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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

IN RE: PETITION FOR DECLARATORY STATEMENT

RICHMOND ENTERTAINMENT
INC., d/b/a HAMILTON JAI ALAI,
and AMTOTE INTERNATIONAL,
INC.,

DS 2008-046

DBPR Case No. 2008038736

Petitioners,

and

INVESTMENT CORP. OF PALM
BEACH, d/b/a PALM BEACH
KENNEL CLUB, ST. PETERSBURG
KENNEL CLUB INC., d/b/a DERBY
LANE, JACKSONVILLE KENNEL
CLUB, INC., ORANGE PARK
KENNEL CLUB, INC., and
BAYARD RACEWAYS, INC.
d/b/a ST. JOHNS GREYHOUND
PARK

Intervenors.

DECLARATORY STATEMENT

Petitioners, Richmond Entertainment, Inc., d/b/a Hamilton Jai Alai, (Hamilton) and Amtote International, Inc. (Amtote) (collectively Petitioners) filed a Petition for Declaratory Statement with the Division of Pari-Mutuel Wagering (Division) regarding whether the betting system of wagering known as "Instant Racing" is permitted at Hamilton's facility pursuant to Chapter 550, Florida Statutes (F.S.).

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Erno W. Dunbar

ISSUE PRESENTED

1. The Petitioners requested a Declaratory Statement as to whether the wagering system known as Instant Racing is authorized for use in Florida at Hamilton's facility pursuant to Chapter 550, F.S. Hamilton holds a valid pari-mutuel permit and license to conduct Jai-Alai. Amtote holds a business license issued by the Division to operate a totalizator system for pari-mutuel permitholders in the state of Florida. The Petitioners require a Declaratory Statement as to whether Hamilton, as a holder of a valid Jai-Alai license, may accept simulcasts of pari-mutuel racing events and use those simulcast events in the operation of a proposed Instant Racing system at its licensed pari-mutuel facility. Further, the Petitioners ask if Instant Racing is authorized at Hamilton's licensed pari-mutuel facility, what are the restrictions and requirements that must be observed in order to qualify for operation at its licensed pari-mutuel facility.

STATEMENT OF THE FACTS

2. Petitioners are a pari-mutuel wagering permit holder licensed by the Division of Pari-Mutuel Wagering to operate a jai alai fronton in Hamilton County, Florida, and a licensed totalizator system operator at pari-mutuel facilities in Florida.

3. On July 7, 2008, Petitioners filed a petition for declaratory statement seeking a determination as to the legality of Instant Racing.

4. On July 17, 2008 Investment Corp. of Palm Beach d/b/a Palm Beach Kennel Club and St. Petersburg Kennel Club, Inc. d/b/a Derby Lane filed a petition to intervene. On July 31, 2008, Jacksonville Kennel Club, Inc., Orange Park Kennel Club, Inc. and Bayard Raceways, Inc. d/b/a filed a petition to intervene.

5. On September 10, 2008, a public hearing was held by the Division regarding the petition at which time sworn testimony was offered by Petitioners regarding Instant Racing.

6. Instant Racing involves the use of recorded historic pari-mutuel events, presently greyhound and thoroughbred races, on which patrons place wagers. The totalisator used in Instant Racing employs the same technology as those totalisator machines defined in Section 550.002(36), F.S., which the Division licenses for use today.

7. A typical Instant Racing wager proceeds as follows: A customer inserts cash or a credit voucher into an Amtote Self-Service Terminal which displays the amount the patron has available to wager. The terminal is in use throughout Florida today for self service wagers. Depending on whether the customer is wagering on recordings of greyhound races or thoroughbred races, the Instant Racing system randomly selects races from a grouping of 336 greyhound races or 720 thoroughbred races from the recorded races stored in its main server; the races are configured so that every possible outcome from an eight greyhound field or a ten thoroughbred field is available for patron wagering.

8. Once the customer inputs a wagering amount, a race is randomly selected from the available races and the customer may make a selection of potential finishers. The customer has the ability to look at some handicapping data to assist in making the wagering selection which is provided to the customer along with the selected race. This information is represented in the form of performance charts. However, the name of the venue, date of the race, number of the race, name of the horse or dog, and if applicable, the jockey and trainer, are presented in the generic so that the customer cannot determine

which race that it has received. During the period between when the race is provided to the customer and when the wager is placed, the self service terminal displays the payouts available from the actual pools in which the customer may make a wager. The pools are locked when the player makes a wager.

