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An Analysis of Horse Racing Jockeys Riding Under Kentucky's Workers' Compensation Laws

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INTRODUCTION

When the Kentucky House passed legislation on March 24, 2006 to provide workers’ compensation coverage to horse jockeys, Governor Ernie Fletcher proclaimed, “[i]f Kentucky is to remain known as the ‘Horse Capital of the World,’ then we should provide workers’ compensation coverage for the jockeys who participate in this thrilling but sometimes dangerous sport.” In the months after Governor Fletcher’s proclamation, the Kentucky legislature eventually passed an amended workers’ compensation bill, omitting the provisions to provide insurance coverage to jockeys. Subsequent to his 2006 legislative failure, Governor Fletcher lost the 2007 Kentucky Gubernatorial Election to the Democratic Party candidate, Steve Beshear. Since former Governor Fletcher’s failure to pass a bill with provisions to provide insurance coverage to jockeys, all efforts to provide uniform workers’ compensation protection to jockeys riding in

1 J.D. expected 2009, University of Kentucky College of Law; B.A., Political Science, 2005, Sewanee: The University of the South.


3 Press Release, Governor Ernie Fletcher’s Communication Office, House Passes Bill for Jockey Workers’ Compensation (Mar. 24, 2006), available at http://www.e-archives.ky.gov/_govfletcher/records/pressrelease–archive(04–06)/20060324jockeys.htm; see Herbert v. Churchill Downs, Inc., 2004 WL 541038, *1 (S.D. Ind. 2004) (“It is a dangerous sport in which horses weighing approximately 1,100 pounds are ridden at speeds of 35-40 miles per hour by jockeys weighing approximately 110-120 pounds. The horses race in tight bunches and often brush against each other in the heat of the race. Strength, alertness, and split-second timing and judgment are all required of every jockey in every race.”); Janice Francis-Smith, Oklahoma Racetracks Mull Workers’ Compensation Coverage Fee for Jockeys, J. RECORD (Oklahoma City, Okla.), Aug. 17, 2007, at 3A (“Nationwide estimates show an average of 2,500 injuries involving jockeys are recorded every year, with two deaths and two cases of paralysis. One in 20 jockeys will suffer a major injury this year. Yet, only a few jockeys make more than about $30,000 a year in the sport, with mounting fees averaging about $25 per race and the bulk of their paycheck being earned by placing first through fourth at the finish line.”).


5 Joseph Gerth, Kentucky Governor; Beshear in Landslide; Library Tax Defeated, COURIER-JOURNAL (Louisville, Ky.), Nov. 7, 2008, at 1A.
Kentucky have failed. Has Kentucky fallen from its title as the “Horse Capital of the World”? What steps must be taken to improve the conditions of jockeys riding in Kentucky? Can Kentucky fulfill its obligation to protect some of its most at-risk workers: the horses and jockeys?

Denying jockeys' workers' compensation claims judicially and failing to provide workers' compensation to jockeys legislatively, Kentucky operates under an antiquated system in need of revision. Since the Kentucky Court of Appeals' 1980 Munday v. Churchill Downs, Inc. decision, Kentucky courts have treated jockeys as independent contractors. The jockey's relationship with the horse's owner or trainer fails to meet Kentucky's workers' compensation statutory definition of an employer–employee relationship, thus denying the jockey Kentucky's workers' compensation benefits. When addressing the status of jockeys, other states' courts have reached “not entirely harmonious results” in the highly fact-specific decisions.

The decisions turn on the application of the First Restatement of Agency to the relationship of the jockey and the horse owner or horse trainer, focusing

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8 See generally East v. Skelly, 114 A.2d 822, 822 (Md. 1955) (explaining “that there are two methods used by owners and trainers of race horses for procuring the services of jockeys. One, less often used, is to employ a jockey under contract to ride any horse the employer designates; the other, the more common, is to use one of the pool of freelance jockeys, who are ready to ride for any owner or trainer who engages their services for a particular race.”).

9 Ky. REV. STAT. ANN. §§ 342.640-650 (West 2007); see generally McCormick v. U.S., 531 F.2d 554 (Ct. Cl. 1976) (explaining the business operations of a trainer and the relationships between a horse trainer, horse owner, and jockeys).


11 RESTATEMENT (FIRST) OF AGENTY § 220 (1933) states:

(1) A servant is a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control.

(2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;
on the "extent of control which, by the agreement, the [horse owner or horse trainer] may exercise over the details of the [jockey's] work."12 "In the majority of cases, jockeys have been held to be independent contractors, since they cannot be controlled during the race, since they furnish their own equipment, and since they are paid by the [ride]."13 Responding to the uncertain legal status of jockeys, California, Maryland, New Jersey, and New York have passed legislation to explicitly include jockeys within the state's workers' compensation statutory definition of "employee."14 An opinion from the Court of Appeals of Oregon accurately captures the author's position: "[g]iven the peculiar circumstances of the horse racing business, [one] would hope that the (Kentucky) legislature would clarify jockeys' status by a general rule."15

This Note examines the status of jockeys riding under Kentucky's existing workers' compensation laws. Part I16 of this Note will recount recent developments that brought attention to the jockeys' workers' compensation status and discuss the stagnation of reactionary legislation. Part II17 of this Note will examine the outdated holding in Munday v. Churchill Downs, Inc. and will offer reasons to support a holding that jockeys should be deemed "employees" of horse owners or trainers. Such a holding would reverse the misfortune of jockeys riding in Kentucky and exert new and presumably unwelcome pressure on horse owners and trainers. Following the examination of Munday, Part III18 of this Note will outline the workers'
compensation programs in Maryland, New Jersey, California, and New York, providing four useful models for Kentucky's program. Part IV of this Note will discuss a potential, though unlikely, federal option to provide insurance protection to jockeys. In conclusion, this Note will demonstrate Kentucky's obligation to renew a legislative effort to protect workers in one of the Commonwealth's most high-profile and popular industries: its horse racing jockeys.

I. DEVELOPMENTS BRINGING JOCKEYS' WORKERS' COMPENSATION TO THE FORE

Jockey injuries and the failings of the beleaguered Jockeys' Guild within the last decade brought the plight of horse racing jockeys to the fore. The troubles surfaced after an on-track accident in 2004. A Jockeys' Guild member, Gary Birzer, fell from his horse during a race at Mountaineer Park, in West Virginia, resulting in his paralysis from the waist down. Expecting insurance coverage provided through the Jockeys' Guild, Birzer received only $100,000 in accident insurance from the racetrack. As Birzer accumulated medical bills approaching $600,000, the horse racing industry and alarmed jockeys took notice of the failing system.

