

STATEMENT OF STEVE SEXTON
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BEFORE THE HOUSE ENERGY AND COMMERCE COMMITTEE
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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.