UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND
Greenbelt Division

In re:	)	
	)	
CLOVERLEAF ENTERPRISES, INC.,	)	**Case No. 09-20056 PM**
	)	**Chapter 11**
Debtor.	)	
	)	
	)	
	)	
CLOVERLEAF ENTERPRISES, INC.,	)	
	)	
Plaintiff,	)	
v.	)	**Adv. Proc. No. 09-00459**
	)	
MARYLAND THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.,	)	
	)	
MARYLAND HORSE BREEDERS ASSOCIATION, INC.,	)	
	)	
TRACKNET MEDIA GROUP, LLC,	)	
	)	
CHURCHILL DOWNS, INC., T/A ARLINGTON PARK,	)	
	)	
NEW YORK RACING ASSOCIATION , T/A BELMONT PARK,	)	
	)	
CHURCHILL DOWNS, INC., T/A CALDER RACE COURSE,	)	
	)	
CHURCHILL DOWNS, INC.,	)	
	)	
DELAWARE RACING ASSOCIATION, D/B/A DELAWARE PARK,	)	
	)	
GREENWOOD RACING, INC. , T/A PHILADELPHIA PARK	)	
	)	
PRAIRIE MEADOWS,	)	
	)	
RIVER DOWNS,	)	

COTTONWOOD RACING CORPORATION,

THE MARYLAND JOCKEY CLUB OF BALTIMORE CITY, INC.,
Serve: The Corporation Trust Inc.
300 E. Lombard Street
Baltimore, Maryland 21202

LAUREL RACING ASSOCIATION, LP,
Serve: The Corporation Trust Inc.
300 E. Lombard Street
Baltimore, Maryland 21202

THOMAS CHUCKAS, JR.,

Serve: Thomas Chuckas, Jr.
5201 Park Heights Avenue
Baltimore, MD 21215

DENNIS SMOTER,

Serve: Dennis Smoter
5201 Park Heights Avenue
Baltimore, MD 21215

RICHARD J. HOFFBERGER, and

Serve: Richard J. Hoffberger
6314 Windsor Mill Road
Baltimore, MD 21207

ALAN FOREMAN, ESQ.,

Serve: Alan Foreman, Esq.
6314 Windsor Mill Road
Baltimore, MD 21207

Defendants.

AMENDED COMPLAINT FOR DAMAGES FROM VIOLATIONS OF SECTIONS ONE AND TWO OF THE SHERMAN ACT (15 U.S.C. §§ 1 & 2), UNFAIR COMPETITION, BREACH OF CONTRACT, TORTIOUS INTERFERENCE WITH CONTRACT, AND FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

Cloverleaf Enterprises, Inc. ("Debtor"), by and through its undersigned counsel, brings this Amended Complaint against the Defendants pursuant to Rule 7015 of the Bankruptcy Rules, the Local Rules of this Court, and by stipulation of the parties, and hereby respectfully alleges as follows:

NATURE OF THE ACTION

PARTIES

1. Debtor is a Maryland corporation that is in the business of owning and operating Rosecroft Raceway ("Rosecroft"). At all times relevant to this Amended Complaint, Debtor's principal offices were located at Fort Washington, Prince George's County, Maryland. From this location Debtor operates Rosecroft as a racetrack for harness racing, a training facility, and an off-track-betting location from which it accepts wagers on thoroughbred, harness, and quarterhorse races held at other racetracks within and outside the State of Maryland transmitted by electronic means to its facility.

2. On June 3, 2009, Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Maryland, Greenbelt Division. Debtor continues in possession of its property and is operating its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed, and no official committee of creditors has been established.

3. On July 6, 2009, Debtor filed an original Complaint against the following named defendants: Maryland Thoroughbred Horsemen's Association, Inc.; Maryland Horse Breeders Association, Inc.; TrackNet Media Group, LLC; Churchill Downs, Inc., T/A Arlington Park; New York Racing Association, T/A Belmont Park; Churchill Downs, Inc., T/A Calder Race

Course; Churchill Downs, Inc.; Delaware Racing Association, D/B/A Delaware Park; Greenwood Racing, Inc., T/A Philadelphia Park; Prairie Meadows; River Downs; and Cottonwood Racing Corp., each of whom was properly served pursuant to Rule 7004 of the Bankruptcy Rules. This Amended Complaint is filed against the above-named defendants, as well as additional defendants identified in paragraphs 17 to 22 below, pursuant to Rule 7015 of the Bankruptcy Rules, the Local Rules of this Court, and by stipulation of the parties.

4. Defendant Maryland Thoroughbred Horsemen's Association, Inc. ("MTHA") is a corporation engaged in the business of representing, assisting, and promoting the interests of Maryland's thoroughbred owners and trainers, whose principal place of business is in Baltimore, Maryland.

5. Defendant Maryland Horse Breeders Association, Inc. ("MHBA") is a corporation engaged in the business of horse breeding advocacy, including representing, assisting, and promoting the interests of Maryland's thoroughbred owners and trainers, whose principal place of business is in Timonium, Maryland.

6. Defendant TrackNet Media Group ("TrackNet") is a limited liability company engaged in the business of selling horse-racing content to wagering outlets, including racetracks, casinos, and off-track wagering facilities, whose principal place of business is in Louisville, Kentucky. Defendant TrackNet has a valid and binding agreement with Debtor that obligates TrackNet to send to Rosecroft simulcast signals of thoroughbred races held at, among other places, racetracks owned by Arlington Park, L.L.C., Calder Race Course, Inc., Churchill Downs, Inc., and Hollywood Park Racing Association. A copy of Debtor's agreement with TrackNet is attached as Exhibit A.

7. Defendant Churchill Downs, Inc., is a corporation engaged in the business of thoroughbred horse racing and owning and operating pari-mutuel wagering properties and businesses, whose principal place of business is in Louisville, Kentucky.

8. Defendant Churchill Downs, Inc., T/A Arlington Park, owns and operates Arlington Park, a racetrack facility engaged in the business of thoroughbred horse racing, whose principal place of business is in Arlington Heights, Illinois.

9. Defendant Churchill Downs, Inc., T/A Calder Race Course, owns and operates Calder Race Course, a racetrack facility engaged in the business of thoroughbred horse racing, whose principal place of business is in Miami Gardens, Florida.

