

**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE NO. 2011-CA-000232**

**AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.**

APPELLANT

v.

EDWARD BENNETT, ET AL.

APPELLEES

**APPELLEES' RESPONSE TO APPELLANT'S
MOTION FOR STAY PENDING APPEAL**

Appellees Edward R. Bennett, Carl T. Fischer, Jr., Kris Knight, Tom Ferree, Simon Fredericks, M.D., and Lynn W. Via (collectively the "Members") submit this response to the motion of Appellant American Saddlebred Horse Association ("ASHA") to stay the Fayette Circuit Court's ruling pending appeal.

I. INTRODUCTION

In April 2009, the Members became concerned about the management of ASHA, a non-profit corporation with an annual budget of approximately \$2 million. Accordingly, they requested to review specific categories of the non-profit's corporate records relating to large expenditures and other management issues. In response, ASHA refused to produce most of the records and filed a lawsuit against the Members. On January 6, 2011, the Fayette Circuit Court rejected ASHA's arguments and entered a summary judgment requiring ASHA to permit its members to inspect ASHA's corporate books and records pursuant to KRS § 273.233.¹ On February 3, 2011, ASHA appealed the circuit court's decision. On February 7, 2011, ASHA moved the Fayette Circuit Court to stay enforcement of its decision during the pendency of the

¹ The Fayette Circuit Court issued its Opinion, Order and Judgment on December 2, 2010. A copy is attached as Ex. A. The December 2, 2010, order was made final and appealable by an order dated January 6, 2011. A copy of the January 6, 2011, order is attached as Ex. B.

appeal. At the conclusion of a hearing on February 18, 2011, the circuit court denied ASHA's motion to stay.² However, pursuant to CR 65.08(1), the circuit court issued a limited stay of 45 days to permit ASHA to appeal to this Court for a stay under CR 65.08(2). The circuit court made it clear that its judgment would be enforceable beginning April 4, 2011, unless ASHA obtained a stay in an appellate court pursuant to CR 65.08. Approximately one month later, on March 17, 2011, ASHA moved this Court for a stay pending the appeal pursuant to CR 65.08(2).³ For the reasons stated below, ASHA's motion for a stay should be denied.

II. ARGUMENT

A. **ASHA Must Seek Relief Pursuant To CR 65.08 To Obtain A Stay of the Fayette Circuit Court's Ruling**

The Fayette Circuit Court's decision requires ASHA, a non-profit corporation, to allow its members to inspect ASHA's corporate books and records, and it prohibits ASHA from withholding records based upon an unfounded claim of privacy. Thus, the circuit court's decision grants injunctive relief and any motion to stay the judgment must proceed under CR 65.08. This has already been confirmed by the circuit court and ASHA.

In denying ASHA's motion to stay enforcement of the decision pending an appeal, the Fayette Circuit Court stated that its decision may be enforced on April 4, 2011 unless ASHA obtains relief in an appellate court "pursuant to CR 65.08."⁴ ASHA did not file a motion to alter, amend or vacate that decision. Furthermore, ASHA expressly moved this Court pursuant to CR 65.08 in seeking its "Emergency Motion for Stay." Nonetheless, ASHA begins its argument by

² A copy of the Fayette Circuit Court's order denying ASHA's motion to stay is attached as Ex. C.

³ ASHA also filed an "Emergency Motion for Stay" on March 17, 2011. Of course, the "emergency" was created of ASHA's own volition. Although ASHA could have filed its motion much sooner, ASHA waited almost one month to file in this Court the same motion it had already briefed in the circuit court.

⁴ See Ex. C.

claiming that CR 65.08 is not applicable.⁵ ASHA's argument is without merit, was rejected by the Fayette Circuit Court, and it should be rejected here.

At the same time that ASHA is seeking "emergency" relief from this Court to stay enforcement of the circuit court's decision, ASHA remarkably contends that the judgment does not require or prohibit any action by ASHA. To begin, if the circuit court's judgment neither requires nor prohibits action by ASHA, there is no need for ASHA to request a stay of the judgment pending the appeal.

Furthermore, ASHA sought relief in this Court under CR 65.08. It is preposterous for ASHA to then claim that an unrelated and conflicting rule, CR 62.03, should apply. CR 62.03 addresses the procedure to stay a judgment awarding monetary damages or property. Here, the circuit court's judgment does not award monetary damages or property interest. Instead, it requires ASHA to comply with the law and produce specific records sought by the Members. The judgment also prohibits ASHA from withholding responsive corporate records based upon ASHA's unfounded claim that those corporate records are private or confidential. Accordingly, the circuit court's judgment falls squarely within the definition of injunctive relief.⁶ Motions to stay judgments granting or denying injunctive relief must proceed under CR 65.08.⁷ The circuit court, in its order denying ASHA's request for a stay, confirmed that ASHA must proceed under CR 65.08.⁸

⁵ See ASHA's Motion for Stay at 3 – 4.

⁶ CR 65.01 states that "[a]n injunction may restrict or mandatorily direct the doing of an act."

⁷ *Bella Gardens Apartments, Ltd. V. Johnson*, 642 S.W.2d 898, 900 (Ky. 1982) ("[T]here is no room for doubt that CR 65.08 is the exclusive authority under which a stay may be had after a final judgment granting or denying injunctive relief has been appealed.").

⁸ See Ex. C.

B. ASHA Is Not Entitled To A Stay

To obtain a stay under CR 65.08, “the movant must demonstrate the following: (1) a probability of irreparable injury pending the appeal; (2) the equities weigh in favor of the requested relief; *and* (3) the appeal presents a substantial question on the merits or that the movant has a probability of success on appeal.” 19 SHERYL G. SNYDER ET AL., KENTUCKY PRACTICE APPELLATE PRACTICE § 12:6(E) (2006) (emphasis added). If ASHA is unable to meet its burden on any of those three factors, ASHA is not entitled to a stay pending the appeal. The standard is analogous to the federal rule, under which “federal courts have required the movant to make a strong showing of probable success on appeal.” *Id.* (citing *Reed v. Rhodes*, 549 F.2d 1050 (6th Cir. 1976)). ASHA has not met its burden under CR 65.08, and its motion should be denied.

