

**STATEMENT OF EDWIN L. KING
THOROUGHBRED HORSE JOCKEY
FORMER TREASURER OF THE JOCKEYS' GUILD**

**BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 18, 2005

Mr. Chairman and distinguished Members of the Subcommittee, thank you for the opportunity to discuss the health and welfare of our jockeys.

My name is Edwin King and I have been a member of the Jockeys' Guild for 26 of the 27 years I have been a thoroughbred jockey. If it had not been for the many barriers and lies by Mr. Gertmenian, Albert Fiss, and the present Guild management, I would still be a member. During my years as a member I served as a Guild representative at many different racetracks. I have ridden in Colorado, Arizona, Illinois, New York, and Florida. I have spent the last 17 years based in New Jersey. In 1999, I was elected to be a Director of the Guild. In 2002, I became Treasurer. I was very proud my fellow members had put their faith in me, to be one of their leaders. Now because of the above mentioned and their campaign of lies against me around the riding colonies in the U.S., the same riders look upon me as if I have done something wrong.

I am probably one of the few riders who also have family ties to the **original** Guild organization. Two of my grandfathers, three of my uncles and my father were all Guild members. The Guild was started in 1940 by Eddie Arcaro to protect its members and put their safety and welfare first, which the current Guild leadership has failed to do by allowing our catastrophic insurance to be canceled without a plan in place.

Health and Welfare of Jockeys

It was very sad to hear of Gary Birzer's accident and even more so to hear that our catastrophic insurance had been canceled. Only after the accident was it brought to my attention we no longer had this benefit. Immediately I contacted Albert Fiss to find out the truth. After dancing around the question he admitted the policy was no longer in affect and had not been for sometime. As a Guild board member, this is something that I should have known. From the time it was put in place by John Giovanni, I had informed my wife, if ever I was severely injured, she should know there is an on-track insurance policy through the Jockeys' Guild. To my knowledge, this policy was still in place and it had never been discussed on any calls or meetings that I had attended.

Once the news of the loss of our catastrophic policy was revealed, Mr. Gertmenian started with the lies. He began by spreading rumors that Mr. Giovanni had canceled the policy, and then it was Jerry Bailey and Pat Day. I recently heard that it was cancelled by the board that

was serving at that time. Now we all know Mr. Gertmenian took it upon himself or by the advice of Matrix to cancel the one most important things to a jockey. He just fails to take responsibility for his mistakes and failures.

We as jockeys risk our lives every minute we are in our workplace environment. Catastrophic insurance is not a luxury; it is an absolute necessity. This management should be ashamed of itself for allowing this to happen and it should be held accountable for the riders and their families that have been injured during the time period after this policy was dropped. Dropping this policy without having another one in place was just playing Russian roulette with the members' lives. This is a game they lost and continue to deny responsibility for by finding others to blame.

This is just one of the many barriers that I have faced trying to work with the current Guild leadership. I do believe that the cost should be shared in our industry for catastrophic insurance. Thoroughbred horseracing is considered to be one of the most dangerous occupations you can be in. It is time that a thoroughbred jockey is considered a viable part of this industry.

Disabled Jockeys' Fund

In December 2002, I became the Treasurer of the Jockeys' Guild. This is a position I did not want. Dave Sheppard, now our Chairman, nominated me to the position. There were no other nominations so I did what I always do and accepted the responsibility. I took my new position very seriously. After reviewing what was expected of the Treasurer and all the duties that came with it, I was not sure I really wanted it. Approximately two to three weeks after the Guild Assembly that was held in Dallas, Texas, I received a call from Mr. Gertmenian requesting approval to remove \$1 million from the Disabled Jockeys' Fund in order to give the impression that the Fund was going bankrupt and entice people in and around the horseracing industry to make donations. During our conversation, I asked if he was sure it was okay to do what he was asking. Mr. Gertmenian said that he was highly educated and much more intelligent than I was and that should merit my trust. At that time, I gave my approval.

