

## **INTRODUCTION**

Mr. Chairman, distinguished members of the Committee, I am both pleased and ashamed to appear before you today. I am ashamed for two reasons, that the collective talents within the horse racing industry cannot solve on track injury insurance, and that I played an instrumental role in placing Wayne Gertmenian as the Guild's current president. Concerning Gertmenian, I say this because in my view he has alienated the entire racing industry to the extent jockeys no longer have a respected representative to voice their concerns.

However, I am grateful for the Committee's attention to the issue of on track injury insurance. I believe this hearing could someday lead toward creating a nationwide program that would include insurance for all backside workers as well as national uniform safety standards that would help reduce injuries.

Our sport is incredibly dangerous, and like most jockeys, I have suffered numerous injuries during my career. In my most traumatic incident I was dropped in a race and trampled. Several bones were broken, including my neck. That particular incident left me temporarily paralyzed. Thankfully the paralysis was brief, but nonetheless, terrifying.

In my written testimony I elaborate my opinions and have included a simple proposal for resolution. The debate here is not that coverage is sorely needed, but rather who carries the fiscal responsibility. In this business working with high-spirited race horses where anything can get you hurt, all the players in this industry have a joint responsibility to ensure no one is denied on track benefits.

Mr. Chairman, I have struggled writing this testimony covering my involvement with the Jockeys' Guild. How can I explain in five minutes what took place over a few years? Furthermore, this committee will hear narratives from many individuals who were involved with Gertmenian at different periods of time. To my recollection, I can't recall the last time Gertmenian gave an accurate statement. The Guild is skilled at stonewalling. They often don't provide factual documents, and instead dispute claims with the "I said, you said" spin. In my written testimony, verifiable facts are provided.

In regard's to Gertmenian's empowerment, I was part of a group of members who under Gertmenian's direction led the charge to replace longtime manager John Giovanni. Gertmenian orchestrated every detail of that takeover. My involvement with the takeover was the biggest mistake of my career. It is a mistake I deeply regret, and have tried to rectify.

The largest controversy surrounding this matter is why, and by whom, the \$1 million on track injury policy was canceled. In December 2001 at the Guild's annual assembly Gertmenian stated the Guild was broke and a few months away from insolvency. He further stated because of the financial problems, his staff was attempting to renegotiate the on track policy while shopping for another. Unfortunately, no minutes of the 2001 assembly were made transparent.

There are, however, minutes of the 2003 assembly where Gertmenian repeated his 2001 claim. He stated, "Now, by the time you hired us to come and take a look at these books, you were down to about \$800,000." He further claimed the Guild had lost everything and was a very few months away from insolvency.

To counter these statements are IRS returns filed for 2001. In these filings, the Guild and its Disabled Fund reported combined net assets of \$5 million. These assets were mostly cash and investments. To say membership was deceived is an understatement.

With regard to the on track insurance policy, no vote was ever taken by the Board and no authority was ever granted to Guild management to cancel the policy. Mr. Chairman, I was a member of the Board at the time. The jockeys of the Guild would never get rid of the most vital benefit of our membership. Instead, this decision was made by people who never put their lives in danger in the saddle on a racehorse. Despite Gertmenian's sworn testimony in federal litigation that the Board canceled the policy, many of the Board members have publicly disputed this. Some of them are here today. Regardless to any of Gertmenian's claims, no written notification was ever mailed to Guild members informing them of the cancellation.

In my written testimony I cited numerous problems within the Guild concerning their integrity and truthfulness. The following incident is just one such occurrence.

After retiring from riding at the end of 2002, I worked briefly for Gertmenian. I was being trained to manage the Guild's finances. In audits I was preparing, Gertmenian instructed me to double bill the states of California and Delaware for benefits which the Guild had already been reimbursed for by the Disabled Jockeys Fund. I refused believing the billing to be unethical. Gertmenian refuted my beliefs and informed me that I was "undereducated and did not understand innovative accounting". I alerted then-chairman Tomey Swan with my concern, along with other problems recently discovered. Her immediate response was to close the financials to all members, including the Board, with the exception of three hand picked by Gertmenian. Closing the financials violated the Guild's bylaws and Department of Labor regulations.

The unethical conduct I witnessed led me to quit my job in frustration. After my departure, the Guild immediately started a vicious campaign against me. I was eventually expelled from the Guild, falsely accused of theft and vandalism. Guild management stated on numerous occasions, to both their members and the public, that criminal charges were filed against me. To this day, no criminal charges have ever been filed against me. I did attempt to clear my name, and sue for defamation. Unfortunately, I could not match the Guild's financial resources and had to settle.

In closing Mr. Chairman, I would like to make two statements:

To Mr. Giovanni: John, you and your staff did absolutely nothing wrong and I am truly sorry for my part in your removal as national manager of the Jockey's Guild.

To the jockeys of America: I rode with you for 27 years. You asked me to look out for your best interests and continue my commitment to improving our profession. My tenure with the Guild was conducted with integrity. I believe that you are shooting the messenger, and not accepting the message.

## **ON TRACK INJURY INSURANCE**

### ***Opinion & Thoughts***

Chairman Whitfield, I am currently employed as an exercise rider, by a trainer at Retama Park in Texas. As with most backside workers, I have little or no say in management and control issues

in my working environment. For the most part, neither does my employer. Track managements and commissions decide and enforce most of the working conditions, including safety and insurance issues, and that the backside workers pay for with their pocketbooks and their bodies. I would like to mention two incidents at Retama Park demonstrating this. I am not citing Retama Park as a dire place to work at, which it is not, just demonstrating what is acceptable in this industry. Incidents like these happen regularly at tracks around the country.