1. ASHA has not established a probability that it will suffer an irreparable injury unless the circuit court judgment is stayed pending appeal.

The circuit court’s judgment requires ASHA, a non-profit corporation, to produce certain corporate records for inspection by its members pursuant to the plain language of KRS § 273.233. ASHA makes multiple, blanket statements that it will suffer harm if required to allow its members to inspect the non-profit’s corporate records. However, ASHA fails to state a single example of the type of harm it would suffer by offering transparency to its members. The circuit court rejected ASHA’s claim, and this Court should too.

ASHA’s first attempt to establish a probability of irreparable harm is to argue that it “has spent significant time, money and other resources” on this litigation and, therefore, it has a strong interest in withholding the records from its members.⁹ Of course, the fact that ASHA spent significant resources litigating the interpretation of a plainly worded statute has no bearing on

⁹ See ASHA Motion for Stay at 6.

whether ASHA will be irreparably harmed if required to produce the corporate records sought for review by the Members. Spending significant resources at the lower court in a losing effort does not equate to a probability of irreparable harm unless a stay is granted pending appeal.

Next, ASHA contends that it would be denied “any possibility of relief on appeal” if the circuit court’s judgment is not stayed pending appeal.¹⁰ That is not true. The circuit court’s judgment confirms that KRS § 273.233 entitles all members of the non-profit corporation to inspect the corporate books and record. Accordingly, unless ASHA is successful on the substantive issue on appeal, ASHA members will be entitled to inspect ASHA’s books and records now and in the future. Thus, ASHA must continue its appeal, regardless of whether it obtains a stay, to maintain its position that it has the right to hide the non-profit’s books and records from its members in the future.

Finally, ASHA argues that it believes that its records relating to how it manages an approximately \$2 million annual budget, employees’ salaries, board meetings and committee meetings are private and confidential. Of course, ASHA cannot rely upon its own misunderstanding of the law to support its motion for a stay pending appeal. Furthermore, ASHA fails to state with particularity how it would be irreparably harmed if forced to release those corporate records for inspection by the Members. The circuit court reviewed the list of corporate records sought by the Members, rejected ASHA’s claims of privacy, and ruled that all of the corporate records sought by the Members must be produced under the plain language of KRS § 273.233.

In short, ASHA argues that it will be harmed if a stay is not entered simply because it does not want to allow its members to inspect the non-profit’s corporate records. ASHA has not

¹⁰ *Id.*

offered any valid explanation of how it would be harmed at all, much less irreparably, by producing the corporate records for inspection by the Members. For instance, ASHA does not claim that the records sought by the Members contain valuable business secrets. Nor does ASHA claim that the cost of producing the records for inspection will be too much for ASHA.¹¹ ASHA has not met its burden.

2. ASHA has refused to allow its members to inspect the non-profit's books and records for almost two years. The equities do not weigh in favor of permitting ASHA to avoid oversight by its members any longer.

ASHA is a non-profit entity subject to appropriate oversight by its members pursuant to KRS § 273.233. Kentuckians have witnessed in recent months the importance of non-profit organizations being subjected to appropriate oversight.¹² By letter dated February 10, 2009, a certified public accountant identified "significant deficiencies" in ASHA's accounting policies.¹³ Since ASHA has an annual budget of approximately \$2 million, the Members, by letter dated April 20, 2009, requested to inspect ASHA's corporate books and records.¹⁴ ASHA refused to comply with the law, and eventually sued its own members in an effort to avoid producing the corporate records for inspection.¹⁵ During the underlying litigation, ASHA's highest paid employee refused to appear for a scheduled deposition, resigned, and moved to California.¹⁶ Although KRS § 273.233 and the Fayette Circuit Court's decision make it clear that ASHA must

¹¹ In fact, the Members are ready to pay a reasonable cost for any copies they request.

¹² For example, the Lexington-Fayette Urban County Airport Board and, more recently, the Passport Health Plan.

¹³ A copy of the letter dated February 10, 2009, is attached as Ex. D.

¹⁴ A copy of the April 20, 2009 letter is attached as Ex. E.

¹⁵ On pages 2 – 3 of its Motion for Stay, ASHA acknowledges that it is required to allow its members to inspect accounting and financial records. Nonetheless, ASHA submitted a sworn statement to the Fayette Circuit Court confirming that ASHA refused to provide records relating to salaries, commissions and bonuses that it paid to its employees. See Affidavit of Alan Balch, attached as Ex. F.

¹⁶ See Adamson e-mail to Houston dated March 12, 2010, attached as Ex. G; see also Getty letter to Houston dated March 30, 2010, attached as Ex. H.

allow its members to inspect the non-profit's corporate records, ASHA has avoided oversight by its members for almost two years. The equities do not weigh in favor of allowing ASHA to delay complying with the law any further.

ASHA attempts to add a requirement that the Members must establish a showing of fraud or mismanagement on the part of ASHA before members may enforce their inspection rights under the law. There is no such requirement for obvious reasons. ASHA controls the corporate books and records. If it refuses to produce those records for inspection by its members, ASHA may make it difficult, if not impossible, for any evidence of mismanagement to ever surface. Furthermore, the equities weigh in favor of allowing the Members to inspect the books and records sooner, rather than later, so that the members may address any potential management issue as soon as possible.

3. ASHA's appeal does not present substantial questions on the merits, nor can ASHA establish a probability of success on appeal.

