

Arizona HBPA Membership

I am writing to you today to update you on the work your HBPA Board Members have been working on. As you know Ann Mc Govern is busy working on getting Arizona Downs ready for a summer Race Meet opening up on May 24th! Starting with Turf Paradise not letting her to offer summer employment to Turf Paradise employees. What a great thing for the Turf Paradise employees to have summer employment here in Arizona! Wouldn't it be great if all three tracks in Arizona could all work together?? A bigger issue is the Monarch track simulcast signal. Monarch is refusing to give Arizona Downs their tracks simulcast signals at the Arizona Downs OTB's. Making it impossible for Arizona Downs to generate enough purse money to run a successful meet. Arizona Downs has agreed with the HBPA for this first season to step up and contribute the additional funds needed to fund the purses for the first year! Purses will average \$70,000 a day for 35 days at Arizona Downs this summer. The Arizona HBPA took the stance that if Arizona Downs cannot have the Monarch signals neither can the other two tracks effective March 1st. So, we sent out the attached letter letting the other two tracks know they can no longer carry Monarch tracks signal. Jerry Simms responded with the 2nd attachment a letter to our Board members as well as many of you members. Our Board met on February 27th and decided to give an extension until March 20th to give the Commission, Monarch, Turf Paradise and Arizona Downs time to negotiate a settlement. The third attached letter is our response to Jerry Simms letter. The HBPA Board will be working on helping how we can to make this all come together, they will also be working on the new contract with Turf Paradise for the upcoming years. The HBPA Board will be hiring an attorney to help with those negotiations and possible Arbitration hearings.

Statement from President Hutton

Negotiating with Turf Paradise this season has been challenging. From negotiating for better beverage prices for horseman to the condition of the backside has been needless to say fatiguing. Not to mention the ongoing attempt to negotiate with Monarch to provide the other tracks in the state with their signal. With that being said this Board will not stop fighting for better conditions at Turf Paradise. We will not allow a few discouraging moments to get in our way! Excellent year-round racing in Arizona is going to happen! With or without some cooperation from certain stake holders!

On a positive note the HBPA and to ATBA have been working jointly at the legislature to pass a new Bill HB 2576 which will generate over \$1 million a year for the Breeders to payout in purse bonuses and breeders' awards to mare and stallion owners! This Bill has been passed out of committee and will be voted on today in the House. After today the Bill will be moved over to the Senate for passage. The HBPA feels strongly this Bill is necessary in helping rebuild the Arizona racing program.

The HBPA Board of Directors is hosting an open General Membership meeting for all members on March 9th at 10 am in the track kitchen so we can update everyone and discuss the above topics. Please plan to attend. Trainers please notify your owners of the meeting and please have all owners send their email information to azhbpa@outlook.com to get their email address added to our master mailing list.

Also please save the date for March 27th 2019 at 5 pm the HBPA and Turf Paradise will be hosting our **SPRING FLING** we will be serving BBQ beer and will have entertainment! Save the Date and plan to attend!

Leroy Gessmann



Arizona
Horsemen's Benevolent & Protective Association, Inc.

• Phoenix, AZ 85080 • 602/942-3336 Fax 602/866-3790

February 20, 2019

Turf Paradise
1501 W Bell Road
Phoenix Arizona 85023

Dear Mr. Jerry Simms,

The Arizona Horsemen's Benevolent and Protective Association, Inc. (Arizona HBPA) remains concerned that several important out-of-state simulcast signals are not being made equally available to all racetracks and off-track betting (OTB) networks within the state of Arizona to the detriment of the growth of live racing in Arizona. Racing opportunities for Arizona horsemen are intertwined with simulcast signals being made accessible on a fair basis to all permitted facilities in this state, including to Arizona Downs and its owned or leased OTBs, and to other permitted racetracks or OTBs in this state.

Until such accessibility to simulcast signals occurs, the Arizona HBPA will not approve any Stronach-owned or Monarch-affiliated tracks, as listed below, to be shown at ANY Arizona permittee-locations. Furthermore, Arizona HBPA will not approve any ADW provider serving Arizona residents to carry the content of the below-listed tracks, and if any ADW provider does not remove the below-listed tracks in its offerings to Arizona residents, then Arizona HBPA, in the exercise of its right under A.R.S. § 5-112(M), 2nd sentence, will not approve of such ADW provider continuing to serve Arizona residents. Once all permittees in this state are allowed to show all Monarch signals at their locations, the Arizona HBPA will give permission for the signals to resume and for ADWs to carry the below-listed tracks. Please be advised that this non-approval of Stronach-owned and Monarch-affiliated tracks takes effect after the expiration of the Arizona HBPA's previously granted consent for the below-listed tracks (which consent expires at 12:00 am (Midnight) March 1, 2019). Furthermore, this non-approval of ADW's to carry the content of the below-listed tracks takes effect at 12:00 am (Midnight) March 1, 2019. Finally, please be further advised that the Arizona HBPA is reviewing other Monarch-affiliated tracks to determine whether the Arizona HBPA will continue with, or withdraw its consent to such other Monarch-affiliated tracks; if Arizona HBPA withdraws consent to such other Monarch tracks, its withdrawal will "constitut[e] grounds for the Department [of Gaming, Racing Division] to rescind authorization for simulcasting" to such other Monarch tracks at Turf Paradise and its OTB network pursuant to 19 A.A.S. 2-419(E).