In the latter part of March 2003, I received phone calls from fellow board members and Robert Colton who was working for the Guild in California. He was having some concerns regarding the new Guild management team and stated that the accounting and record keeping was less than desirable. An emergency Board meeting was called for all Board members to meet

in California. At the meeting Mr. Colton appeared to have done his homework. Those of us who know Robert know he is very articulate. During his presentation the management team, specifically Lisa Haley, Albert Fiss, and Steven Rice constantly cut Robert short saying he did not understand the dynamics of creative bookkeeping. He was not seeing the picture they told him repeatedly. He tried to show us the number of riders who were in error on the health insurance plan. That number was between 50 and 100. Robert talked to us about the commingling of riders' dues and per mount fees in the operating account, which Steven Rice admitted to me later the next month was actually true. After the continued abuse by Mr. Gertmenian's team Robert, lacking any other choices, packed up and left the premises. After listening to the information Robert had presented I became very concerned I had made a tremendous mistake approving the removal of any funds from the Disabled Jockeys' Fund. Because I hadn't received any documentation on where the \$1 million had been transferred to, exactly when it had been transferred, or if it had been transferred I knew my mission was to make sure the money was in a separate account, earmarked just for the permanently disabled with every penny accounted for. I have since then learned that a portion of the \$1 million was transferred around the middle of December 2002, which was prior to Mr. Gertmenian's call to me. Where those funds were distributed, I am still not clear on.

On numerous occasions, I contacted the Guild office looking for these answers without resolution. I not only was in search of the disabled Riders Fund but also records on the numerous bank accounts – i.e., the operating, payroll, and media rights accounts -, investments, credit card statements, along with receipts and corresponding logs. I asked for rental receipts for the office. The list seems that it could go on forever on what was asked for and what was never received. I had e-mailed Tomey Jean Swan and my fellow Board members with the hope they would help me resolve this problem. This went on for approximately 18 months. Ms. Swan's responses to my e-mail were always very vague, but at one point, Ms. Swan did advise me that the \$1 million was being used by the Guild to self-insure. That was the first I had heard that. I got so many different answers it was amazing where this \$1 million was moved. However, never did I get what I was asking for: the documentation to prove where it was.

Finally, a phone conference was scheduled for August 8, 2004, which happened to be our biggest day in racing at Monmouth Park. My wife and I had a dinner engagement with an owner and trainer of a horse that I had ridden that day, resulting in me being late for the call. A few

moments after connecting I heard Ms. Swan state that I was trying to start trouble in the organization. At that time, I explained that I would state my reasons for asking for the conference. I explained the conversation between Mr. Gertmenian and me about the \$1 million.

Mr. Gertmenian immediately stated that our conversation had never happened, that I misunderstood him, and then that he only asked for \$250,000. I became very angry and Mr. Gertmenian and I had an extremely volatile exchange in the presence of the entire Guild senate. After a cooling out period, Ms. Swan explained that Mr. Gertmenian would often say something that was false and she would have to correct him by saying, this is probably what you meant to say.

It was decided that Albert Fiss, Ray Sibille, and myself would get together via a three-way phone call and go through the account transactions and reach a conclusion on the Disabled Jockeys' Fund. Due to some unforeseen circumstances, we were not able to accomplish this. In the meanwhile, I copied everything and forwarded it on to Tom Megale, a CPA based in New York. Tom advised me that he could not make any conclusions or recommendations based on the information he was going through and that he did not think it was what I was looking for. With the information I was provided I noticed some temporarily and permanently disabled riders from California and Delaware were paid from The Disabled Jockeys' Fund. Normally you might think this was not improper but there are state programs to take care of riders eligible in those states. I had asked Albert Fiss how the Disabled Jockeys' Fund was disbursed to pay temporarily disabled riders, including the Delaware and California jockey colonies, and how the funds were reimbursed. Mr. Fiss advised me that when those programs paid in, they would reimburse the Disabled Jockeys' Fund. The real problem here is that the fund is a charity and was set up for the special needs (electric bills, house payments, auto repair bills, doctors' bills, etc.) for the disabled riders, not to make the temporary disability payments for the guild.