In 2001, three years before Birzer's accident, the Jockeys' Guild members' family health insurance policy expired. John Giovanni, then manager of the Jockeys' Guild, purchased an insurance policy in March 2001, that "provided catastrophic coverage for every Guild member, up to $1 million over the $100,000 then provided by most tracks." Following a "well-orchestrated hostile takeover" that placed Dr. Wayne Gerteremenian as the Jockeys' Guild manager in June 2001, Gerteremenian decided to let the Guild's catastrophic injury coverage lapse in 2002 without providing notice to the Thoroughbred Racing Associations or the Jockeys' Guild members. When in 2004 Birzer sustained his injuries, the Jockeys' Guild

19 See infra notes 157-175 and accompanying text.
21 Vowinkel, supra note 14; Novak, supra note 20, at 6689.
22 Vowinkel, supra note 14.
23 Id.
24 Novak, supra note 20, at 6688.
25 Id. Giovanni renewed the family health insurance policy for members in California and Delaware, as California and Delaware were the only two states that provided insurance funding to the Guild.
26 Novak, supra note 20, at 6688–89.
members finally learned of the insurance policy’s lapse. In response to the newly revealed crisis, Birzer filed suit against the Jockeys’ Guild. By November 2004, jockeys refused to ride their mounts at Churchill Downs in Louisville, Kentucky and at Hoosier Park in Anderson, Indiana until on-track insurance levels increased.

Recognizing the potential magnitude of the issue, the horse racing industry sought viable solutions. Most major racetracks, including Churchill Downs, raised their on-track insurance coverage from $100,000 to between $500,000 and $1,000,000. The public gained even greater awareness of the insurance coverage issue after the United States House Energy and Commerce Committee’s Subcommittee on Oversight and Investigations held hearings in 2005 to examine “on-track injury insurance and other [horse racing–related] health and welfare issues.” In addition to media attention related to jockeys’ wearing advertising and promotional logos on their attire during races, media attention in 2004 and 2005 shifted its focus to the jockeys’ inability to obtain adequate insurance protection. Answering the intense media coverage, Kentucky Governor Fletcher appointed a “Blue Ribbon Panel” to “determine how best to provide [insurance] coverage to jockeys and other racetrack workers in Kentucky.” Created pursuant to Kentucky Executive Order 2005–164, the Blue Ribbon Panel met five times over the course of four months and heard presentations from representatives of the horse racing and insurance industries.

27 Id. at 6689.
30 Vowinkel, supra note 14; Novak, supra note 20, at 6688.
31 Novak, supra note 20, at 6688; TOBA Letter, infra note 50.
32 Novak, supra note 20, at 6689.
34 Marcus Green, Tracks to Boost Jockeys’ Insurance; Medical Coverage Will be $1 Million, COURIER-JOURNAL (Louisville, Ky.), Feb. 16, 2005, at 1D.
35 BLUE RIBBON PANEL ON JOCKEY WORKERS’ COMPENSATION, REPORT TO GOVERNOR ERNIE FLETCHER: RECOMMENDATIONS RELATING TO WORKERS’ COMPENSATION FOR LICENSED JOCKEYS, APPRENTICE JOCKEYS AND EXERCISE RIDERS, 2–3 (2005), available at http://www.khre.ky.gov/NR/rdonlyres/BA7C4F96-5806-4E95-896E–D143EE394672/o/jockeyproposal.pdf. Members of the Blue Ribbon Panel included: Sen. Gary Tapp, Kentucky State Senate; Rep. Jim Bruce, Kentucky State House of Representatives; Tom Ludt, Kentucky Horse Racing Authority; David Switzer, Executive Director of the Kentucky Thoroughbred Association; Susan Bunning, President of the Kentucky Horsemen’s Benevolent & Protective Association; Darrel Haire, Interim Manager of the Jockeys’ Guild; Harvie Wilkinson, Vice President Keeneland Association; Steve Sexton, President of Churchill Downs; Jim Gallagher, Executive Director of the Kentucky Horse Racing Authority; LaJuana Wilcher, Environmental and...
Recognizing "the important role that [jockeys] play in the horse racing industry," Governor Fletcher's Blue Ribbon Panel concluded that "it is good public policy that [jockeys] be provided protection from work place injuries under the current Kentucky Workers' Compensation Act." The Panel proposed changes to Kentucky's Workers' Compensation Act, recommending the explicit recognition of exercise riders as employees of horse trainers and requiring the exercise riders to be licensed by the Kentucky Horse Racing Authority (KHRA), the state's racing authority. Furthermore, the Panel proposed the creation of the "Kentucky Injured Jockeys Compensation Fund, Inc.,” whose board members would serve as the "employers" for apprentice and freelance jockeys when the jockeys mounted, rode, and dismounted a horse. The Kentucky Injured Jockeys Compensation Fund “would provide for jockeys and apprentice jockeys in the event of a work–related injury, and further advance the goal of maintaining the Commonwealth of Kentucky as the 'Horse Capital of the World.'" The Kentucky Injured Jockeys Compensation Fund would purchase a blanket workers' compensation policy similar to, though more limited in scope than, the New York Jockey Injury Compensation Fund. Licensed racing facilities, horse owners, and a one–percent share of the owners' winning purse would finance the Kentucky Injured Jockeys Compensation Fund.

On February 27, 2006, Governor Fletcher and Kentucky Representative Carolyn Belcher announced Kentucky House Bill 741, incorporating the Blue Ribbon Panel's recommendations. Governor Fletcher had responded to the highly publicized issue with a practicable legislative effort, but his efforts whimpered to a low–profile failure. The bill passed the Kentucky House’s vote, but the Panel's recommendations failed to gain inclusion in the Senate’s 2006 workers' compensation bill. After the December 2007 Annual Jockeys’ Guild Assembly, the Jockeys’ Guild and other industry groups had once again failed to resolve the insurance coverage issue, and

Public Protection Cabinet; and William Emrick, Executive Director of the Office of Workers' Claims.