*Incident one.* Retama Park races at night, where there are dozens of light standards with hundreds of flood lights. In the very early morning training hours, they can not turn on a light, not one. If a loose horse runs into me that I can not see because of darkness, I'm responsible for my own medical and disability coverage because the state does not enforce workmen's compensation and Retama Park has no coverage for exercise people.

*Incident two.* On September 10th, 2005, during the running of the 7th race, jockey Deirdre Panas fell hard entering the far turn when her mount, Wild Over You, broke both front legs. While Panas lay dazed and partly under Wild Over You, the chase truck failed to notice and drove by. For what ever reason, no ambulance followed this race and was NEVER DISPATCHED. It is very disturbing that when a jockey and horse needed the safety system the most, the system failed. Fortunately Ms. Panas suffered only scrapes and bruises. Had Panas been seriously injured while she was stuck under Wild Over You, she would have been responsible for all medical costs over \$100,000 even though she did not cause the horse to break its legs or tell the emergency team not to respond.

What is so frustrating with this whole insurance issue is that it is just a sliver when you look at the entire economic picture. On a national average, over \$34,000 is wagered on each horse when it steps on a track to race, but the industry can't find \$25 to insure the jockey? Add the rest of the backside workforce and maybe we're looking for a total of \$100. We're an industry with a GDP impact of \$34 billion and we can't find \$75 to \$100 million for coverage? I personally find it difficult to support this industry asking states for slots to maintain horse racing when it has a long history of not looking out for the well being of its workforce.

### ***Proposal***

When the cost for a national program is compared to the national mutual handle, it really isn't a question of money. To insure all the jockeys in the United States with a million dollars of medical coverage is less than two-thirds of one-tenth of one percent of the national handled (0.066%). What is the problem here?

While the cost is a very small part of the economic picture for the entire horse racing industry, the economic impact without joint cooperation to any one organization or individual can be overwhelming, especially an exercise person or jockey that has suffered a catastrophic injury with either limited or no medical coverage. Trying to feed your family while having millions of dollars in medical bills and no means of earning income due to a disabling injury is something no one in this industry should have to face.

The industry should not only address the insurance problem for everyone involved with the horses, but at the same time developed a national program that makes safety job one. Developing, implementing, and monitoring uniform safety standards would help reduce injuries.

The attached proposal takes a very simplistic approach and slices everything down the middle or at least in parts to all entities involved. It first divides the cost between the national handle and the local entities involved with each horse that starts. The proposal further divides each half. On the mutual handle side, a sliding scale based on the amount of the wager contributed to purses, the less contribution, the higher percentage charged for the program. The local track's half would be further divided among the entities involved with the horse. The cost associated with a horse running in a race would be divided between the track, horse owner, and jockey. For the backside help, grooms and exercise people, the costs would be split between the tracks and trainers. How each pays their share could be decided locally, percentage of purse, fee per start, fee per stall, etc. (SEE Appendix A – On Track Injury Insurance Proposal)

## **JOCKEYS' GUILD**

### *Preface*

Mr. Chairman, in my introduction I briefly explained my involvement with the Jockeys' Guild and the takeover by Gertmenian. There has to be questions as to why jockeys would so faithfully believe in and follow Gertmenian.

Dr. Gertmenian is a powerful speaker and has an amazing ability to make people believe in him and, sorry to say, I was one of the first to follow. As with most jockeys, this was not a difficult thing to do. Combine poor working conditions, little respect from the industry, long working hours and under education with promises to remedy these, and the jockeys will follow anyone. Mr. Gertmenian has assured jockeys he will make them "true superstars" and rich beyond their dreams.

Since the takeover, Mr. Gertmenian has declared war on horse racing. In my opinion, his war has destroyed the Guild's finances, including monies received from tracks. He has refused to work civilly with any organization in the industry and has refused to provide answers in the form of truthful financials to just about anyone, including Guild members. Mr. Gertmenian has viscously attacked anyone who dared to speak against him and if they were a member, had them thrown out and benefits denied. He has failed to understand the Guild's primary purpose, taking care of injured jockeys, by not renewing \$1 million of on track coverage. The very existence of the Guild is now threatened under Mr. Gertmenian's reign.

### ***Takeover by Gertmenian***

The turmoil for a change in management really began at the 2000 national convention. It was here where Chris McCarron and Mike McCarthy were elected to the nine member executive Board. I was added as a tenth member following the executive Board election when the membership was impressed with a presentation I made about the Guild's current membership model and funding. They changed the bylaws so a tenth member could be added. They opened the nominations where I was the only one nominated and I was elected to executive Board. One of the members retired shortly after this, though I cannot recollect his name.

It was revealed at the convention the Guild was having financial difficulties. The Guild, though currently financially sound with assets of about \$5 million, was projected to lose significant money in 2001. This was mainly due to many members not paying for their health benefits in

full and increased costs in health benefits. A couple of key resolutions were passed at this assembly:

- *Zero Tolerance.* A resolution of zero tolerance of members not paying for the health benefits in full. All members would have to pay for benefits up front and would be canceled if they were 30 days in arrears.
- *Disabled Jockeys Fund principal not to be used.* John Giovanni had proposed to ease the current financial situation by having the Disabled Fund pay for the health insurance of permanently disabled members. This would have bankrupted the Fund in 18 months or less. His resolution was soundly defeated and instead, a resolution was passed mandating only future donations and the interest from the Fund could be used. The principle was not to be touched.
- *Balance budget.* A resolution was passed mandating the Guild would have to operate each year at a profit. The Guild could no longer use any of its assets towards operations.

