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March 22, 2010

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Ed Fenasci
Secretary/Treasurer
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1535 Gentilly Blvd.
New Orleans, LA 70119

Re: Seelig, *et al.* v. La. Horsemen's Benevolent & Protective Ass'n 1993, Inc., *et al.*
Civil District Court, Orleans Parish, Case No. 2009-13379
Independent Counsel Engagement and Report

Dear Ed:

Please accept this independent counsel report concerning the referenced matter. This report addresses the eight enumerated subject matters in our February 22, 2010 engagement letter. This report also addresses the "Bonding Requirements" issue listed as item no. 6 in the November 12, 2009 letter of P.J. Stakelum III, Esq. ("Stakelum") to the officers and directors of Louisiana Horsemen's Benevolent and Protective Association 1993, Inc. (the "LHBPA") on behalf of Stanley Seelig.¹

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¹ That letter is referred to as the "Stakelum Letter."

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1. Transactions with Roughneck Construction and Handling of Insurance Proceeds²

In the referenced lawsuit, the plaintiffs allege that the LHBPA contracted with Roughneck Construction, L.L.C. ("Roughneck") to repair the LHBPA corporate offices at 1535 Gentilly Blvd. in New Orleans after Hurricane Katrina. The plaintiffs allege the following improprieties concerning the transactions with Roughneck:

- The LHBPA's bylaws (the "Bylaws") provided that such a contract could only be authorized by the LHBPA's Board of Directors (the "Board"), but no such Board authorization occurred
- The Bylaws required that checks used to pay for "such expenses" be signed by two authorized individuals, but the checks given to Roughneck were not so signed
- The Board failed to obtain a written contract with Roughneck
- The Board failed to maintain adequate records of the work performed by Roughneck
- The LHBPA paid Roughneck at least in part with money from the Fair Grounds Video Poker Settlement Account and the Louisiana Downs Video Poker Settlement Account (collectively the "Video Poker Settlement Accounts"), but should not have done so
- At the same time that Roughneck was working at the LHBPA corporate offices, Roughneck or persons working for it were also repairing and/or renovating the home of Sean Alfortish ("Alfortish")
- At least one former LHBPA employee has alleged that LHBPA funds were used to pay

² Engagement letter scope item nos. 1 and 3.

for renovations and/or repairs at Alfortish's home

The plaintiffs demand an audit of the expenditures to Roughneck, a report on the insurance proceeds collect for Katrina damage to the LHBPA corporate offices, and damages for losses which the LHBPA sustained as a result of the defendants' "breach of fiduciary duties and other wrongful acts" in dealings with Roughneck, including all "overcharges and improper billings" (Petition, ¶¶ 70 – 79; Stakelum Letter, numbered paragraph 7). The plaintiffs also demand an accounting of the insurance coverage that the LHBPA had in force at the time of Hurricane Katrina and of the insurance proceeds that the LHBPA received under that coverage (Petition, ¶¶ 100 – 104).

Documentation that I received from Liz Roussel shows that the LHBPA received \$40,182.68 in contents coverage insurance proceeds and \$241,977.17 in building coverage insurance proceeds, for a total of \$282,159.85. The documentation indicated that those proceeds were paid for windstorm damage and that the proceeds were paid on March 27, 2007.³ There was no flood insurance coverage at the LHBPA's corporate offices. I understand that the proceeds information has not yet been shared with the plaintiffs. I recommend that it be shared.

I understand that no written contract between the LHBPA and Roughneck existed.⁴ Contrary to the plaintiff's assertions, the Bylaws do not provide that a contract such as that between the LHBPA and Roughneck be written or authorized by the Board. The Bylaws are silent on contracts to which the LHBPA is a party except for "purse contract[s]," contracts with "any state racing authority," or contracts with "racing associations" (Bylaws Art. II, §§ 10, 11). I recommend that the Bylaws be amended to provide better guidelines on contract procedures with any entity, not just on "purse contracts" or contracts with "any state racing authority" or contracts with "racing associations."