10. Defendant New York Racing Association, T/A Belmont Park, owns and operates the three largest thoroughbred horse racing tracks in the State of New York, including Belmont Park, whose principal place of business is in Elmont, New York.

11. Defendant Delaware Racing Association, D/B/A Delaware Park, is an association engaged in the business of thoroughbred and Arabian horse racing, whose principal place of business is in Wilmington, Delaware.

12. Defendant Greenwood Racing, Inc., T/A Philadelphia Park, is a corporation engaged in the business of thoroughbred horse racing and gambling, whose principal place of business is in Bensalem, Pennsylvania.

13. Defendant Prairie Meadows is a corporation engaged in the business of thoroughbred horse racing and quarterhorse racing, whose principal place of business is in Altoona, Iowa.

14. Defendant River Downs is a racetrack facility engaged in the business of thoroughbred horse racing, whose principal place of business is in Cincinnati, Ohio.

15. Defendant Cottonwood Racing Corporation is a corporation engaged in the business of thoroughbred horse racing, whose principal place of business is in Claremore, Oklahoma.

16. Defendants TrackNet, Arlington Park, New York Racing Association, Calder Race Course, Churchill Downs, Delaware Park, Greenwood Racing, Prairie Meadows, River Downs, and Cottonwood Racing are collectively hereafter referred to as the "Out-of-State Racetrack Defendants." The Out-of-State Racetrack Defendants and their respective contracts with Debtor are identified more fully in Exhibit B hereto.

17. Defendant The Maryland Jockey Club of Baltimore City, Inc. ("MJC"), is a corporation engaged in the business of thoroughbred horse racing, whose principal place of business is in the City of Baltimore, Maryland.

18. Defendant Laurel Racing Association, LP, is a Maryland limited partnership engaged in the business of thoroughbred horse racing and related gambling activities whose principal place of business is in Laurel, Maryland.

19. Defendant Thomas Chuckas, Jr. is an individual who serves as the President of the MJC, whose principal place of business is in the City of Baltimore, Maryland.

20. Defendant Dennis Smoter is an individual who serves as the Vice President of the MJC, whose principal place of business is in the City of Baltimore, Maryland.

21. Defendant Richard J. Hoffberger is an individual who serves as the President of the MTHA, whose principal place of business is in the City of Baltimore, Maryland.

22. Defendant Alan Foreman, Esquire, is an individual who serves as General Counsel to the MTHA, whose principal place of business is in the City of Baltimore, Maryland.

JURISDICTION AND VENUE

23. This Adversary proceeding arises out of and relates to Debtor's Chapter 11 case. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 & 1334 and 15 U.S.C. § 3007(a). This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (G), & (O).

24. Venue is proper in this District pursuant to 28 U.S.C. § 1409 and 15 U.S.C. § 3007(b).

BACKGROUND ALLEGATIONS COMMON TO ALL COUNTS

A. Summary of Operations

25. Debtor owns and operates Rosecroft on 124 acres of land located in Fort Washington, Prince George's County, Maryland. Rosecroft has been in operation since 1949 and hosts live standardbred horse racing throughout the year. Pursuant to approval from the Maryland Racing Commission ("MRC"), Debtor has suspended live racing until September, 2010. Debtor continues to hold Maryland Sire Stakes Races. Rosecroft also operates training facilities and provides other services, including catering, concerts, boxing matches, car shows and other community events. Rosecroft employs approximately 210 people.

26. Rosecroft also operates an off-track betting ("OTB") facility, which accepts wagers on thoroughbred, harness, and quarterhorse races held at racetracks located within and outside the State of Maryland. The OTB facility is Rosecroft's main source of revenue. Rosecroft's revenue from the OTB facility is derived from its "take" from the handle of wagers placed by its patrons on simulcast races. In 2007 and 2008, Rosecroft's take from OTB wagering constituted approximately 95 percent of its total annual revenue. Continued and uninterrupted receipt of simulcast signals, therefore, is essential to Rosecroft's business.

27. Of the simulcast signals that Rosecroft receives, the most important come from thoroughbred tracks. Thoroughbred tracks simulcast the most lucrative races for wagering in the horse racing industry, including the Triple Crown (the Kentucky Derby, the Preakness Stakes, and the Belmont Stakes) and the Breeders' Cup races. For Rosecroft, the Triple Crown and the Breeders' Cup race days are financially the most significant days of the year. In 2007 and 2008, Rosecroft's take from all thoroughbred simulcast wagering constituted approximately 75 percent of its total annual revenue.

28. To ensure continued and uninterrupted service of thoroughbred signals, Rosecroft has entered into written simulcasting agreements ("Simulcasting Agreements") with approximately eighty-one (81) tracks around the world for the transmission of thoroughbred racing signals.

B. The Interstate Horseracing Act

29. In 1978, Congress passed the Interstate Horseracing Act ("IHA"), 15 U.S.C. §§ 3001 *et seq.*, to address the emergence of OTB sites and the impact of OTB operations on horse tracks with live racing. Under the IHA, interstate off-track betting is unlawful unless authorized by the racing commissions in both the state where the host racetrack is located and the state where wagers are accepted at the OTB site. *See* 15 U.S.C. §§ 3004(a)(2) & (3).

30. Assuming approval is granted from the relevant racing commissions, the IHA permits an OTB operator to accept wagers if it obtains the consent of the host racetrack, which requires the OTB operator to negotiate a contract with the host racetrack operator. *See* 15 U.S.C. § 3004(a)(1). The IHA provides that, as a condition precedent to granting its consent to the OTB to receive its simulcast signal, the host racetrack must obtain the consent of the horsemen's

group that represents the majority of the owners and trainers racing at the host racetrack. *See* 15 U.S.C. § 3004(a)(1)(A).

31. The IHA also requires that, before it can accept wagers, the OTB operator must obtain the consent of all currently operating tracks within 60 miles of the OTB site. If there are no currently operating tracks within 60 miles of the OTB site, then the OTB operator must obtain the consent of the closest currently operating track in the adjoining State. *See* 15 U.S.C. §§ 3004(b)(1)(A) & (B).

