

**SUPREME COURT OF KENTUCKY
DOCKET NO. 2012-SC-000414**

**APPEAL FROM THE KENTUCKY
COURT OF APPEALS CASE NO. 2011-CA- 000164**

APPALACHIAN RACING, LLC, ET AL.

APPELLANTS

v.

THE FAMILY TRUST FOUNDATION
OF KENTUCKY, INC.

APPELLEE

REPLY BRIEF OF APPELLANTS

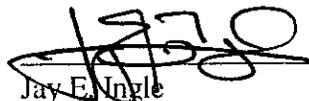
William A. Hoskins
Jay E. Ingle
Jackson Kelly PLLC
175 East Main Street,
Suite 500
Lexington, KY 40507
Phone: (859) 255-9500
*Counsel for Appalachian
Racing, LLC; Lexington
Trots Breeders Association,
LLC; Kentucky Downs,
LLC, and Ellis Park Race
Course, Inc.*

William M. Lear, Jr.
Shannon Bishop Arvin
Christopher L. Thacker
Stoll Keenon Ogden PLLC
300 West Vine Street,
Suite 2100
Lexington, KY 40507-1801
Phone: (859) 231-3000
*Counsel for Keeneland
Association, Inc.; Players
Bluegrass Downs, Inc.; and
Turfway Park, LLC*

Sheryl G. Snyder
Jason Renzelmann
Frost Brown Todd LLC
400 West Market Street,
32nd Floor
Louisville, KY 40202
Phone: (502) 589-5400
*Counsel for Churchill
Downs Incorporated*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that copies of this Reply Brief of Appellants were served upon the following individuals by U.S. Mail on May 28, 2013: Stanton L. Cave, Esq., Law Office of Stan Cave, P.O. Box 910457, Lexington, KY 40591; Susan Bryson Speckert, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington, KY 40511; Peter F. Ervin, Public Protection Cabinet, 500 Mero Street, Capitol Plaza Tower, 5th Floor, Frankfort, KY 40601; Douglas M. Dowell, Laura M. Ferguson, Office of Legal Services for Revenue, P.O. Box 423, Frankfort, KY 40602; Jeff Mosley, Finance and Administration Cabinet, 702 Capitol Ave., Rm. 392, Frankfort, Kentucky 40601; Samuel P. Givens, Jr., Clerk of the Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; and Hon. Thomas Wingate, Judge, Franklin Circuit Court, 669 Chamberlin Ave., Frankfort, KY 40601.


Jay E. Ingle

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF POINTS AND AUTHORITIESi-iii

I. THE ONLY QUESTION BEFORE THE COURT IS WHETHER THE REGULATIONS AS PROMULGATED ARE A VALID AND LAWFUL EXERCISE OF THE COMMISSION'S AUTHORITY.....1-3

Faust v. Commonwealth, 142 S.W.3d 89, 95 (Ky. 2004).....2

Centre College v. Trzop, 127 S.W.3d 562, 566-67 (Ky. 2003).....2

Flying J Travel Plaza, 928 S.W.2d 344, 347 (Ky. 1996).....2

Revenue Cabinet v. Joy Technologies, 838 S.W.2d 406, 409 (Ky. 1992).....2

Marksberry v. Chandler, 126 S.W.3d 747, 753 (Ky.App. 2003).....2

Fiscal Court Com'rs of Jefferson County v. Jefferson,
614 S.W.2d 954, 957 (Ky.App. 1981).....2

Telespectrum, Inc. v. Public Service Com'n of Kentucky,
227 F.3d 414, 420 (6th Cir. 2000).....2

CR 76.12(4)(c)(vii).....3

Fortney v. Elliot's Adm'r., 273 S.W.2d 51, 52 (Ky. 1954).....3

II. THE REGULATIONS SPECIFICALLY REQUIRE THAT ANY WAGERING ON HISTORICAL HORSE RACING BE PARI-MUTUEL.....4-5

810 KAR 1:011, § 1(1).....4

810 KAR 1:011, § 4(1)(a).....4

KRS 230.361.....4

Commonwealth v. Ky. Jockey Club, 38 S.W.2d 987, 991 (Ky. 1931).....4

Swigart v. People, 40 N.E. 432, 288 (Ill. 1895).....4

15 U.S.C. § 3002(13).....4

ARCI Model Rules-001-010(52) and 004-007(M), available at http://www.ua-rtip.org/sites/ua-rtip.org/files/Chapters1-4_2013.pdf (last visited May 24, 2013).....4