The Bylaws do provide that all "checks . . . of the [LHBPA] shall be signed by any two of the Officers of the [LHBPA] designated in writing to do so by the President" (Bylaws, Art. II, § 5). The checks that were written to Roughneck were only signed by one individual. I asked Alfortish and Romero about the two-signature requirement. They told me that the two-signature requirement contemplated by the Bylaws apparently had never been instituted and that they simply inherited the existing system from the prior Board. According to Alfortish and Romero, they were told by the LHBPA's bank that only one signature (that of the LHBPA president) was required. I recommend that the LHBPA take steps to comply with the Bylaws *vis-à-vis* check writing protocol or amend the Bylaws to comport with the current single signature practice and reality.

³ Alfortish and Mona Romero ("Romero") told me on March 3, 2010 that the insurance proceeds were put into the LHBPA's "general fund." As will be discussed, consideration should be given whether those funds should be returned to the Video Poker Settlement Accounts.

⁴ Roughneck is listed as "inactive" by "voluntary action" with the Louisiana Secretary of State and apparently is defunct. I wrote to Roughneck on March 4, explaining my independent counsel role and asking that Roughneck's principal, Ronnie Sylvester, call me to discuss Roughneck's dealings with the LHBPA. I traded phone messages with Sylvester on March 19, but never spoke with him.

Alfortish told me that subcontractors (carpenters, electrician) who worked for Roughneck at the LHBPA corporate offices did work at Alfortish's house but that they did so separate of their relationship with Roughneck. Alfortish also told me that the LHBPA did not pay for any of the work done at his house. During a hearing on October 16, 2009 in Orleans Parish Civil District Court in Ball v. Alfortish, CDC no. 2008-01907, Div. "K," Ronnie Sylvester ("Sylvester"), Roughneck's principal, appeared pursuant to a subpoena commanding the production of documents concerning work done by Roughneck at the LHBPA corporate offices "and any other work performed by Roughneck . . . on any other property for . . . Alfortish." Sylvester testified that the "only thing I've done is just HBPA, that's the only thing. . . ." In her sworn statement/affidavit on September 24, 2009, Sheila Menard testified that "employees" of Roughneck worked on Alfortish's house, that the employees would work some days at the LHBPA corporate offices and some days at Alfortish's house and that she did not know how the work done at Alfortish's house was paid for.

I reviewed a folder of documents approximately one-half inch thick addressing the work done by Roughneck at the LHBPA corporate offices. The documents include bills, bid forms, job descriptions, and canceled checks for the work done by Roughneck. Also included is a spreadsheet showing date of invoice/check, job number, check number, location, description, and invoice total for the work done by Roughneck. It appears that, contrary to the plaintiffs' assertions, the Board did maintain adequate records of the work performed by Roughneck. I understand from Stakelum that he has not seen these Roughneck documents. The LHBPA should consider making the documents available to Stakelum and the plaintiffs.

The documents show that Roughneck was paid \$343,898.70 and that it began work shortly after Katrina on October 25, 2005. Roughneck's last invoice to the LHBPA and the LHBPA's last payment to Roughneck were in August 2006, some seven months before the LHBPA received insurance proceeds for the Katrina damage to its corporate offices. Of the \$343,898.70, \$227,743.70 was paid out of the Fair Grounds Video Poker Settlement Account and \$116,155.00 was paid out of the Louisiana Downs Video Poker Settlement Account. Alfortish and Romero told me that Roughneck was paid out of the Video Poker Settlement Accounts because that money was immediately available and they wanted to do everything possible to make the LHBPA functional and able to help horsemen as soon as possible after Hurricane Katrina. Alfortish and Romero had the attitude that the money was available to help the horsemen in a time of severe need after Katrina and that they thought it best to use the money to accomplish that purpose.

The insurance proceeds that the LHBPA eventually received in March 2007 were not returned to the Video Poker Settlement Accounts. Alfortish and Romero told me that the decision not to "reimburse" the Video Poker Settlement Accounts with the insurance proceeds after the proceeds were received in March 2007 was a business decision that they made. Even if the funds in the Video Poker Settlement Accounts were available for use by the LHBPA "for the benefit and welfare of all members in a manner consistent with the objectives and purposes of the [LHBPA]" pursuant to the Bylaws (an issue which will be discussed in greater detail below), I recommend that the insurance proceeds received by the LHBPA post-Katrina (\$282,159.85) be

returned to the Video Poker Settlement Accounts to offset the \$343,898.70 that was taken from those accounts to pay Roughneck.