32. Two racetracks, Pimlico Race Course ("Pimlico") and Laurel Park (operated by defendant Laurel Racing Association, LP ("LRA")), operate in the State of Maryland within 60 miles of the OTB operated at Rosecroft. Both Pimlico and LRA are controlled by Defendant MJC. At certain times of the year, live thoroughbred horse races run at Pimlico and at Laurel Park. MJC also simulcasts thoroughbred races run at Pimlico and Laurel Park to out-of-state tracks and OTB sites, as well as to tracks and OTB sites within the State of Maryland, including Rosecroft.

33. Pursuant to the IHA, Defendant MTHA has given its consent to Defendant MJC to simulcast races run at Pimlico and Laurel Park. Defendant MTHA receives a percentage of MJC's take from simulcast wagering that occurs at Pimlico and Laurel Park. If the amounts wagered on simulcast races at Pimlico and Laurel Park increase, the revenue that MTHA receives increases as well.

34. Defendant MJC exercises the exclusive right within the State of Maryland, under the 60-mile consent provision of the IHA, *see* 15 U.S.C. § 3004(b)(1)(A), to consent to Rosecroft's import of simulcast signals from out-of-state thoroughbred tracks. As a result, MJC

possesses control over the lifeblood of Rosecroft's business, i.e., the ability to accept wagers on thoroughbred races simulcast from out-of-state tracks.

C. The Cross-Breed Simulcasting Memorandum of Understanding

35. Since 1993, with the approval of the MRC, Rosecroft has imported simulcast signals from out-of-state thoroughbred racetracks pursuant to a written agreement between Debtor and Defendants MJC and LRA. From time to time since 1993, Debtor and Defendants MJC and LRA have renegotiated the terms governing the export and import of simulcast signals by Pimlico, Laurel, and Rosecroft.

36. In March 2006, Debtor entered into a Cross-Breed Simulcasting Memorandum of Understanding ("MOU") with Defendants MJC, LRA, and MTHA, as well as non-defendant parties Cloverleaf Standardbred Owners Association, Inc., and Maryland Standardbred Breeders Association, Inc. A copy of the MOU is attached as Exhibit C. Under the MOU, the parties granted each other the relevant and necessary consents to allow Pimlico, Laurel, and Rosecroft to send and to receive simulcast signals.

37. Under the MOU, Debtor agreed to pay Defendant MJC an annual "Premium" of $5.9 million payable in 50 equal weekly installments of $118,000, less certain specified offsets for sums due to Debtor from Defendant MJC. Debtor's obligation to pay this Premium is conditioned upon "Rosecroft continu[ing] to receive signals from and accept wagers on substantially all of the thoroughbred racetracks it accepted wagers on in 2005." MOU at ¶ 2. The Premium was in addition to customary sums paid to the out-of-state host tracks.

38. In or about August 2008, Debtor's President, Kelley Rogers ("Rogers"), advised the President of Defendant MJC, Defendant Thomas Chuckas, that because of changed business and financial conditions, Debtor could not continue to pay MJC the $118,000 weekly payments

under the MOU. Rogers explained that, since March 2006, when the parties agreed to the MOU, Debtor's revenue from simulcast and live horse racing had declined steadily and, as a result, Debtor could not operate if it were required to continue to pay the weekly Premium. Rogers requested, and Defendant Chuckas agreed, to provide a one-time concession of payment of $470,000 for 2008 and to work with Rogers to re-negotiate the MOU so Rosecroft could continue to operate.

39. Debtor and Defendant Chuckas engaged in discussions to alter the terms of the MOU from in or about the fall of 2008 up to and including March 2009. Debtor was led to believe by Defendant Chuckas that Defendant MJC was working with the other thoroughbred interests and renegotiating the MOU in good faith.

40. As of March 2009, Debtor was current on all Premium payments to Defendant MJC incurred in 2008, but had not made any Premium payments to MJC incurred in 2009.

D. Antitrust Defendants Conspire to Deprive Rosecroft of Simulcast Signals of Thoroughbred Races and Attempt to Monopolize the Relevant Simulcast Wagering Market

41. Discussions concerning the terms of the MOU came to an end, in or about March 2009, when, upon information and belief, Defendants MJC, LRA, MTHA and individual defendants, Thomas Chuckas, Dennis Smoter, Richard Hoffberger, and Alan Foreman (collectively, the "Antitrust Defendants"), combined and conspired to form a group boycott that would deprive Debtor of simulcast signals from out-of-state and Maryland-based racetracks. The purpose of Antitrust Defendants' group boycott was to drive Debtor out of business and, thereby, to eliminate their main competition with respect to the business of accepting wagers on out-of-state races. By driving Debtor out of business, Antitrust Defendants would control all but one of the OTB facilities in the State of Maryland. (The only exception would be Ocean Downs

Racetrack, a small facility approximately 100 miles from the Baltimore-Washington, D.C. metropolitan area, operating in Berlin, Maryland.) Wagering patrons in the relevant geographic market, therefore, would have no reasonable alternative to wagering on out-of-state races at OTB facilities controlled by Antitrust Defendants.

42. The Antitrust Defendants sought to effectuate the group boycott and their attempt to monopolize the simulcast wagering market in the relevant geographic market by three methods:

a. First, Antitrust Defendants combined and conspired among themselves and with others to initiate proceedings before the MRC to unlawfully revoke the MRC's approval of Debtor's right to receive simulcast signals of thoroughbred races;

b. Second, Antitrust Defendants combined and conspired with various out-of-state thoroughbred tracks and out-of-state thoroughbred horseman's groups to unlawfully terminate simulcast signals to Rosecroft, despite the existence of valid and binding contracts between Rosecroft and the out-of-state tracks that obligated them to send their simulcast signals to Rosecroft;

c. Third, the Antitrust Defendants combined and conspired among themselves and with others to unlawfully deprive Rosecroft of the simulcast signal of in-state thoroughbred races.

Through these concerted actions and the timing of these actions – immediately before the start of the Triple Crown, the most lucrative horse racing series of the year – Defendants intended to (1) eliminate competition for patrons who place wagers on simulcast horse races in the relevant geographic market; (2) monopolize simulcast wagering on horse races in the relevant geographic market; and (3) maximize the financial and reputational harm to Debtor.