The balance budget resolution led to a series of meetings by the executive Board where we reviewed cost cutting measures. Prior to the first meeting, Mike McCarthy and I spent three days at the Guild's office in Lexington reviewing the accounting system and making extensive copies of travel, salaries, and the retirement plan for employees records. I wanted to see what the true costs were per employee and created extensive reports prior to the first executive Board meeting.

At the first meeting, it was revealed we were facing a health premium increase of 40+% and most likely would have to cancel the coverage. I personally was furious that this had not been told at the recent national convention, where all the members could have decided on such a serious issue. The current health plan then through ULLICO, provided coverage both on and off the track. John Giovanni proposed purchasing a separate policy through CIGNA that would provide for \$1 million of on track coverage only. McCarron, McCarthy, and I fought hard to keep the current health plan in place, but were out voted in the end, and effective April 1, 2001, the ULLICO policy was canceled and the CIGNA policy became effective.

It was at this time Wayne Gertmenian came to the forefront. Gertmenian and McCarron had met though their daughters and their relationship expanded with them discussing the Guild extensively. I had become aware of him previous to my election to the Board in 2000 and first spoke with him that same year.

Gertmenian's involvement accelerated in the spring of 2001 where he planned and orchestrated our every move in minute detail in his conquest of the Guild. He traveled extensively to tracks trashing Giovanni and later had the Guild reimburse these traveling expenses. He held "coaching sessions" with the four Board members supporting him. Gertmenian pushed us to request an executive Board meeting. Mr. Gertmenian groomed us extensively prior to the meeting, he had me purchase a tape recorder to record the meeting, he wrote both the resolution and cause for action for the meeting, he worked ahead of time with Matrix attorney Lloyd Ownbey and made it very clear that Ownbey was to be invited into the meeting, he contacted the landlord of the Guild's office ahead of time, and finally he had me place my cell phone to the land phone line so that he could secretly listen to the teleconference. Mr. Chairman, reflecting back on my actions, I am ashamed.

On June 15, the executive Board held a meeting via teleconference to discuss the direction of the Guild. John Giovanni was not invited. McCarron read Gertmenian's resolution to fire the current staff and replace them with Gertmenian and his associates. About two hours of time and debate took place and because I had to keep placing my cell phone to the landline, I am not exactly sure what we voted on or what the vote was, but I received four signed cause for action resolutions and my signature made five. I immediately faxed the signatures to Gertmenian, where he had two of his associates fly immediately to Lexington from Los Angeles. They entered the Guild's office, changed the locks and never allowed Giovanni or his employees into the office again.

On the very next day after the teleconference, Guild President Pat Day had a change of mind and attempted to set up another Board meeting, but Gertmenian instructed the four of us, McCarron, McCarthy, Swan, and me not to speak to anyone, not to participate in any meeting, and not to even answer the phone. This would deny the Board from ever having a quorum and thereby making any changes. He stated we should continue this behavior until a few of them quit in frustration. We then would place individuals in support of us on the Board. Pat Day resigned within a couple of weeks, soon followed by Jerry Bailey, Tony Black, Larry Melancon, and Dean Kuntz.

### ***Signs of Trouble***

The first serious sign of trouble with the new management was in the fall of 2002. I was working in Southern California as a stunt jockey in the filming of Seabiscuit. Chris McCarron and his wife Judy had graciously offered me to stay at their home. Chris was the technical advisor on the film and the current treasurer for the Guild. I believe it was in October when Chris received the independent audit for the Guild, the first under Gertmenian. The auditor was *“unable to conduct an audit of the statement of activities and cash flows in accordance with auditing standards generally excepted in the United States of America.”*

Chris immediately contacted Gertmenian who did his usual dance around the issue and blame it on former national manager John Giovanni. Chris and I had very little time due to the filming, so Chris made arrangements for a meeting by phone with Dana Piazza, the certified public accountant from Piazza, Donnelly, & Marlette, who conducted the audit. During an hour lunch break, Chris and I spoke with Dana. He revealed very troubling problems within the Guild’s office. He stated the office has basically refused to help in any manner. The office had provided very little paperwork, did not return his repeated phone calls, and he could never get a straight answer. He stated the management was very unprofessional. Chris and I confronted Gertmenian again and tried to arrange a meeting. He could not find the time to meet with us. We contacted Chairman Swan and insisted a meeting with the Board.

At the teleconference, Gertmenian once again blamed the problems on Giovanni and in addition, the former auditor of the Guild, Arthur Anderson. One of the most serious concerns with the audit was that management was unable to locate bank statements to two accounts, and their ownership. Net transfers for the year into the accounts had been approximately \$377,000. Gertmenian stated on his staff was one of the best forensic auditors there is, Alice Gaston, and she could not find this money. After researching this thoroughly, they felt strongly Giovanni owned the accounts and had stolen the money. I stopped Gertmenian right there and told him I did not believe him. I knew Giovanni well enough that I really didn’t think he was capable of this. Seabiscuit would be filming in Kentucky for two weeks in November, and I would go to the Guild’s office there to look into the problem. Once I was there, I literally found the answer in five minutes with a couple of calls to the banks. The trust accounts were required by law to transfer the money into holding accounts of the bank. Not a penny was missing.