810 KAR 1:011, § 4(1)(b).....5

810 KAR 1:011, § 4(1)(c).....5

810 KAR 1:011, § 4(2).....5

III. THE FOUNDATION’S BRIEF MISSTATES FACTS AND MAKES ASSERTIONS THAT ARE UNSUPPORTED IN FACT AND LAW.....5-10

KRS 418.020.....5

A. The Foundation’s Contention That The Commission’s Authority Is Not Plenary Ignores The Plain Language of KRS Chapter 230.....6

KRS 230.215(2).....6

B. The Foundation Continues To Try To Add A Requirement That Wagering Only Be On “Live” Races.....6-7

Flying J Travel Plaza v. Transp. Cabinet, 928 S.W.2d 344, 347 (Ky. 1996).....7

C. The Regulations Do Not Authorize Reel Games.....7

810 KAR 1:011, § 2(1).....7

D. The Foundation Mischaracterizes One Phrase From the Instant Racing Patent In An Effort To Suggest That Instant Racing Is Not Pari-Mutuel.....7-8

E. Progressive Pools In Which Different Patrons Wager on Different Races Are Allowed By KRS Chapter 230.....8-9

810 KAR 1:011, § 4(1)(b).....9

810 KAR 1:011, § 4(1)(c).....9

F. The Foundation Incorrectly Confuses Odds and Payouts With Pari-Mutuel Wagering.....9-10

KRS 230.3615.....9

810 KAR 1:011, Section 10(3).....9

810 KAR 1:011, Section 4(1)(a).....9
810 KAR 1:011, Section 13(1).....10
G. The Foundation Confuses Handicapping With Pari-Mutuel Wagering.....10
CONCLUSION.....10

I. THE ONLY QUESTION BEFORE THE COURT IS WHETHER THE REGULATIONS AS PROMULGATED ARE A VALID AND LAWFUL EXERCISE OF THE COMMISSION'S AUTHORITY.

From the beginning of this case the question has always been the facial validity of the Regulations, not the approval of any particular game or wager. The question at issue was clearly stated in the Petition that initiated this action—whether “[t]he Regulations are a valid and lawful exercise of the Commission’s statutory authority to regulate pari-mutuel wagering of horse racing under Chapter 230 of the Kentucky Revised Statutes.”¹

The Franklin Circuit Court properly recognized and adhered to the scope of the question before it. In denying the Foundation’s motion for broad discovery, the Circuit Court appropriately noted that the sole questions presented by the Petition concerning the validity of the Regulations were “legal, not factual.”² Again in its Opinion and Order, the Circuit Court made clear that the question presented concerned only the Regulations themselves, not any particular game or wager:

While the term “Instant Racing” was used in the AG Opinion, and has been used at times in this case, including by the Court, this *Opinion and Order* addresses the legality of pari-mutuel wagering on “historical horse races” as set forth in the Regulations promulgated by the Commission, and not on any particular game or scheme.³

The Circuit Court then undertook its review just as it should—by scrutinizing the Regulations to determine whether they were consistent with the enabling legislation.⁴

Countless Kentucky cases set forth the necessary analysis when testing the facial

¹ Pet. ¶ 22 A.

² Franklin Circuit Court, Sep. 23, 2010 Opinion and Order at 2, attached to Racing Associations’ Brief as Appx. E.

³ Franklin Circuit Court, Dec. 29, 2010 Opinion and Order at 2, n.2, attached to Racing Associations’ Brief as Appx. F.