April 28, 2009—the Maryland Racing Commission's Public Hearing

43. The Triple Crown consists of three thoroughbred horse races: (1) the Kentucky Derby, run at Churchill Downs in Louisville, Kentucky; (2) the Preakness Stakes, run at Pimlico in Baltimore, Maryland; and (3) the Belmont Stakes, run at Belmont Park in Elmont, New York. For Debtor, the race days of the Triple Crown are the most important revenue-generating days of the year. On those days, Rosecroft serves more patrons, accepts more wagers, and sells more concessions than on any other business days. Antitrust Defendants were well aware of the importance of the Triple Crown race days to Debtor.

44. In 2009 the Kentucky Derby ran on May 2. Only four days before the running of the Kentucky Derby, on April 28, 2009, Antitrust Defendants petitioned the MRC to revoke its consent to Debtor's receipt of simulcast signals of out-of-state thoroughbred races. Debtors' President, Rogers, arrived at the MRC meeting on April 28, 2009, only to learn for the first time that on the MRC's agenda was the issue whether to revoke the MRC's consent to Debtor's receipt of simulcast signals of out-of-state thoroughbred races. Rogers objected to the revocation of consent because, among other grounds, the Commission had not complied with statutorily required notice and opportunity to be heard procedures to consider a proposed revocation of its consent.

45. Notwithstanding these objections, and upon the insistence of Antitrust Defendants, the MRC illegally voted "to withdraw its consent for [Debtor] to accept 'interstate off-track wagers' as required by 15 U.S.C. § 3004, and to withdraw its approval for [Debtor] to contract to hold pari-mutuel betting on thoroughbred races held at an out-of-state track. . . " Also at the Antitrust Defendants' urging, the MRC illegally ordered Debtor to notify out-of-state tracks regarding the MRC's ruling "that each of the out-of-state thoroughbred tracks is to

immediately cease and desist from providing its races to" Debtor and that Debtor "immediately is to cease and desist from conducting pari-mutuel betting on any out-of-state thoroughbred races."

46. On the very same day as the MRC's meeting and immediately following the MRC's decision, Defendant Dennis Smoter, Vice-President of MJC, sent an email addressed to "EVERYONE" stating: "**THE MJC AND [DEBTOR] ARE IN THE MIDST OF A CONTRACT DISPUTE. OUR COMMISSION HAS WITHDRAWN THEIR APPROVAL FOR [DEBTOR] TO RECEIVE THOROUGHBRED SIMULCASTS. OUR HORSEMEN [DEFENDANT MTHA] SUPPORT THIS INITIATIVE**." The April 28, 2009, email from Defendant Smoter also attached a press release in which the MJC proclaimed: "[T]he Maryland Racing Commission voted to withdraw approval of [Debtor] to import thoroughbred signals, effective midnight, April 29." The purpose of Defendant Smoter's email communication was to urge the recipients of the email – out-of-state tracks and out-of-state horseman's groups that controlled simulcast signals of thoroughbred races – to disregard their existing obligations to Debtor and to join their group boycott.

47. Two days after the MRC hearing, Defendants' anticompetitive efforts began to be bear fruit, as out-of-state tracks began to cease sending simulcast signals of thoroughbred races to Rosecroft. On April 30, 2009, Defendant TrackNet sent Debtor a letter stating that "we are notifying you that, effective immediately, we will cease sending to you for wagering purposes the racing signals of any TrackNet affiliated thoroughbred racetrack." TrackNet controlled the simulcast signals for at least six out-of-state tracks, including Churchill Downs, where the Kentucky Derby is run. As a direct result of Antitrust Defendants' concerted acts, Debtor was placed at significant risk of not receiving the simulcast signal from TrackNet and Churchill

Downs, thereby jeopardizing the ability of bettors to wager on the Kentucky Derby and other Derby Day races at Rosecroft.

May 1, 2009—the Day Before the Kentucky Derby

48. The day before the Kentucky Derby, Antitrust Defendants targeted and urged the Kentucky Horse Racing Authority and Churchill Downs to disregard their existing obligations to Debtor and to join their group boycott of Debtor. On May 1, 2009, Defendant Chuckas wrote to the MRC and purported to withdraw, under the IHA, Defendant MJC's consent to Rosecroft's receipt of simulcast signals of out-of-state thoroughbred races. Defendant Chuckas specifically objected "to the conduct by [Debtor] of betting on the Kentucky Derby Day racing program" and requested "that the Commission take such action as is needed to prevent the conduct of betting by Rosecroft on that program." Defendant Chuckas sent a copy of his May 1 letter to the Kentucky Horse Racing Authority and to Churchill Downs in order to "assure that Rosecroft be denied the ability to conduct co-mingled simulcast betting on Churchill Downs programs including without limitation, the Derby Day program." Defendant MJC did not have the right to withdraw consent or otherwise interrupt the transmission of signals to Debtor at the time and in the manner that they did. On information and belief, Defendant MJC and Chuckas' true purpose for purporting to withdraw consent was to implement and effectuate a widespread group boycott against Debtor and to attempt to monopolize the market for simulcast wagering on out-of-state and in-state races in the relevant geographic market.

49. Also, on May 1, 2009, Defendant Chuckas urged other out-of-state thoroughbred racetracks to disregard their existing obligations to Debtor and to join the Antitrust Defendants' group boycott of Debtor. In a memorandum addressed to "Host Tracks Simulcasting Races to [Debtor]" and "Racing Commissions in Host Tracks States," Defendant Chuckas wrote that

Debtor is in "serious breach" of the MOU and that Defendant MJC: (1) "objects to and withdraws its previous approval under the [IHA] to the conduct by [Debtor] of betting on any out-of-state races"; (2) "specifically objects to the conduct by [Debtor] of co-mingled simulcast betting on any racing programs emanating from your host racetrack and host state"; and (3) "request[s] that you do not allow the conduct of betting by Rosecroft on such racing programs." Defendant MJC did not have the right to withdraw consent or otherwise interrupt the transmission of signals to Debtor at the time and in the manner that they did. On information and belief, Defendant MJC and Chuckas' true purpose for purporting to withdraw MJC's consent was to implement and effectuate a widespread group boycott against Debtor and to attempt to monopolize the market for simulcast wagering on out-of-state and in-state races in the relevant geographic market.

50. Antitrust Defendants specifically intended for their anticompetitive conduct to prevent Rosecroft from receiving the Kentucky Derby simulcast signal. To that end, Defendant MJC prepared advertisements in advance of the May 2, 2009, Kentucky Derby in which it boasted "the ONLY PLACES in the Washington, D.C./Baltimore Area to watch & wager on the May 2 Kentucky Derby" included five locations—none of which was Rosecroft.