Expulsion from the Guild

In October 2004, a friend informed me that he had been talking to the Labor Department and I would be receiving a call from a woman investigator. Two days later, reporter Liz Mullen called. It did not register exactly who she said she was, so when she asked a question I answered it to the best of my knowledge. Ms. Mullen's questions were all in reference to the catastrophic policy and the Disabled Jockeys' Fund. Ms. Mullen asked if I was aware the catastrophic

insurance had been dropped and when or if I had been notified. I explained to her that I was unaware until I heard about Gary Birzer. Liz asked me about the Fund and I gave her the full explanation. How I had spent months trying to find answers and the roadblocks I had encountered. She actually knew that most of the money was gone before I did. Liz went to the Internet to find out information and helped me to find out more disturbing facts. She showed me how to find the Guild's filings with the IRS and the Labor Department LM2 and LM30 forms. They were either not filed or were extremely late.

Approximately one week after Ms. Mullen's article was published and another by Bill Christine from the LA Times I received an angry phone call from Dave Shepherd, our Vice Chairman. He said that I should not have aired anything to do with the Guild in any open forum. During our conversation, I informed him that as members of the Board of Directors we were not doing our fiduciary duties with the way things were being handled. In response, he informed me that I should resign because I had done tremendous damage to the Guild, and threatened that if I did not resign, "there would be consequences." He would not elaborate on what that might be.

Mr. Shepherd called about a week later reiterating our first conversation and shortly afterwards, I began to receive calls from jockeys that I hardly knew asking me to resign or they would throw me out of the Guild. The callers included Mr. Shepherd and jockeys G.R. Carter, Brian Peck and Glenn Murphy, who I learned were instructed to call by John Beech. The calls even came in at night, when the callers knew I was away and riding at the Meadowlands. Instead of talking to me, they harassed my wife, hoping she could get me to resign.

On November 3, 2004, I attended a three-way call with Tomey Swan and Darrell Haire. They told me how I damaged the Guild and were hurting the membership. Again, both Tomey and Darrell told me that it would be in the best interests of the Guild for me to QUIETLY resign so that everything that was happening would QUIETLY go away.

On Sunday, November 7, 2004, a phone conference was scheduled in which I was on the agenda for expulsion. The Guild failed to charge me or notify me of any charges before the conference. During the conference they accused me of having my own agenda, and that I was involved with Robert Colton and his issues with the Guild. They read seven reasons for removing me from my senate and Executive Board seat. Dave Shepherd had the gall to blame me for the walkout at Churchill Downs on the same day.

Without allowing me to defend myself, they voted me off the Board. Ms. Swan informed me I was no longer to call the Guild office and harass them for the information that I had been seeking for the past 22 months. A recording of this call has been circulated and played on "At The Races and Beyond," a radio program heard on Sirius Satellite Radio.

On December 5, 2004, at the Guild's national assembly, which I attended only briefly before being totally expelled from the organization, I sat in the seat designated for New Jersey's Monmouth Park and Meadowlands racetrack delegate. After a very short time, the Executive Board and Senate went to what they call a breakaway session. After approximately 45 minutes, all the members returned to the main room, at which time Kent Desormeaux informed me that the Board had met with its attorneys and the vote for my expulsion was unanimous. When I asked Kent for the reasons, he said that Mr. Gertmenian had told the Board that they had spent over \$ 5,000 to send Albert Fiss to explain the Fund to me. Another lie!

Mr. Fiss did come over to the Meadowlands racetrack to see me. Upon his visit he failed to bring any material or information concerning the Fund. Mr. Fiss was actually scheduled to be in New York for a committee meeting on workmen's compensation. Coming to see me was a side trip.