Before leaving Lexington, I helped prepare for the December assembly, even though I could not go. I made Tom Richardson bring the accounting up to dated and give me some year to date financials. I packed copies of these financials, along with copies of the failed audit in a box with several other items into the box that was to be taken to the assembly. A few days after the meeting I was informed no audit or any financials were made available to the membership. I confronted Gertmenian. He stated the audits had been forgotten at the Guild's office. Other items in the box I packed were used at the meeting. Gertmenian didn't forget to invite the auditor, Lacey Marlette, who was there.

McCarron and I both sent our resignations to the Board at the 2002 national assembly. As stated previously, neither of us attended due to prior comments. At the meeting members of the Board request I be asked to work for the Guild. Gertmenian approached me about the idea, but I was some what hesitant with what had been transpiring in the Guild's office. He stated the Guild's office was relocating to near his home, which would give him more access of Matrix Associates. He wanted me to takeover the finances and help manage the office. He assured me the office would be run in a professional manner now that he could be there everyday. I agreed and started January 1, 2003

### ***Working for Gertmenian***

The office was set to relocate early to mid February. I help set up the building where we would be moving into and the new computers and network. In addition to the extensive work preparing the office and then unpacking items as they came, I was assisting in writing the TRA contract. Gertmenian had declined to renew the Guild/TRA contract when it expired at the end of 2002 and was attempting to address all the problems faced by jockeys into the new contract. Gertmenian had previously told the Board he and the attorneys were doing quite well with progress on the contract. The "great" progress I was given were scraps of paper with scribbled ideas from members who had attended the last assembly.

When I finished setting up and testing the new network, Steve Rice flew from Lexington with the Guild's data. We restored the data on to the new machines, and for the first time, I had an unrestricted access to the Guild accounting and the hard copy file system.

I was stunned. It was horrifying. The accounting system was in a shambles, in spite of the Board previously approving \$50,000 to upgrade. I discovered the upgrade costs to really be about \$250,000. The main cost was the custom software, which had to be thrown away. Members' savings and health insurance premiums were being commingled into the general operating account. Audits and tax returns were excessively late and appeared to me to be incorrect, with possible fraud. I discovered the independent auditor had a long time relationship with Gertmenian. Since the Gertmenian takeover, the Guild had stopped filing Department of Labor Management LM-2 reports, as required by the DOL. Employees' apartments, food, and utility bills had been regularly paid for and hidden inside of the Guild's expenses. I could not find any record where 1099s had been issued for these fringe benefits. Gertmenian's \$12,000 worth of annual insurance annuities the Guild bought for him as required in his contract was also hidden. His contract provided him with a leased car and related expenses which were not listed anywhere on the tax returns. The car was basically for personal use. There was no office structure, no job descriptions, and no check and balances of any kind. I also witnessed what I considered serious election manipulations and violations. There were too many problems, of which the Board and membership had been misled or outright lied to, to list here. In the Appendix is a document I presented at a Delaware Commission meeting in the fall of 2003 citing my concerns with the new Guild management. (SEE Appendix E – Delaware Concerns)

### ***Chairman Closes Financials***

As mentioned previously, it was around this time period where Gertmenian had instructed me to double bill the States of California and Delaware for benefits the Guild has already been paid by the Disabled Jockeys Fund. I contacted Chairman Swan and she flew to the Guild's office. I picked her up at the airport and explain many of my concerns. We met with Chris McCarron and Kent Desormeaux at Kent's restaurant in Monrovia, where a teleconference was held with the Board. The Board decided to have a face to face meeting in Monrovia on the suggestion of Board member David Shepherd. Later that evening I drove Swan over to a reception for Edgar Prado in honor of winning the Wolfe award. Gertmenian was there and ordered Daryll Haire to drive Swan around. I was not able to speak with her for the rest of her stay. The next day Swan met with Gertmenian and fax a memo to the rest of the Board. The memo with her signature stated:

To: Jockeys' Guild Board of Directors  
From: Tomey Jean Swan  
Date: 3/24/2003  
Re: Matrix Capital Associates Contract

In considerations of those issues raised at our Board meeting, I have created a standing Financial Committee of the Board, charged with receiving and reviewing in –depth the financial statements at regular intervals. The committee will be comprised of the Chairman of the Board, Tomey Jean Swan; Treasurer Eddie King, and one Board member-at-large

I phoned Swan and confronted as to where she thought she had the power to create the committee. I also question as to whose idea this was and who picked the members of the committee. She stated she was chairman, she had formed the committee, she had picked the members and she could do “what ever she wanted”. She further stated she had closed the financials to all members but the financial committee. I informed her I would have no such part, and resigned my position.

The Guild bylaws stated the following concerning financials and the committee:

#### **ARTICLE VIII BOARD of DIRECTORS**

Section H **POWERS and DUTIES.** All the powers customarily vested in a corporate Board of directors shall be vested in this Board. These include, but are not limited to, the hiring of, and contracting with, a President as CEO. Such contracting may not occur during the 90 days immediately prior to the annual Assembly. From time to time, the **Board may create committees** to perform those functions necessary to pursue the purpose of the Guild.

#### **ARTICLE XI MISCELLANEOUS**

Section D **INSPECTION of DOCUMENTS.** **Financial records**, the Book of Minutes (excluding executive sessions), and these By-Laws, shall be **open for inspection** and copying by any member. Such inspection may be made in person during business hours at the Guild Office.