51. On the afternoon of May 1, 2009, on Debtor's motion, the Honorable Sean Wallace, Judge of the Circuit Court of Prince George's County, Maryland, issued a Temporary Restraining Order ("TRO") in favor of Debtor. The TRO provided, inter alia: "ORDERED, that [Maryland Racing Commission] is hereby temporarily enjoined from preventing or prohibiting [Debtor] from accepting simulcast transmissions; and it is further ... ORDERED, that [Debtor] shall be allowed to receive all nature of all simulcast signals from out of state, including the

Kentucky Derby, pending further Court action." A copy of the TRO is attached hereto as Exhibit D.

52. Notwithstanding the TRO, Antitrust Defendants persisted in urging out-of-state tracks and horsemen's groups to cease sending signals to Debtor. In the early evening of May 1, 2009, Defendant Smoter sent a mass email marked "Importance: High" to "Thoroughbred Simulcast Partners" stating in bold lettering: "**Please be reminded that the Maryland Jockey Club has WITHDRAWN its consent to allow Rosecroft to import out-of-state thoroughbred simulcasts under conditions set forth in the *INTERSTATE HORSERACING ACT OF 1978*. We ask all of our thoroughbred simulcast partners to continue to with hold [sic] their signals. (A second copy of the letter—originally sent at 1:20 pm EDT today—is attached.) Thanks for your help, Dennis Smoter, MJC**".

53. Upon information and belief, Defendant Alan Foreman furthered the Antitrust Defendants' conspiracy by calling and writing out-of-state tracks and horseman's groups to urge them to join the group boycott and cease transmitting their simulcast signals to Debtor.

54. On May 1, 2009, notwithstanding the TRO and as a direct result of Antitrust Defendants' efforts to urge out-of-state tracks and horsemen's groups to join the group boycott, a number of out-of-state tracks ceased sending simulcast signals to Debtor, including: Evangeline Downs, Churchill Downs, Golden Gate Race Track, Pimlico Race Course, Lone Star Park, Thistledown Race Track, Calder Race Course, River Downs Race Track, Charles Town Races & Slots, Penn National Race Track, Prairie Meadows Race Track, Arlington Park Race Track, Delaware Race Track, Philadelphia Park Race Track, Finger Lake Race Track, Northlands Race Track, and Tampa Bay Race Track.

55. In the early morning hours of May 2, 2009, Debtor notified out-of-state tracks, including those with whom Debtor had contracts to receive simulcast signals, of the TRO. Debtor advised all out-of-state tracks, including Churchill Downs, to re-establish their simulcast signals.

56. Notice of the TRO did not, however, stop some out-of-state tracks from terminating simulcast signals. For instance, one out-of-state track owner, Woodbine Entertainment Group, emailed Debtor on May 2, 2009 stating: "[I]t appears that [Rosecroft] does not have the necessary approvals to simulcast our product. Therefore, I don't think that we have any choice but to suspend permission for Rosecroft to simulcast the Woodbine Thoroughbred product effective Sunday, May 3, 2009."

May 2, 2009—The Day of the Kentucky Derby

57. As a result of Antitrust Defendants' conspiratorial actions, patrons in the relevant geographic market who wished to wager on the Kentucky Derby and the Derby Day races were limited in where they could bet on the races. Patrons who arrived at Rosecroft to wager on the Derby Day races learned that TrackNet and Churchill Downs had refused to simulcast the Kentucky Derby to Rosecroft. Patrons were told that Debtor was undertaking legal efforts to ensure receipt of the Churchill Downs simulcast signal. Many patrons left because of the uncertainty whether they would be able to wager on the Kentucky Derby and other races.

58. On May 2, 2009, Debtor ultimately obtained a TRO from the Honorable Deborah Chasanow, United States District Judge for the District of Maryland. The TRO enjoined TrackNet and Churchill Downs from denying its simulcast signal to Debtor. Debtor received the simulcast signal from Churchill Downs only a short time before post time for the Kentucky Derby. By that time, many of Debtor's patrons had left Rosecroft, and Debtor was forced to

refund the price of admission to many patrons. In addition, Debtor provided free food to patrons in order to persuade them to stay in the facility and as damage control and as an expression of Debtor's goodwill towards its patrons.

After the Kentucky Derby

59. After May 2, 2009, out-of-state tracks and horsemen's groups continued to join the group boycott and ceased sending simulcast signals to Debtor, including but not necessarily limited to: Delaware Thoroughbred Horsemen's Association (May 5); New Jersey Thoroughbred Horsemen's Association, Inc. (May 4, 2009); Pennsylvania Horsemen's Benevolent & Protective Association (May 5, 2009); Maryland Thoroughbred Horsemen's Association (May 6, 2009); Maryland Horse Breeders Association (May 8); New England Horsemen's Benevolent & Protective Association, Inc. (May 12, 2009); Suffolk Downs (May 12, 2009); and Minnesota Horsemen's Benevolent & Protective Association (May 20, 2009).

60. On May 6, 2009, in furtherance of the Antitrust Defendants' conspiracy, Defendant MTHA took steps to ensure that Debtor would not receive simulcast signals from Pimlico and Laurel, which had ceased sending signals to Rosecroft on April 29, 2009. By letter dated May 6, 2009, Defendant Richard Hoffberger wrote the MJC and others, stating that the MTHA "withdraws it approval for [the MJC] and Laurel Racing Association Limited Partnership to send the live Maryland Thoroughbred signal for purposes of intertrack wagering to Rosecroft." The MTHA did not have the right to withdraw consent or otherwise interrupt the transmission of signals to Debtor at the time and in the manner that they did. On information and belief, the MTHA's true purpose for purporting to withdraw consent was to implement and effectuate a group boycott against Debtor and to enable MJC to monopolize the market for simulcast wagering on out-of-state and in-state races in the relevant geographic market.

61. As a direct consequence of Antitrust Defendants' actions, Debtor did not receive the simulcast signal from Pimlico on May 16, 2009, for the Preakness Stakes, the second leg of the Triple Crown, and other races run at Pimlico that day. MTHA's actions eliminated competition for wagering on the Preakness Stakes and other races in the relevant geographic market, as betting patrons could not bet on those races at Rosecroft. MTHA's actions also directly caused Debtor to suffer significant financial and reputational injury.