2. Use of Video Poker Settlement Account Funds⁵

The plaintiffs allege the following concerning the Video Poker Settlement Accounts:

- The LHBPA caused checks drawn on the Video Poker Settlement Accounts to be issued to those owners entitled to share in the funds
- The monies remaining in the Video Poker Settlement Accounts represented the funds necessary to cover the settlement checks issued to owners entitled to share in the settlements who had not yet cashed their settlement checks
- During February and March 2006, at least \$134,320.44 was withdrawn from the Louisiana Downs Video Poker Settlement Account and used improperly for purposes other than the payment of settlement proceeds to those owners entitled to share in the settlement who had not yet cashed their settlement checks
- During the twelve months beginning January 31, 2008, the balance of the Louisiana Downs Video Poker Settlement Account was improperly reduced by over \$225,000.00
- At least \$116,155.00 of the funds in the Louisiana Downs Video Poker Settlement Account was used improperly to pay Roughneck
- Between March 2006 and May 2006, at least \$138,600.00 was withdrawn from the Fair Grounds Video Poker Settlement Account and used improperly for purposes other than the payment of settlement proceeds to those owners entitled to share in the settlement who had not yet cashed their settlement checks
- During the three years beginning May 31, 2006, the balance of the Fair Grounds Video Poker Settlement Account was improperly reduced by over \$518,000.00
- At least \$227,443.74 of the funds in the Louisiana Downs Video Poker Settlement Account was used improperly to pay Roughneck

The plaintiffs demand that the Board engage an independent certified public accounting firm to audit all disbursements from the Video Poker Settlement Accounts to determine their propriety and that the report be made available to any LHBPA member who requests it. The plaintiffs also seek a money judgment against the defendants in an amount that will reimburse the Video Poker Settlement Accounts for monies wrongfully or improperly withdrawn from them (Petition, ¶¶ 80 - 99; Stakelum Letter, numbered paragraph 5).

⁵ Engagement letter scope item no. 2.

The plaintiffs acknowledge that the funds in the Video Poker Settlement Accounts are “purse money” (Petition, ¶ 80). Under the Bylaws, “all monies, purse or otherwise” that are not claimed or withdrawn from the Horsemen’s Bookkeeper’s Account after one year become “unclaimed monies.” Unclaimed monies that the LHBPA cannot disburse “shall be used by the [LHBPA] for the benefit and welfare of all members in a manner consistent with the objectives and purposes of the [LHBPA].” The LHBPA is required to keep all unclaimed monies “segregated by account from other monies” (Bylaws, Art. III, § 4D).

Alfortish and Romero told me that funds were taken from the Video Poker Settlement Accounts for the benefit and welfare of LHBPA members and “to keep the LHBPA operating.” I reviewed records of the Louisiana Downs Video Poker Settlement Account (Merrill Lynch account no. 21904165). In 2006, the following checks were issued:

January 2006

<i>Check no.</i>	<i>Payable to</i>	<i>Amount</i>
101	Rhonda R. King	\$2,020.64
102	Rhonda R. King	\$397.83
103	Joseph J. Graci, III	\$918.74 ⁶

February 2006

<i>Check no.</i>	<i>Payable to</i>	<i>Amount</i>
106	Roughneck Construction	\$16,205.00
107	Roughneck Construction	\$50,000.00
109	Roughneck Construction	\$49,950.00

March 2006

<i>Check no.</i>	<i>Payable to</i>	<i>Amount</i>
110	Office Furniture Outlet, Inc.	\$10,447.90
112	Best Buy	\$2,401.97
113	Gordon’s of Metairie	\$4,665.24
114	Home Depot	\$650.33 ⁷

In 2007, no checks were issued.

⁶ These checks presumably were for video poker proceeds/purse monies.

⁷ According to Romero, these expenses were to refurbish the LHBPA corporate offices after Katrina. The LHBPA subsequently received \$40,182.68 in contents coverage insurance proceeds for Katrina damage. These expenses (and others that went toward refurbishing the LHBPA corporate offices) should be repaid to the Video Poker Settlement Accounts.