⁴ *Id.* at 4. (“This inquiry requires an examination of the enabling statutes that authorize pari-mutuel wagering and vest plenary authority in the Commission, as well as an examination of the scope of the Commission’s power to regulate pari-mutuel wagering on horse racing. We will then scrutinize the proposed Regulations themselves.”).

validity of a regulation—whether the regulation at issue falls within the scope of the agency’s authority and is consistent with the enabling legislation.⁵ Stated conversely, “a regulation is valid unless it exceeds statutory authority or, in some way, is repugnant to the statutory scheme.”⁶ That analysis requires nothing more than the plain language of the Regulations themselves and the enabling statutes. To go beyond that analysis would contradict longstanding principles of Kentucky law. The same rules apply for the construction and interpretation of statutes and regulations.⁷ In determining the meaning of a statute, courts consistently state that “we may not look beyond the language of the statute unless the legislative intent is not discernible from the language used.”⁸ Courts may not speculate as to what the legislature intended⁹ and may not add to or change language in an unambiguous statute.¹⁰ Faced with the purely legal question of whether the Regulations were consistent with KRS Chapter 230, the Circuit Court properly limited its review to the only documents needed to answer that question—the Regulations and the enabling statutes.

The Foundation attempts to confuse the issue by trying to change the question before the Court into something that it is not. Despite the clear framing of the question in the Petition as one of validity of the Regulations as promulgated, the Foundation tries to change the question into whether the Regulations were properly followed when specific games were *later* approved—well *after* the Circuit Court entered its final Opinion and Order. The question before the Court is whether “[t]he Regulations are a valid and lawful exercise of the

⁵ See, e.g., *Faust v. Commonwealth*, 142 S.W.3d 89, 95 (Ky. 2004); *Centre College v. Trzop*, 127 S.W.3d 562, 566-67 (Ky. 2003); *Flying J Travel Plaza*, 928 S.W.2d 344, 347 (Ky. 1996).

⁶ *Revenue Cabinet v. Joy Technologies*, 838 S.W.2d 406, 409 (Ky. 1992).

⁷ *Marksberry v. Chandler*, 126 S.W.3d 747, 753 (Ky.App. 2003).

⁸ *Fiscal Court Com'rs of Jefferson County v. Jefferson*, 614 S.W.2d 954, 957 (Ky.App. 1981).

⁹ *Id.*

¹⁰ See, e.g., *Telespectrum, Inc. v. Public Service Com'n of Kentucky*, 227 F.3d 414, 420 (6th Cir. 2000) (“This Court may not amend or add to the plain language of a statute.”).

Commission's statutory authority."¹¹ The Foundation's Brief, however, addresses a different question: whether the activity, conduct and devices currently ongoing meet the tests expressly set forth in the Regulations, i.e., whether they meet the requirement in the Regulations that they must be pari-mutuel wagers.¹²

That, however, was not the question before the Franklin Circuit Court. When the Petition was filed, and when the Circuit Court rendered its Opinion and Order, no Association had sought approval for wagering on historical horse races, no particular wager or machine had been approved, and no wagering on historical horse races had ever been conducted in Kentucky. Thus, it was not only legally inappropriate to go beyond the face of the Regulations and enabling statutes, it was factually impossible. While two Associations have subsequently sought and obtained Commission approval of specific wagers on historical horse races, those approvals occurred in separate proceedings many months after the Circuit Court rendered its judgment and the Foundation's Notice of Appeal. Thus, facts related to specific games or wagers could not have been before the Circuit Court and are not properly before this Court now.¹³

If the Foundation wished to challenge specific games or change the scope of the question, it has had the opportunity to do so. The Foundation could have objected to Kentucky Downs or Ellis Park's requests for approval before the Racing Commission or challenged the approvals by administrative appeal. Having undertaken no such step, the Foundation may not now challenge those approvals by altering the question in this case.

¹¹ Pet., ¶ 22 A.

¹² Foundation Br. at 21 ("The question here is whether the activity, conduct and devices described by the joint petition and in the Regulations, constitute pari-mutuel wagering on legitimate horse racing under Chapter 230, specifically under KRS 230.315(2) and 230.361(1), so as to be within the exception to the prohibition in Chapter 528 against gambling allowed by KRS 436.380.").

¹³ CR 76.12(4)(c)(vii); *see also Fortney v. Elliot's Adm'r.*, 273 S.W.2d 51, 52 (Ky. 1954) ("The case must be tried in this court [of appeals] on the record as it was presented to the trial court . . . [A]dditions cannot be made to the record of matters not considered by the trial court in rendering its judgment.").