Status of Simulcast Signals of Thoroughbred Races

62. Before Antitrust Defendants' anticompetitive conduct, Rosecroft was receiving approximately forty-two (42) simulcast signals of thoroughbred races. As a direct result of Antitrust Defendants' conduct, as of November 2009, Rosecroft was receiving approximately only twenty-two (22) simulcast signals of thoroughbred races. Debtor's revenue from wagering on simulcast thoroughbred races has materially declined.

COUNT I – VIOLATION OF § 1 OF THE SHERMAN ACT
(Antitrust Defendants)

63. Debtor repeats and realleges the allegations contained in paragraphs 1 through 62 as if set forth fully herein.

64. Antitrust Defendants actions as alleged herein violate Section 1 of the Sherman Act, which prohibits contracts, combinations, and conspiracies in restraint of trade. *See* 15 U.S.C. § 1.

Interstate Trade and Commerce

65. The activities of Antitrust Defendants, as described in this Amended Complaint, were and are within the flow of interstate commerce and have substantially adversely affected interstate commerce.

The Relevant Market

66. The relevant product market is the facilities which receive simulcast signals and accept wagers on simulcast horse races that take place on tracks outside and inside the State of Maryland.

67. The relevant geographic market is the State of Maryland, the District of Columbia, and other areas within reasonable geographic proximity of travel to OTB locations within the State of Maryland.

The Conspiracy

68. Upon information and belief, in or around Spring 2009, Antitrust Defendants agreed and conspired to form a group boycott that would deprive Debtor of simulcast signals from out-of-state and Maryland-based thoroughbred racetracks in violation of Section 1 of the Sherman Act.

69. Antitrust Defendants conspired among themselves and with others to effectuate a group boycott against Debtor with specific intent to: (1) drive Debtor out of business; (2) eliminate competition for customers who wager on simulcast horse races in the relevant geographic market; and (3) monopolize the market for wagering on simulcast horse races in the relevant geographic market.

70. Antitrust Defendants knew that their concerted activity would significantly diminish Debtor's capacity to collect off-track bets and generate revenue, and otherwise cause harm to Debtor including, but not limited to, injuring Debtor's reputation and goodwill.

71. Antitrust Defendants did not have the right to withdraw consent or otherwise interrupt the transmission of simulcast signals to Debtor at the time and in the manner that they did.

Injury and Damages

72. Antitrust Defendants' group boycott of Debtor was injurious to competition in ways the antitrust laws were intended to prevent. As a direct and proximate result of Antitrust Defendants' actions, patrons of simulcast wagering had fewer opportunities and locations to bet on simulcast races within the State of Maryland.

73. As a direct and proximate result of Antitrust Defendants' anticompetitive conduct, Debtor's business and company goodwill have been and will continue to be damaged.

74. Antitrust Defendants' anticompetitive actions and effects were specifically intended to harm Debtor.

COUNT II – VIOLATION OF § 2 OF THE SHERMAN ACT
(Antitrust Defendants)

75. Debtor repeats and realleges the allegations contained in paragraphs 1 through 74 as if set forth fully herein.

76. Antitrust Defendants' actions as alleged herein violate Section 2 of the Sherman Act, which prohibits attempted monopolization and combinations and conspiracies to monopolize any part of trade or commerce. *See* 15 U.S.C. § 2.

77. Antitrust Defendants have illegally attempted to monopolize and combined and conspired to monopolize, among themselves and with others, the market for simulcast wagering on out-of-state and in-state races in the relevant geographic market. Antitrust Defendants engaged in a planned and executed strategy to deprive Rosecroft of simulcast signals of out-of-state and in-state thoroughbred races with specific intent to: (1) drive Debtor out of business; (2) eliminate competition for customers who wager on simulcast horse races in the relevant geographic market; and (3) monopolize the market for wagering on simulcast horse races in the relevant geographic market.

78. Debtor has been damaged by the unlawful and anticompetitive actions of Antitrust Defendants, both financially and in its reputation, as a result of its reduced capacity to accept wagers on out-of-state and in-state thoroughbred races, including the Triple Crown races.

79. As a direct and proximate result of Antitrust Defendants' actions, Debtor's business and company goodwill have been and will continue to be damaged by the anticompetitive effects of Antitrust Defendants' conduct.

80. Antitrust Defendants' anticompetitive actions and effects were specifically intended to harm Debtor.

COUNT III – UNFAIR COMPETITION IN VIOLATION OF MARYLAND LAW
(Antitrust Defendants)

81. Debtor repeats and realleges the allegations contained in paragraphs 1 through 80 as if set forth fully herein.

82. Antitrust Defendants have engaged in unfair competition in the field of business by refusing to deal with Debtor and conspiring to withdraw consents and simulcast signals that Debtor requires in order to conduct its business activities.

83. Antitrust Defendants have conspired and agreed to engage in unfair competition and unfair methods that are wrong in nature and the result of malicious or evil intent.

84. Antitrust Defendants actions were willful, wanton, unconscionable, in bad faith and with corrupt motive or reckless disregard of the rights of Debtor.

85. Antitrust Defendants performed an unlawful act, intentionally or wantonly, without legal justification or excuse but with an evil purpose or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure Debtor.

86. Antitrust Debtor has been damaged by the Defendants' unfair competition in an amount to be determined at trial.

COUNT IV – BREACH OF CONTRACT
(MTHA, MHBA, MJC, and LRA)

87. Debtor repeats and realleges the allegations contained in paragraphs 1 through 86 as if set forth fully herein.

88. MTHA, MHBA, MJC, and LRA entered into the MOU with Debtor in March 2006.

89. The MOU expressly acknowledges that its terms were negotiated and agreed to "in order to foster the best interests of the racing industry in the State of Maryland and end the public conflict between the two breeds." MOU ¶ 15. Moreover, paragraph 15 of the MOU explicitly requires that all parties to the MOU "continue to operate cross-breed simulcasting under its terms and conditions" and that "[a]ll parties and horsemen's organizations pledge to use a good faith effort to seek the approval of all parties."

