OTB must have the consent of all currently operating tracks within 60 miles of its betting office. If there are no such currently operating tracks, then the guest OTB needs the consent of the closest currently operating track in an adjoining state. 15 USC §3004(b)(1).

NYRA to New Jersey

On May 15, NYRA at Belmont Park is conducting a thoroughbred meet of nine races with a post time of 1:00 PM. There are three wagering sites in New Jersey. There is Freehold which is running a harness meeting starting at 1:00 PM. There are the Meadowlands which has a twilight program of two thoroughbred races starting at 6:35 followed by an evening program of harness racing. There is also wagering at a number of casinos in Atlantic City which conduct no racing.

For all three interstate wagers, you need the consent of NYRA plus the consents of the New Jersey and New York racing commissions. While the consent of the racing commissions is self-explanatory, the approval of NYRA is not. While other racetracks generally need to have a contract in place with their horsemen, "a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law" See 15 USC §3004(a)(1)(A). does not need an agreement with its horsemen. While NYRA is most assuredly a not-for-profit racing association under §202 of the Racing, Pari-Mutuel Wagering and

Breeding Law [Racing Law], there are some questions as to whether the law sets off-track betting revenues in New York State forth. In 1978, at the time that the Interstate Horse Racing Act was passed, distribution of OTB revenues in New York State was totally determined by State law. Since the implementation of simulcasting, OTB revenues are no longer necessarily set forth by law. Instead under the statutory provision enabling New York OTB's to receive simulcasts at their branches, there is a need for a contract between the OTB and the racetrack which can contain any remuneration that the OTB has agreed to pay the racetrack in addition to the fees provided by statute. Racing Law, §1008.2.b. Assuming that such simulcasting contract increases the fees that an OTB pays to a track, then the distribution of OTB revenues is no longer determined by State law. Additionally, the statute authorizing in-home simulcasts received by OTB's states that "the distribution of revenues shall be subject to contractual agreement of the parties..." Racing Law, §1003.1.(a)(iv). Again, under this contract, state law would not govern the distribution of revenue. Finally, §1012 of the Racing Law enables racetracks to maintain telephone accounts. This would make the racetracks with telephone wagering account systems "off track betting systems" under 15 USC §3002. (8). State law does not govern the distribution of revenues at a racetrack. Thus, a case can reasonably be made that NYRA needs to have a contract with its horsemen in order to authorize interstate bets.

This analysis does not even begin to answer the question of how to determine what a horsemen's group consists of under 15 USC §3002.(12). The definition of a horsemen's group is "the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day." The lack of clarity in this definition raises a ton of interpretation problems as was described in Kentucky Div., Horsemen's Benevolent & Protective Association, Inc. v. Turfway Park Racing Association, Inc. 832 F. Supp 1097, 1103 (E.D. Ky. 1993), rev'd 20 F. 3d 1406 (6th Cir. 1994). Do you count all the owners or trainers at the meeting or only those owners on a specific day of racing? Is it one owner/one vote or one horse/one vote? How do you count a trainer who is also an owner? Are the trainers and the owners counted separately or together? What happens if no group represents the majority of horsemen? Even if NYRA's horsemen have rights under the Interstate Horse Racing Act, there are serious questions about how they would exercise these rights.

For the Atlantic City casinos to bet on NYRA, besides the NYRA approval and the two racing commission approvals, they would also need approval of Philadelphia Park. Under 15 USC §3004(b)(1), the interstate bet is also subject to the approval of the all currently operating tracks within 60 miles of the OTB office, or the closest currently operating racetrack in an adjoining state. On May 15, there were no currently operating racetracks within 60 miles of Atlantic City. However, Philadelphia Park was operating that afternoon, and it was the closest currently operating track in an adjoining state. Thus, if you wanted actual compliance with the law, Philadelphia Park would have to consent to the Atlantic City casinos wagering on NYRA.

For the Meadowlands to wager on NYRA, it would also need the consent of Freehold. Freehold is the only operating racetrack, other than NYRA, within 60 miles of the Meadowlands. (For the Meadowlands to accept wagers during the afternoon of May 15 from a racetrack other than NYRA or Freehold, it would need the permission of both NYRA and Freehold.)

In order to wager on NYRA, Freehold would need the consent of Philadelphia Park which is less than 60 miles from Freehold. There is an open question as to whether Freehold would need consent from the Meadowlands. The problem is that the definition of “currently operating tracks” in 15 USC §3002.(14) refers to racing associations conducting racing at the same time of day as the host track defined as “(afternoon against afternoon and nighttime against nighttime).” The statute does not contemplate racing associations running twilight programs such as the limited one run by the Meadowlands. If a twilight program were deemed a daytime program, then Freehold would need Meadowlands consent as well as the consent of Philadelphia Park. If the Meadowlands is conducting a nighttime program, Freehold does not need Meadowlands consent.