36 Id. at 3.
37 KY. REV. STAT. ANN. Ch. 342.
38 BLUE RIBBON PANEL, supra note 35, at 2–3.
39 Id. at 4–5.
40 Id. at 5.
41 Id. at 4.
42 Id. at 5.
44 S. 191, 2006 Leg., Reg. Sess. (Ky. 2006); Jones, supra note 4; Press Release, Governor Ernie Fletcher's Communication Office, supra note 3.
the uncertainty continued. The state-level legislative avenue appeared at a dead end with the start of Governor Beshear’s administration in 2008. While they never mentioned workers’ compensation funding for jockeys, Beshear’s limited gambling proposals presented opportunities to redirect the newly generated revenue to the creation of a workers’ compensation program for jockeys riding in Kentucky. Nonetheless, Governor Beshear’s administration failed to pass a limited gaming proposal and currently faces a budgetary crisis. Pursuant to Executive Order 2008-668, signed on July 3, 2008, Governor Beshear abolished the KHRA and established the Kentucky Horse Racing Commission as its successor organization. Representing significant progress in the state’s approach to horse racing, the Executive Order refocuses Kentucky’s state racing authority on the safety of horse racing in Kentucky. A federal effort, titled the “Jockeys Insurance Fairness Act,” presents another avenue to address the jockeys’ plight, but widespread industry opposition threatens the legislation’s success. Most recently, the congressional efforts, the industry’s focus, and media attention have shifted from focusing on jockeys’ insurance coverage to focusing on the health and safety of thoroughbred horses after the on-track euthanization of Eight Belles at the 134th Kentucky Derby. Industry developments in 2008 effectively stalled efforts to resolve the jockeys’ insurance crisis.

In light of the failure of state-level legislation and the stagnation of federal legislation, Governor Beshear’s current administration and Kentucky legislators must examine the fundamental source of the controversy in

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45 Gregory A. Hall, *Jockeys' Guild Told Little Aid is Likely*, COURIER-JOURNAL (Louisville, Ky.), Dec. 4, 2007, at 1D.


47 Tom Loftus, *Legislative Session Tough for Beshear*, COURIER-JOURNAL (Louisville, Ky.), Apr. 20, 2008, at 1A.


49 Id.


Kentucky: the *Munday* decision. Examination thereof reveals how the Kentucky Court of Appeals reached its erroneous holding and demonstrates the need to redress the flawed holding. Ultimately, an examination of the *Munday* decision validates Kentucky's need to renew legislative efforts under Governor Beshear's administration.

II. AN EXAMINATION OF *MUNDAY V. CHURCHILL DOWNS, INC.*

A. Jockeys as Independent Contractors in *Munday* v. Churchill Downs, Inc.

In 1980, Judge Wintersheimer wrote the Kentucky Court of Appeals's unanimous decision in *Munday*.

During a 1976 race at Churchill Downs in Louisville, John Joseph Munday, a Kentucky-licensed jockey, fell from the horse he raced and broke a vertebra. While Munday could continue working as an exercise rider, the accident left him unable to mount horses in races. As a result, Munday filed a claim with Kentucky's Workers' Compensation Board. The Workers' Compensation Board and the Jefferson Circuit Court dismissed Munday's claim, holding Munday to be an independent contractor of both the horse's owner, Eugene Hancock, and the racetrack, Churchill Downs.

Affirming the decisions of the Workers' Compensation Board and the Jefferson Circuit Court, the Court of Appeals analyzed whether Munday was an employee or an independent contractor under the principles of control outlined in *Ratliff v. Redmon*. Examining the relationship between Munday and the horse owner, the court discussed only a few limited facts.

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53 *Id.* at 488.

54 *Id.*

55 *Id.*

56 *Id.* at 487.

57 *Id.* at 488; *Ratliff v. Redmon*, 396 S.W.2d 320, 324–25 (Ky. 1965). In *Ratliff v. Redmon*, Kentucky's highest court cites nine factors to determine whether one acts for another as an employee or independent contractor:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
The decision first mentioned Munday's status as a "freelance" jockey, stating that Munday was not only "paid by the job," but he also "solicited trainers for mounts and operated by himself or through an agent." Secondly, the decision examined the evidence relevant to Hancock's control over Munday. The court focused on the pre-race instructions Hancock gave to Munday and the effect of the instructions in light of Kentucky's Rules of Racing, requiring jockeys "to ride the horse so as to win, or finish as near as possible to first, and to demonstrate the best and fastest performance of which the horse is capable." Citing the Illinois Supreme Court's decision in Clark v. Industrial Commission as a "similar situation," the court found the owner's pre-race directions to "stay close and to win if he could" to be "of a general and informative nature and not calculated to supersede [Munday's] professional skills as to the specific details of riding the horse." In effect, Hancock's instructions as to the details of Munday's work, or how he should ride the horse, did not amount to control over Munday and thus did not amount to an employer-employee relationship. Discussing Munday's relationship with Churchill Downs, the court dispatched Munday's argument in sweeping fashion, finding that no employer-employee relationship existed. In conclusion, the decision noted that the ruling did not disturb the Workers' Compensation Board's fact-findings when they are supported by substantial evidence.

B. The Shortcomings of Munday v. Churchill Downs, Inc.

The Kentucky Court of Appeals concisely reviewed the Workers' Compensation Board's and the Jefferson Circuit Court's decisions in Munday. In a brief opinion, the court misapplied the principles of control outlined in Ratliff v. Redmon to the facts of the case. Furthermore, the decision failed to appreciate the underlying rule outlined in the First

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(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer; and

(i) whether or not the parties believe they are creating the relationship of master and servant.

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61 Munday, 600 S.W.2d at 488.
62 Id.
63 Id. at 488-89.
The court's misplaced reliance on *Clark v. Industrial Commission* led to an imprecise decision. As a result, an erroneous ruling has dictated the relationship between jockeys and horse owners and trainers in Kentucky for nearly thirty years.

When Kentucky courts resolve workers' compensation cases, the existence of an employer-employee relationship is the threshold requirement for the individual to gain workers' compensation benefits. An explanation of the relationship between the horse owner, the horse trainer, and the horse jockey contextualizes the employer-employee analysis. In horse racing, a horse owner either trains or hires a trainer to provide "shelter, feed, the basic equipment needed for training, daily maintenance and a training program directed toward making the horse a winner of races."65

"In the regular conduct of the horse training business, the trainer retains the services of personnel necessary to assist him in properly training the horses."66 Sometimes, the horse trainer also owns the horses he trains.67 A jockey often hires an agent to solicit mounts for the jockey from the horse trainers.68 Thereafter, a relationship forms between the horse trainer or owner and the jockey. A horse trainer or owner may hire a number of jockeys over the course of a single day's racing, and a jockey may ride for a number of owners or trainers over the course of a single day's racing. Often a continuing relationship develops in which a trainer or owner only hires a particular jockey to ride a particular horse.69