9. The totalisator system accumulates wagers, records sales, calculates payoffs, and displays wagering data on a display device located at a pari-mutuel facility. In an Instant Race as in with a live pari-mutuel event, there are no fixed odds. The final odds are determined by the wagering by those participating in the pari-mutuel wagering pools available for that particular recorded race. Once the wager is submitted to the totalisator, the race is shown to the customer on the self service terminal and the result of the race is displayed. At the conclusion of the race, the patron may wager on another race or "cash out" the balance available by receiving a voucher from the self-service terminal and redeeming it like a mutuel ticket or credit voucher.

10. The Instant Racing system requires that a set percentage of the wager be deducted as a commission that includes taxes with the balance of the wager being available to the patron on a particular race. The operator receives a take-out amount from the gross pool and has no interest in the winning outcome. Further, the payout amount for the Instant Racing pool is determined by the amounts the players wager; there are no fixed odds. The operation of the Instant Racing pool is consistent with the Model Rules for Pari-mutuel Wagering of the Association of Racing Commissioners International. Generally applied regulatory requirements for pari-mutuel wagering pools are met with the Instant Racing pools.

11. The races provided in the Instant Racing system are not computer images or fictional events driven in some random fashion. There are no specifications within its system for predetermined wagering results or patron payout percentage. The recorded races used by the Instant Racing were conducted live at officially recognized racetracks under the supervision of a state regulatory body with official results determined without disqualification, coupling, dead heats or other post-race altering of the finish.

12. Instant Racing has a database of over 500,000 races from more than 40 racetracks. In the case of Instant Racing on recorded thoroughbred races, more than 20,000 races are used for distribution to the player terminals. The totalisator system is constantly creating different groups of 720 races which offer the patron the same likelihood of race outcomes. The groups and the races within those groups are selected by a random number generator located at the totalisator hub to ensure the security and integrity of the system. The random number generator has been certified to meet the test for randomness and is tested regularly by the Thoroughbred Racing Protective Bureau (TRPB) to ensure randomness in the race selection process. In addition, the TRPB tests the entire database monthly to ensure no pattern exists in the delivery of the races to the terminals. As part of the integrity checks on the system, the TRPB also audits the handicapping information for accuracy, verifies that the order of finish and payouts of the races match the day the race was first run, and inspects race videos for clarity. Similarly, the totalisator is audited using nationally recognized SAS70 audit protocols to ensure its integrity. Suspicious activity as to an unusual frequency of selecting winners is scrutinized in the same fashion and under the same standard as that applied to live racing. Lastly, Instant Racing meets all of the TRPB audit standards for pari-mutuel wagering.

13. The racing databases from which the race groups are selected are changed regularly to further ensure that the customer is not able to identify the race or predict its outcome in advance. The racing database is easy to reconfigure and can be changed as often as weekly based on the desires of the regulator. Racing databases can be reconfigured within 24 hours and can be restricted to races from only a particular jurisdiction.

14. Races used in Instant Racing are subject to signed agreements with the "host" racetrack that conducted the original race. This agreement allocates three percent of the takeout from the race used to the host racetrack which in turn shares these proceeds pursuant to agreements with its horsemen, breeders, or greyhound owners and trainers.

15. The Instant Racing system does provide for protections and controls to prevent or significantly reduce the possibility of a pari-mutuel pool on an Instant Racing event from being inappropriately manipulated. The Instant Racing system does sequester the racing information from pari-mutuel wagering pool participants and displays partial information required to apply skill to the betting process. The identity of the race participants and the individual location of the race are withheld from those intending to participate in the pari-mutuel wagering pool for that event. The race events are individually delivered to the totalisator system in a specified order from a secure location. The objective is to assure that no unfair advantage is given to a pari-mutuel pool participant with advance knowledge of the outcome of the previously run live race prior to closing the Instant Racing pari-mutuel wagering pool on that race.

16. Amtote, which operates the Instant Racing system, is a licensed totalizator company and operates under the jurisdiction of the Division. The Petitioners assert that

all equipment is stored in a secured location and operated exclusively by authorized personnel holding licenses issued by the Division. An audit trail is created in the totalisator system. The system triggers the video server to select the next Instant Race with no advance identifying knowledge. The next race in the wagering sequence is determined by a computerized algorithm written to make it impossible to determine in advance exactly which race will be presented to which Instant Race terminal at any designated facility.

17. The system uses the services of the TRPB for regular audits to monitor and analyze operations in addition to Amtote's SAS 70 reporting to verify system integrity. Additionally, the licensed facility administration has the ability to monitor wagering using player tracking programs available within the system. Suspicious activity as to an unusual frequency of selecting winners is scrutinized in the same fashion and under the same standard as that applied to live racing.

18. The system possesses the potential to audit post-event wagering patterns. The wagering patterns may be assessed subsequent to an Instant Race wager to determine if the wagering pattern in some fashion may disclose inappropriate wagering activity, access to otherwise nondisclosed information by one or more pool participants, or other improper activity.

CONCLUSIONS OF LAW

19. The Division is authorized to regulate the pari-mutuel industry and administer the provisions of Chapter 550, F.S., pursuant to Section 550.0251, F.S.

20. Sections 120.565(1) and (2), F.S., provide as follows:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances.

* * *

(2) The petition seeking a declaratory statement shall state with particularity the Petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the Petitioner believes may apply to the set of circumstances.

21. The purpose of a Declaratory Statement is to allow a Petitioner to select a proper course of action in advance. *Novick v. Department of Health, Board of Medicine*, 816 So. 2d 1237 (Fla. 5th DCA 2002). The Supreme Court of Florida, in *Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999), recognized that by enacting Section 120.565, F.S., the Legislature gave citizens a right to get a clear, binding answer from the agency on how the agency's statute and rules apply. In *Investment Corp of Palm Beach*, the Court also recognized the unique nature of this industry with limited participants who would almost invariably have an interest in a Declaratory Statement. The Court further found that changes to the Administrative Procedure Act allow for the issuance of Declaratory Statements even though the interest of persons who are not a party may be affected. *Id.* 747 So. 2d 374, at 378 and 385.

22. In this situation, the Pari-Mutuel industry has a very limited number of participants engaged in almost identical operations, differentiated under Chapter 550, F.S. only regarding the type of event to which the pari-mutuel wagering activity applies. As a consequence of the facts presented, the agency is permitted to simultaneously provide a Declaratory Statement and initiate rulemaking regarding Instant Racing both as it applies

to the Petitioners and other interested members of the Pari-Mutuel Wagering industry in the state.

23. Hamilton and the Intervenors have been issued permits which have been approved by election and have received licenses from the Division to conduct pari-mutuel operations at a location specified in their permits pursuant to the provisions of Chapter 550, F.S. In this instance Hamilton holds a valid pari-mutuel permit and license to conduct Jai-Alai, and the Intervenors hold similar pari-mutuel permits to conduct greyhound racing. The Petitioners require a Declaratory Statement as to whether Hamilton, as a holder of a valid Jai-Alai license may accept simulcasts of pari-mutuel racing events and employ those simulcast events in the operation of Amtote's proposed Instant Racing system at Hamilton's licensed pari-mutuel facility. Therefore, the Petitioners are entitled to a Declaratory Statement regarding whether the pari-mutuel betting system of wagering known as Instant Racing is authorized for use in Florida at Hamilton's licensed pari-mutuel facility pursuant to Chapter 550, F.S. The Intervenors similarly authorized to intervene.

24. Florida courts have determined that the state may exercise greater control in the exercise of its police power to regulate gambling because the public interest and the public welfare are affected by legalized gambling. In *Hialeah Racing Association, Inc. v. Gulfstream Park Racing Association, Inc.*, 37 So. 2d 692, 694 (Fla. 1949), *appeal dismissed*, 336 U.S. 948, 69 S. Ct. 885, 93 L. Ed. 1104 (1949), the Florida Supreme Court found:

[a]uthorized gambling is a matter over which the state may exercise greater control and exercise its police power in a more arbitrary manner because of the noxious qualities of the enterprise as distinguished from those enterprises not affected with a public interest and those enterprises

over which the exercise of police power is not so essential for the public welfare.

25. Pari-mutuel wagering, is a form of gambling, which even though legal pursuant to the provisions of Chapter 550, F.S. has the greater potential to be injurious to the public welfare. See *Astral Liquors, Inc. v. Department of Business Regulation*, 463 So. 2d 1130, 1131-32 (Fla. 1985). The state exercises greater oversight over the conduct and outcome of pari-mutuel events because of the potential harm that gambling poses to the public and the increased harm it poses when the results of pari-mutuel contests are manipulated for the gain of a few at the expense of other participants. The state requires a greater level of certainty and verification that each pari-mutuel contest upon which wagering is authorized is conducted according to published rules and requirements by which all participants participate.

26. Section 550.002(22), F.S. defines the term “pari-mutuel” as:

A system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.

27. Based on the findings of fact, the Division finds that competent substantial evidence exists that the Instant Race system is “pari-mutuel” wagering as that term is defined by Section 550.002(22), F.S. The Petitioners has demonstrated that the Instant Race system requires a set percentage of the wager be deducted as a commission to the operator to include taxes with the balance of the wager being available to the bettor on a particular race. First, the operator receives a take-out amount from the gross pool and the operator has no interest in the winning outcome. Second, the payout amount for the

instant racing pool is determined by the amounts the players wager and there are no fixed odds.

28. However, since the Instant Racing system does not utilize live racing being conducted at the permitholder's facility, the statutes that authorize pari-mutuel wagering at one facility on signals broadcast from other locations must be examined to determine whether Instant Racing is authorized by Chapter 550, Florida Statutes, as a "rebroadcast" of a simulcast or intertrack wagering signal as urged by the Petitioners.

29. Pari-mutuel wagering conducted on races and games received from tracks located outside the state of Florida is authorized by Section 550.3551, Florida Statutes. Specifically, Section 550.3551(3), Florida Statutes, authorizes horse tracks to receive broadcasts of horseraces conducted in other states and Section 550.3551(4), Florida Statutes, authorizes greyhound tracks and jai alai frontons to receive broadcasts of races or games conducted outside the state of Florida. Section 550.3551(5), Florida Statutes, restricts the direct receipt of a broadcast from a location from outside Florida to broadcasts received from an out-of-state permitholder who holds the same class of pari-mutuel permit held by the recipient.

30. Sections 550.3551(3)-(5), Florida Statutes, read as follows:

(3) Any horse track licensed under this chapter may receive broadcasts of horseraces conducted at other horse racetracks located outside this state at the racetrack enclosure of the licensee during its racing meet.

(a) All broadcasts of horseraces received from locations outside this state must comply with the provisions of the Interstate Horseracing Act of 1978, 92 Stat. 1811, 15 U.S.C. ss. 3001 et seq.

(b) Wagers accepted at the horse track in this state may be, but are not required to be, included in the pari-mutuel pools of the out-of-state horse track that broadcasts the race. Notwithstanding any contrary provisions of this chapter, if the horse track in this state elects to include wagers

accepted on such races in the pari-mutuel pools of the out-of-state horse track that broadcasts the race, from the amount wagered by patrons at the horse track in this state and included in the pari-mutuel pools of the out-of-state horse track, the horse track in this state shall deduct as the takeout from the amount wagered by patrons at the horse track in this state and included in the pari-mutuel pools of the out-of-state horse track a percentage equal to the percentage deducted from the amount wagered at the out-of-state racetrack as is authorized by the laws of the jurisdiction exercising regulatory authority over the out-of-state horse track.

(c) All forms of pari-mutuel wagering are allowed on races broadcast under this section, and all money wagered by patrons on such races shall be computed as part of the total amount of money wagered at each racing performance for purposes of taxation under ss. 550.0951, 550.09512, and 550.09515. Section 550.2625(2)(a), (b), and (c) does not apply to any money wagered on races broadcast under this section. Similarly, the takeout shall be increased by breaks and uncashed tickets for wagers on races broadcast under this section, notwithstanding any contrary provision of this chapter.

(4) Any dog track or fronton licensed under this chapter may receive broadcasts of dograces or jai alai games conducted at other tracks or frontons located outside the state at the track enclosure of the licensee during its operational meeting. All forms of pari-mutuel wagering are allowed on dograces or jai alai games broadcast under this subsection. All money wagered by patrons on dograces broadcast under this subsection shall be computed in the amount of money wagered each performance for purposes of taxation under ss. 550.0951 and 550.09511.

(5) A pari-mutuel permitholder licensed under this chapter may not receive broadcasts of races or games from outside this state except from an out-of-state pari-mutuel permitholder who holds the same type or class of pari-mutuel permit as the pari-mutuel permitholder licensed under this chapter who intends to receive the broadcast.

31. While the receipt of a signal from outside the state of Florida constitutes “simulcasting” as that term is defined by Section 550.002(32), Florida Statutes, Sections 550.3551(3)-(5), Florida Statutes, do not use the terms “simulcast” or “simulcasting” to authorize the receipt of broadcasts from out-of-state, they merely authorize the receipt of “broadcasts” or a “broadcast” signal by an in-state pari-mutuel facility.

32. Section 550.002(3), Florida Statutes, defines “broadcast” as follows:

(3) "Broadcast" means the broadcast, transmission, simulcast, or exhibition in any medium or manner by means that may include, but are not limited to, community antenna systems that receive and retransmit television or radio signals by wire, cable, or otherwise to television or radio sets, and cable origination networks or programmers that transmit programming to community antenna televisions or closed-circuit systems by wire, cable, satellite, or otherwise.

[Emphasis added.]

33. The definition of "broadcast" contained in Section 550.002(3), Florida Statutes, includes the term "simulcast." "Simulcast" is defined by Section 550.002(32), Florida Statutes, as follows:

(32) "Simulcasting" means broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location, by the transmittal, retransmittal, reception, and rebroadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or rebroadcasting the events.

[Emphasis added.]

34. As it pertains to events occurring at an out-of-state location, the definition of "simulcasting" in Section 550.00(32), Florida Statutes, uses the present tense terms "receiving" and "events occurring live" to describe receipt of races broadcast from out-of-state. Petitioners assert that the term "rebroadcasting" which is contained within the definition of "simulcasting" would authorize Instant Racing since the previously run races are stored for rebroadcast at a later time. However, the term "rebroadcasting" is only used within the context of methods by which those "events occurring live" may be received. At the time simulcast wagering authorization was authorized by Section 550.3551, F.S., the Instant Racing system was not in existence.

35. Further, the authorization to conduct intertrack wagering also indicates an intention by the legislature that the races and games transmitted from in-state locations be

conducted live. Sections 550.615(1)-(2), Florida Statutes, which authorize intertrack wagering, read as follows:

(1) Any horserace permitholder licensed under this chapter which has conducted a full schedule of live racing may, at any time, receive broadcasts of horseraces and accept wagers on horseraces conducted by horserace permitholders licensed under this chapter at its facility.

(2) Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

36. Section 550.002(17), Florida Statutes, defines “intertrack wagering” as follows:

(17) "Intertrack wager" means a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal rebroadcast from, another in-state pari-mutuel facility.

[Emphasis added.]

37. The definition of “intertrack” wager authorizes pari-mutuel wagering on two types of signals, live events at another in-state pari-mutuel facility or the rebroadcast of a simulcast signal from another in-state pari-mutuel facility. The reference to a live race or game is plain on its face. As indicated earlier, the receipt of simulcast signals are restricted by Section 550.3551(5), Florida Statutes, to an out-of-state permitholder with the same class of pari-mutuel permit. Thus, the reference to a “simulcast signal rebroadcast from, another in-state pari-mutuel facility” contained in the definition of “intertrack wager” found in Section 550.002(17), Florida Statutes, authorizes wagering on races or games of a different class of out-of-state permitholder that are “rebroadcast” from an authorized in-state recipient.

38. As noted, while authorized by statute, pari-mutuel wagering is a form of gambling. In *PPI, Inc. v. Dep't of Business and Professional Reg.*, 698 So. 2d 306, (Fla. 3rd DCA 1997), the Court noted that statutes authorizing gambling are “an exception to long-standing Florida law that prohibits all such forms of gambling” and that such exceptions are to be strictly construed. *Id.* at 308. Therefore, it would not be appropriate to interpret the definitions of simulcast or intertrack wagering to include recorded and stored races as those used in Instant Racing.

39. While the Petitioners have presented evidence that the Instant Racing system is pari-mutuel and contains sufficient safeguards to ensure fairness and integrity for those playing, it is clear from the statutory language of Section 550.002 (17) and (32), F.S. that the legislature contemplated that races be live (*See* Section 550.002 (17), F.S., “performed live” and Section 550.002 (32) F.S., referring to “occurring live”). In order for Instant Racing to fit within the statutory framework of chapter 550 F.S., specific authority for the use of historic races in both “simulcast” as well as “intertrack wager” would have to be present as well as any necessary rulemaking authority to implement such a system. Therefore, it does not appear that the Legislature intended to authorize forms of pari-mutuel wagering such as those utilized by the Instant Racing system.

THEREFORE, the foregoing findings of fact and conclusions of law, the Petition is answered in the negative. The Instant Racing system is not authorized by the above referenced provisions of Chapter 550, Florida Statutes, and the request to employ the Instant Racing system is hereby DENIED.

DONE AND ORDERED this 26TH day of February, 2009.



David J. Roberts, Director
Division of Pari-Mutuel Wagering
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify this 26th day of February, 2009, that a true copy of the foregoing has been provided by U.S. Certified Mail to the following:

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