II. THE REGULATIONS SPECIFICALLY REQUIRE THAT ANY WAGERING ON HISTORICAL HORSE RACING BE PARI-MUTUEL.

Much of the Foundation's Brief is dedicated to reciting rhetorical questions and statements regarding what questions need to be answered about specific games or wagers, almost all of which reduce to whether wagering on historical racing is pari-mutuel in nature. However, the Regulations themselves make clear that any wagering on horse races in Kentucky, whether on live, simulcast, or historical races, must be pari-mutuel in nature. With regard to historical races, the Regulations expressly state:

The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering."¹⁴

A wager on an historical horse race, less deductions permitted by KRS Chapter 230 or 810 KAR Chapter 1, shall be placed in pari-mutuel pools approved by the commission.¹⁵

These requirements necessarily establish that the Regulations are consistent with KRS Chapter 230's requirement that the Commission "promulgate administrative regulations governing and regulating mutuel wagering on horse races under what is known as the pari-mutuel system of wagering."¹⁶

In addition, the Regulations include specific provisions ensuring that approved wagers must be consistent with what is "known as the pari-mutuel system of wagering." The term "pari-mutuel wagering" refers simply to a system of wagering in which patrons wager among themselves, rather than against the operator of the pool.¹⁷ The Regulations on their

¹⁴ 810 KAR 1:011, § 1(1).

¹⁵ 810 KAR 1:011, § 4(1)(a).

¹⁶ KRS 230.361

¹⁷ *Commonwealth v. Ky. Jockey Club*, 38 S.W.2d 987, 991 (Ky. 1931); *Swigart v. People*, 40 N.E. 432, 288 (Ill. 1895) (distinguishing pool selling from bookmaking in that "[i]n the first, the betting is with the bookmakers; in the second, the betting is among the purchasers of the pool, they paying a commission to the seller."); 15 U.S.C. § 3002(13) ("parimutuel" means any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator."); ARCI Model Rules-001-010(52) and 004-007(M), available at [4](http://www.ua-</p></div><div data-bbox=)

face require that wagering on historical racing necessarily conform to this accepted definition of “pari-mutuel wagering”:

A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.¹⁸

An association conducting wagering on an historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.¹⁹

An association shall only pay a winning wager on an historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association’s funds.²⁰

Again, these requirements end the inquiry, as they establish that the Regulations are consistent with KRS Chapter 230’s requirement that wagering on historical racing be pari-mutuel in nature.

III. THE FOUNDATION’S BRIEF MISSTATES FACTS AND MAKES ASSERTIONS THAT ARE UNSUPPORTED IN FACT AND LAW.

The Foundation’s Brief is largely comprised of unsupported allegations, misstatements of fact and law, and assertions without any citation to the record. At times, the Foundation attempts to restate legal principles, adding words to statutes or changing the language of a statute altogether.²¹ At other times, the Foundation tries to paint the picture of a

rtip.org/sites/ua-rtip.org/files/Chapters1-4_2013.pdf (last visited May 24, 2013) (defining “pari-mutuel wagering” as “a form of wagering on the outcome of an event in which all wagers are pooled and held by an pari-mutuel pool host for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants.”).

¹⁸ 810 KAR 1:011, § 4(1)(b).

¹⁹ 810 KAR 1:011, § 4(1)(c).

²⁰ 810 KAR 1:011, § 4(2).

²¹ In its argument regarding discovery, for example, the Foundation re-writes KRS 418.020 and claims that it is entitled to discovery because an agreed case must be treated as if it were an ordinary civil action. That is not what the statute states. KRS 418.020 expressly states that it is not an ordinary civil action (“Parties to a question which might be the subject of a civil action may, without action . . .”). The Court is then allowed

vast conspiracy.²² None of those assertions are relevant to the question at hand and are only designed to confuse the issue and distract the Court from the key legal question presented by the Petition below. While it would be appropriate to ignore them altogether, some are so misleading that they require a brief response.

A. The Foundation's Contention That The Commission's Authority Is Not Plenary Ignores The Plain Language of KRS Chapter 230.