Countering Swan's claims that she formed the committee and choose the members are her own words in a transcript of a Senate meeting held in the summer of 2004:

RAY SIBILLE: I know what Dr. G wanted to do, you know, when he put me and you and Eddie on the financial committee. He wanted to keep it just us so that the word wouldn't get out how much money we have.

TOMEY JEAN SWAN: That's exactly, Ray.

RAY SIBILLE: The day he did that, I asked him, I said, no, why don't you put everybody. And he says, no, I would rather do it like this. And I thought we could do it like this, but I wish he would put all nine members of us on there. I wish everybody would have been on it.

TOMEY JEAN SWAN: Maybe we need to address that. We're trying to keep things in-house as much as we can so that things don't get out.

RAY SIBILLE: And that's what he told us.

Chairman Swan's action also violated the spirit and letter of the Labor Management Reporting and Disclosure Act. "An Act to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations, and for other purposes."

### **Board of Directors Meeting, March 31, 2003**

The face-to-face Board meeting was held March 31, 2003, at its new office in Los Angeles. They claimed in their lawsuit that I requested the meeting and tried to charge me with the expense of it. There was just one problem with this, I had quit a week before and had no intention of having any more involvement with the Guild. Two of Gertmenian's staff came to McCarron's home where I had been staying. I already had made arrangements to go home to Delaware and was leaving soon. They pleaded with McCarron and I to attend the meeting to prevent damaging the "fragile Guild". McCarron declined and I consented. What a mistake I made. It was an ambush by Gertmenian. I was unable to state any of many concerns without being interrupted by the staff of Gertmenian. When chairman Swan refused to take control of the meeting and the Board refused to open the financials, I walked out of the meeting. Maybe my memory of this event was clouded by my emotions, so I have included a non biased witness to the events. Below are parts of an email from Board member Robbie Davis who attended the meeting:

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----- Original Message -----  
From: Robbie Davis  
To: Board of Directors  
Sent: Monday, May 12, 2003 9:45 PM  
Subject: Concerns and Questions
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Board of Directors,

I have many concerns and questions.

8. It is very concerning to me **that Bobby Colton was completely humiliated by a matrix employee when he was telling his points** and I told our president that this was not acceptable and it was allowed to happen again. **I still have not heard Bobby's points. Only that this guy is a liar and cannot be trusted.** It was only last year that EVERYONE praised his work in Kentucky and the fact that **Chris McCarron said he would never speak to Dr. G again. Bobby has never lied to me and he was always out for the best interest of the Guild.**

Davis made several other interesting points in his email:

1. Chris McCarron introduced Dr. G to the Guild in 2001; he was the first man we looked at to take over the Guild. At the meeting in December 2001 in Austin, Texas, we all sat down and put together our objectives. I said in one group that the Guild should buy real estate and not to rent, also offer pension for everyone and accounting services. **DR. G said "this is the only organization in the world that the employers give the employees a full pension and benefits and the employers get nothing"** and that this is ludicrous, **it's still this way today.**

2. We were told our **money from the mount fees** would pay for insurance, once that was paid it **would go into a retirement account.** Now **we are told this is not true.** Not only are **our own members** but all the way up to the **president and the Board** where **mislead or lied to?**

3. **Then Dr. G said "that your savings would double if you keep it in there."** and also said "No bank would touch it because we didn't have a million dollars in there." **This is a fabrication.**

- (a) Can he put this in writing and guarantee it?
- (b) What about the interest?
- (c) What is it going to be used for?
- (d) What are the chances he will lose it?
- (e) Is the Board liable?

4. **I've asked for a financial statement, which I was assured, would come every quarter but I have not seen any yet.**

5. When I arrived the night before the meeting, in California, Dr. G was in the hotel and he said that he just met a charming gentleman named Manue and that he would make a great C.P.A. for the Guild. Then Manue said the next day at the meeting that they had been friends for the last fifteen years. **Was I mislead or lied to?**

11. We know that Dr. G is the CEO of matrix. **All that means is that it is a tax loophole for a corporation that he controls,** he hires students to work odd jobs for minimum wage or assignments. At the cost of \$38,000 a month plus the cost of his own salary for \$8,300 a month, plus rent \$ 8,200 a month, \$1,000 a month for life insurance, \$500 a month for a car which **comes to \$56,000 a month and this comes to**

**\$672,000 per year**, not including our employees or expenses **AND HE ONLY WORKS PART TIME.**

12. We have paralyzed riders that rode for 20 years and now their benefits will be stopped or discontinued. **It wouldn't be too nice to see Ron Turcotte pushing pencils on the street.**

18. **Dr. G is no cinch on winning this, if he stumbles out of the gate we will have a problem for a long time**, one that we can truly not afford. Lawyers have told us that nobody makes us get on racehorses; we get paid well for it. NOT ALL OF US DO.