When making its decision in *Munday*, the court under appreciated the legislative intent behind Kentucky's workers' compensation program and failed to address the legislative trend recognized in the 1979 *Wright v. Fardo* decision.70 The court properly understood that, "despite the far reaching language of the coverage sections [in Kentucky's workers' compensation laws], the Legislature did not indicate an intention to depart from the traditional notion that an independent contractor did not come within the definition of employee."71 But the *Munday* decision overlooked a key conclusion from the *Wright v. Fardo* ruling: "[i]f a trend can be gleaned from the General Assembly's inaction and action, the progression has proceeded

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64 *See supra* note 11.
66 *Id.*
67 *Id.*
68 *See Joe Drape, The Work of a Jockey's Agent Goes Beyond Big-Money Deals, N.Y. TIMES, Aug. 25, 2006, at D4* ("A jockey's agent must supply his rider with a steady diet of 'live horses'—those with a chance to win—while the trainers that he solicits demand a dependable jockey with a measure of loyalty. Often, it is an uneasy tightrope to walk.").
69 *Id.* ("Pletcher has long relied on John Velazquez as his main rider; they topped last year's trainer and jockey standings.").
71 *Id.* at 271–72.
in favor of inclusion of more work relationships within the ambit of the [Workers’ Compensation] Act." 72 By taking a narrow view, the court, in effect, undervalued the broad social spirit underlying Kentucky’s workers’ compensation laws.

The ruling in Munday, like nearly all workers’ compensation cases involving jockeys, relied on the application of the principles of control to determine whether a jockey meets the definition of an employee. Failing to fully appreciate certain aspects of the underlying principles outlined in the First Restatement of Agency, the court in Munday reached a flawed decision. 73 Of the factors specified in the Restatement, four factors predominate: “[1] the nature of the alleged employee’s work as related to the business of the alleged employer; [2] the extent of control; [3] the professional skill of the alleged employee, and [4] the intention of the parties.” 74 Writing the decision in Ratliff v. Redmon, Judge Hill recognized the “relative weight” of each factor in the analysis, stating, “it is constantly said that the right of control of the details of the work is the primary test.” 75 Earlier Kentucky jurisprudence provided a solid foundation for Judge Hill’s analysis of the “relative weight” of each factor. “[T]he right of control is the important question. . . . [and] it is well to bear in mind that the right and extent of control are closely related to the nature of the work being performed.” 76 “[T]he status of independent contractor cannot be established by proof that the principal did not exercise control; the test in such a case is whether it could have exercised such control.” 77

When applying the concepts of control in Munday, the court focused on the owner’s pre-race instructions to the jockey. The Munday decision held that, “[t]he instructions of Hancock did not amount to a control of the details of the jockey’s work.” 78 Rather, the instructions were “only a repetition of the jockey’s professional obligation.” 79 While the statement

72 Id. at 272.

73 See supra note 11.


75 Ratliff v. Redmon, 396 S.W.2d 320, 327 (Ky. 1965) (citing 1 LARSON’S WORKMEN’S COMPENSATION LAW 627); see also Davis v. Perkins, 620 S.W.2d 331, 332 (Ky. Ct. App. 1981) (“On only one point as to the relative weight of the various tests is there an accepted rule of law; it is constantly said that the right to control the details of the work is the primary test.”) (emphasis added).

76 Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 758 (Ky. 1955) (emphasis in original).

77 Browns, Bell & Cowgill v. Soper, 152 S.W.2d 278, 280 (Ky. 1941) (emphasis in original).


79 Id.; see 810 Ky. ADMIN. REGS. 1:016(14) (Oct. 2007) (mandating the jockey’s professional obligations when racing a horse).
remains valid, comment e of section 220 of the *First Restatement of Agency* enlightens the analysis of the pre-race instructions: "[t]he fact that the State regulates conduct of an employee through the operation of statutes requiring specific acts to be done or not to be done does not prevent the employer from having such control over the employee as to constitute him a servant." California's Supreme Court decisions on workers' compensation and jockeys properly explained the analysis of horse owners' pre-race instructions to jockeys. In *Isenberg v. California Employment Stabilization Commission*, Justice Traynor explained the rationale behind such instructions:

> the owner or the trainer . . . gives instruction as to the running of the race and the handling of the horse . . . [T]he owner or trainer can give no instructions or orders that do not have as their objective the winning of the race . . . . If the owner or trainer does not wish the horse to be whipped, he may so instruct the jockey, but he cannot enforce such an instruction unless he has the whip taken from the horse upon application to the stewards . . . . If it is apparent that the jockey did not follow instructions, the owner does not engage the jockey to ride again.

Thus, instead of merely repeating the jockey's professional obligation, the horse owner has "the right to control the activities of the jockeys except where he was prevented from doing so by the rules of the Racing Board or by the inaccessibility of the jockeys while they were actively engaged in the race." Furthermore, Justice Traynor stated, "[t]he belief of the jockeys . . . that they would not be rehired if they failed to follow the instructions is relevant to show their submission to control." Analyzing the legislative intent behind a state's horse racing rules in *Drillon v. Industrial Accident Commission*, California's Supreme Court decided, "[w]e fail to see how the fact that a third person, the state here, . . . may impose penalties in addition to the right secured to the master, has any effect or bearing on the question of whether the relationship is that of independent contractor rather than master and servant.

Instead of merely providing standard information to the jockey, the horse owner or trainer retains the right to control the jockey. The California Supreme Court cases provide a more practical rationale of the horse owner

80 *Re*statement (First) of Agency § 220 cmt. e (1933).
82 Isenberg, 180 P.2d at 13; *cf*. McCormick v. United States, 531 F.2d 554 (Ct. Cl. 1976) (discussing a trainer's instructions to an exercise rider).
84 Isenberg, 180 P.2d at 15.
85 Drillon, 110 P.2d at 68–69.
or trainer's instructions to the jockey than the holding of the Illinois case cited in \textit{Munday}. The \textit{Munday} court's brief analysis of the horse owner's instructions cited an Illinois case, \textit{Clark v. Industrial Commission}.\textsuperscript{86} Providing a fairly thorough analysis of horse owner instructions to jockeys, \textit{Clark v. Industrial Commission} nonetheless reached a holding that directly conflicts with the California holding. When it initially discussed the principles of control, the \textit{Clark v. Industrial Commission} decision stated:

The right to control the work is perhaps the most important single factor in determining the relation...inasmuch as an employee is at all times subject to the control and supervision of his employer, whereas an independent contractor represents the will of the owner only as to the result and not as to the means by which it was accomplished.\textsuperscript{87}

The Illinois Supreme Court decided the horse owners and trainer used their pre-race instructions to "familiarize a jockey with the peculiarities and characteristics of the horse he was about to ride so that he could better apply his skills in accomplishing the ultimate goal of winning the race."\textsuperscript{88} Case testimony indicated that the owners of the horse "know the horse and [the horse owner] know[s] how [the horse] wants to run...the man who owns the horse and [the] trainer know how the horse runs best."\textsuperscript{89} Acknowledging that unexpected circumstances confront the jockey during the course of a horserace, the decision concluded, "once the race started, the owner was completely dependent on the jockey's professional skill and judgment in riding the horse as the race unfolded."\textsuperscript{90} The Illinois decision quickly shifted from the jockey's reliance on the horse owner's pre-race guidance and instructions to the horse owner's complete submissive dependence on the jockey's skill. Such a shift resulted in a sweeping conclusion, allowing the Illinois court to justify its holding that the jockey was an independent contractor.

