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November 4, 2013

***VIA FEDERAL EXPRESS***

The Honorable Debbie O'Dell-Seneca  
Washington County Courthouse  
1 South Main Street, Suite 2002  
Washington, PA 15301

**Re: Litman, et al. v. Cannery Casino Resorts, LLC, et al.**  
**Washington County Court of Common Pleas No. 2012-8149**

Dear Judge O'Dell-Seneca:

I am enclosing a courtesy copy of Defendants' Motion for Reconsideration of the October 7, 2013 Order denying Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, which will be presented to you on Thursday, November 4, 2013.

Very truly yours,

  
Patrick L. Abramowich

PLA:has  
Enclosure

cc: Gregg R. Zegarelli, Esquire (via email and First Class mail w/enc) ✓



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November 4, 2013

***VIA FEDERAL EXPRESS***

Phyllis Ranko-Matheny, Prothonotary  
Washington County Courthouse  
1 South Main Street, Suite 1001  
Washington, PA 15301

**Re: Litman, et al. v. Cannery Casino Resorts, LLC, et al.**  
**Washington County Court of Common Pleas No. 2012-8149**

Dear Ms. Ranko-Matheny:

I am enclosing originals of (i) Motion for Reconsideration, and (ii) Notice of Presentation of Motion for Reconsideration for filing in the above-captioned action. I also am enclosing an extra copy of each, which I kindly ask that you date stamp and return to me in the enclosed self-addressed stamped envelope.

Very truly yours,

  
Patrick L. Abramowich

PLA:has  
Enclosures

cc: Gregg R. Zegarelli, Esquire (via email and First Class mail w/enc) ✓

IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JANINE LITMAN and TIMOTHY  
MASTROIANNI, individually and  
jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware corporation,  
CANNERY CASINO RESORTS, LLC,  
CANNERY CASINO RESORTS and  
WASHINGTON TROTTING ASSOCIATION,  
INC., t/d/b/a THE MEADOWS RACETRACK  
& CASINO, an unincorporated association,  
CANNERY CASINO RESORTS, an  
unincorporated association consisting of one  
or more yet unidentified natural and/or legal  
persons, individually and jointly,

Defendants.

CASE NO. 2012-8149

**NOTICE OF PRESENTATION  
OF MOTION FOR  
RECONSIDERATION**

Filed on behalf of Defendants,  
Cannery Casino Resorts, LLC,  
Washington Trotting Association,  
Inc., WTA Acquisition Corp.,  
Cannery Casino Resorts, LLC,  
Cannery Casino Resorts and  
Washington Trotting Association,  
Inc. t/d/b/a The Meadows  
Racetrack & Casino, and  
Cannery Casino Resorts

Counsel of Record for these  
Parties:

Patrick L. Abramowich, Esquire  
PA ID No. 74494

Benjamin I. Feldman, Esquire  
PA ID No. 312683

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[bfeldman@foxrothschild.com](mailto:bfeldman@foxrothschild.com)

IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JANINE LITMAN and TIMOTHY  
MASTROIANNI, individually and  
jointly,

CASE NO. 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware corporation,  
CANNERY CASINO RESORTS, LLC, CANNERY  
CASINO RESORTS and WASHINGTON TROTTING  
ASSOCIATION, INC. t/d/b/a THE MEADOWS  
RACETRACK & CASINO, an unincorporated  
association, CANNERY CASINO RESORTS, an  
unincorporated association consisting of one  
or more yet unidentified natural and/or legal  
persons, individually and jointly,

Defendants.