90. Defendants MTHA, MHBA, MJC, and LRA breached the MOU, including the provisions of paragraph 15 of the MOU, when they failed or refused to consent to Debtor's receipt of simulcast signals as required under the MOU and actively encouraged others to deprive Debtor of simulcast signals.

91. Debtor has been damaged by the breach of the MOU in an amount to be determined at trial.

COUNT V – BREACH OF CONTRACT
(Out-of-State Racetrack Defendants and TrackNet)

92. Debtor repeats and realleges the allegations contained in paragraphs 1 through 91 as if set forth fully herein.

93. The Out-of-State Racetrack Defendants and TrackNet are obligated under their respective Simulcasting Agreements to provide the simulcast signal described therein to Debtor.

94. The Out-of-State Racetrack Defendants and TrackNet have failed or refused to provide the simulcast signal to Debtor as required under the respective Simulcasting Agreements and they are in breach of said agreements.

95. Debtor has been damaged by the breach of the Simulcasting Agreements by the Out-of-State Racetrack Defendants and TrackNet in an amount to be determined at trial.

COUNT VI – TORTIOUS INTERFERENCE WITH CONTRACT
(MTHA, MHBA, MJC, LRA, and TrackNet)

96. Debtor repeats and realleges the allegations contained in paragraphs 1 through 95 as if set forth fully herein.

97. The Simulcasting Agreements described in Exhibit B are valid and binding contracts between Debtor and the respective Out-of-State Racetrack Defendants.

98. On information and belief, Defendants MTHA, MHBA, MJC, LRA, and TrackNet have directed and have attempted to direct the Out-of-State Racetrack Defendants to cease providing simulcast signals to Debtor in violation of the Simulcasting Agreements.

99. Although the MRC is the only entity in the State of Maryland with authority to direct the interruption of service of the Out-of-State Racetrack Defendants under the IHA, the Out-of-State Racetrack Defendants have terminated the simulcast service based upon the instruction from MTHA, MHBA, MJC, LRA, and TrackNet.

100. Neither MTHA, MHBA, MJC, LRA nor TrackNet have the authority under the IHA to direct the Out-of-State Racetrack defendants to cease providing simulcast signals to Debtor.

101. Debtor has been damaged by the tortious interference by MTHA, MHBA MJC, LRA, and TrackNet with Debtor's contracts with the Out-of-State Racetrack Defendants

resulting in their breach of the Simulcasting Agreements, causing damage in an amount to be determined at trial.

COUNT VII – DECLARATORY JUDGMENT
(MTHA, MHBA, MJC, LRA)

102. Debtor repeats and realleges the allegations contained in paragraphs 1 through 101 as if set forth fully herein.

103. In early 2006 when the parties were negotiating the terms of the MOU, the parties intended that the agreement would provide an absolute consent to the simulcast of out-of-state races until 2021.

104. The MOU then served as the basis by which Rosecroft, Pimlico, and Laurel, three current debtors in possession, exchanged their consent for the operation of simulcast racing in accordance with the IHA. Based on these consents and relying thereon, Rosecroft, and on information and belief, Pimlico and Laurel, respectively, entered into numerous Simulcasting Agreements with the Out-of-State Racetracks and others for the provision of simulcast signals.

105. Without this mutual consent none of the Maryland racetracks would be in compliance with the IHA, which requires the consent of racing establishments within 60 miles of an OTB facility.

106. The mutual consents therefore have been fully performed and relied upon. Accordingly, Debtor seeks a declaration that the mutual exchange of consent is binding on the defendant parties to the MOU – MTHA, MHBA, MJC, and LRA – until December 31, 2021.

COUNT VIII –INJUNCTIVE RELIEF
(Out-of-State Racetrack Defendants and TrackNet)

107. Debtor repeats and realleges the allegations contained in paragraphs 1 through 106 as if set forth fully herein.

108. The termination of the simulcast signals by Out-of-State Racetrack Defendants and TrackNet has caused substantial immediate and irreparable harm to Debtor in the loss of wagering clientele and other damage to customer relations, loss of profits and loss of good will. Such damages are not susceptible to monetary valuation and Debtor has no adequate remedy at law.

109. Pursuant to 11 U.S.C. § 105, Debtor is entitled to injunctive relief enjoining Out-of-State Racetrack Defendants and TrackNet from taking any action to interfere with Debtors' relationships with Out-of-State Racetracks Defendants for the provision of simulcast signals.

110. In addition, Debtor is entitled to an order directing the Out-of-State Racetrack Defendants and TrackNet to immediately resume their transmission of simulcast signals in accordance with the terms of their respective Simulcasting Agreements.

COUNT IX – RIGHT OF SETOFF
(MJC and LRA)

111. Debtor repeats and realleges the allegations contained in paragraphs 1 through 110 as if set forth fully herein.

112. The IHA requires Defendants MJC and LRA to have the express consent of Debtor in order to conduct simulcast wagering. Debtor has provided such consent to MJC and LRA under the MOU.

113. The MOU obligates Defendants MJC and LRA to make certain payments to Debtor.

114. Defendants MJC and LRA have not made these payments since January 1, 2009. Prior to March 5, 2009, their respective petition dates, the Jockey Club and LRA owed Debtor the sum of $311,367.99 on account of their simulcast wagering.

115. Since their petitions were filed on March 5, 2009, Debtor projects $ 1,134,169.71 in fees have accrued under the MOU in favor of Debtor.

116. Debtor is entitled to judgment in favor in the amount of $1,445,537.70.

COUNT X – CLAIM OBJECTION
(MJC and LRA)

117. Debtor repeats and realleges the allegations contained in paragraphs 1 through 116 as if set forth fully herein.

118. On or about July 14, 2009, the MJC and LRA filed a proof of claim in Debtor's Bankruptcy Case seeking to recover $ 1,762,042.00 allegedly due under the MOU.

119. The MOU expressly states that Debtor's obligation to pay the Premium is conditioned upon "Rosecroft continu[ing] to receive signals from and accept wagers on substantially all of the thoroughbred racetracks it accepted wagers on in 2005." MOU at ¶ 2.

120. Debtor is not receiving all of the simulcast signals it did in 2005. Debtor has not received a full compliment of simulcast signals since April 2009. Therefore, no obligation to pay the Premium is accruing under the MOU.