The third and final factor is another strong impediment to ASHA meeting its burden under CR 65.08. ASHA must establish that its appeal presents a substantial question on the merits or that it has a probability of success on appeal. ASHA cannot meet that burden. As the circuit court stated in its order granting summary judgment in favor of the Members, the language in KRS § 273.233 is plain, and all of the cases discussing identical statutes support the circuit court's ruling. The Fayette Circuit Court also stated in its opinion, that the General Assembly "said what it meant and meant what it said."¹⁷ KRS § 273.233 states, in pertinent part, "All books and records of a corporation may be inspected and copied by any member, or the member's agent or attorney, for any proper purpose at any reasonable time." If ASHA does not like the law, it should ask the legislature to amend the law to allow non-profits in Kentucky to

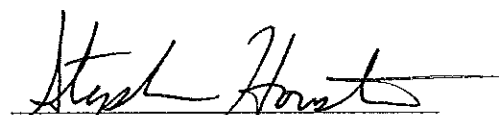
¹⁷ Fayette Circuit Court Opinion, Order and Judgment dated December 2, 2010 at 4, attached as Ex. A.

hide financial and other corporate records from members of the non-profit. Unless the legislature takes such absurd action, ASHA is not likely to convince any court to interpret the plain language of KRS § 273.233 to allow non-profits to avoid transparency to their members.

IV. CONCLUSION

ASHA's motion for a stay of the Final Judgment pending appeal should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen A. Houston", written over a horizontal line.

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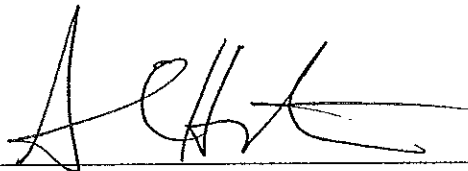
CERTIFICATE OF SERVICE

A copy of the foregoing document was served via electronic mail and First Class United States Mail, postage prepaid, to the following on the 25th day of March, 2011:

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EXHIBIT A

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION
CIVIL ACTION NO. 09-CI-5292

DEC - 2 2010

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.

PLAINTIFF

V

OPINION, ORDER AND JUDGMENT

EDWARD R. BENNETT, ET AL

DEFENDANTS

This matter is before the Court on Joint Motions for Summary Judgment by the Plaintiff, American Saddlebred Horse Association, Inc. (hereinafter "ASHA"), and the Defendants, Edward R. Bennet, Carl T. Fischer, Jr., Kris Knight, Tom Ferrebee, Simon Fredricks, MD and Lynn W. Via (hereinafter "Defendants" or the "Members") on ASHA's Complaint and the Members' Counter-Claim. Both parties are seeking Declaratory Relief by way of an adjudication as to the interpretation of KRS 273.233. The Court has had the benefit of excellent Memoranda of Law from both parties and has considered equally excellent Oral Arguments on the pending Motions. The Court has taken the matter under advisement and now renders its Opinion, Order and Judgment.

FACTUAL BACKGROUND AND CHRONOLOGY OF EVENTS

The ASHA is a non-profit corporation established to promote the American Saddlebred breed of horse and to promote the American Saddlebred industry. The Defendants are Members of the ASHA. By letter dated February 10, 2009, a CPA firm identified "significant deficiencies" in the accounting policies of the ASHA. By letter dated April 20, 2009, the Defendants-Members requested books and records containing certain information indicating reasons for

concern and articulated reasons supporting their request for information, documents, books and requests from the ASHA. There followed an exchange of correspondence between the parties and Counsel relative to that request of the Members to ASHA. On June 15, 2009, the ASHA allowed representatives of the Members to inspect portions of the books and records of the corporation but refused to permit inspection of other books, records and documents. The ASHA also refused to allow the representatives of the Members to copy any of the materials produced. This was followed by another exchange of correspondence between the Members and the ASHA.

On or about July 7, 2009, the ASHA amended its bylaws to identify, with specificity, the limited categories of documents that it deemed appropriate for inspection by its members. The Amended Bylaw, effective July 7, 2009, provided in part as follows:

“...[A] member of the Association in good standing may be permitted to inspect the articles of incorporation, bylaws, financial statements, minutes, the record of executive compensation, as disclosed on IRS Form 990, and list of the names and addresses of members of the Association during regular business hours, upon at least five (5) business days prior written notice of his or her request stating the purpose of the inspection.”

A limited production of documents transpired on July 29, 2009 which the Members felt were not responsive to their request. Copying of the documents produced were limited by the ASHA. Thereafter, there followed continued correspondence and communications between the ASHA and the Members and their respective representatives and Counsel. Following any agreement between the parties as to resolution of the dispute, the ASHA filed this Declaratory Judgment which drew the Counter-Claim of the Members also seeking Declaratory relief from the Court.

OPINION AND ANALYSIS OF ISSUE PRESENTED

Both Motions for Summary Judgment and Declaratory Relief center around the statutory interpretation of KRS 273.233 which is found in the chapter applicable to “Nonstock, Nonprofit Corporations and provides:

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principle office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent of attorney, for any proper purpose at any reasonable time.¹

That amendment to KRS 273.233 was effective July 15, 2010.

The ASHA argues that the first and second sentences of the 2009 language of KRS 273.233 be read together. Reading them together, argues the ASHA, the reference to “books and records” in the second sentence refers back to the classes of documents enumerated in the first sentence. Thus, argues the ASHA, “books and records” actually means “books and records of account” (i.e., accounting and financial records, minutes, and the membership list) but does not include every document or piece of paper in ASHA’s possession.

On the other hand, the Members argue that the first sentence of the statute identifies records that non-profit corporations are required to maintain whereas the second sentence of the statute provides to the members of a non-profit corporation a right to inspect “all books and

¹This was the language of the statute in 2009 when this dispute arose. The statute has been amended by the 2010 General Assembly to explicitly provide that the books and records inspected by a member may be copied by said member. The amendment in 2010 also expressly provided that the member’s right of inspection shall not be abolished or limited by the corporation’s articles of incorporation or bylaws.

records.” These are separate and distinct duties, responsibilities and rights mandated by the legislature as to both the non-profit corporation and its Members say the Members.