**NOTICE OF PRESENTATION OF MOTION FOR RECONSIDERATION**

TO: Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial Ventures Law Group, P.C.  
2585 Washington Road, Suite 134  
Summerfield Commons Office Park  
Pittsburgh, PA 15241

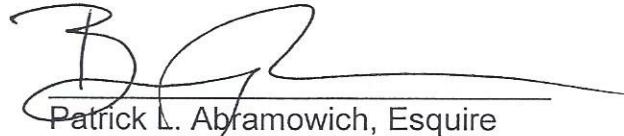
Please take notice that Defendants Cannery Casino Resorts, LLC, Washington  
Trotting Association, Inc., WTA Acquisition Corp., Cannery Casino Resorts, LLC,  
Cannery Casino Resorts and Washington Trotting Association, Inc. t/d/b/a The  
Meadows Racetrack & Casino, and Cannery Casino Resorts will present their Motion  
for Reconsideration to the Honorable Debbie O'Dell-Seneca, Washington County

Courthouse, 1 South Main Street, Courtroom 1, Washington, Pennsylvania 15301, on Thursday, November 7, 2013, at 9:15 a.m. or as soon thereafter as meets the convenience of the Court. A copy of the Motion for Reconsideration and Defendants' Proposed Order is enclosed.

Respectfully submitted,

FOX ROTHSCHILD LLP

By:



Patrick L. Abramowich, Esquire

PA ID No. 74494

Benjamin I. Feldman, Esquire

PA ID No. 312683

625 Liberty Avenue, 29<sup>th</sup> Floor

Pittsburgh, PA 15222

Telephone: (412) 391-1334

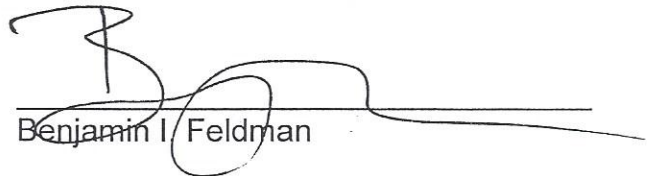
*Counsel for Defendants,  
Cannery Casino Resorts, LLC,  
Washington Trotting Association, Inc.,  
WTA Acquisition Corp., Cannery Casino  
Resorts, LLC, Cannery Casino Resorts and  
Washington Trotting Association, Inc. t/d/b/a  
The Meadows Racetrack & Casino, and  
Cannery Casino Resorts*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of November, 2013, a true and correct copy of the foregoing Notice of Presentation of Motion for Reconsideration was served upon the following counsel of record via e-mail and United States mail, First Class, postage prepaid:

Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial  
Ventures Law Group, P.C.  
2585 Washington Road  
Suite 134  
Summerfield Commons Office Park  
Pittsburgh, PA 15241  
[mailroom.grz@zegarelli.com](mailto:mailroom.grz@zegarelli.com)

*Counsel for Plaintiffs,  
Janine Litman and  
Timothy Mastroianni*

  
Benjamin I. Feldman

**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY  
MASTROIANNI, individually and  
jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware corporation,  
CANNERY CASINO RESORTS, LLC,  
CANNERY CASINO RESORTS and  
WASHINGTON TROTTING ASSOCIATION,  
INC., t/d/b/a THE MEADOWS RACETRACK  
& CASINO, an unincorporated association,  
CANNERY CASINO RESORTS, an  
unincorporated association consisting of one  
or more yet unidentified natural and/or legal  
persons, individually and jointly,

Defendants.

CASE NO. 2012-8149

**MOTION FOR  
RECONSIDERATION**

Filed on behalf of Defendants,  
Cannery Casino Resorts, LLC,  
Washington Trotting Association,  
Inc., WTA Acquisition Corp.,  
Cannery Casino Resorts, LLC,  
Cannery Casino Resorts and  
Washington Trotting Association,  
Inc. t/d/b/a The Meadows  
Racetrack & Casino, and  
Cannery Casino Resorts

Counsel of Record for these  
parties:

Patrick L. Abramowich, Esquire  
PA ID No. 74494  
Benjamin I. Feldman, Esquire  
PA ID No. 312683

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[bfeldman@foxrothschild.com](mailto:bfeldman@foxrothschild.com)

**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY  
MASTROIANNI, individually and  
jointly,

CASE NO. 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTHING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware corporation,  
CANNERY CASINO RESORTS, LLC, CANNERY  
CASINO RESORTS and WASHINGTON TROTTHING  
ASSOCIATION, INC. t/d/b/a THE MEADOWS  
RACETRACK & CASINO, an unincorporated  
association, CANNERY CASINO RESORTS, an  
unincorporated association consisting of one  
or more yet unidentified natural and/or legal  
persons, individually and jointly,

Defendants.

