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By: Ted Walter, Staff Member

In October 2011, *KJEANRL* staff member Taryn Deveau first blogged about Kentucky Downs being the first racetrack in Kentucky to offer instant racing.[1] That post also included the Franklin Circuit Court's ruling that "instant racing is within the Commission's regulatory authority so long as it involves pari-mutuel wagering on horse races." [2] Furthermore, that same post made it clear that the opponents of instant racing, The Family Foundation of Kentucky, were going to appeal.[3] Then, in September 2012, *KJEANRL* staff member Matt Hassen blogged that the Kentucky Court of Appeals had remanded the case to the Franklin Circuit Court in order to allow discovery for the

Family Foundation, discovery which had been denied before.[4] "Because of the lack of evidentiary support for its decision, the appellate court found review of the circuit court's decision impossible and ordered further proceedings in order to determine such factual issues as the precise manner in which wagers are pooled and how the odds are calculated for instant race wagering." [5]

Now, the Kentucky Supreme Court has agreed to review the Court of Appeals ruling.[6] There is a lot of money at stake pending the outcome. Through September 2012, "almost \$169 million had been wagered using instant racing machines in Kentucky." [7] And through the end of 2012, the combined handle of instant racing in Kentucky since its inception is \$228.2 million.[8] Apparently due to the success, it was recently reported that the Keeneland Association has intentions of bringing instant racing to the Lexington and Corbin areas.[9] According to the article, Keeneland is interested in teaming with Full House Resorts to buy harness track Thunder Ridge and move it near Corbin. [10] The track would be for Quarter Horses "with top-level purses boosted by multibreed simulcasting and instant racing." [11] Additionally, "[i]f the legislation passes, or if the court case is decided in the racetrack's favor, Keeneland anticipates announcing plans for a Lexington instant racing facility in conjunction with the Red Mile." [12]

Instant Racing is not only a Kentucky issue. Recently the horse racing and breeding industry has been making a push for instant racing in Oregon.[13] In April 2012, the Nebraska Governor vetoed a bill that would have allowed instant racing at Nebraska racetracks.[14] In December 2012, the Michigan legislature passed a bill allowing instant racing and sent the bill to the Michigan Governor for his signature.[15] Arkansas first allowed instant racing in 2000 and makes "in excess of \$100 per machine per day." [16]

With state budgets and pensions facing deficits and with little money to fix them, some are viewing instant racing as a large source of taxable income. "Expanding instant racing to more Kentucky horse racetracks should provide additional tax money to help fund the state's ailing pension system," according to House Speaker Greg Stumbo in a recent *Lexington Herald-Leader* article.[17] In that same article, it was report that "[o]f the \$247 million wagered on instant racing in Kentucky, \$226.7 million was returned to the public." Should the courts come down against instant racing in Kentucky, it seems hard to believe the legislature will still say no.

[1] Taryn Deveau, *Instant Racing: A Possible Trifecta for Kentucky*, Ky. J. Eq. Ag. & Nat'l. Res. L. Blog (Oct. 21, 2011), <http://www.kjeanrl.com/2011/10/instant-racing-possible-trifecta-for.html>.

[2] *Id.*

[3] *Id.*

[4] Matt Hassen, *Update on Instant Racing*, Ky. J. Eq. Ag. & Nat'l. Res. L. Blog (Sept. 27, 2012), <http://www.kjeanrl.com/2012/09/update-on-instant-racing.html>.

[5] *Id.*

[6] Jack Brammer, *Kentucky Supreme Court agrees to review instant racing appeal*, LEXINGTON HERALD-LEADER (Jan. 11, 2013),

<http://www.kentucky.com/2013/01/11/2472531/kentucky-supreme-court-agrees.html>.

[7] *Id.*

[8] Tom LaMarra, *KY Historical Race Wagering Now at \$228*, BLOODHORSE.COM (Jan. 24, 2013), <http://www.bloodhorse.com/horse-racing/articles/75770/ky-historical-race-wagering-now-at-228m>.

[9] Janet Patton, *Exclusive: Keeneland aims to build prime Quarter Horse racetrack near Corbin*, LEXINGTON HERALD-LEADER (Feb. 14, 2013),

<http://www.kentucky.com/2013/02/14/2517437/exclusive-keeneland-to-build-prime.html>.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Tom LaMarra, *Portland Meadows Seeking Historical Racing*, BLOODHORSE.COM (Feb. 15, 2013), <http://www.bloodhorse.com/horse-racing/articles/76238/portland-meadows-seeking-historical-racing>.

[14] *Nebraska governor vetoes Instant Racing bill*, THOROUGHBREDTIMES.COM (April 10, 2012), <http://www.thoroughbredtimes.com/national-news/2012/04/10/nebraska-governor-vetoes-instant-racing-bill.aspx>.

[15] BloodHorse Staff, *Michigan Instant Racing Bill Goes to Governor*, BLOODHORSE.COM (Dec. 15, 2012), <http://www.bloodhorse.com/horse-racing/articles/75055/michigan>.

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[16] Associated Press, *Kentucky Downs Says Instant Racing Play Good*, BLOODHORSE.COM (Sept. 9, 2011), <http://www.bloodhorse.com/horse-racing/articles/75055/michigan-instant-racing-bill-goes-to-governor>.

[16] Associated Press, *Kentucky Downs Says Instant Racing Play Good*, BLOODHORSE.COM (Sept. 9, 2011), <http://www.bloodhorse.com/horse-racing/articles/64927/kentucky-downs-says-instant-racing-play-good>.

[17] Beth Musgrave and Jack Brammer, *Stumbo says expansion of instant racing could help fix pension system*, LEXINGTON HERALD-LEADER (Feb. 15, 2013),

<http://www.kentucky.com/2013/02/15/2518425/stumbo-says-expansion-of-instant.html>.

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