

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

LAWRENCE REYNOLDS,  
ANTHONY MAWING, ALEXIS  
RIOS-CONDE, JESUS SANCHEZ,  
DALE WHITTAKER, LUIS PEREZ.  
and TONY A. MARAGH,

Plaintiffs,

v.

Civil Action No. 09-C-688

THE WEST VIRGINIA RACING  
COMMISSION, a public corporation,

Defendant.

ORDER

This matter came before the Court on April 16, 2009, at 3:00 p.m.. Counsel for Plaintiffs and the Defendant were present. Also present was counsel for PNGE Charles Town Gaming, LLC, d/b/a Charles Town Racing and Slots ("the Track").

The Court earlier entered a temporary restraining order finding numerous deficiencies in the constitutional due process afforded to the Plaintiffs by the Defendant in connection with the suspension of their West Virginia racing permits. The track's counsel was present at this hearing. Because of the irreparable harm to the Plaintiffs if the TRO was not granted, and after full consideration of all factors applicable to the TRO analysis, the Court ordered that the suspensions of the Plaintiffs' racing permits be stayed until the time specified in the Temporary Restraining Order.

After the TRO was entered, Plaintiffs advised that the Track, which previously barred the Plaintiffs from entering upon the grounds of the facility, had refused to abide

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KANAWHA COUNTY CIRCUIT COURT  
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by the TRO and took the position that the suspensions remained in effect until May 8, 2009, despite the Court's TRO ruling.

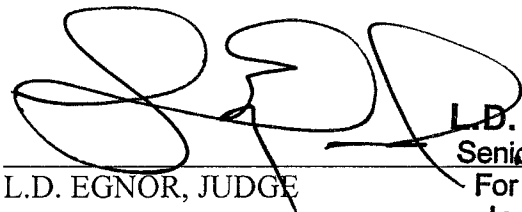
Rule 65(d) of the West Virginia Rules of Civil Procedure states that a TRO is binding not only upon the parties to the TRO action, but also "upon those persons in active concert or participation with" those parties.

The Court FINDS that PNGI Charles Town Gaming, LLC, d/b/a Charles Town Racing and Slots, is in active concert or participation with the Defendant, for all those reasons stated at the hearing. Further, if the Track bars the Plaintiffs from racing at the Track, the irreparable harm that caused the Court to issue the TRO would go unabated. Such conduct would render the Court's TRO a nullity and frustrate the Court's authority to ensure compliance with its lawful orders.

Therefore, the Court ORDERS that PNGI Charles Town Gaming, LLC shall not restrict or impede the rights of the Plaintiffs listed above to enter the Track and engage in their legitimate racing activities. The suspensions of the Plaintiffs' racing permits are stayed, and until the TRO expires, the Track may not impair or impede the Plaintiffs' rights to engage in activities consistent with the Plaintiffs' racing permits.

This Order was issued at 3:30 p.m. on April 16, 2009. This Order expires upon the conclusion of the *de novo* hearing before the West Virginia Racing Commission, which will occur within thirty days of the filing of the Request for Hearing, unless extended for good cause shown or by agreement of the parties. This Order in no way invalidates or alters the terms of the Court's Temporary Restraining Order entered earlier this day.

The Clerk is directed to send a certified copy of this Order to all counsel of record.



**L.D. EGNOR, JR.**  
Senior Status Judge  
For Judge Zakaib  
In His Absence

L.D. EGNOR, JUDGE

April 16, 2009  
Date

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 16  
DAY OF April 2009  
CATHY S. GATSON CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**FILED**  
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CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT