IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

FLORIDA QUARTER HORSE TRACK ASSOCIATION, a Florida Corporation,

Plaintiff,

Case No. 2009-CA-2088

v.

STATE OF FLORIDA, DEPARTMENT OF BUSINESS REGULATION, DIVISION OF PARI-MUTUEL WAGERING; JEFFERSON COUNTY KENNEL CLUB, a Florida Corporation; WASHINGTON COUNTY KENNEL CLUB, a Florida Corporation; and PENSACOLA GREYHOUND TRACK, a Florida Corporation,

Defendants.
_____/

JEFFERSON COUNTY KENNEL CLUB, a Florida Corporation; WASHINGTON COUNTY KENNEL CLUB, a Florida Corporation; and PENSACOLA GREYHOUND TRACK, a Florida Corporation,

Counter-Plaintiffs,

v.

FLORIDA QUARTER HORSE TRACK ASSOCIATION, a Florida Corporation, GRETNA RACING, LLC, a Florida Limited Liability Company; and ELH JEFFERSON, LLC, a Florida Limited Liability Company,

Counter-Defendants,

and

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

Crossclaim-Defendant.
_____/

CALDER RACE COURSE, INC.'S MOTION TO INTERVENE

COMES NOW, Calder Race Course, Inc. ("Calder"), by and through its undersigned counsel, pursuant to Florida Rule of Civil Procedure 1.230 and files this Motion to Intervene into

the instant case and states as follows:

1. On or about May 29, 2009, Plaintiff, Florida Quarter Horse Track Association, a Florida corporation, (the "FQHTA") filed this action against Defendants, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Department"), as well as Jefferson County Kennel Club ("JCKC"), Washington Kennel Club ("WCKC"), and Pensacola Greyhound Track ("PGT"), (collectively referred to as "Defendant Greyhound Tracks") asserting that Section 550.09514, Florida Statutes, is unconstitutional.

2. On or about September 8, 2009, the Defendant Greyhound Tracks filed an Answer to the Plaintiff's Complaint and filed a Counterclaim against Gretna Racing, LLC ("Gretna Racing") and ELH Jefferson, LLC ("ELH Racing"), two (2) newly permitted quarter horse facilities, and a Crossclaim against the Department challenging the validity of Section 550.334(4), Florida Statutes, which exempts quarter horse permit applicants from the requirements of Section 550.054, Florida Statutes, which generally sets forth application requirements for pari-mutuel permits.

3. In the Counterclaim/Crossclaim, the Defendant Greyhound Tracks asserts that Section 550.334(4), Florida Statutes, violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the "equal before the law" and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution. In addition, Defendant Greyhound Tracks' Counterclaim/Crossclaim challenges the legality of the Department's approval of quarter horse racing permits to Gretna Racing and ELH Racing asserting such approval is in violation of certain provisions of Chapter 550, Florida Statutes, which sets forth a comprehensive regulatory scheme regarding the conduct of pari-mutuel wagering, and in the alternative, challenges Section 550.334(1), Florida Statutes, as violating the

Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the "equal before the law" and Due Process provisions of Article I, Sections 2 and 9 of the Florida Constitution, should the Court determine that such section exempts quarter horse permits from the referendum requirement of Section 550.0651, Florida Statutes.

4. Calder Race Course, Inc. ("Calder") is the holder of a valid pari-mutuel permit and operating license issued by the Department pursuant to the provisions of Chapter 550, Florida Statutes, for the conduct of thoroughbred horse racing. Collectively, the permit and operating license authorize Calder to conduct pari-mutuel wagering pursuant to Chapter 550, Florida Statutes, at its facility in Miami-Dade County, Florida.

5. Section 550.054(2), Florida Statutes, precludes the issuance of a pari-mutuel permit to conduct horseracing, harness horseracing, or dog racing within 100 miles of an existing pari-mutuel facility.

6. There are several quarter horse applications pending before the Department for facilities in Miami-Dade County, Florida. The purported quarter horse facilities would be located in close proximity to Calder's pari-mutuel facility, and within 100 miles of Calder's pari-mutuel facility. Thus, if the pending quarter horse permits are granted, then such quarter horse permit holders would be able to operate cardrooms, quarter horse racing, and possibly thoroughbred racing within Calder's existing market area because Section 550.334, Florida Statutes, arbitrarily exempts quarter horse permits from the 100 mile requirement in Section 550.054(2), Florida Statutes, notwithstanding the fact that it falls within the same class "horseracing."

7. The exemption of quarter horse racing from the permitting requirements applicable to the entire pari-mutuel industry, and in particular the horseracing industry is

arbitrary and discriminatory, and confers benefits on quarter horse permits to the detriment of Calder.

8. As the holder of an existing licensed and permitted pari-mutual facility regulated by the provisions of Chapter 550, Florida Statutes, Calder has an interest in the interpretation and application of Chapter 550, Florida Statutes, and specifically Section 550.334, Florida Statutes, with respect to quarter horse permit applications. See Miami Beach Kennel Club, Inc. v. Bd. Of Business Regulation, 265 So. 2d 373 (Fla. 3d DCA 1972)

9. Calder concurs with the allegations set forth by Defendant Greyhound Tracks in Counts I-VI of the Counterclaim/Crossclaim regarding Sections 550.334(1) and (4), and the allegations that the Department's interpretation of Section 550.334, Florida Statutes, in granting quarter horse permits is contrary to Chapter 550, Florida Statutes.

10. Florida Rule of Civil Procedure 1.230 provides:

> Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be subordinate to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

11. Florida Rule of Civil Procedure 1.210(a) further provides in pertinent part that, "Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause."

12. Section 86.091, Florida Statutes, provides, "When a declaratory judgment is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration."

13. Intervention pursuant to Florida Rule of Civil Procedure 1.230 is a matter within the court's discretion. Union Central Life Insurance Company v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992) (holding that an insurance company whose policy contained a provision entitling the

company to subrogation rights against responsible parties was entitled to intervene to assert and protect its interests.) The Court in Union Central acknowledged that the test to determine what interest entitles a party to intervene is:

> [T]he interest which will entitle a person to intervene . . . must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.

Id. at 507 (citing Morgareidge v. Howey, 78 So. 14, 15 (Fla. 1918). See also Stefanos v. Rivera-Berrios, 673 So. 2d 12, 13 (Fla. 1996). The status of intervenor assures the right to be heard and the ability to appeal an adverse ruling. Union Central at 507. Intervention is explained as a two step analysis: first, the trial court must determine whether the interest asserted is appropriate for intervention, and second, the trial court must exercise its sound discretion to determine whether to permit intervention. Hausmann v. LM and JM, 806 So. 2d 511, 513 (Fla. 2001). "Consistent with the policies which it is intended to advance, intervention rule should in general be liberally construed." Grimes v. Walton County, 591 So. 2d 1091, 1093-94 (Fla. 1st DCA 1992).

14. Calder does not seek to delay the proceedings. Calder seeks to intervene solely to protect its interest and ensure that the record regarding thoroughbred and quarter horse pari-mutuel permitting as it relates to Calder, and south Florida, is complete and accurate. Where litigation is still in the pleading stage and intervenors assure the court that their participation will not delay or disrupt proceedings, it is an abuse of discretion to deny a motion to intervene. Hartford Fire Insurance Company v. School Board of Dade County, 661 So. 2d 111, 112 (Fla. 3d DCA 1995).

15. Counsel for Calder has conferred with counsel for all parties and is authorized to represent the following:

a) Defendants/Counter-Plaintiffs, the Defendant Greyhound Tracks, DO NOT OBJECT to this Motion;

b) Defendant/Crossclaim-Defendant, Department, DOES NOT OBJECT to this Motion;

c) Plaintiff/Counter Defendants, FQHTA OBJECTS to this Motion; and

d) Counter –Defendants, Gretna Racing and ELH Racing, OBJECT to this Motion;

WHEREFORE, Calder respectfully requests that it be granted Intervenor status in the instant case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile or e-mail and U. S. Mail to the following interested parties this 14th day of October, 2009:

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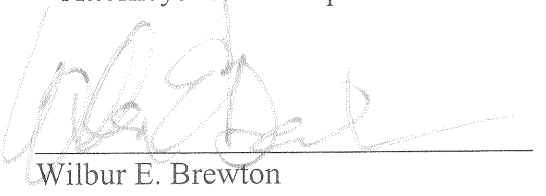

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