**MOTION FOR RECONSIDERATION**

Defendants, Cannery Casino Resorts, LLC, a Nevada limited liability company,  
Washington Trotting Association, Inc., a Delaware corporation, WTA Acquisition Corp., a  
Delaware corporation, Cannery Casino Resorts, LLC, Cannery Casino Resorts and Washington  
Trotting Association, Inc. t/d/b/a The Meadows Racetrack & Casino, an unincorporated



association, and Cannery Casino Resorts,<sup>1</sup> an unincorporated association consisting of one or more yet unidentified natural and/or legal persons (collectively, “Defendants”), individually and jointly, by and through their counsel, Patrick L. Abramowich, Esquire, Benjamin I. Feldman, Esquire and Fox Rothschild LLP, file the following Motion for Reconsideration of the Court’s Order dated October 7, 2013 denying Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction. In support thereof, Defendants aver as follows:

1. In the above-captioned Third Amended Complaint, Plaintiffs assert a number of purported claims related to the operation of a gaming establishment known as The Meadows.

2. Each and every practice challenged by Plaintiffs in the Complaint is governed by comprehensive regulations established by the Pennsylvania Gaming Control Board (the “GCB”) pursuant to the Pennsylvania Race Horse Development and Gaming Act (the “Act”), which grants the Board “general and sole regulatory authority over the conduct of gaming or related activities” in the Commonwealth. 4 Pa.C.S.A. § 1202(a). Any relief granted to Plaintiffs in response to the Third Amended Complaint would potentially conflict with the comprehensive regulatory scheme developed by the GCB in furtherance of its statutory authority.

3. Accordingly, Defendants filed a Motion to Dismiss For Lack of Subject Matter Jurisdiction (“Motion to Dismiss”) on or about October 3, 2013, asserting that Plaintiffs’ purported claims must be pursued, if at all, before the GCB.

4. Plaintiffs filed their Brief in Opposition to Defendants’ Motion to Dismiss on the morning of the argument, and Defendants were not served a copy of their Brief until minutes

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<sup>1</sup> It is denied that the Defendant identified as “Cannery Casino Resorts” exists as an entity separate and distinct from the Defendant identified as “Cannery Casino Resorts, LLC.” Further explanation concerning Plaintiffs’ mistaken identification of Defendants will be made subsequent to disposition of the pending Preliminary Objections.

before the argument began. Plaintiffs' opposition to the Motion to Dismiss was based fundamentally on the premise that proceedings before the GCB would not comport with the requirements of due process.

5. The Court issued an Order on October 7, 2013 denying Defendants' Motion to Dismiss without opinion.

6. Defendants respectfully request that this Court reconsider its October 7, 2013 Order for the reasons set forth below.

7. First, pursuant to the Act, "The Pennsylvania Supreme Court shall have exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of this part. The Supreme Court is authorized to take such action as it deems appropriate, consistent with the Supreme Court retaining jurisdiction over such a matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief." 4 Pa.C.S.A. § 1904. Accordingly, this Court lacks jurisdiction to consider Plaintiffs' due process objections to the exclusive jurisdiction of the GCB.

8. Even if this Court had jurisdiction to consider Plaintiffs' objections, the procedures here complied with the requirements of due process.

9. Specifically, the Plaintiffs filed a patron complaint in which they alleged, *inter alia*, that The Meadows collected a vigorish, *i.e.*, a five percent commission on certain craps bets, in a manner inconsistent with its Second Rules Submission. The GCB's Bureau of Investigations and Enforcement investigated the complaint, and the GCB's Office of

Enforcement Counsel negotiated a resolution of the complaint with Washington Trotting Association, the owner and operator of The Meadows.<sup>2</sup>

10. The GCB instituted a proceeding to consider the Consent Agreement with Washington Trotting Association at Docket No. 3071-2013 (the “Proceeding”) and issued an Order on March 14, 2013 approving the Consent Order as a final resolution of the issues raised in the Plaintiffs’ patron complaint. A true and correct copy of the Order is attached hereto as Exhibit 1.

11. Critically, the Plaintiffs could have sought leave to intervene in the Proceeding. The GCB’s regulations provide that “[a] person wishing to intervene in a proceeding may file a petition with the Clerk, which shall be served on all named parties to the underlying proceeding. When a petition to intervene is filed with the Clerk, it will be referred to the Board, which will issue a determination as soon as practicable.” 58 Pa. Code § 493a.12(b). The Board will grant a petition to intervene if: “(1) The Person has an interest in the proceeding which is substantial, direct and immediate. (2) The interest is not adequately represented by a party to the proceeding. (3) The person may be bound by the action of the Board in the proceeding.” 58 Pa. Code § 493a.12(c).

12. If the Plaintiffs intervened, they would be parties to the Proceeding and could appeal the approval Order to the Commonwealth Court if dissatisfied.

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<sup>2</sup> The Plaintiffs have argued incorrectly that the Consent Agreement proves that their claims have merit. In reality, the Consent Agreement recites the Office of Enforcement Counsel’s allegation that The Meadows charged a vigorish only on winning bets, rather than on all bets at the time that they were placed, as authorized by the Second Rules Submission. If true, that allegation would mean that The Meadows undercharged patrons, and that the only loss to be pursued would be to the Commonwealth’s loss of tax revenue.

13. If the Plaintiffs were denied leave to intervene, such denial could be reviewed by the Commonwealth Court. *Eastern Pa. Citizens Against Gambling v. Pa. Gaming Control Bd.*, 2013 WL 3542685 (Pa. Commw. Ct. April 18, 2013) (reviewing, *inter alia*, denial of a petition to intervene as untimely).

14. The Plaintiffs' claims here constitute a collateral attack on GCB's Order. However, since Plaintiffs did not seek to intervene, they are barred from challenging the Order resolving their patron Complaint. *Citizens Against Gambling Subsidies v. Pa. Gaming Control Bd.*, 916 A.2d 624, 628 (Pa. 2007) (pursuant to the Act, one's failure to intervene in the administrative proceedings before the Board prevents that person from challenging the Board's findings).

15. Finally, the exclusive jurisdiction of the GCB would not offend due process, even if it resulted in a forfeiture of Plaintiffs' claims.

16. The Pennsylvania General Assembly may, in its discretion, substitute access to the courts with an administrative process without offending due process. *Kline v. Arden H. Verner Co.*, 469 A.2d 158, 159 (Pa. 1983) (upholding the constitutionality of the Workers' Compensation Act). As the Pennsylvania Supreme Court explained in *Kline*:

To change, alter or abolish a remedy lies within the wisdom and power of the legislature and in some instances, the courts. Access to a tribunal is not denied when the tribunal has no jurisdiction to entertain the claim or the remedy. Time and circumstances require new remedies to adjust to new and unforeseen losses and conditions. To do so, facets of the society often require new immunities or larger responsibility, as the legislature may determine. The workmen's compensation law has deprived some of rights in exchange for surer benefits, immunized some, to make possible resources to benefit many, who were heretofore without possible or practical remedies.


*Id.* at 160.

17. Here, the General Assembly provided exclusive jurisdiction over gaming to the GCB. While the exercise of such jurisdiction necessary impedes Plaintiffs' right to bring claims concerning the operation of casinos in court, the decision to confer such jurisdiction is committed to the wisdom of the General Assembly, and does not offend due process.