It is axiomatic and well-settled law that in the interpretation of a statute, the Court must give effect to its plain and ordinary meaning as derived from the language chosen by the General Assembly. The ASHA argues that general terms in a statute associated with specific terms should be construed as being limited to the specific terms and meaning. *Steinfeld v Jefferson County Fiscal Court*, 229 S.W.2d 319 (Ky. 1950). Also, argues the ASHA, a general rule of statutory construction is that enumeration of particular items excludes other items which are not specifically mentioned. *Board of Education of Rockcastle County v Kirby*, 926 S.W.2d 455 (Ky. 1996). On the other hand, the Members argue that statutes granting the right of inspection must be construed liberally. 88 ALR 3d 663 ¶ 2[a] and cases cited at footnote 28 of the Members’ Memorandum. Further, argues the Members, “books and records” should be given a broad construction so as to extend to all records, contracts, paper and correspondence to which the common law right of inspection of a stock holder might properly apply. 18 A. Am.Jur. 2d *Corporations* § 330 and cases cited at footnotes 29 and 30 of the Members’ Memorandum.

Taking all of these statutory construction principles to heart and looking at the “four corners” of the statutory language applicable in 2009 as set out above, this Court is of the Opinion and Judgment that the General Assembly “said what it meant and meant what it said.” Looking at the plain and ordinary everyday language of the referenced statute, it appears to this Court that there are separate and distinct rights, responsibilities and duties of first, the non-profit corporation, and secondly, its members.

If, the General Assembly meant that only the “books and records” set out in the first

sentence of the statute could be inspected by any member, the legislative branch could have certainly worded the second sentence of the statute accordingly. It would not take a Constitutional lawyer to draft language to that effect had the legislature intended to limit the inspection rights of the members of a non-profit corporation to just the enumerated items found in the first sentence of the statute. By way of example only and not meant as an intrusion into the legislative purgative or discretion, if the legislature had intended for the members of a non-profit corporation to only be able to inspect the enumerated items in the first sentence of the statute, it could have spelled out in the second sentence something like:

All such books and records of a corporation specifically set out and enumerated in the first sentence of this statute may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

This is but one example imagined by this Court that would have expressly limited the right of inspection of a member of a non-profit corporation as is argued by the ASHA. Clearly, the legislature did not include any such language or any other language to that affect in the statute effective in 2009. Rather, and significantly to this Court, the legislative language set out that:

All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time. (emphasis added)

In the Court's mind, had the legislature intended to limit the rights of inspection of a member of a non-profit corporation to only the enumerated items set out in the first sentence of the statute as argued by the ASHA, it could have certainly done so as suggested by the Court in the language above or similar language. On the other hand, the fact that the legislature did not include that language and rather included the all-inclusive description of "all books and

records” is a clear indication to this Court that it was the intent of the legislature to do exactly what the language of the statute, in its plain and ordinary every day meaning, expressly set forth, i.e., that “All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.” (emphasis added)

While there is no Kentucky case interpreting this statute, sister states support this Court’s interpretation of a similar statute interpreting the scope of the inspection rights granted to members of a non-profit corporation. South Dakota law is identical to the language of this Kentucky statute. In 2004, the Supreme Court of South Dakota held that “as a long as a member has stated a proper purpose, which is presumed, the member may inspect all books and records necessary to make an intelligent and searching investigation” *Lang v W.Providers Physician Org.*, 688 N.W. 2d 403, 407 - 08 (S.D. 2004) (citing *Patel v Illinois State Medical Society*, 698 N.E. 2d 588 (Ill. App. Ct. 1998).

The Illinois statute on the right of inspection differs only in that the right to inspection is afforded to only those members entitled to vote. The Appellate Court of Illinois held in *Patel v Illinois State Medical Society*, *supra* as follows:

The right to examine records may even extend to records for which a proper purpose has not been directly shown, so long as one has been shown for some records: “the shareholder is not required to establish a proper purpose for each record he requests. Once that purpose has been established, the shareholder’s right to inspect extends to all books and records necessary to make an intelligent and searching investigation and from which he can derive any information that will enable him to better protect his interest.”

Further, this Court does adopt the argument that inspection statutes are to be construed liberally. While this is not an “Open Records” case, the same general principle is applicable that

the right of a member of the general public or, in the case at bar, the right of a member of a non-profit corporation, should be inclusive as to the material sought and should be construed liberally in favor of inspection. See also *Bill Reno, Inc. v Rocky Mountain Ford Dealer's Advertising Association*, 378 P2d 206 (Colo. 1963); *Saio v McKesson HBOC, Inc.*, 806 A.2d 113 (Del. 2002). Simply put, members of either a for-profit corporation or a non-profit corporation are entitled to information relative to the business activities conducted by the corporation. This Court feels that the requested items enumerated by the Members in the case at bar fit squarely within that principle and parameters.

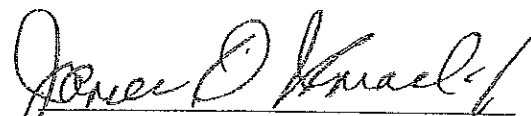
The 2010 Amendment to KRS 273.233 affects two issues in this case. There was some dispute about whether or not the "right to inspect" included only the opportunity to review certain documents or whether the "right to inspect" also included the right to copy the documents. The legislature has now set forth explicitly in the 2010 Amendment that not only may all books and records of a non-profit corporation be inspected by any member but that the said documents may also be copied by the member. Further, the July 2009 Amendment to the Bylaws attempting to limit the right of inspection to only certain documents or items has been negated by the last sentence of the 2010 Amendment to the statute. This Court holds and determines that the Bylaw Amendment of the ASHA is invalid and carries no force or effect as it is in direct violation of the statute, as amended.