This twilight issue is not an imaginary hypothetical one. Racetracks are increasingly running twilight cards. Plainridge, Prairie Meadows, Great Lakes Downs, the Meadows, and Harrington regularly run twilight cards. Even NYRA and Churchill are starting post time on certain days at 3:00 PM. The Interstate Horse Racing Act provides us with no answers on how to treat twilight racing cards.

Freehold to New York Sites

For a New York guest OTB to take Freehold on the afternoon of May 15, there must be at a minimum the approvals of Freehold and the New Jersey and New York racing commissions. In New York there are six OTB regions, six harness tracks, and two thoroughbred tracks. On May 15, NYRA and the harness track Monticello Raceway are conducting afternoon programs. Buffalo and Saratoga Equine are conducting evening programs of harness racing. All other tracks have dark days.

Besides the three initial approvals, if NYRA wants to take Freehold, it will need permission of the Meadowlands if the Meadowlands twilight program is deemed an afternoon program. If the Meadowlands program is not an afternoon program, then NYRA will need the approval of Philadelphia Park which is actually the closest operating track in an adjoining state. Nassau and New York City OTB’s will need NYRA approval. The branches of Suffolk OTB within 60 miles of Belmont Park will need NYRA approval, but the branches that are further than 60 miles from Belmont will probably need the approval of Suffolk Downs in Massachusetts which is probably - by crossing the Long Island Sound – the nearest operating track in an adjoining state.

Moving to the north, Yonkers Raceway would need NYRA approval since Yonkers Raceway is within 60 miles of Belmont Park. Again, if the Meadowlands were deemed to be conducting an afternoon program, Yonkers would also need Meadowlands approval since the Meadowlands is even closer to Yonkers than Belmont Park is. Catskill OTB would need approval of all racetracks within 60 miles of each branch. It may need approval of Monticello, NYRA, and/or the Meadowlands. There are some Catskill locations that are not within 60 miles of these tracks. For these tracks, Catskill would need Meadowlands approval if the Meadowlands is considered an afternoon track. If the Meadowlands is not an afternoon track, then in its eastern branches Catskill may need Suffolk Downs approval, and for its western branches it may need Philadelphia Park approval. Monticello will either need Meadowlands approval (if the Meadowlands is deemed an afternoon track) or Philadelphia Park.

If the Meadowlands is an afternoon track, Saratoga Equine needs Meadowlands approval. If it is not an afternoon track, then Saratoga needs Suffolk Downs' approval. The same holds true for Vernon Downs.

The same general situation holds true for Capital OTB branches, Western OTB branches, Finger Lakes, Batavia Downs, and Buffalo Raceway. For most of these locales, if the Meadowlands is an afternoon track, then they will need Meadowlands approval to take races from Freehold. If Meadowlands is an evening track, then, they will need the approval of either Suffolk Downs or Philadelphia Park, whichever track is closer.

Meadowlands to New York Sites at Night

For purposes of simplicity, we will consider that the Meadowlands ran a night program on May 15. Two New York harness tracks, Saratoga Equine and Buffalo raceway are conducting night meetings. Besides the approvals from the two racing commissions and the Meadowlands, the scenarios under the Interstate Horse Racing Act are as follows: Capital District OTB branches within 60 miles of Saratoga need Saratoga's approval to take the Meadowlands. Similarly, all Western OTB branches within 60 miles of Buffalo need Buffalo's approval to take the Meadowlands. Batavia Downs, which is less than 60 miles from Buffalo Raceway, would likewise need Buffalo's approval to take the Meadowlands.

Every other racing entity (and this includes Saratoga Equine and Buffalo Raceway) in New York State would need the approval of Pocono Downs, the harness track in Wilkes-Barre, Pennsylvania, which is the closest operating track in an adjoining state conducting a program of nighttime racing. This analysis is made somewhat easier by the fact that neither Plainridge (a harness track in Massachusetts) or the Meadows (a harness track in Western Pennsylvania) were running on May 15. If any of these tracks were running at night, a mileage analysis for each

betting site would need to be conducted to determine whose consent was necessary under the Interstate Horse Racing Act.

As can be seen, taken literally, the Interstate Horse Racing Act makes for results that are absolutely bizarre. A tiny harness track in Pennsylvania can block most wagers on out-of-state races throughout New York State. The determination of whose approval is needed for any interstate wager requires an atlas and a site-by-site analysis. The wording of the statute is vague and ambiguous. About the only break that racing has gotten is that the courts have decided that there is no private cause of action given to racetracks whose approval is theoretically necessary under 15 USC§3004(b)(1). See Sterling Suffolk Racecourse Ltd. Partnership v. Burrillville Racing Association, Inc., 989 F. 2d 1266 (1st Cir. 1993), cert denied 510 US 924 (1993). Racing is better off with the Interstate Horse Racing Act as a dead letter rather than as a live trap.