May 2003 Mr. Gertmenian's Matrix Contract

After returning home from the March 2003 Board meeting in California, Ms. Swan contacted me and asked if I knew a contract attorney that could help us with Mr. Gertmenian's Matrix contract. I indicated that I knew attorneys on the East Coast but felt that it was a conflict of interest to consider someone that was involved in the horseracing industry. Therefore, I contacted a firm out of Denver who highly recommended Steven Blitz. We worked with Steve for approximately three weeks, putting together a draft contract for Mr. Gertmenian. The board was to have a conference call on a Wednesday to go over the draft. Ms. Swan set up a conference call prior to the scheduled Board call with Mr. Gertmenian and the Board and advised me this would just be a question and answer call. I advised it was just a draft and it was not ready to be presented to Mr. Gertmenian at this time and she responded that she understood. At approximately 11:20 p.m. Eastern time I was ordered by Tomey Swan to fax the draft. Once Mr. Gertmenian and Mr. Fiss read over it they decided they could handle our terms. Around 12:30

AM Eastern time, Dave Shepherd made the motion to vote to accept the contract. It was seconded and a vote was taken passing the new contract.

After Mr. Gertmenian had made phone calls that day to Board members threatening to walk away, it came down to a 5 – 4 vote to give him what he wanted. On May 15, 2003, stressed by the Board's inability to make what I felt was the right decision and make Mr. Gertmenian and Matrix more accountable, I submitted my resignation (see Attachment). In the letter I pointed out the lack of legal documentation, bank statements, credit card receipts, the negligence in keeping track of the riders' insurance premiums (many riders were and most likely still are in error).

Other Board members reassured me that we would hold Mr. Gertmenian accountable and persuaded me to stay on. In December 2003, Mr. Gertmenian again wanted to renegotiate his contract, only this time he failed to have a notice sent out so all Board members could attend. After all he only needed 5 votes.

Delaware Health Insurance

As a guild member, I always carried the Guild's health insurance program and in 2002, I rode primarily at Delaware Park becoming eligible for Delaware's subsidized premiums. It now only cost me approximately \$280.00 a month. In 2003, I did not meet the eligibility to retain the subsidized cost and decided since my wife covered the family through her employment with United Airlines we would cancel it with the Guild. During the 2004 racing season at Delaware Park I rode enough horses to again become eligible for the program. On or around November 3 I rode my 50th horse, completing eligibility requirements. During the last week of Delaware racing, I contacted the Guild office and informed Eric South that I would like to start receiving the insurance again from the Delaware fund. At that time, he faxed all the required forms to my home, which I immediately completed and returned to the Guild's office. Mr. South advised me that if all the documentation was in place, this policy would take effect December 1, 2004.

I again spoke with Eric South in early December at the Guild's Annual Assembly in Texas to see what the status with my insurance was and he stated everything was in place. Around December 20, 2004, I contacted Larry Saumell, the Guild representative, and asked if he would check into this for me because I had not received any information that this policy was in effect. On or about December 29, my wife and I spoke with Larry Saumell on separate calls. He advised us it was under review and I needed to speak with Albert Fiss. I called the Guild office

that same day and spoke with Eric South who also informed me it was under review and I needed to speak with Albert Fiss. I left a message on Albert's cell phone that I needed to speak with him regarding my insurance. I did not receive a return phone call. On January 3, 2005, I spoke with Earlie Fires about this matter and he advised me that because of my pending lawsuit with the Jockeys' Guild, Mr. Fiss refused to talk to me. My wife Penny has spent time attending Delaware Racing Commission Meetings and also the Delaware Health and Welfare Meetings. The Guild was advised on many occasions to get our health insurance in place. One request from the Guild by its CFO Gevork Asatryan was that that all five of our family members needed physicals and that a payment for two months in advance needed to be made to get our family active. On August 9, 2005, all required information was sent overnight to the Guild office. After my wife called to see when we would receive our insurance cards, she was advised by Lisa Haley that Delaware had not paid them in two years and they were not adding any new members to the policy. Lisa also advised that Albert Fiss would call us, but he never has. Gevork Asatryan later contradicted what Ms. Haley had said about Delaware not paying, saying that she must have been mistaken. We have not yet received our check back, or a letter explaining why we are being denied our health insurance benefits. Mr. Asatryan did advise verbally that we would not be getting our insurance through the Guild. The administrator of the Delaware Racing Commission, John F. Wayne, has been very helpful in trying to help my family get back on the health insurance plan.