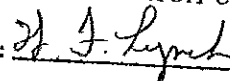
ACCORDINGLY, it is the Opinion, Order and Judgment of this Court that the Defendants' Members set out above are entitled to inspect and copy any and all books and records of the ASHA and make copies thereof at a reasonable expense pursuant to their enumerated written request previously submitted. This right of inspection and copying is not

limited to the enumerated items set out in the first sentence of KRS 273.233 but shall include each and every item, document or record of any description responsive to the written requests of the Members. The purported 2009 Bylaw Amendment of the ASHA is ruled to be invalid and unenforceable in this regard.

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is OVERRULED and the Defendants-Members' Motion for Summary Judgment is GRANTED pursuant to this Opinion, Order and Judgment.

Dated this 30 day of November, 2010.


HON. JAMES D. ISHMAEL, JR.

A True Copy
ATTEST: WILMA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT
By:  Deputy

This is to certify that a true and correct copy of the foregoing Opinion, Order and Judgment was served upon the following parties, via First Class Mail, this ____ day of November, 2010:

DEC - 2 2010

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DEC - 2 2010

WILMA F. LYNCH, C.F.C.C.

BY W. F. Lynch d.c.

EXHIBIT B

JAN 0 6 2011

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION
CIVIL ACTION NO. 09-CI-5292

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.

PLAINTIFF

VS.

FINAL JUDGMENT AND ORDER

EDWARD R. BENNETT, ET AL

DEFENDANTS

This matter came before the Court on Joint Motions for Summary Judgment by the Plaintiff, American Saddlebred Horse Association, Inc. (hereinafter "ASHA") and the Defendants, Edward R. Bennett, Carl T. Fischer, Jr., Kris Knight, Tom Ferrebee, Simon Fredricks, MD and Lynn W. Via (hereinafter "Defendants" or the "Members") on the ASHA's Complaint and the Members' Counter-Claim. On December 2, 2010, the Court entered an Opinion, Order and Judgment denying the ASHA's Motion and granting the Members' Motion. On December 10, 2010, the ASHA moved this Court for entry of a final judgment and appealable order. On December 15, 2010, the Members' filed a Response to ASHA's Motion.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED that:

- (1) The Opinion, Order and Judgment of December 2, 2010 is incorporated by reference as if set out at length herein;
- (2) Counts II (Breach of Contract) and III (Promissory Estoppel) of the Members' Counter-Claims are dismissed without prejudice; and

(3) This Court retains jurisdiction to enforce this Final Judgment and Order.

This Order is FINAL AND APPEALABLE, there being no just cause for delay.

Entered this 6th day of January, 2011



JUDGE, FAYETTE CIRCUIT COURT

This is to certify that a true and correct copy of the foregoing Final Judgment and Order was served upon the following parties, via First Class Mail, this 6th day of January, 2011:

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FAYETTE CIRCUIT COURT
WILMA F. LYNCH, C.F.C.C.

BY: WFL D.C.

EXHIBIT C

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION
CIVIL ACTION NO. 09-CI-5292

FEB 28 2011

AMERICAN SADDLEBRED HORSE
ASSOCIATION, INC.

PLAINTIFF

V.

ORDER

EDWARD R. BENNETT, CARL T.
FISCHER, JR., KRIS KNIGHT, TOM
FERREBEE, SIMON FREDRICKS,
M.D. AND LYNN W. VIA

DEFENDANTS

This matter came on before the Court for hearing on February 18, 2011, at 8:30 a.m., on the motion of Plaintiff to stay enforcement of the Court's final judgment of January 6, 2011, which incorporates in full the Opinion, Order and Judgment of December 2, 2010 ("Final Judgment"), pending the final disposition of Plaintiff's appeal. The Court having reviewed the briefs, heard oral argument of counsel, and being otherwise duly and sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's motion for stay pending the final disposition of Plaintiff's appeal is **DENIED**. The Court exercises its discretion and stays any enforcement of the Final Judgment for forty-five (45) days from its ruling on February 18, 2011, until April 4, 2011, unless a longer stay is granted by an appellate court pursuant to CR 65.08.

ENTERED this 25th day of FEBRUARY, 2011.

/s/ JAMES D. ISHMAEL, JR.
A TRUE COPY
ATTEST: WILMA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT
HON. JAMES D. ISHMAEL, JR. BY *[Signature]*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Order was served upon the following parties, via First Class Mail, this 28th day of February, 2011:

Edward H. Stopher, Esq.
Jefferson K. Streepey, Esq.
Jeff W. Adamson, Esq.
Boehl, Stopher & Graves, LLP
Aegon Center, Suite 2300
400 West Market Street
Louisville, KY 40202

James B. Cooper, Esq.
Boehl, Stopher & Graves, LLP
444 West Second Street
Lexington, KY 40507
COUNSEL FOR PLAINTIFF

Stephen A. Houston, Esq.
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202-2828

Lewis G. Paisley, Esq.
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, KY 40507
COUNSEL FOR DEFENDANTS


MALCOLM J. LYNCH
CLERK, FAYETTE CIRCUIT COURT

EXHIBIT D

BENNETT & COMPANY, CPAs
Accountants and Advisors

February 10, 2009

Board of Directors
American Saddlebred Horse Assn., Inc.
4083 Iron Works Parkway
Lexington, KY 40511

In planning and performing my audit of the financial statements of American Saddlebred Horse Assn., Inc. as of and for the year ended December 31, 2008, in accordance with auditing standards generally accepted in the United States of America, I considered its internal control over financial reporting (internal control) as a basis for designing my auditing procedures for the purpose of expressing my opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Association's internal control. Accordingly, I do not express an opinion on the effectiveness of the Association's internal control.

My consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, I identified certain deficiencies in internal control that I consider to be significant deficiencies as of December 31, 2008.