In 2008 and 2009, the following checks were issued to the LHBPA:

<i>Check no.</i>	<i>Date</i>	<i>Amount</i>	<i>Memo</i>
115	February 2008	\$13,991.24	
116	April 2008	\$14,676.00	
117	June 2008	\$5,886.18	
119	August 2008	\$24,000.00	GL1114
120	August 2008	\$50,000.00	GL1114
121	October 2008	\$50,000.00	GL1114
122	November 2008	\$25,000.00	GL1114
123	December 2008	\$25,000.00	GL1114
124	January 2009	\$25,000.00	GL1114
125	July 2009	\$25,000.00	GL1114
Total		\$258,552.42	

According to Romero, these 2008 and 2009 expenses were to, among other things, purchase field offices for the LHBPA's Workers' Compensation and Medical Programs at racing facilities in Louisiana. I find the round whole dollar amount checks (\$24,000.00, \$25,000.00, and \$50,000.00) a bit unusual. I recommend that the LHBPA comply with the plaintiffs' request and have an independent certified public accounting firm audit these expenses.⁸

I also reviewed records of the Fair Grounds Video Poker Settlement Account. These records were more complicated. There were three accounts at Hibernia Bank/Capital One Bank: (1) account no. 812345362, called the "settlement account"; (2) account no. 2080335205, called the "settlement expense account"; and (3) account no. 049924984. This last account appeared to be some sort of sweep account into which funds were automatically swept in 2006 and 2007. The automatic sweeping stopped in May 2008. The "settlement expense account" was closed by letter from Alfortish to Capital One Bank on February 1, 2008. The balance in the "settlement expense account" was transferred to the "settlement account."

On February 28, 2008, \$15,332.32 was transferred to the LHBPA from the "settlement account" for "2006 Interest Transfer." On April 29, 2008, \$11,220.81 was transferred to the LHBPA from the "settlement account" for "2007 Interest Transfer." Given that the plaintiffs acknowledge that the funds in the Video Poker Settlement Accounts are "purse money" (Petition, ¶ 80), those transfers apparently were proper. *See* La. Rev. Stat. § 4:185.

⁸ The minutes of the LHBPA's Finance Committee's meeting of December 9, 2008 reflect that the LHBPA needed "additional revenues because of the dramatic interest rate declines which have resulted in reduced revenues and increased expenses such as legal expenses." Minutes of Finance Committee meetings and of Board meetings do not, however, reflect any discussion of wholesale transfers of funds from the Video Poker Settlement Accounts to the LHBPA such as those that occurred from August 2008 to July 2009.

The following checks written on the Fair Grounds Video Poker Settlement Account to the LHBPA caught my eye:

<i>Check no.</i>	<i>Date</i>	<i>Amount</i>	<i>Memo</i>
10836	June 2008	\$26,231.07	transfer for legal fees
10841	July 2008	\$20,000.00	transfer for legal retainer
10840	August 2008	\$10,000.00	bank transfer – legal
10842	December 2008	\$10,000.00	bank transfer ⁹
Total		\$66,231.07	

The minutes of the Board's meetings in 2008 do reflect some discussion of legal expenses of the LHBPA. They do not, though, establish how the decision to take the legal expenses from the Fair Grounds Video Poker Settlement Account was reached. This issue should be investigated further.

3. Hurricane Relief Donations¹⁰

The plaintiffs allege various improprieties concerning charitable monetary donations received by the LHBPA after Hurricanes Katrina and Rita, including misuse of those funds (Petition, ¶¶ 105 – 116; Stakelum Letter, numbered paragraph 3). Among the general allegations of misuse and self-dealing was the specific allegation that donated funds were used to install an audio system in Alfortish's home. Support for this allegation appears in the September 24, 2009 sworn testimony/affidavit of Nelson J. Menard, Jr. at pages 16 – 18. In that sworn testimony/affidavit, Nelson Menard testified that he installed the system at Alfortish's home at the instruction of Romero.