18. This Court has broad discretion to modify or to rescind an order, and this power may be invoked pursuant to a party's motion for reconsideration. *Haines v. Jones*, 830 A.2d 579, 584 (Pa. Super. Ct. 2003). In light of the foregoing, Defendants respectfully request that the Court exercise its authority under 42 Pa.C.S. § 5505 to reconsider its Order denying their Motion to Dismiss.

Respectfully submitted,

FOX ROTHSCHILD LLP

By:   
Patrick L. Abramowich, Esquire  
PA ID No. 74494  
Benjamin I. Feldman, Esquire  
PA ID No. 312683  
625 Liberty Avenue, 29<sup>th</sup> Floor  
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*Counsel for Defendants,  
Cannery Casino Resorts, LLC,  
Washington Trotting Association, Inc.,  
WTA Acquisition Corp., Cannery Casino Resorts,  
LLC, Cannery Casino Resorts and  
Washington Trotting Association, Inc. t/d/b/a The  
Meadows Racetrack & Casino, and Cannery  
Casino Resorts*

IN THE PENNSYLVANIA GAMING CONTROL BOARD

IN RE:

WASHINGTON TROTTING  
ASSOCIATION, INC. d/b/a THE  
MEADOWS RACETRACK AND CASINO

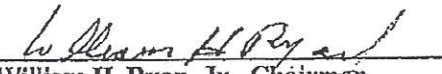
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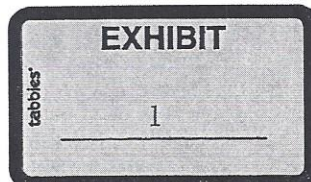
MAR 14 2013  
3071-2013

ORDER

AND NOW, this 13<sup>th</sup> day of March 2013, upon consideration of the matters set forth in the Consent Agreement proposed by the Office of Enforcement Counsel and Washington Trotting Association, Inc. d/b/a The Meadows Racetrack and Casino, the Pennsylvania Gaming Control Board hereby **ORDERS** that the attached Consent Agreement is **APPROVED**, and that the obligations of the parties, pursuant to the terms of the Consent Agreement, shall be an order of the Board.

By the Board:

  
William H. Ryan, Jr., Chairman  
Pennsylvania Gaming Control Board



**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

JANINE LITMAN and TIMOTHY  
MASTROIANNI, individually and  
jointly,

CASE NO. 2012-8149

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a  
Nevada limited liability company,  
WASHINGTON TROTTING ASSOCIATION,  
INC., a Delaware corporation, WTA  
ACQUISITION CORP., a Delaware corporation,  
CANNERY CASINO RESORTS, LLC, CANNERY  
CASINO RESORTS and WASHINGTON TROTTING  
ASSOCIATION, INC. t/d/b/a THE MEADOWS  
RACETRACK & CASINO, an unincorporated  
association, CANNERY CASINO RESORTS, an  
unincorporated association consisting of one  
or more yet unidentified natural and/or legal  
persons, individually and jointly,

Defendants.

**ORDER OF COURT**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2013, upon consideration of  
Defendants' Motion For Reconsideration, it is hereby ORDERED that the Court's October 7,  
2013 Order is VACATED and the Plaintiffs' Third Amended Complaint is hereby DISMISSED.

BY THE COURT:


\_\_\_\_\_, J.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of November, 2013, a true and correct copy of the foregoing Motion for Reconsideration was served upon the following counsel of record via e-mail and United States mail, First Class, postage prepaid:

Gregg R. Zegarelli, Esquire  
Zegarelli Technology & Entrepreneurial  
Ventures Law Group, P.C.  
2585 Washington Road  
Suite 134  
Summerfield Commons Office Park  
Pittsburgh, PA 15241  
[mailroom.grz@zegarelli.com](mailto:mailroom.grz@zegarelli.com)

*Counsel for Plaintiffs,  
Janine Litman and  
Timothy Mastroianni*

  
Benjamin I. Feldman