When it addressed the instructions in light of the Illinois Racing Board's rules, the Illinois decision failed to account for comment e of section 220 of the \textit{First Restatement of Agency}.\textsuperscript{91} The resulting analysis thus misinterpreted the effect of the pre-race instructions: "[i]t is apparent that any pre-race strategy talks between the owner and jockey concerning the race about to be run would have to be disregarded by the jockey to the extent they were in conflict with the racing rules and regulations."\textsuperscript{92} The Illinois court


\textsuperscript{87} \textit{Clark}, 297 N.E.2d at 156.

\textsuperscript{88} \textit{Id}.

\textsuperscript{89} \textit{Id}.

\textsuperscript{90} \textit{Id.} at 157.

\textsuperscript{91} \textit{RESTATEMENT} (FIRST) OF \textit{AGENCY} §220 cmt. e (1933).

\textsuperscript{92} \textit{Id}.
failed to consider the horse owner or trainer’s right to control the means by which the jockey sought to accomplish his task of winning the horse race. The court did not acknowledge that, in effect, the horse owner or trainer “is the one who not only prescribes the work, but directs, or may direct, the manner of doing work” consistent with the Illinois Racing Board rules. In addition, the Illinois court failed to properly recognize the horse owner and trainer’s control over the jockey and, thus, failed to recognize the employer–employee relationship. In the end, the failures rendered the Illinois decision erroneous. Most importantly to jockeys riding in Kentucky, the Kentucky Court of Appeals in Munday adopted the Illinois court’s erroneous holding.

While it properly focused its decision on the owner’s extent of control over the jockey, the Kentucky Court of Appeals overlooked other factors favoring the existence of an employer–employee relationship. The Munday decision failed to “bear in mind that the right and extent of control are closely related to the nature of the work being performed.” One can hardly conceive an instance when a horse owner or trainer would consider hiring a jockey with the intent that the jockey would not be an integral part of his or her regular business. And the court should have noted that Kentucky courts “know of no judicial exception to coverage of workmen’s compensation brought on by the infrequency of the employer’s business or by the difficulty of obtaining workmen’s compensation insurance at a rate profitable to the business.”

Even though jockeys provide their personal riding equipment, pursuant to the Kentucky Administrative Regulations (KAR), the horse owner equips the jockey with the owner’s registered cap and silks. Also, most importantly, the horse owner provides the horse.

C. Conclusion of Examination of Munday v. Churchill Downs, Inc.

In light of the shortcomings in the Munday decision, a viable argument stands to challenge the outdated judicial stance. Should they reexamine

93 Browns, Bell, & Cowgill v. Soper, 152 S.W.2d 278, 280 (Ky. 1941) (emphasis in original).
94 In its discussion of the factors that the author argues the Kentucky Court of Appeals overlooked, the Isenberg decision held the factors “either present or inapplicable” to the decisions and thus favoring the existence of employer–employee relation. Isenberg v. Cal. Employment Stabilization Comm’n, 180 P.2d 11, 15 (Cal. 1947).
95 Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 758 (Ky. 1955).
96 Ratliff v. Redmon, 396 S.W.2d 320, 326 (Ky. 1965).
98 810 Ky. ADMIN. REGS. 1:009 § 14 (Oct. 2007).
99 Id.
Munday, Kentucky courts should and must reach a decision that parallels the holdings of the California Supreme Court decisions written by Justice Traynor. The reexamination would include jockeys in the definition of "employees" under Kentucky’s Workers’ Compensation program, and thus jockeys would be eligible for the workers’ compensation coverage under the policies carried by horse owners or trainers, as is required of all thoroughbred horse owners and trainers licensed to race in Kentucky. Should Kentucky courts reach such a new result, Kentucky’s judicial position would align itself with the underlying social policy of workers’ compensation programs. The new holding would also demonstrate the proper application of the First Restatement of Agency and diminish the surprising acceptance of the Illinois Supreme Court’s Clark v. Industrial Commission decision. A test case involving the proper set of facts could perhaps destabilize the holding in Munday. The following non-exclusive list of facts could lead to a new result in Kentucky: (1) the jockey receives distinct and specific instructions from the owner or trainer as to manner of riding the horse during the race; (2) the owner or trainer consistently hires the jockey to ride his horses or a certain horse; (3) the owner or trainer expects the jockey to ride his horses when the jockey is available; (4) the jockey expects the owner or trainer to hire him to ride his horses; (5) the owner requires the jockey to wear advertising or promotional material to benefit the owner; (6) instead of paying the jockey per mount, the owner or trainer pays the jockey bi-weekly; and (7) the owner or trainer withholds tax expenses from payments to the jockey.

The new result would undoubtedly benefit the unfortunate position of jockeys currently racing in Kentucky. The result would also undoubtedly cause fervent dissent among Kentucky’s licensed horse owners and trainers, shifting the insurance burdens away from the jockeys to a new party. In any event, the exact ramifications of the judicial reversal on the Kentucky horse racing industry remain uncertain. As unlikely as a reversal of a thirty-year judicial precedent may seem, the jockeys’ current insurance crisis and the validity of the aforementioned argument ought to prompt Kentucky horse owners, horse trainers, and other horse industry members to reconsider previously failed legislative initiatives. Inaction from even a single party perpetuates the recent turmoil in the horse racing industry. The models enacted in a number of states with significant horse racing industry interests provide valuable guidance to solve the insurance coverage issue facing

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100 See 81o Ky. ADMIN. REGS. 1:007 § 2(1)(b) (Oct. 2007) (“In addition to administrative regulations applicable to licensees under 81o KAR 1:003, a holder of an owner’s license: Shall carry workers’ compensation insurance covering employees in connection with racing as required by Kentucky law.”); 81o Ky. ADMIN. REGS. 1:008 § 3(2) (Oct. 2007) (“A licensed trainer ... shall carry workers’ compensation insurance covering his employees in connection with racing as required by KRS Chapter 342.”).