20. WHY CAN'T WE STOP WASTING TIME AND GET ON WITH A BASIC SIMPLE LOW BUDGET PLAN AND STOP LOOKING FOR GREENER PASTURES AND JUST TRY TO BE CONTENT AND BUILD A SOLID UNION? THIS WILL TAKE SOME TIME, **THEN PULL THE CHAINS!**

I had quit a week before the March 30 Board meeting and never went back until a day or two after the meeting to get my personal items. The Guild had worked furiously on the financials the week leading up to the meeting. At no time while I attended the meeting was there any mention of any wrong doing by me nor was I aware of any stated after I left the meeting. In a statement sent to the Board by Guild vice president Albert Fiss, dated May 12, 2003, Fiss stated the following which counters their own claims of damage:

*"I, Albert Fiss, Vice President of the Jockeys' Guild, Inc., do hereby certify under penalty of perjury, that the preliminary financials statements presented to the Financial Committee of the Jockeys' Guild (on March 31, 2003) are substantially accurate and represent the current financial condition of the Guild."*

Fiss's statement directly contradicts the Guild's charges that I caused serious harm to the accounting system. The date in parenthesis was included in the letter. Nearly two months after I left, the Guild was reporting to the Board the financials were basically fine a week after I had quit.

### **Expulsions and Lawsuits**

Mr. Chairman, I absolutely did nothing wrong to the Guild or its office. I have spent most of my life riding, with the major part of this in the jockeys' room where we spend hours sweating, joking, and working together. Any jockey that rode with me on a regular basis knew what kind

of person I was and I was the first person they turned to when there was a problem. I considered many of them my brothers and would never harm or hurt them.

Gertmenian has repeatedly told the members not to speak to reporters or people outside of the Guild. He has stated on numerous occasions if someone hears or reads something three times, it becomes fact in that persons mind. Speak to one reporter, the story is picked up by two others publications, the story now has legs to run on. The reason for me writing this here is very obvious in the transcript of the first of two hearings to expel me:

JOCKEY'S GUILD, INC., SENATE MEETING  
SUNDAY, DECEMBER 21, 2003, 6:10 P.M.

DR. GERTMENIAN: Before we go any farther, I think we need to get a report from the chief financial officer, Mr. Rice.

MR. RICE: Criminal charges have been filed with the Monrovia Police Department, California, against Robert Edwin Colton. Criminal cases –

DR. GERTMENIAN: Please repeat your first line because you broke up.

MR. RICE: Criminal charges have been filed with the Monrovia –

DR GERTMENIAN: Again, we can't hear the first word.

MR RICE: Criminal charges have been filed with the Monrovia Police Department in California against Robert Edwin Colton. A civil case is also being prepared.  
(SEE Appendix B: Monrovia Police Affidavit)

This disgusting behavior of attacking innocent people to divert attention from the unethical and possible illegal practices by Gertmenian and his staff just didn't stop with me. Gertmenian continued using it to have the Guild expel Guild secretary of the Board Deirdre Panas, expel Guild treasurer Eddie King, remove permanently disabled member Gary Donahue as Chairman of the Disabled Jockeys Fund, removed and humiliated Gladys Olivares, wife of permanently disabled member Jose Olivares from the National Assembly. Donahue and Olivares were further punished with exceptional long delays to benefits they were entitled to. Eddie King has been denied by the Guild for a year health benefits he is entitled to.

One expulsion that received little attention was to former Guild Secretary Deirdre Panas. She was first member under Gertmenian's control to be "disciplined". She was removed from her

position as secretary and later, expelled in the same “hearing” I was. She was expelled for the following reasons:

*Panas was charged with exchanging emails with Colton planning the director’s meeting on March 31, 2003.* Panas, fulfilling her duties as secretary, had been asked by Board members in the past to handle arrangements for Board meetings. Panas did not plan the March 31 meeting, but instead handled a teleconference two weeks prior. In helping Panas, I was doing the required duties of my job, the same as the person before me and the person who replaced me.

Panas was charged with *harassing the Guild office by requesting publicly disclosed IRS tax documents.* IRS rules require tax-exempt organizations to provide copies of tax returns to any requesting individuals; these tax documents are usually to be provided immediately in the case of in-person requests and within 30 days in the case of written requests. The Guild further suspected her of contacting the IRS and making them comply with all requests. The Guild, though claiming in the charges that they complied, did not send copies of the returns for almost two months. The Guild further stated in the charges they took it easy on Panas by “*refusing its right to file a harassment complaint to the IRS against her.*”

Panas was charged with *failure to file minutes of Board meetings.* It was the Guild staff who repeatedly failed to have audio recordings of the meetings. The Board meeting she was charged with not providing the minutes was the March 31 meeting. She was the only member unable to come in person to the meeting. She participated by phone but was only intermittently able to listen by telephone because she was repeatedly getting disconnected and was told by Guild staff they were having technical problems. When I was secretary I repeatedly requested for audio recordings of meetings, but Gertmenian stated it was a waste of time, energy, and money, which the Guild had very little of.

Panas was charged with *exercising her right of freedom of speech by expressing to fellow Board member Shepherd her lack of confidence in Gertmenian.* Panas is guaranteed her right to speech in the Bill of Rights and by the LMRDA. Gertmenian and his staff are on record stating the Guild did not have to abide by the LMRDA and told members they do not have certain rights. Members of labor organizations rights are protected under the LMRDA which specifically states:

(2) FREEDOM OF SPEECH AND ASSEMBLY.-- Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions;

After quitting my job, I continued to demonstrate to my fellow members of the Guild the serious problems within the management. I repeatedly requested documents from the Guild, citing my right under the Department of Labor's Labor Management and Reporting and Disclosure Act, thinking foolishly that they would comply. The Guild never honored one single request, even though they are required by the IRS and the DOL.