On page 31 of its Brief, the Racing Commission states, "The Commission's authority is not plenary." That statement is a direct contradiction of KRS 230.215(2), which grants the Commission "**plenary power** to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth...."²³

B. The Foundation Continues To Try To Add A Requirement That Wagering Only Be On "Live" Races.

Much of the Foundation's Brief repeats in various ways its theme that wagers on historical races are not permissible because they are not wagers on "live" races. However, even the Foundation's own description of the Commission's authority includes no requirement that wagers be on "live" races: "[T]he Commission's statutory authority is limited to (i) 'pari-mutuel system of wagering', (ii) on 'horse races', (iii) which are

to render judgment as if an action were pending, but the statute does not state that the entire case is treated just like an ordinary civil action. Such a proposition would render the use of KRS 418.020 meaningless.

²² For example, the Foundation claims that the Court made evidentiary rulings in its *sua sponte* order setting the initial briefing schedule, but cites no example from that order of what it believes is an evidentiary ruling. The reason is there are none. In addition, the Foundation suggests that it was inappropriate for the Racing Commission to even discuss wagering on historical racing with the Associations prior to promulgating the Regulations, but cites no authority. To the contrary, regulatory bodies regularly seek and obtain comment from their licensees prior to promulgation of regulations.

²³ KRS 230.215(2) (emphasis added).

'legitimate horse racing and wagering thereon.'²⁴ The word "live" appears nowhere in those provisions of KRS Chapter 230 that define the Commission's power to authorize pari-mutuel wagering and cannot be added by the courts.²⁵

C. The Regulations Do Not Authorize Reel Games.

The Foundation attempts to characterize wagering on historical racing as an illegal "reel game," but provides no support for such a contention or even a definition of what a "reel game" is.²⁶ Regardless, the Regulations do not authorize "reel games." Rather, they consistently state that any wagering, whether on live or historical racing, must be pari-mutuel in nature. Furthermore, the equipment used to calculate and determine winners and payouts for wagers on historical races is the same equipment used for live and simulcast wagering in Kentucky. Both use a totalizator, as required by KRS 230.361.²⁷

D. The Foundation Mischaracterizes One Phrase From the Instant Racing Patent In An Effort To Suggest That Instant Racing Is Not Pari-Mutuel.

The Foundation devotes six pages of its Brief to an argument that a specific patented game, Instant Racing, is not pari-mutuel in nature based on one reference to "trivial pools of one" taken out of context. Whether the particular product Instant Racing comports with the Regulations is not the question at issue here. The Regulations require wagers on historical racing to be pari-mutuel in nature, thus ending the inquiry. If the Foundation wished to challenge Instant Racing, it could and should have done so when certain Instant Racing games and wagers were approved by the Commission.

Nevertheless, the Foundation's contention that the Instant Racing patent proves that

²⁴ Foundation Br. at 33.

²⁵ *Flying J Travel Plaza v. Transp. Cabinet*, 928 S.W.2d 344, 347 (Ky. 1996).

²⁶ The Foundation repeatedly states that Oaklawn refers to their games as reel games, and makes the conclusory statement that wagering on historical races is a reel game, but provides no citation for any of these statements.

²⁷ 810 KAR 1:011, § 2(1).

the game is not pari-mutuel can be quickly refuted. The title of the patent itself is “Methods and Apparatus for **Parimutuel** Historical Gaming.”²⁸ The first sentence of the abstract states, “A gaming system which enables **parimutuel wagering** with instant payoffs on actual past events.”²⁹ The reference to a “trivial pool of one” lies in the middle of the patent’s explanation of how the game allows an instant payoff based on **pari-mutuel wagering** through the use of the concept of progressive pools, similar to those used for Pick 6 and Twin Trifecta wagers.³⁰ The patent plainly states that each wager is apportioned to a pari-mutuel pool: “Each wager forms a trivial pool of one, and either loses **and is apportioned among the tiers of progressive pools**, or wins and is awarded **one of the progressive pools**.”³¹ The exemplary games included in the appendices each include a section titled “Pool Split” that explain that “[a]fter commissions have been deducted from the wager, the remaining amount is **apportioned among [] separate pools** which have been carried over from previous contests played by all players...”³²