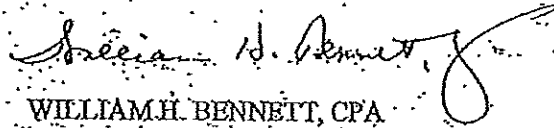
A significant deficiency is a control deficiency or combination of control deficiencies that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control. I consider the following deficiencies to be significant deficiencies in internal control as of December 31, 2008:

1. The Association does not have sufficient personnel to be able to segregate duties properly. Cash, accounts receivable, and accounts payable should be segregated such that entering invoices, entering deposits, and writing checks are performed by employees who are independent of signing checks and reconciling bank statements. Consider hiring additional personnel for further segregation of duties.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control. I did not identify any deficiencies in internal control that I consider to be material weaknesses, as defined above as of December 31, 2008.

This communication is intended solely for the information and use of the board of directors, management, those charged with governance and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,


WILLIAM H. BENNETT, CPA

WHB:rh

EXHIBIT E

April 20, 2009

American Saddlebred Horse Association, Inc.
4083 Iron Works Parkway
Lexington, KY 40511

Ms. Victoria Gillenwater
1st Vice President, ASHA
900 Vista Oaks Lane
Knoxville, TN 37919

Mr. Paul Treiber
Secretary, ASHA
Pine Meadows Farm
2220 Lakewood Court
Hartland, WI 53029

Mr. Scott Matton,
Bd. of Dir., ASHA
2800 Oakwood Rd.
Hartland, WI 53029

Dr. Alan Raun
Bd. of Dir., ASHA
Reedannland Farm
2291 50th Avenue
Cumming, IA 50061

Mr. Carl Holden
Bd. of Dir., ASHA
8007 Westover Dr.
Prospect, KY 40059

Mr. Art Zubrod
Bd. of Dir., ASHA
Fair Island Farm
1590 Pisgah Pike
Versailles, KY 40383

Ms. Louise Gilliland
Bd. of Dir., ASHA
Winsdown Farms
Route 6
Box 166A
McAlester, OK 74501

Ms. Judy Werner
President, ASHA
Redwing Farm
Waterloo, IL 62298

Ms. Barbara Molland
2nd Vice President, ASHA
5000 Carroll Road
Petaluma, CA 94952

Mr. Jim Ruwoldt
Treasurer, ASHA
3004 Village Lane
Roswell, GA 30075

Ms. Mary Ann Pardieck
Bd. of Dir., ASHA
4181 South Summit Lane
Columbus, IN 47201

Mr. Jimmy Robertson
Bd. of Dir., ASHA
P.O. Box 616
Simpsonville, KY 40067

Dr. Margaret McNeese
Bd. of Dir., ASHA
2719 Ferndale
Houston, TX 77098

Ms. Betsy Boone
Bd. of Dir., ASHA
8651 Boone Farm Road
Concord, NC 28027

Mr. Nelson Green
Bd. of Dir., ASHA
1242 Catnip Hill Road
Nicholasville, KY 40356

Mrs. Germaine Johnson
Bd. of Dir., ASHA
4025 Peppertree Drive
Lexington, KY 40513

Mr. William Whitley
Bd. of Dir., ASHA
913 Queensferry Rd.
Cary, NC 27511

American Saddlebred Horse Association, Inc.

Dear ASHA Directors:

We are senior members in good standing of the American Saddlebred Horse Association, Inc. ("ASHA"). We have become increasingly concerned about the decline in popularity of the American Saddlebred horse in recent years. Since 2005, there has been a steady decrease in the total number of registered Saddlebred horses. The erosion of popularity of our breed is further evidenced by steadily declining attendance over the past decade at the World's Championship, our industry's signature event.

As you know, one of the primary purposes of the ASHA is to stimulate and promote interest with respect to the history, breeding, exhibiting, and improvement of the American Saddlebred. As concerned members of the ASHA, we want to be sure that the ASHA is utilizing its assets in a prudent manner, and in furtherance of the purposes of the ASHA.

After request, the ASHA provided copies of tax returns and certain related financial reports of the ASHA for calendar years 2006 and 2007. After our initial review, these reports seem to indicate that the ASHA has expended significant sums on items for which we are unable to determine what benefit, if any, the ASHA received in return. Those expenditures range from a few thousand dollars to more than \$400,000. Furthermore, none of the financial reports identify the recipients of these disbursements. We believe it is important for the members of the ASHA to be provided with more detailed information about the expenditures of the ASHA, and we are therefore enclosing a list of questions related to certain expenses as to which we would appreciate receiving additional information.


Included in the enclosed list is our request for a copy of the "employment agreement and deferred compensation package" for Alan Balch, the Executive Secretary of the ASHA. According to the ASHA Financial Statements prepared by Bennett & Company CPAs for the year ended December 31, 2007 ("2007 Statements"), the ASHA approved "an employment agreement and deferred compensation package" with Alan F. Balch on October 31, 2007. The 2007 Statements indicate that the compensation agreement with Mr. Balch was given retroactive effect beginning November 1, 2006. The IRS Form 990 filed on behalf of the ASHA for the year 2007 indicates that Mr. Balch's base salary increased to \$100,000, but the financial records we received fail to disclose the additional benefits that Mr. Balch is entitled to receive, in addition to his salary, as part of his "deferred compensation package." As members of the ASHA, we respectfully request a copy of Mr. Balch's "employment agreement and deferred compensation package" so that we may determine the total compensation and benefits that Mr. Balch is entitled to receive from the ASHA while key barometers of the Saddlebred industry are falling. We also want to determine if any deferred compensation owed to Mr. Balch poses a substantial off-balance sheet expense which will become due for payment in future years. In today's

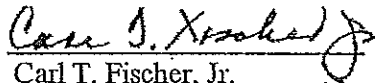
challenging economic environment, and in light of the particular decline in our industry, we want to be certain that the ASHA has not entered into any agreements that might not be in the best interest of the ASHA.