I made several requests to chairman Swan to air my concerns at a Guild Senate meeting. My requests were ignored repeatedly until I received an email sent at 7:30 pm on a Saturday for a hearing the next day at 6:30pm. I attended the teleconference and informed the members I had insufficient time to prepare, less than 24 hours. In addition, I cited my rights under the LMRDA, which Guild management flatly stated that the Department of Labor laws did not apply to them. I was repeatedly cut off in what ever I said and a motion was made to have a hearing to expel me from the Guild.

The Guild eventually expelled me, falsely accusing me of theft and vandalism. Guild management had stated on numerous occasions that criminal charges were filed against me. To this day, no criminal charges have ever been filed against me. The Guild attempted to sue me for over \$10,000,000. I sued the Guild for defamation because I wanted to clear my name of any wrong doing. I spent over two years of my life and a large part of my life savings. Unfortunately, I could not match the Guild's financial resources and had to settle.

## **HONOR & INTEGRITY**

### ***Elections Protest Letters***

In Appendix C: Election Protest Letters, are two letters from Guild members concerning Guild election protests. Also attached is the Guild's response to one of the letters. I also have in my possession a document titled Potential BOD Candidates which has Gertmenian's personal handwriting. I was present when Gertmenian called some of the individuals on the lists lobbying

them to run for a position on the Board and to support certain members. Many of the names of the Gertmenian's list ended up in elected positions.

### ***What defines Perjury?***

In September 2004 my attorney had Request for Information served against Matrix Capital Associates during the discovery stage of my lawsuit. Lloyd C. Ownbey, Jr., attorney for Matrix Capital, signed the requests with the following responses: *Admission No. 2: Admit the agreed compensation for Robert Colton in working for YOU was \$500 per week plus expenses.* The response was **admit**. *Request for Admission No. 3: Admit that Robert Colton was never paid for his work by YOU:* The response was **admit**. In the fall of 2005, Lloyd Ownbey represented Matrix again in a California Labor Hearing where I was suing for my back wages. Under sworn testimony Ownbey stated I had never worked for either the Guild or Matrix at any time. He further stated Matrix did not owe any money to me. In another answer to a question I asked Ownbey, he stated he had not received any compensation from Matrix in the last three to four years. (SEE Appendix D: Possible Perjury)

### ***Guild Management Repeatedly Lied to Delaware Racing Commission***

Guild management lied to the Delaware Racing Commission several times. Twice concerning me and several times concerning the management of the Delaware Jockey Health & Welfare Fund.

In a January Commission meeting, Guild Vice President Fiss stated to the Commission criminal charges had been filed against me by the Guild. In minutes for March 23, 2004, meeting of the Delaware Commission:

- ❖ *Contact with John Reagan:* Mr. Rice said Mr. Colton stated he spoke to Mr. Reagan from the California Horse Racing Board, and John Reagan said he never spoke to him. Mr. Wayne replied that Mr. Rice put that in writing in a letter to the Commission dated January 12, 2004, quoting: "As an update, I spoke with John Reagan from the California Horse Racing Board on Friday, he specified he never spoke with Robert E. Colton as Mr. Colton stated in the Commission meeting on Wednesday." Mr. Wayne said he received an email from Mr. Reagan dated March 18, 2004, 4:15 p.m., Re: Jockey's Disabled Fund, quoting: "John, I know what you mean - they say a lot of things that make me scratch my head. I don't know what Rice was talking about on Jan 7, 04 but I had spoken

with Colton many times before that and Rice knew it. In fact, he angrily complained to Roy Wood that I had given Colton privileged information which was not true and Roy knew it – so they hurt themselves on that one...”

I am on record in several commission meetings and in written letters to the Delaware Commission that the Guild was not in compliance with ERISA regulations concerning the health plan, specifically by not filing annual financial reports (IRS Form 5500) and providing participants in the health plan an annual summary of the reports. The Guild stated on several occasions they had complied. In a correspondence dated 30 October 2003 to Delaware the Guild stated:

*2. a. “Unregulated Health Plan” – For clarification, Marsh, Inc. is the broker and P5 e.Health Services, Inc. is the third party administrator. To the best of our knowledge and in good faith, the Guild has complied with all known guidelines set forth by all parties.*

In minutes for January 7, 2004, meeting of the Delaware Commission:

*Mr. Colton Has Serious Concerns:* Bob Colton said he still has some serious concerns. He has contacted the Department of Labor, and **any labor organization that has any kind of welfare plan has to be registered and published and a report filled out on a form 5500. None of the Guild’s benefits** (the health insurance plan, permanent disability plan, temporary disability plan or life insurance plan) **have been registered with the Department of Labor. Mr. Rice said he has been working with the Department of Labor and as far as he knows, everything was filed that needed to be.** Mr. Colton said that was the Office of Labor and Management Standards, which was the report for financial disclosure. The IRS and the Department of Labor have joint jurisdiction over labor organizations. The labor organizations must file annual 5500 reports to the Department of Labor, in addition to supplying the members of their organization the report and none of those have been supplied to his knowledge. He offered to supply the Commission with his contact information for the Department of Labor.