101 RESTATEMENT (FIRST) OF AGENCY § 220 (1933).
jockeys and the horse industry in Kentucky.

III. MODEL STATE WORKERS' COMPENSATION PROGRAMS PROVIDING COVERAGE FOR JOCKEYS

A. Maryland

Historically, Maryland courts have held jockeys to be "casual" employees of the horse trainer or horse owner, denying jockeys the benefits of its workers' compensation program. Following principles similar to those later outlined in the First Restatement of Agency, Moore v. Clarke decided the dispute between a horse owner and family of a jockey who died while riding at Pimlico Race Track in Baltimore. Maryland's highest court ultimately held as follows:

The employment extended over a period of but a few minutes at most, ... it was single, isolated, [and] complete in itself, was connected with no past or future employment, and when it was finished all contractual relations between the employer and the employee ceased. It was incidental and fortuitous ....

Thus, in finding such, the court stated that "the only conclusion permitted by the undisputed facts is that at the time of the accident, [the jockey] was casual employee and not an employee within the scope of the statute." The Maryland General Assembly eventually intervened and established Maryland's workers' compensation program for jockeys in 1986. Passed in 1985, the legislation created the Maryland Jockey Injury Compensation Fund. The program provides workers' compensation insurance coverage to "jockeys licensed by the Maryland Racing Commission to ride thoroughbred horses." The Fund provides "workers' compensation insurance on a blanket basis for all jockeys who are covered employees under § 9–212" of the Maryland's Labor and Employment Code. Section 9–212 defines the employment relationships between licensed jockeys, licensed

103 RESTATEMENT (FIRST) OF AGENCY § 220 (1933).
104 Moore, 187 A. at 889; RESTATEMENT (FIRST) OF AGENCY § 220 (1933).
105 Moore, 187 A. at 894.
106 Id.
110 MD. CODE ANN., BUS. REG. § 11–903 (West 2007).
owners, licensed trainers, and the Maryland Jockey Injury Compensation Fund. Every thoroughbred owner and thoroughbred trainer pays insurance premiums pursuant to Maryland’s licensing requirements. The Fund only provides coverage to jockeys licensed to ride in Maryland and injured on Maryland tracks. Key language in the Maryland Code requires the employed jockey to be “performing a service in connection with racing or training a thoroughbred race horse.” As of 2006, the Maryland Jockey Injury Compensation Fund reached $741,868 and each license carried a $200 assessment that funds the program.

B. New Jersey

Since the 1961 decision in Gross v. Pellicane, New Jersey courts generally hold jockeys to be employees of the horse trainers that hire them. After thorough analysis of the employer’s right of control under its Workers’ Compensation Act, New Jersey courts reached a holding favorable to jockeys based on the Workers’ Compensation Act’s liberal judicial construction “to bring as many cases as possible within its coverage.” While they failed to consider or mention Munday, New Jersey courts’ liberal construction led them to reach decisions that directly conflicted with the Kentucky case’s holding. The New Jersey Supreme Court’s decision in Biger v. Erwin, a case involving the death of a fallen freelance steeplechase jockey, upheld Gross v. Pellicane and found the horse owner to be the sole employer of the deceased jockey.

In 1995, the New Jersey legislature passed workers’ compensation legislation, creating the New Jersey Horse Racing Injury Compensation Board to provide insurance coverage for employees of the horse racing industry. The New Jersey legislature noted the horse racing industry’s important public interest and the growing difficulties challenging the industry’s ability to ensure coverage of its employees. “[T]he purpose of the [New Jersey] Horse Racing Compensation Act [is] to fill a gap in workers’ compensation coverage unique to the horse racing industry . . .

113 Jones, supra note 4.
115 Maryland Racing Commission, supra note 108, at 28.
117 Id. at 841 (citing Hannigan v. Goldfarb, 147 A.2d 56 (N.J. Super. Ct. App. Div. 1958)).
[but] the Legislature did not intend to provide blanket coverage to every person employed in the horse racing industry. The New Jersey program provides coverage for "horse racing industry employee[s]," including freelance jockeys, apprentice jockeys, exercise riders, trainers and their licensed employees, and "drivers engaged in performing services for an owner in connection with the racing of a horse in New Jersey. The New Jersey Horse Racing Injury Compensation Board funds the coverage by incurring "an assessment upon the gross overnight purses paid to either the thoroughbred or standardbred horse owners not to exceed three percent of such purses." Since the enactment of the New Jersey Horse Racing Injury Compensation Board, the New Jersey Legislature has amended the definition of "horse racing industry employee" on four occasions, indicating the legislature's intent not to provide blanket coverage to the horse racing industry.

In 2006, the Fitzgerald v. Tom Coddington Stables decision exposed some of the shortcomings of the New Jersey legislative effort. The decision held a trainer/groom to be outside the definition of "horse racing industry employee" and thus outside the protection of workers' compensation insurance coverage provided by the New Jersey program. The case delineated a "seeming contradiction" in the New Jersey workers' compensation structure, where the New Jersey Horse Racing Injury Compensation Board's coverage intersected with the horse trainers' obligation to provide private workers' compensation to their employees pursuant to New Jersey statute.

C. California

California's treatment of jockeys as "employees" stems from 1940s decisions in Drillon v. Industrial Accident Commission and Isenberg v. California Employment Stabilization Commission. As previously discussed, these decisions applied the facts to the First Restatement of Agency. In determining whether the jockeys were independent contractors or

124 Fitzgerald, 890 A.2d 933.
125 Id. at 933.
126 Id. at 935 (citing N.J. Stat. Ann. §§ 34:15–134.1 (West 2004)).
128 Restatement (First) of Agency § 220 (1933).
employees, the decisions focused on the extent of the horse owner’s control over the freelance jockeys. The analysis centered primarily on the horse owner’s right to discharge the jockey and the effect of the horse owner’s instructions, eventually holding the jockeys to be “employees.”

As workers’ compensation costs gradually increased in California, the California horse racing industry searched for ways to curb the costs. California Assembly Bill 2931, approved in September 2002, set the amount of funds deducted from California’s pari-mutuel pools to be used to “defray the cost of workers’ compensation coverage for licensed thoroughbred stable employees and jockeys . . . .” The fund permits up to $4,000,000 each year in workers’ compensation coverage for California’s “licensed thoroughbred stable employees and jockeys . . . .” Furthermore, the bill stated that horse racing’s “marketing organization,” outlined under the California Business and Professions Code section 19605.73, may also provide funding to decrease workers’ compensation costs pursuant to annual “defrayal plan[s].” In December 2002, California created the California Horsemen’s Safety Alliance (CHSA), a “partially self-insured program” to manage horse racing workers’ compensation. Responding to increasing insurance costs, the CHSA and California horse racing industry’s efforts to decrease workers’ compensation costs resulted in the passage of California Assembly Bill 701. The bill permitted additional deductions from California’s pari-mutuel pools to be deposited in an “account to defray the costs of workers’ compensation insurance incurred in connection with thoroughbred horses . . . .” Most recently, California Assembly Bill 1736 enacted an important funding extension, continuing the California Business and Professions Code section 19605.73 until January 1, 2011.