121. In addition, the conduct of the MJC and LRA renders the payment obligation thereunder invalid.

122. Accordingly, Debtor seeks the disallowance of the MJC and LRA proof of claim in its entirety.

COUNT XI – CLAIM OBJECTION
(MHBA and MTHA)

123. Debtor repeats and realleges the allegations contained in paragraphs 1 through 122 as if set forth fully herein.

124. On or about July 17, 2009, the MHBA filed a proof of claim in Debtor's Bankruptcy Case seeking to recover $105,272.52 allegedly due under the MOU. On or about August 6, 2009, the MTHA filed a proof of claim in Debtor's Bankruptcy Case seeking to recover $828,159.74 allegedly due under the MOU.

125. The MOU expressly states that Debtor's obligation to pay the Premium is conditioned upon "Rosecroft continu[ing] to receive signals from and accept wagers on substantially all of the thoroughbred racetracks it accepted wagers on in 2005." MOU at ¶ 2.

126. Debtor is not receiving all of the simulcast signals it did in 2005. Debtor has not received a full compliment of simulcast signals since April 2009. Therefore, no obligation to pay the Premium is accruing under the MOU.

127. In addition, the conduct of MHBA and MTHA renders the payment obligation thereunder invalid.

128. Finally, to the extent any claim is allowable on account of the MOU, only the MJC has standing to pursue payment of any such claim. Any other claims arising under the MOU must be disallowed as duplicative.

129. Accordingly, Debtor seeks the disallowance of the MHBA proof of claim and the MTHA proof of claim in their entirety.

WHEREFORE, Debtor respectfully requests the Court to:

(i) adjudge Antitrust Defendants' conduct as alleged herein as violations of the Sherman Act, 15 U.S.C. §§ 1 & 2;

(ii) enter an injunction pursuant to 15 U.S.C. § 26 preventing Antitrust Defendants and those acting in privity with Antitrust Defendants from engaging in further violations of the Sherman Act, 15 U.S.C. §§ 1 & 2;

(iii) enter judgment in an amount to be determined at trial, including interest thereon, for treble damages resulting from Antitrust Defendants' violation of the Sherman Act, 15 U.S.C. §§ 1, 2, & 15;

(iv) award Debtor attorneys fees and costs, pursuant to the Sherman Act, 15 U.S.C. § 15;

(v) award Debtor compensatory and punitive damages for Antitrust Defendants' engaging in unfair competition pursuant to Maryland law;

(vi) enter judgment in its favor in an amount to be determined by this Court on account of the breach of the MOU by MTHA, MHBA, MJC, and LRA;

(vii) enter judgment in its favor in an amount to be determined by this Court on account of the breach of the respective Simulcasting Agreements by the respective Out-of-State Racetracks and TrackNet;

(viii) enter judgment in its favor in an amount to de determined by this Court against TrackNet, MTHA and MHBA on account of their tortious interference with the respective Simulcasting Agreements between Debtor and the respective Out-of-State Racetracks;

(ix) declare that the mutual consents to interstate simulcasting as set forth in the MOU are binding until December 31, 2021, and not subject to unilateral termination by any party;

(x) enjoin Defendants MTHA, MHBA, MJC, and LRA from taking any action to terminate the MOU or otherwise interfere with Debtor's simulcast signal from the Out-of-State Racetracks Defendants;

(xi) enter an injunction to compel the Out-of-State Racetracks Defendants and TrackNet to immediately resume sending the simulcast signals to Debtor;

(xii) declare that MJC and/or LRA owes Debtor $1,134,169.71 pursuant to the MOU on account of their continued simulcast wagering for the period from March 5, 2009;

(xiii) disallow the Proofs of Claim filed by MJC, LRA, MTHA, and MHBA; and

grant such other and further relief as is necessary, proper and just.

Dated: November 16, 2009

Respectfully submitted,

/s/ Nelson C. Cohen
William W. Taylor, III (USDC MD Bar #03375)
Nelson C. Cohen (USDC MD Bar #08994)
Virginia Whitehill Guldi (USDC MD Bar #09616)
Zuckerman Spaeder LLP
1800 M Street, N.W., Suite 1000
Washington, DC 20036
202-778-1823 — Telephone
202-822-8106 — Facsimile
ncohen@zuckerman.com

/s/ Joseph B. Chazen
Joseph B. Chazen (USDC MD Bar #03154)
Meyers, Rodbell & Rosenbaum, P.A.
6801 Kenilworth Avenue, Suite 400
Riverdale, MD 20737
301-209-2533 — Telephone
301-779-5746 — Facsimile
bmeyers@mrrlaw.net

Attorneys for Debtor and
Debtor-in-Possession

CERTIFICATE OF SERVICE

I, Nelson C. Cohen, hereby certify that on November 16, 2009, a copy of the forgoing Amended Complaint was sent electronically to:

Lawrence D. Coppel, Esq.
Susan J. Klein, Esq.
Gordon, Feinblatt, Rothman,
Hoffberger & Hollander, LLC
233 East Redwood Street
Baltimore, MD 21202

Darek Bushnaq, Esq.
Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202

Joseph A Lynott, III, Esq.
Lynott, Lynott & Parsons, P.A
11 N. Washington Street
Suite 220
Rockville, MD 20850

Scott W. Foley, Esq.
Shapiro Sher Guinot & Sandler
36 S. Charles St., 20th Floor
Baltimore, MD 21201-3147

Gary H. Leibowitz, Esq.
Cole, Schotz, Meisel, Forman & Leonard
300 E. Lombard Street, Suite 2000
Baltimore, MD 21202

and via United States First Class Mail, postage prepaid to:

Michael L. Vild, Esq.
c/o Delaware Racing Association
777 Delaware Park Blvd.
Wilmington, DE 19804

Robert Green, President
Greenwood Racing, Inc.
t/a Philadelphia Park
3001 Street Road
Bensalem, PA 19020

Gary Palmer, President/CEO
Prairie Meadows
1 Prairie Meadows Drive
Altoona, IA 50009-0001

Jack Hanessian, General Manager
River Downs
6301 Kellogg Avenue
Cincinnati, OH 45230-0826

Mark Enterline, Consulting General Manager
Cottonwood Racing Corporation
20900 S. 4200 Road
Claremore, OK 74017

/s/ Nelson Cohen
Nelson C. Cohen