Accordingly, and pursuant to the Arizona HBPA's rights under 19 A.A.S. 2-419(C)(4), the Arizona HBPA does not approve nor give its consent to Turf Paradise or its owned or leased OTBs receiving partial or full card flat racing simulcasts and selected stakes from the following tracks.

Santa Anita
Golden Gate
Gulfstream
Laurel

Maryland Jockey Club
Pimlico
Meadowlands Racetrack
Rosecroft Raceway

Del Mar
Monmouth
California Fairs

Thank you for your attention to this matter.

By copy of this letter to the Director of the Department of Gaming, Racing Division, and pursuant to 19 A.A.S. 2-419(C)(4), the Arizona HBPA petitions the Department (and its Director and personnel) and the Arizona Racing Commission (and its Chairperson and personnel), not to permit Turf Paradise or any of its owned or leased OTBs in Arizona from receiving and accepting wagers on partial or full card flat racing simulcasts and selected stakes races from any of the above-listed tracks on or after 12:00 am (Midnight) March 1, 2019, unless and until the Arizona HBPA provides notification otherwise.

Sincerely,

Robert Hutton, President

CC: Rudy Casillas
Ted Vogt



Gerald W. Alston

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February 25, 2019

Mr. Bob Hutton, President
And Others
Arizona HBPA
1501 W. Bell Road
Phoenix, Arizona 85023

Dear Mr. Hutton:

On April 5, 2013, TP Racing, L.L.P. dba Turf Paradise (hereinafter referred to as the "Track") and the Arizona Horsemen's Benevolent and Protective Association, Inc. (hereinafter referred to as "HBPA"), as parties, entered into an agreement wherein they agreed to certain very important issues that would constitute their working relationship. This agreement was signed by Mr. J. Lloyd Yother, and Mr. Simms.

Section VI, Subsection 5, (A.), of that agreement provides as follows:

A. The Track and HBPA agree that this Agreement shall be a two-year agreement set to start May 31, 2015. However, in order for Track to have this OTB Business model in place during the second year of this Agreement, Track must have opened Four (4) new OTB sites by May 31, 2016. The Track may earn additional years to this Agreement by opening Three (3) new OTB's each year up to a total of four (4) years. It is agreed and understood that this Agreement is cumulative, and if the Track opens more than the required number of OTB's in a given year, the excess will be applied to and credited for the Track in the following years. Track must maintain a minimum of fifty (50) OTB's at all times.

As you are well aware, Turf Paradise has completely performed as required by that Agreement, and as a matter of fact, is now operating 56 OTBs in Arizona. So, based on the contract entered into by all involved, Turf has the right to conduct OTBs under this Agreement up to and including 2020 (four years after the 2016 date reflected in the contract).

The information and citations to the Arizona Administrative Code that you cited in your correspondence does not, and cannot, trump the contractual

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agreements that you entered into, and that Turf Paradise has completely performed on.

If you cause Monarch to stop sending the OTB simulcast signals to the Turf Paradise OTBs starting the 1st of March, 2019, you will be in breach of the contract. Those in breach will be the entity, HBPA, and all of the HBPA board members that voted to, in essence, breach this contract. You can rest assured that litigation will follow almost immediately, but more on that later.

Mr. Simms discussed this litigation issue with Mr. Hutton, who said, "We are not concerned, we have insurance."

I would suggest that before you take a step that is going to be very difficult to step back from, and is going to cause millions of dollars of damages to Turf, that you carefully consider what the consequences will be.

You should contact your insurance agent and ask your agent three questions:

- 1) what are the limits of coverage on your policy? (I'm guessing it's Two Million or Four Million Dollars, but you need to find that out);
- 2) do you cover lawsuits and damages resulting from your having intentionally breached a contract?; and
- 3) do you provide a defense for a breach of contract lawsuit?

All of the answers to those questions will be that you are on your own and have no coverage for damages caused by a breach of contract.