Shortly after Hurricane Katrina struck, the LHBPA began receiving monetary donations from around the country to help individuals in the horse racing industry in Louisiana who had been affected by the storm. To deal with those funds, a 501(c)(3) non-profit corporation called the *Louisiana Horsemen's Benevolent and Protective Association Charitable Foundation, Inc.* ("Charitable") was formed on October 28, 2005. Charitable served as a clearing house for the receipt and distribution of donations, first as a result of Hurricane Katrina and then as a result of Hurricane Rita. In a February 26, 2010 meeting with Liz Roussel and Jim Gelpi, I was told that Charitable developed a system for distributing donations by which a written application for aid was made, the application was reviewed by Charitable's board of directors, and money was distributed. Charitable's articles of incorporation show that its initial board of directors consisted of Alfortish, Tom Ball, Sam David, Larry Robideaux, and Gerald Romero. The articles also show that Charitable had no members.

I understand that the LHBPA has resisted calls to disclose information about the donated funds received and distributed by Charitable. LHBPA has asserted that it and Charitable are

⁹ Alfortish told me that this non-legal-related transfer was to fund the LHBPA's operations.

¹⁰ Engagement letter scope item no. 4.

separate corporations, that neither entity had any sort of legal obligation to disclose the information and that confidentiality concerns about revealing recipients and the amounts they received weighed in favor of non-disclosure. In a mandamus action entitled Seelig v. Louisiana Horsemen's Benevolent and Protective Ass'n 1993, Inc., Orleans Parish Civil District Court No. 2009-08723, the court on November 19, 2009 denied Seelig's request for records of Charitable.

Apparently undeterred, Seelig pressed on. The Stakelum Letter avers that it "is our understanding that [Charitable] was organized by the [L]HBPA or by individuals acting on its behalf and that the [L]HBPA is responsible for appointing the individuals who run [Charitable]." I have analyzed Charitable's articles of incorporation and its bylaws. I found no support for those allegations. Additionally, I reviewed with Alfortish the LHBPA organizational chart given to me by Jim Gelpi. Alfortish told me that, notwithstanding the chart's apparent indication that the LHBPA oversees Charitable and that Charitable reports to the LHBPA, there is no organizational connection between the LHBPA and Charitable. Finally, I understand that a federal grand jury is investigating allegations of misuse of funds donated to help Louisiana horsemen in the wake of Hurricane's Katrina and Rita. I recommend that the LHBPA continue to oppose the plaintiffs' efforts on this issue.

4. Indemnification of Officers, Directors, and Other Employees¹¹

The plaintiffs complain of an amendment to the Bylaws adopted at the July 29, 2008 Board meeting (Petition, ¶¶ 117 – 132; Stakelum Letter, numbered paragraph 2). The plaintiffs complain that the amendment does not comply with La. R.S. 12:227, which addresses indemnification of officers, directors, employees, and agents of Louisiana nonprofit corporations. The plaintiffs want those who receive indemnification payments "to execute an appropriate written agreement containing the usual and customary terms for repayment of indemnification advances if such person is unable to show that they were free of all wrong-doing and such other requirements as must be met under the statute and bylaws. Formal demand is further made upon the board to obtain appropriate collateral from each such person to secure such repayment obligations" (Stakelum Letter, p. 3).

The amendment broadened the indemnification provisions in the existing Bylaws. Those provisions were mandatory for Officers or Directors and discretionary for Employees or Agents. In either case indemnification was limited to instances where there had been an adjudication that the conduct of the person to be indemnified met the appropriate standard and indemnification only was due at the conclusion of the matter. The amendment provided that, on a discretionary basis, the indemnity set out in sections 1 - 3 of Article VI of the Bylaws "may be made when any Officer, Director, Employee or Agent of the [LHBPA], by reason of his or her position with the [LHBPA], is a witness by mandatory order of the government in a civil or criminal proceeding" and that expenses may be reimbursed as they are incurred. The amendment also provided that "subject to the discretion of the Board," Officers, Directors, Agents, or Employees who received witness indemnification payments shall be liable to reimburse the LHBPA "the amount of any or all such expenses so reimbursed in the event said recipient, in a relevant subsequent judicial

¹¹ Engagement letter scope item no. 5.

proceeding, is adjudged guilty as charged in a criminal court or guilty of willful civil misconduct in a civil court.”