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D. New York

New York’s 1928 Pierce v. Bowen decision involved the “accidental injury” of a driver of a horse contracted to ride in four races at a county fair. The Court of Appeals of New York found the jockey to be a servant and thus able to receive workers’ compensation benefits under New York’s Workmen’s Compensation Law. New York courts continue to follow the Pierce v. Bowen ruling.

A 1990 legislative initiative resulted in the creation of the New York Jockey Injury Compensation Fund. Effective in 1991, the Fund serves as the employer of all jockeys, apprentice jockeys, and licensed exercise riders employed in New York. The New York Jockey Injury Compensation Board uses its funds to purchase workers’ compensation insurance for the “employees.” Contributing owners and trainers receive protection through the “exclusive remedy doctrine.” In the event a freelance jockey, apprentice jockey, or exercise rider suffers a “covered injury” at a race track, the New York Jockey Injury Compensation Fund insulates the contributing horse owner or trainer from liability. The Fund’s financing comes from (1) the flat fees paid by horse owners and horse trainers, (2) stall fees used to determine the yearly premiums, and (3) a percentage of the winners’ purse. Governor Fletcher’s Blue Ribbon Panel used the New York workers’ compensation program as the model it introduced in Kentucky House Bill 741. Maryland and New Jersey enacted variations of New York’s program, but industry observers consider the Maryland and New Jersey programs less comprehensive than New York’s.


140 Id.
142 MINKOWITZ, supra note 141.
144 MINKOWITZ, supra note 141.
145 Id.
146 Vowinkel, supra note 14.
147 BLUE RIBBON PANEL, supra note 35, at 4; Press Release, Governor Ernie Fletcher’s Communications Office, supra note 43.
148 MINKOWITZ, supra note 141.
Appellate Division found that the New York Jockey Injury Compensation Fund covered the injury of an exercise rider and entitled the rider to workers' compensation benefits, even though his license was expired at the time of the accident.  

E. Conclusions on State Legislation

As the most comprehensive state legislative effort, the New York Jockey Injury Compensation Fund has served as the model for other states' legislation. California, whose industry-wide effort demonstrates the benefits of a concerted effort of parties willing to compromise to reduce workers' compensation costs, has also shown itself to be a leader in addressing these issues. As its failure to pass any legislation bodes poorly for any jockey riding on its race tracks, Kentucky should renew its effort to pass an initiative similar to former Governor Fletcher's Blue Ribbon Panel's proposal. Governor Beshear's administration could inject much-needed energy and new perspectives into Kentucky's legislative options with the creation of the Kentucky Horse Racing Commission (KHRC). The restructuring of Kentucky's horse racing body presents a progressive rhetorical stance, but the KHRC must enact substantive changes as well. While many of Kentucky's legislators' constituents will fear the shift away from the status quo, the successes in New York and California demonstrate the benefits of the programs.

In renewing its effort to pass the initiative drafted by the Blue Ribbon Panel in 2005, Kentucky should implement the recommendations of the National Horsemen's Benevolent and Protective Association (NHBPA). John Roark, then President and Chairman of the NHBPA, cited four keys to states' successful workers' compensation programs: "(1) strict maintenance of valid workers' compensation certificates of insurance for all racing stables; (2) improved payroll reporting systems; (3) better training and higher licensing standards of licensees; and (4) the creation of a national on-track accident database modeled after the national highway patrol system." Roark also outlined the NHBPA Workers' Compensation Task Force's findings to reduce insurance rates to "ensure the long-run stability and affordability of insurance in the racing industry." 

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150 Id.
152 Roark Hearing, supra note 135, at 63 (numbers not in original).
153 Id. at 69. These groups believe insurance rates can be reduced by (1) increasing the use of effective plans to cover athletic participants, namely jockeys and exercise riders; (2) forming self-insured or partially self-insured "captive" plans to make the industry more attractive to insurers; (3) developing a national database for reporting on-track accidents and injuries; (4) enforcing better compliance and reporting practices and loss controls among
Adopting a program of blanket-coverage, the Kentucky initiative should provide wider coverage than the limited programs in Maryland and New Jersey. Addressing any fears over the percentage share financed by the winners’ purses, Kentucky’s program could benefit from the example set by the $4,000,000 cap on California’s program. Such a visible maximum cap fosters concrete expectations in the horse racing industry. The efficiency of California’s program and its implementation of best practices, similar to those espoused by the NHBPA Workers’ Compensation Task Force, effectively reduced average workers’ compensation rates to the lowest nationwide.\(^1\) The Blue Ribbon Panel’s recommendation to assign the costs of financing the coverage across many parties in the horse racing industry properly spreads the burdens of the new system. Should horse owners, trainers, and racing venues fear the new burdens of financing the insurance coverage, Kentucky legislators must consider supplementing the insurance financing through other gambling and casino avenues. Governor Beshear would support a casino bill “to include provisions benefiting the horse industry.”\(^2\) While the horse racing industry may wish to redirect the new funds from limited gambling to other uses, the funds generated by a casino could serve as an additional revenue source and would reduce the additional burdens on horse owners, trainers, and racing venues.

Ultimately, a future bill should slightly remodel the Blue Panel’s 2005 proposal. A future proposal should include regulations implementing the NHBPA’s cost-reducing recommendations. In addition to financing provided by racing facilities, horse owners, and a one percent share of the owners’ purse, new casino revenues could finance the Kentucky Injured Jockeys’ Compensation Fund. While such a program seems unlikely in light of the failures of Governor Beshear’s limited gambling proposals and the Commonwealth’s financial crisis,\(^3\) Kentucky legislators must continue their efforts to solve the exasperating issue that Kentucky’s horse racing industry continues to ignore.

IV. THE FEDERAL LEGISLATIVE INITIATIVE: THE JOCKEY INSURANCE FAIRNESS ACT

When he spoke before the Energy and Commerce Committee’s Subcommittee on Oversight and Investigations in 2005, John Roark, then President and Chairman of the NHBPA, presented a well-documented history of Congress’s and the National Labor Relations Board’s policy to

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\(^2\) Hall, supra note 46.