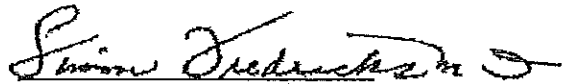
We are confident that you respect the fiduciary responsibilities that you, as Directors, have to the ASHA and its members, including your oversight of the budget and expenditures of the ASHA. We look forward to receiving the information we have requested from you at your earliest convenience. Please provide your response to us by delivering the same to Stoll Keenon Ogden, PLLC, c/o Stephen A. Houston, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, KY 40202.

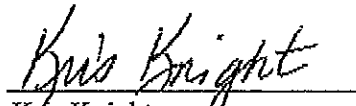
This request is being submitted by the signatories to this letter, indicated below, as well as the individuals listed on the next page who have authorized us to include their names in this request.

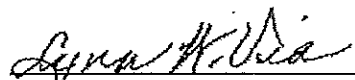
Sincerely,


Tom Ferrebee


Carl T. Fischer, Jr.


Simon Fredericks M.D.


Kris Knight


Lynn W. Via

Enclosure

Additional Individuals Joining In This Request

Moe Anson

Matthew Heiman, Esq.

John Jones

Billy Knight

Betty Moore

Ron Moore

James Nichols

Randy Stoess

Allison Walker

AMERICAN SADDLEBRED HORSE ASSOCIATION, INC.

1. Provide a copy of the employment agreement and deferred compensation package entered on October 31, 2007 between ASHA, Inc. and Alan F. Balch, as identified in the Financial Statements prepared by Bennett & Company CPAs for the year ended December 31, 2007 ("2007 Financial Statements").
2. Identify the individuals who voted to approve the agreement and deferred compensation package described in number 1 above.
3. Identify the individuals who voted against the agreement and deferred compensation package described in number 1 above.
4. Identify each individual and entity who received any portion of the "professional fees" totaling \$16,400 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
5. Identify each individual and entity who received any portion of the "professional fees" totaling \$15,650 in 2006 listed in the Financial Statements prepared by Bennett & Company CPAs for the year ended December 31, 2006 ("2006 Financial Statements"), and identify the specific purpose for those expenditures.
6. Identify each individual and entity who received any portion of the expenditures for "meetings/conferences" totaling \$222,166 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
7. Identify each individual and entity who received any portion of the expenditures for "meetings/conferences" totaling \$159,865 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
8. Identify each individual and entity who received any portion of the expenditures for "printing" totaling \$200,796 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
9. Identify each individual and entity who received any portion of the expenditures for "printing" totaling \$180,497 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
10. Identify each individual and entity who received any portion of the expenditures for "commissions" totaling \$29,369 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
11. Identify each individual and entity who received any portion of the expenditures for "commissions" totaling \$26,105 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.

12. Identify each individual and entity who received any portion of the expenditures for "contract fee" totaling \$9,600 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
13. Identify each individual and entity who received any portion of the expenditures for "contract fee" totaling \$78,443 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
14. Identify each individual and entity who received any portion of the expenditures for "advertising/promotion" totaling \$13,523 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
15. Identify each individual and entity who received any portion of the expenditures for "advertising/promotion" totaling \$63,287 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
16. Identify each individual and entity who received any portion of the expenditures for "bank fees" totaling \$19,442 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
17. Identify each individual and entity who received any portion of the expenditures for "bank fees" totaling \$13,214 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
18. Identify each individual and entity who received any portion of the expenditures for "interest expense" totaling \$26,179 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
19. Identify each individual and entity who received any portion of the expenditures for "interest expense" totaling \$32,949 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
20. Identify each individual and entity who received any portion of the expenditures for "Market Research" performed in 2007 for a total cost of \$12,796 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures. Provide a copy of any document indicating the results of that research.
21. Identify each individual and entity who received any portion of the expenditures for "Market Research" performed in 2006 for a total cost of \$38,721 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures. Provide a copy of any document indicating the results of that research.
22. Identify each individual and entity who received any portion of the expenditures for "web page/email" totaling \$20,136 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.

23. Identify each individual and entity who received any portion of the expenditures for "web page/email" totaling \$4,267 in 2006 listed in the 2006 Financial Statements, and identify the specific purpose for those expenditures.
24. Identify each individual and entity who received any portion of the expenditures for the "Comm. and Publications" portion of "salaries" in 2007 totaling \$90,157 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
25. Identify each individual and entity who received any portion of the expenditures for the "advancement" portion of the "salaries" totaling \$77,428 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
26. Identify each individual and entity who received any portion of the expenditures for the "administration" portion of the "salaries" totaling \$413,691 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
27. Identify each individual and entity who received any portion of the expenditures for the "Comm. and Publications" portion of "benefits" in 2007 totaling \$12,530 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
28. Identify each individual and entity who received any portion of the expenditures for the "advancement" portion of the "benefits" totaling \$9,758 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.
29. Identify each individual and entity who received any portion of the expenditures for the "administration" portion of the "benefits" totaling \$66,990 in 2007 listed in the 2007 Financial Statements, and identify the specific purpose for those expenditures.

EXHIBIT F

AMERICAN SADDLEBRED HORSE
ASSOCIATION, INC.

PLAINTIFF

v.

AFFIDAVIT OF ALAN F. BALCH

EDWARD R. BENNETT, CARL T.
FISCHER, JR., KRIS KNIGHT, TOM
FERREBEE, SIMON FREDRICKS,
M.D. AND LYNN W. VIA

DEFENDANTS

Comes ALAN F. BALCH, being duly sworn, and states as follows:

1. I am the Executive Secretary of the American Saddlebred Horse Association, Inc.

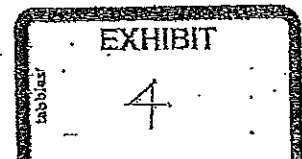
2. I have reviewed the defendants' request for production of documents.