Closing Statement

It was not easy this year, but I know what I have done is the right thing. The problems I have experienced with this Guild management and rapport they now have with the thoroughbred industry has only strengthened my belief that this man and his team that are so much smarter than I am are incapable of running this organization like it should be run. Mr. Gertmenian took it upon himself to accept disability insurance from the jockeys while he pulled the jockeys' security blanket right from beneath them. If that is not bad enough, he did not properly inform us that it was gone. In addition, they have been unwilling to share with me the financial records that I have every right too see and that the law required me to obtain, and they have also criticized me and tarnished my reputation for doing so. And to top it off they have essentially made it impossible for me to enjoy the health insurance benefits I deserve as a Delaware jockey.

Mr. Chairman, thank you for providing me with the opportunity to address the Subcommittee. Please accept my full written testimony to the Congressional record.

Attachment

May 15, 2003

Mr. Robbie Davis
70 St. Paul's Place
Hempstead, NY 11550

Dear Robbie,

With much regret this letter is to inform you that I am resigning my position, as treasurer on the Executive Board from the Jockeys' Guild. I do not feel that I can represent the members of this organization in a professional manner. There are several reasons that I am turning in this resignation. The responsibility of the treasurer is to account for all financial records including past records, current funds, accounts receivable and accounts payable. After requests were made to the Jockeys' Guild/ Matrix Office I was unable to acquire bank statements and other records applicable to be able to fulfill my responsibilities as treasurer. This is very frustrating when you are appointed a position and cannot attain the information needed to fulfill my duties. I will not be liable for incorrect accounting procedures.

(A) The lack of legal documents. (stated it will take 60 to 90 days to acquire them)

(B) The lack of logs for travel and expenses. (Stated to me these are very honorable people) this still should have been done.

(C) The negligence in not keeping track of the rider's insurance premiums. (many riders are now in arrears which could cost the membership thousands of dollars)

These are just a few of many problems I feel the Guild is facing for not keeping and tracking the accounts. As pertaining to the Delaware and California Trust Agreements

it is required under the agreement the Guild shall;

(A) Maintain at all times as a tax-exempt entity. The Trust shall appoint a Certified Public Accountant for the purpose of providing an annual audit to TOC and the California Horse Racing Board of all moneys received and expended by the trust.

The TOC and the California Horse Racing Board shall have the right upon reasonable notice to the trust to review the books and records of the Trust at any time. (Stated it does not matter it is mandated, it cannot be taken away.)

(B) Delaware—I did not receive a Vine Street Trust Agreement pertaining to this fund.

This is just a few reasons I have for resigning. After being told, many times we have nothing to worry about. I feel we have many reasons to worry. Ignorance is not a defense! A request by our chairman Tomey Swan was made for me to seek outside Legal Council concerning the new agreement proposed to us in March by Dr. Gertmenian/Matrix. There were many Attorneys on the East Coast that I knew but thought it was a conflict of interest to be connected with horse racing therefore I contacted a firm out of Denver Colorado who came highly recommended. Steven Blitz a specialized contract attorney that presently sits on two Executive Boards. He made a draft and a memo stating that there were many ambiguities and wished to discuss this with the Board. Mr. Blitz was going out of town so we scheduled a conference call for Tuesday May 13 at 7pm. It was discussed with Tomey and Dave to defer the conference call with Dr. Gertmenian until we had reviewed the ambiguities on the conference call that was scheduled with Mr. Blitz. I was advised that we should continue with the call on Monday night and it would just be a questions and answers session, so I had no problem being on this call. After reviewing

my fax records at 11:19pm Eastern Time the draft was faxed to Dr. Gertmenian, with in minutes the draft was passed. The \$3000 dollars that was spent on council was a waste of the membership's money since the Board failed to follow through.

This organization has struggled over the past few years. One would have thought some of the lessons learned would have been a guiding factor in the decision the Board recently made.

Sincerely,

Edwin L. King

cc

Tomey Swan

Ray Sibille

Deirdre Panas

Jockeys' Guild Inc.

Kent Desormeaux

Larry Reynolds

Dave Shepherd

Abad Cabassa