The indemnification provided by statute for indemnification of officers, directors, employees, and agents of Louisiana nonprofit corporations is not exclusive of any other rights to which an indemnitee may be entitled under any bylaw, agreement, authorization of members or disinterested directors, or otherwise. La. Rev. Stat. § 12:227E. The statute applies even when the person seeking indemnification is not a defendant. Id. § 12:227A; Lain v. Credit Bureau of Baton Rouge, Inc., 637 So. 2d 1080 (La. App. 1 Cir. 1994).

The statute contemplates the situation created by the amendment to the Bylaws that allows for reimbursement of expenses as they are incurred. *See* La. Rev. Stat. § 12:227D. Under that subsection, indemnification may be paid in advance of a matter’s final disposition if two requirements are met. First, the indemnification must be authorized by the board of directors in the manner provided in La. R.S. 12:227C.¹² Second, the director, officer, employee, or agent must provide an undertaking to repay the amounts paid in advance of final disposition unless it shall ultimately be determined that indemnification is proper. La. Rev. Stat. § 12:227D.¹³

I recommend that the Board amend the Bylaws to comply with La. R.S. 12:227 *vis-à-vis* reimbursement for expenses as they are incurred. Attention should also be paid to Article V, § 10(A) of the Bylaws, which provides, among other things, that the LHBPA may not obligate itself for legal or attorney fees without the prior consent of the Board.

In response to the plaintiffs’ demand for collateral, no requirement exists in the law or the Bylaws that indemnitees who are reimbursed for expenses as they are incurred provide collateral to secure any repayment obligations that might arise.

5. Use/Misuse of LHBPA Corporate Credit Cards¹⁴

The plaintiffs complain that “extraordinarily large sums were charged against the [L]HBPA’s credit cards,” that no written policy for use of the LHBPA’s credit cards existed, that the LHBPA did not maintain proper documentation for amounts charged against its credit cards, and that the LHBPA did not exercise proper corporate oversight over the spending that was occurring on the LHBPA’s credit cards. The plaintiffs ask that that the Board engage an independent certified public accounting firm to audit charges on the LHBPA’s credit cards since March 2005. The plaintiffs seek damages against the defendants to compensate the LHBPA for losses that it sustained as a result of acts of the defendants that led to misuse or abuse of the

¹² The authorization must be made (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable or a quorum of disinterested directors so directs, by independent legal counsel, or (3) by the members. La. Rev. Stat. § 12:227C.

¹³ An “undertaking to repay” does not require security. *See Bernard v. Vignaud*, 8 Mart (o.s.) 442 (La. 1820).

¹⁴ Engagement letter scope item no. 6.

LHBPA credit cards (Petition, ¶¶ 133 – 147; Stakelum Letter, numbered paragraph 4).

The LHBPA apparently has two credit card accounts – one with VISA and one with American Express. I discussed the credit card usage with Alfortish and Romero. I reviewed the LHBPA's credit card statements from March 2005 to the present.¹⁵ I understand that the only LHBPA personnel now with corporate credit cards are Alfortish and Romero. Restricting corporate credit cards to Alfortish and Romero should make controlling and monitoring the cards' usage easier. I do not know if the LHBPA has adopted a written credit card usage policy. I recommend that it do so.

The plaintiffs are correct in their observation that large amounts were charged against the LHBPA's credit cards. However, when I spoke with Alfortish and Romero about the charges that I had flagged for follow up they were able to explain them. I understand that the National Horsemen's Benevolent and Protective Association conducts four conventions a year at different locations in the United States and that Board members and Romero (and spouses) attend them. Credit card charges associated with attending those conventions were evident. I also understand that the LHBPA's worker's compensation segregated portfolio company, *Horseman's Insurance Alliance, SPC* ("SPC"), is required to hold yearly board meetings and that those meetings cannot occur in the United States, which explains credit card charges in such exotic locales as Mexico, Costa Rica, and Aruba.¹⁶ I did note charges associated with attendance at a Bobby Jindal fund raising event in San Diego, California in March 2009 for, among others, Romero, James Nickel, and William Courson. I was told that Courson and Nickel are LHBPA lobbyists.