E. Progressive Pools In Which Different Patrons Wager on Different Races Are Allowed By KRS Chapter 230.

A variation on the Foundation’s argument regarding Instant Racing is its fundamental misunderstanding of the nature of progressive pools. The Foundation freely acknowledges that Instant Racing collates wagers into progressive pools,³³ but mistakenly claims that progressive pools are the “antithesis of pari-mutuel wagering.”³⁴ That is simply not the case. Nothing in KRS Chapter 230 precludes progressive pools or requires that all wagers in a pool

²⁸ Foundation Circuit Court Brief in Opposition, R. V, Ex. H at 1.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ *Id.*

³² *Id.* at 15, 17.

³³ Foundation Brief at 39 (quoting Patent’s summary as a system which “collates pools from all sources”), 40 (describing collation of pools “into progressive pools”).

³⁴ *Id.* at 40.

be placed on the same race.

To the contrary, progressive pools have been approved and operational for many years in Kentucky and are part of the fabric of pari-mutuel wagering. In the Pick Six wager, for example, bettors on a Friday may try to pick the winners of six consecutive races. If no one correctly selects six winners, a portion of the pool may be paid out to those who correctly picked 5 out of 6 races (although the various payees may have successfully selected a different set of 5 races), and the remainder of the pool is carried over to Saturday. On Saturday, then, a new group of wagerers tries to correctly pick 6 new races. If no one does so on Saturday, then the same process is followed and a portion of the pool carries over to Sunday. The result is a progressive pool where different wagerers are competing for the same pool by betting on different horse races on different days. Nothing in Kentucky law precludes progressive pools, so long as the Association only takes a commission and does not have a stake in the outcome.³⁵

F. The Foundation Incorrectly Confuses Odds and Payouts With Pari-Mutuel Wagering.

The Foundation attempts to confuse issues further by claiming that there has been no explanation of how odds or payouts are calculated. How odds or payouts are calculated, however, have no bearing on whether something is pari-mutuel. Nor has there ever been any requirement in KRS Chapter 230 or the administrative regulations requiring a particular method of calculating odds. Rather, the statutes and Regulations consistently state that the Association may take a commission from each pari-mutuel pool, with the remainder to be paid out to wagerers.³⁶ With both traditional live racing and wagering on historical races the

³⁵ See fns 18 and 19, *supra*.

³⁶ KRS 230.3615; 810 KAR 1:011, Section 10(3) (for live racing); 810 KAR 1:011, Section 4(1)(a)(for historical racing).

Regulations require that the odds or payouts be posted and updated at least every ninety seconds.³⁷

G. The Foundation Confuses Handicapping With Pari-Mutuel Wagering.

Like with the calculation of odds and its other arguments, the Foundation attempts to add a requirement to KRS Chapter 230 that pari-mutuel wagering must include a certain type or set amount of handicapping information. No such requirement can be found anywhere in Chapter 230. While the Regulations do require certain handicapping information to be provided for wagering on historical racing, an individual wagerer's use of such information has no bearing on the pari-mutuel nature of the game—just as with traditional live racing where an individual is free to place a wager based on his or her favorite color, a horse's name, or his or her favorite number, without any handicapping information whatsoever.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Associations' Brief, the Associations respectfully request that the Court reverse the Court of Appeals and affirm the Opinion and Order of the Franklin Circuit Court.

Respectfully submitted,


William A. Hoskins
Jay E. Ingle
*Counsel for Appalachian
Racing, LLC; Lexington
Trots Breeders Association,
LLC; Kentucky Downs, LLC;
and Ellis Park Race Course,
Inc.*

 for
William M. Lear, Jr. (*wt perm.*)
Shannon Bishop Arvin
Christopher L. Thacker
*Counsel for Keeneland
Association, Inc.; Players
Bluegrass Downs, Inc.; and
Turfway Park, LLC*

 for
Sheryl G. Snyder
Jason Renzelmann (*wt perm.*)
*Counsel for Churchill
Downs Incorporated*

³⁷ 810 KAR 1:011, Section 13(1) ("Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds."); 810 KAR 1:011, Section 13(3) ("For wagering on an historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.").