3. Except as described in the following paragraphs, to the best of my knowledge the documents requested were produced to counsel for the defendants for review prior to the filing of this declaratory judgment action. Many of the subject documents were posted on the plaintiff's Website after review by defendants' counsel where they are available to all members of the American Saddlebred Horse Association including the defendants.

4. The following documents, if existing, were not produced for inspection:

a. Compensation records of individual employees and staff of the American Saddlebred Horse Association were not produced for inspection, although total annual payroll figures were produced.

b. Contracts between ASHA and individual staff members were not produced, although the employment contract and deferred compensation agreement of Alan F. Balch were produced.



c. Documents, including electronic mail, reflecting correspondence between officers, including Alan F. Balch, and members of the Executive Committee and directors of ASHA.

d. E-mails between Alan F. Balch and former finance committee member and director Carl Holden.

e. Documents relating to information received by Ms. Werner relative to the September 18, 2009 Executive Committee meeting.

f. Documents reflecting, regarding, or relating to potential violations of ASHA and Registry rules by ASHA and Registry employees and board members.

5. The following documents, if existing, were produced to the defendants, but photocopies were not furnished:

a. The employment agreement and deferred compensation agreement between ASHA and Alan F. Balch.

b. All documents reflecting, regarding or relating to the ASHA's Registry internal control policies and procedures with respect to finance receipts, expenditures, and accounts.

c. All documents reflecting, regarding or relating to the date upon which the internal control policies and procedures were adopted and implemented.

d. Documents reflecting Mr. Balch's time spent at work, on vacation, and absent due to illness.

e. Documents related to work performed by ASHA employees including Mr. Balch on behalf of the USA Equestrian Trust and the USEF and any other individual except ASHA and Registry.

Alan F. Balch
Alan F. Balch

Subscribed and sworn to before me by ALAN F. BALCH this January 27

2010.

My commissions expires: March 27 2011

Ann C. Hill
Notary Public, State at Large, KY.

EXHIBIT G

From: Jeff Adamson [jadamson@BSG-Law.com]
Sent: Friday, March 12, 2010 10:12 AM
To: Houston, Stephen
Cc: Edward Stopher; Jeff Streepey
Subject: RE: ASHA v. Bennett, et al.

Follow Up Flag: Follow up

Flag Status: Completed

Stephen: Mr. Balch is no longer an ASHA employee and is now represented by Richard Getty. We've been advised that Mr. Getty is not available to attend a deposition on March 16, 2010. I suggest you communicate with Mr. Getty.

Getty & Childers PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Phone: (859) 259-1900
Fax: (859) 259-1909
rgetty@gettychilders.com

-----Original Message-----

From: Houston, Stephen [mailto:Stephen.Houston@skofirm.com]
Sent: Thursday, March 11, 2010 5:59 PM
To: Jeff Adamson
Subject: ASHA v. Bennett, et al.

Dear Jeff:

This is in response to your letter to me dated March 10, 2010, in which the ASHA proposes to reschedule the deposition of Alan Balch.

The Defendants asked for a date to depose Mr. Balch approximately 4 months ago. On January 4, 2010, the ASHA advised the Defendants that March 16, 2010 would be a convenient day for the deposition of Mr. Balch. Accordingly, the Defendants issued a notice of deposition of Mr. Balch for March 16, 2010. Furthermore, the Court's scheduling order provides for the deposition of Mr. Balch on March 16, 2010, and it provides for dispositive issues to be addressed shortly thereafter.

The Defendants do not agree to rescheduling Mr. Balch's deposition.

Regards,
Stephen

Stephen A. Houston
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202
(502) 333-6000
www.skofirm.com

5/12/2010

EXHIBIT H

GETTY & CHILDERS PLLC

ATTORNEYS AT LAW

1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909

Richard A. Getty, Member
Extension 17
E-Mail: rgetty@gettychilders.com

Via dello Studio
No. 8
50122 Florence, Italy
Telephone: 011-39-055-290-394
Facsimile: 011-39-055-267-8800

E-MAILED AND MAILED
Stephen.Houston@skofirm.com

March 30, 2010

Stephen A. Houston, Esq.
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202

Re: American Saddlebred Horse Association, Inc. v. Edward R. Bennett, et al.
Case No. 09-CI-05292 (Fayette Cir. Ct.)

Dear Mr. Houston:

This will acknowledge receipt of your e-mail of yesterday enclosing the Notice to Take the Deposition of Alan Balch on April 14, 2010, along with a Subpoena which you have asked me to accept on behalf of Mr. Balch.

First, the date previously given to you, April 14th, is no longer available either to me or to Mr. Balch. As you may know, Mr. Balch has taken a new position in California and must be in that state during the entire week of April 12th.

I understood from Jeff Streepey that you informed counsel for the American Saddlebred Horse Association, Inc. (the "ASHA") that Mr. Balch's deposition had been taken off the schedule for April 14th and would possibly be rescheduled at a later time. As a result of receiving that information, both Mr. Balch and I scheduled other matters for April 14th.

If you still desire to take Mr. Balch's deposition, I understand that he would be available on Friday, April 30, 2010, here in our offices in Lexington. Please check your schedule and coordinate with counsel for the ASHA to determine whether that date would be feasible and get back to me.

GETTY & CHILDERS PLLC

ATTORNEYS AT LAW

Stephen A. Houston, Esq.
March 30, 2010
Page 2

In light of the foregoing, I obviously cannot accept service of a Subpoena for an April 14th deposition of Mr. Balch. Nor am I in a position to accept the service of a Subpoena on behalf of Mr. Balch at any time.

Should you have any questions regarding the foregoing matters, please feel free to call me at your convenience. With best regards, I remain

Sincerely yours,



Richard A. Getty

RAG/kjl

cc: Mr. Alan F. Balch
Joe F. Childers, Esq.
Jefferson K. Streepey, Esq.
Edward H. Stopher, Esq.

ragltr7076