In a 2003 audit submitted by the Guild for reimbursements from the Health Fund the following was stated:

*Page 4, Note 3 – The Jockeys’ Guild Benefit Plan  
ERISA Plan Name: The Jockeys’ Guild Benefit Plan  
Type of Plan: Group medical, group dental, and group life insurance  
IRS Number: 13-1922798  
Plan Identification Number: 501*

The Guild filed IRS Form 5500 for their health plan on January 19, 2005, over two years past the date the return was due. The last page of the return included the following statement from the Jockeys' Guild:

**Form 5500 Annual Return/Report of Employee Benefit Plan**

**Plan Name: The Jockeys' Guild Welfare Benefits Plan**

**Date: 1/19/2005**

*Form 5500, Box D – DFVC Filing*

*Please note that this return is being filed under the DFVC program and the required penalties have been submitted to:*

*DFVC Program*

*EBSA*

*P.O. Box 530292*

*Atlanta, GA 30353-0292*

The Delinquent Filer Voluntary Compliance (DFVC) Program is designed to encourage voluntary compliance with the annual reporting requirements under the Employee Retirement Income Security Act (ERISA). The DFVC Program gives delinquent plan administrators a way to avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount.

***Matrix Staff Contribution to the Jockeys' Guild***

In the law suit between the Guild/Matrix and I, one of the documents disclosed in discovery was one titled "Matrix Staff, Contribution to the Jockeys' Guild". The document lists 32 Matrix Consultants with 24,650 hours of combined hours contributed to the Guild over an eighteen month period (June 15, 2001 thru December 31, 2003) at an estimated market value of \$200 per hour for a total value of \$4,930,000. The Guild's Vice President Albert Fiss had 7,200 hours listed giving him a contributed value of \$1,440,000. The document further stated Fiss was only paid by the Guild \$36,000 over this same time period. Dividing Fiss's stated hours (7,200) by the time period (564 days) would have calculated to an average of 13 hours per day if he work all 564 days. Contradicting this document are the 2001 and 2002 IRS returns filed by the Guild, one signed by Fiss. In both returns, under Part V, List of Officers, Albert Fiss is listed as Vice President with average hours per week devoted: NONE; Compensation: 0; Expense Account: 0; Contribution to EBP & DC: 0. Fiss, as with most of Gertmenian's staff, was provided with an

apartment, cell phone, food, and traveled extensive during this time period. With the exception of the 2002 return for Gertmenian's stated compensation of \$75,000., all key employees listed had a zero printed for all categories including hours and compensation. (SEE Appendix F: Matrix Hours)

***Jockey or Jock's Agent?***

David Shepherd was elected as a Guild Senator 2001, to member of the Board in 2003, and Chairman in 2004. He was injured in July of 2002 at a racetrack and was unable to ride for rest of the year. When Guild members are injured they collect disability payments from both the Guild and the racetrack where they were injured. It is illegal in most states to collect disability while gainfully employed. Eligibility for participation in the Guild's health plan is 100 mounts per year minimum. Guild members pay into their Health Premium Welfare Accounts by mean of \$7 deductions from their jock mounts. The Guild's current health premium rate for a family is \$690 per month. Oklahoma Rules of Racing prohibit jockeys from be licensed in any other capacity. If a person is licensed as a jockey and takes out a jockey agent license, he must surrender his jockey license. The following will make sense to the above:

Oklahoma Horse Racing Commission (from their web site)

2002 Jockey Agent License List:

<i>Lic Type</i>	<i>Name</i>	<i>Track</i>	<i>Birthday</i>	<i>Lic Start Date</i>	<i>Lic Expiration Date</i>
Jockey	SHEPHERD, DAVID REED	RP	11/21/1957	2/21/2002	12/31/2002
<b>Jockey Agent</b>	SHEPHERD, DAVID REED	RP	11/21/1957	<b>8/29/2002</b>	12/31/2002

2003 Jockey Agent License List:

<i>Lic Type</i>	<i>Name</i>	<i>Track</i>	<i>Birthday</i>	<i>Lic Start Date</i>	<i>Lic Expiration Date</i>
Jockey	SHEPHERD, DAVID REED	RP	11/21/1957	4/16/2003	12/31/2003
<b>Jockey Agent</b>	SHEPHERD, DAVID REED	RP	11/21/1957	<b>8/21/2003</b>	12/31/2003

2002 IN ALL AVAILABLE COUNTRIES

	STARTS	1ST ( %)	2ND ( %)	3RD ( %)	UNPL%	EARNINGS
TOTALS	126	7 (6)	6 (5)	11 (9)	(81)	\$94,410

2003 IN ALL AVAILABLE COUNTRIES

	STARTS	1ST ( %)	2ND ( %)	3RD ( %)	UNPL%	EARNINGS
TOTALS	<b>43</b>	1 (2)	2 (5)	4 (9)	(84)	\$16,612

2004 IN ALL AVAILABLE COUNTRIES

	STARTS	1ST ( %)	2ND ( %)	3RD ( %)	UNPL%	EARNINGS
TOTALS	<b>4</b>	0 (0)	2 (50)	0 (0)	(50)	\$3,651

2005 IN ALL AVAILABLE COUNTRIES

	STARTS	1ST ( %)	2ND ( %)	3RD ( %)	UNPL%	EARNINGS
TOTALS	<b>46</b>	0 (0)	0 (0)	6 (13)	(87)	\$14,570

In closing, Mr. Chairman, I thank the Committee for bringing attention to lack of adequate on track injury insurance. I acknowledge the majority of my testimony involved the Jockeys' Guild. I would hope that these two issues remain apart in your investigations. Labor organizations have a long history of internal strife. The needed benefits for all backside workers should not be delayed because of what has taken place inside of the Guild

Mr. Chairman, thank you for the opportunity to address the Subcommittee. Please accept my full written testimony to the Congressional record. I would be happy to respond to any questions you may have.