Perhaps more noteworthy than the amounts charged to the LHBPA's credit cards was the source of funds for payment of some of the credit card statements. Several statements were paid partially or in full with checks drawn on the Louisiana Horsemen's Medical Benefit Trust Administrative Account. On the VISA credit card, the following amounts were paid with checks drawn on the Louisiana Horsemen's Medical Benefit Trust Administrative Account:

<i>Statement Date</i>	<i>Amount paid from Medical Benefit Trust Administrative Account</i>
Nov. 3, 2008 to December 2, 2008	\$636.81
March 3, 2009 to April 2, 2009	\$1,342.41 (entire balance)

¹⁵ The following statements were not available for my review: VISA – February 2008 to June 2008; American Express – February 2008 to May 2008.

¹⁶ I was told that members of the board of directors of SPC (and spouses) attend SPC's yearly meetings. For example, I noted airfare charges on Romero's American Express card statements ending September 12, 2007 and October 11, 2007 for round-trip travel to Aruba for the following individuals: Sam David, Elizabeth David, William Hof, Deborah Hof, Kathryn Hornsby, Will Hornsby, Gerald Romero, Cindy Romero, Tammy Broussard, Carroll Castille, and Stacey Castille. I was told that those individuals (or their spouses) were on SPC's board.

April 3, 2009 to
May 2, 2009 \$857.51 (entire balance)

October 3, 2009 to
November 2, 2009 \$454.92

On the American Express credit card, the following amounts were paid with checks drawn on the Louisiana Horsemen's Medical Benefit Trust Administrative Account:

<i>Statement Date</i>	<i>Amount paid from Medical Benefit Trust Administrative Account</i>
September 11, 2008	\$6,347.23 (entire balance) ¹⁷
October 12, 2008	some amount, not entire balance (my notes are unclear, but reference to the statement will clarify)
December 12, 2008	\$8,835.14 (entire balance) ¹⁸

It should be noted that copies of the checks drawn on the Louisiana Horsemen's Medical Benefit Trust Administrative Account were attached to the credit card statements that they were used to pay. That practice would seem to indicate no chicanery in connection with the use of Medical Benefit Trust funds to pay the credit card bills (had the checks not been attached to the statements, anyone reviewing the statements would have not know the source of funds used to pay the statements). Nevertheless, a written policy addressing what funds should be used to pay the LHBPA's credit card bills is probably in order.

6. Workers' Compensation Insurance Program¹⁹

The plaintiffs allege that the recent audit of the LHBPA's workers' compensation insurance program by the Louisiana Department of Insurance (the "DoI") disclosed some deficiencies in the program. The plaintiffs want those deficiencies addressed. The plaintiffs also complain that the DoI did not have access to records and assets kept at overseas locations and that the auditing company, pursuant to its policies, did not make its work papers available (Petition, ¶¶ 147 - 166; Stakelum Letter, numbered paragraph 8). I understand from Jim Gelpi and Liz Roussel that the DoI did have access to records and assets kept at overseas locations. I

¹⁷ Alfortish told me that these charges were in conjunction with a "big" meeting of the Medical Trust's board that occurred in Shreveport before a general membership meeting of the LHBPA.

¹⁸ Alfortish told me that a portion of these charges were attributable to the Medical Trust, but that the LHBPA was low on funds when this bill was paid and the Medical Trust "loaned" funds to pay the bill to the LHBPA. I have seen no written evidence of the loan or of its repayment.

¹⁹ Engagement letter scope item no. 7.

also understand from Gelpi and Roussel that the auditing company has been replaced with an auditing company that does, as a matter of policy, release its work papers.²⁰

As to the deficiencies noted by the DoI and its recommendations, I have reviewed the DoI's *Summary of Comments and Recommendations* and the LHBPA's letter dated December 31, 2009 to the DoI addressing each of DoI's comments and recommendations. With the following ministerial questions and comments, I believe that the DoI's concerns have been addressed.

Service and Management Agreements

What is the status of the processes identified in reply to item nos. 4 and 5?

Has the written agreement identified in reply to item no. 7 been executed?

Fidelity Bond and Other Insurance

Has the coverage related to Directors been clarified per the reply to item no. 8?

Market Conduct

What is the status of the establishment of surcharges mentioned in reply to item no. 10?

Treatment of Policyholders – Claims Review

Has Broadspire agreed to the modification of the contract to address or include the requirement of a complaint register mentioned in reply to item no. 12?