\(^3\) Loftus, supra note 47.
decline to assert jurisdiction over labor disputes in the horse racing industry.\textsuperscript{157} Citing a 1977 Senate Report, Roark emphasized the widely held stance in the horse racing industry opposing “an unwarranted intrusion by the Federal Government into an area of regulation better left to the states.”\textsuperscript{158} Presenting the NHBPA’s position, Roark supported the continued use of “state regulatory authorities over the industry,” while slightly leaving open the option of an “indirect mode of regulating interstate commerce” through the Interstate Horseracing Act (IHA).\textsuperscript{159} In conclusion, Roark encouraged state-level officials to reach solutions with horse racing industry parties and quickly backtracked from the “indirect” option of amending the IHA.\textsuperscript{160} Recognizing Roark’s slight olive branch, Congressman Ed Whitfield and Congressman Bart Stupak drafted the Jockeys Insurance Fairness Act (JIFA) after the hearing.\textsuperscript{161} Representatives Whitfield and Stupak introduced JIFA in September 2006, initiating a federal-level approach to the jockeys’ insurance coverage issue.\textsuperscript{162} JIFA would amend the IHA\textsuperscript{163} and provide funding for health and injury insurance for jockeys, exercise riders, trainers, and backstretch workers.\textsuperscript{164} JIFA would redirect a portion of the “revenues horseman’s groups receive through simulcast racing agreements to state racing authorities,” such as the KHRC.\textsuperscript{165} “The state racing authorities would then be required to use those revenues to offer on-track injury coverage for jockeys, exercise riders, trainers, and track workers.”\textsuperscript{166} The amendments to the IHA would not apply “in states where jockeys, exercise riders, backstretch workers and trainers are included in a state’s worker’s compensation program,” such as those in Maryland, New Jersey, California, and New York.\textsuperscript{167} After inaction in 2006, Representatives Whitfield and Stupak reintroduced JIFA in House Resolution 2175 on May 3, 2007, and the legislation has been referred to the House Committee on Energy and Commerce.\textsuperscript{168} While the Jockeys’ Guild supports the Jockeys Insurance Fairness Act,\textsuperscript{169}

\begin{footnotesize}
\begin{enumerate}
\item[157] Roark Hearing, supra note 135, at 61–62.
\item[158] Id. at 62 (citing S. Rep. No. 95–554, at 14 (1977)).
\item[160] Roark Hearing, supra note 135, at 65.
\item[161] American Horse Council, supra note 50.
\item[162] Press Release, Congressman Ed Whitfield, supra note 50.
\item[164] American Horse Council, supra note 50.
\item[165] Press Release, Congressman Ed Whitfield, supra note 50.
\item[166] Id.
\item[167] American Horse Council, supra note 50.
\item[168] Jockeys Insurance Fairness Act, H.R. 2175, 110th Cong. (1st sess. 2007); American Horse Council, supra note 50.
\end{enumerate}
\end{footnotesize}
the American Horse Council, the Thoroughbred Owners and Breeders Association (TOBA), and other horse racing industry leaders vehemently oppose the legislation. In a letter to Representative Whitfield, TOBA expressed opposition to "any effort to amend the IHA to provide a revenue stream to fund injury insurance for jockeys." Fearing that any amendment to the IHA could place the horse racing industry in jeopardy, TOBA asserts "that the jockeys [already] receive adequate compensation from the owners to pay for their health insurance." The fragmented nature of the American horse racing industry poses a huge obstacle to the passage of any national-level initiative.

Recent industry developments, however, present opportunities for jockeys to advance their position. Jockeys should exploit the successes of promotional and advertising material worn on jockey attire and use the potential revenue as a bargaining tool to gain insurance coverage. Jockeys should also take advantage of the media attention, Congressional hearings, and the concerted industry effort to improve the health and safety of the thoroughbred horse and closely associate their troubles within a framework to address the current industry-wide crisis. To date, the horse racing industry has failed to reach a national agreement protecting jockeys, and the uncertainty facing jockeys continues.

CONCLUSION

Jockeys riding in Kentucky face an entrenched and outdated workers' compensation scheme. The Kentucky Court of Appeals' decision in *Munday v. Churchill Downs, Inc.* serves as the fundamental obstacle for jockeys in Kentucky. An examination of the *Munday* decision and further consideration of California's Supreme Court decisions demonstrate the flawed conclusion Kentucky courts continue to observe. In light of

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170 Jockeys Insurance Fairness Act, H.R. 2175, 110th Cong. (2007); Angst, supra note 169; TOBA Letter, supra note 50; American Horse Council, supra note 50.
171 Id. supra note 50.
172 Id.
173 LaMarra, supra note 51 ("Longtime owner/breeder Arthur Hancock was blunt in his assessment. He said the industry is a 'conglomeration of different entities, each of which has its own function and its own agenda.' He rattled off a list of alphabet-soup organizations and said: 'All of these fiefdoms have their own Nero-like CEOs, and each of them envisions himself as the savior of racing. Most of them don't even own a horse.").
175 See Drape, supra note 51; LaMarra, supra note 51.
Kentucky's judicial roadblock, former Governor Fletcher initiated the creation of a well-devised, yet ultimately unsuccessful, system to update and realign Kentucky's workers' compensation scheme. Federal efforts, such as Representative Whitfield's Jockey Insurance Fairness Act, also face an entrenched judicial history and a horse racing industry unwilling to aid jockeys through the creation of a consistent nationwide program. Additionally, the recurring failings and bankruptcy of the Jockeys' Guild compound the difficulties jockeys face, rendering the jockeys' voice nearly muted.\footnote{See supra note 20.}

Kentucky's inability to adopt a new workers' compensation system only perpetuates the jockeys' dilemma. The workers' compensation schemes in Maryland, New Jersey, California, and New York provide practical and effective models to emulate in resolving the jockeys' insurance coverage issue. Refining the 2006 proposal and adapting a proposal to the new opportunities presented, Kentucky should finally resolve the exasperating problem. While the issue may seem insignificant in light of the current budgetary crisis, the Kentucky Legislature must not overlook the needs of some of the Commonwealth's most important workers. Realistically, only a renewed effort from Kentucky's legislators will improve the conditions of jockeys riding in Kentucky. An increased willingness from Kentucky's horse racing industry to adapt and compromise is essential to lead Kentucky to a resolution. Once the Commonwealth resolves the jockeys' workers' compensation issue, Kentucky will then fulfill former Governor Fletcher's proclamation and retain its position as the "Horse Capital of the World."