

Barriers To Dealing With “The 1%”

A Racetrack Perspective

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Public, Horsemen (for most part)
and Media Want (and Demand) Action

From Regulators

If Not Them.....

Then From The Race Tracks



Simple Answer(s)

- Not so simple
- Varies by jurisdiction
- Depends on your judge



Penn National Gaming & Racing

11 Wholly owned or Joint Venture Pari-Mutuel Operations

- 8 Different Jurisdictions
- Thoroughbred – Quarter Horse – Harness – Greyhound

Annually over 1,000 live racing dates & \$1 billion in wagers



Horsemen's Guide

- Similar to “Code of Conduct”
Used by Corporations & Sports Leagues
- Instituted across all PNG Racing properties in 2012
Consistent Corporate Guidelines
Local Rules and Regulations
- Basis for decision making process for racing properties on actions to be taken regarding participants



What Has PNG Done?

Zia Park

Six trainers and two jockeys barred

Beulah Park

Licenseses barred for violation of slaughter policy

Charles Town

Actions against riders misrepresenting weights

Penn National Race Course

Attempt to exclude trainer caught in stall of race day horse with syringes



Private Property Actions & Right of Exclusion

Penn National Gaming Has Full Control Over
What Happens On Its Property

Right?



NOT ALWAYS



West Virginia

- Charles Town actions versus licensees
- Late 2011 decision by Supreme Court of Appeals gave licensees right to appeal to Racing Commission for review of track ejections
- ***OF SIX CASES HEARD BY THE COMMISSION SINCE THE RULING ONLY ONE TRACK ACTION HAS BEEN UPHELD.***



Pennsylvania

- Trainer caught by Racing Commission investigators with syringes coming out of stall of “In to Go” Horse
 - Track and trainer agree to short term sanctions
 - Trainer turns around and goes for injunction
- U.S. District Court For Middle District of PA Judge grants injunction
 - Indicates “State Action” by Racetrack
- Track Formally ejects via Racing Commission Regulations
 - Wins ejection hearing with Commission
- Same Judge upholds injunction
 - States PA Commission rules on hearings unconstitutional
- Likely Appeal by PNG on Section 1983 Claims



Dangerous Precedents

- “State Actor” definition stretched – taken literally NO interaction with Commission or basis for decisions
 - State is involved in every matter of racing
 - What about other regulated industries and impact? (Gaming?)
- Ability to revoke stalls under injunction
 - Judge glossed over issue of property rights of racetrack
- Opportunity with Regulation deemed Unconstitutional?
 - No further Commission Review?
 - Likely reform of current law with expedited hearings



Going Forward

- Keeping lawyers employed
- Reviewing every jurisdiction
- Clarity on “State Action” – Could be potential minefield
- Adjust, Regroup, But Will Not Back Down