Accounts and Records

Has the additional letter further confirming LHBPA's tax exempt status mentioned in reply to item no. 16 been received?

Contingency Planning

Have the business contingency plan and the system for the transfer of data to the off-site mirrored system been enhanced and reduced to writing as mentioned in reply to item no. 21?

Notes to Financial Statements – Note 1

Has the "written confirmation" mentioned in reply to item no. 22 been received?

²⁰ I note that at the Board meeting held on July 29, 2008, Alfortish reported that Frank McGee, the Louisiana Department of Insurance auditor who audited the workers' compensation program, was impressed with the program and said that it was by far the best new workers' compensation program he has ever seen.

7. The LHBPA's Annual Meeting of Members²¹

This item is not a lawsuit allegation. On November 12, 2009, the plaintiffs complained that more than a year elapsed since the last general membership meeting of the LHBPA occurred in September 2008 (Stakelum Letter, numbered paragraph 9). A general membership meeting occurred on December 21, 2009.

The plaintiffs ground their complaint on a provision of the Bylaws that provides that there "shall be at least one (1) General Membership Meeting of the [LHBPA] **each** year, and such additional General Membership Meetings as the President may determine necessary for the welfare of the [LHBPA]" (Bylaws, Art. V, § 9) (emphasis added). The plaintiffs' position apparently is that the Bylaw requirement of at least one general membership meeting "each year" means that a general membership meeting must occur at least once every 365 days, rather than once every calendar year.

This issue is picayune. As it was not included in the lawsuit, I question whether the plaintiffs have abandoned it (they do not allege any harm as a result of it). In any event, the Bylaws also provide that the "President shall call at least one (1) General Membership Meeting **annually** and bi-monthly Board meetings, and such additional meetings as the welfare of the [LHBPA] may require (Bylaws, Art. 5, § 3(G) (emphasis added). To the extent that some textual tension exists between the use of "each year" in Article V, Section 9 and the use of "annually" in Article 5, Section 3(G), I suggest that the two sections be amended and harmonized to make clear that a general membership meeting must occur at least once each calendar year.

8. Bonding Requirements²²

This item is not a lawsuit allegation. The plaintiffs complain that the LHBPA is not complying with the bonding requirements of the Bylaws. Those requirements are that the "President, employees of the [LHBPA], and members of the Board as may be specifically designated by the Board, the Executive Director, and the Secretary-Treasurer shall . . . be bonded in such amounts and in such manner as determined by the Board" (Bylaws, Art. V, § 1(G)). Additionally, the "Executive Director, the Secretary-Treasurer, the Certified Public Accountant/Auditor and such other employees of the [LHBPA], as may be designated by the Board, shall be bonded in such amount as determined by the Board" (Bylaws, Art. V, § 2). The plaintiffs demand that the Board "obtain surety bonds on all of the persons holding the aforementioned positions in a minimum amount of \$500,000 per person" (Stakelum Letter, numbered paragraph 6).

I reviewed certain insurance documents provided to me by Liz Roussel. Those documents show that Travelers Casualty and Surety Company of America ("Travelers") issued a

²¹ Engagement letter scope no. 8.

²² This item was not included as part of the original scope of the engagement letter. It subsequently was added to the scope of this report.

Directors & Officers liability insurance policy to the LHBPA (policy no. 105028673), that the policy is in effect, and that the policy includes "employee theft" coverage with a limit of \$800,000.00. The insuring agreement of the policy addressing employee theft provides that Travelers "will pay you for your direct loss of, or your direct loss from damage to, **Money, Securities and Other Property** directly caused by **Theft or Forgery** committed by an **Employee**, whether identified or not, acting alone or in collusion with other persons [emphasis in original]." Consequently, I believe that the plaintiffs' concern on this issue is satisfied.

Please let me know if you have any questions or comments about the above. I am available to discuss this report with the LHBPA at the convenience of all involved. I reserve the right to modify and or supplement this report on the basis of additional information received or knowledge gained about its subject matter.

Thank you again for the opportunity to work on this interesting matter.

Sincerely,



Richard L. Traina

RLT:jdt

Cc: Elizabeth A. Roussel, Esq. (by email: liz.roussel@arlaw.com)

C. James Gelpi, Esq. (by email: cjg@stanleyreuter.com)