There is no dispute that Turf Paradise is not in any way involved with Monarch's decision to not provide a signal to Arizona Downs. As a matter of fact, Turf would like very much for there to be an agreement between Arizona Downs and Monarch, and Arizona Downs and Turf, that would allow Arizona Downs to have OTBs.

If you proceed down this line, in an effort to cause Monarch to stop the signals to Turf Paradise, you will have at least, for now, put Turf Paradise out of business. You, and each of the members of the Board will be facing substantial financial liability for your actions, so much so that it is unlikely that any of you will be able to sustain the loss.

The RWA will be reduced to a point where the Division of Racing will find it difficult to sustain operations.

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Furthermore, Turf Paradise will, if their revenues are reduced because Monarch cannot send a signal to Turf, be unable to keep the race track open and operating. This will cause many difficulties for all phases of the thoroughbred racing industry, not the least of which is for all of the horsemen and trainers, who keep their horses on the back side of the race track during the race meet, will have to find other accommodations for their horses. Turf Paradise will not be open for business and therefore, not able to accommodate those activities on the back side of the race track.

You must get back to us with your decision about whether you are going to go forward with this attempt to turn off the signal, in 24 hours from receipt of this letter. If you intend to go ahead with your efforts to stop the signal and if we don't hear from you in that time frame, we will file a lawsuit to enjoin your activities and seeking all damages that may be incurred by your action.

We would ask that you take a step back from what will be ruinous for horse racing, and for each and every one of the members of the HBPA Board.

I encourage you to do the right thing for yourselves and for thoroughbred racing.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By



Gerald W. Alston

GWA/tas

cc: Vincent Francia, General Manager



Arizona
Horsemen's Benevolent & Protective Association, Inc.

• Phoenix, AZ 85080 • 602/942-3336 Fax 602/866-3790

February 26, 2019

Via Hand Delivered

Turf Paradise
Jerry Simms, Owner
1501 West Bell Road
Phoenix, AZ 85023

Dear Mr. Simms,

The Arizona HBPA is in receipt of a letter dated February 25, 2019 from Mr. Gerald W. Alston, on behalf of Turf Paradise, addressed to Mr. Bob Hutton, President and Others of Arizona HBPA. This letter is Arizona HBPA's reply.

Please be advised that the Arizona HBPA completely disagrees with the content and tone of that letter. Without detailing all of that letter's errors, the following is a partial list: (1) the length of time of the 2013 contract is *not* until May 31, 2020, but rather until May 31, 2019 (see Art. 1, 2nd line; Art. VI, Sec. 5(A)'s "total of four (4) years"); and (2) the statement that Arizona HBPA breaches the contract by not consenting to incoming simulcasts of Monarch-affiliated tracks is false because Arizona HBPA retains full discretion to consent, or not, to live-simulcasting under Art. VI, Sec. 2, 3rd sent.); and (3) the Arizona HBPA Board of Directors are never subject to suit as they are absolutely protected under applicable state and federal law.

We could go on and on about other errors in that letter, but the Arizona HBPA hopes that you, Mr. Simms, understand that our actions against Monarch Content Management, LLC, are not intended to be punitive to Turf Paradise or to you personally. We do, however, feel it to be the duty of the HBPA, and germane to our contract with Turf Paradise, to ensure the future of horse racing in the state of Arizona, and Monarch's refusal to allow simulcast signals to be distributed equally to all tracks and OTBs in Arizona is detrimental to this goal.

After discussing this matter with Rudy Casillas, however, we have learned that the Department of Gaming and Racing Commission are stepping in to assist in resolving this conflict over Monarch's unfounded decision to deny making its affiliated tracks' simulcast signals available to all tracks and OTBs in Arizona. In deference to the Commission's and Director's efforts to assist, and in order to give those efforts an opportunity to succeed over a brief period of time, the Arizona HBPA has decided to delay stopping the Monarch-affiliated tracks' simulcast signals from coming into Arizona until March 20th.

To this end, we ask that you exercise appropriate deference to the Commission's and Director's efforts to assist, and request that you personally send a letter immediately to Monarch addressing its refusal to make its affiliated tracks' signals available to all Arizona racetracks and OTBs. Consistent with what Mr. Alston states in his letter, if Turf Paradise truly wants there to be an agreement between Arizona Downs and Monarch, and Arizona Downs and Turf, your sending such a letter promptly to Monarch would certainly facilitate such an agreement. We are convinced that such an action on your part has the distinct potential of helping to draw all parties together to negotiate a resolution to this dispute, and we implore you, in a show of good faith, that you do so. Please be advised that that the promptness of your doing so is of the utmost importance, and please copy me on your letter.

Sincerely,

Robert Hutton, President

CC: Rudy Casillas & Ted Vogt