

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Brian S. Rosen, Esq.
Bruce A. Colbath, Esq.

WEIL, GOTSHAL & MANGES LLP
100 Federal Street, Floor 34
Boston, MA 02110
Ardith Bronson, Esq. (*admitted pro hac vice*)

*Attorneys for The New York
Racing Association, Inc.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 9**
: **Case No. 09-17121 (MG)**
: **NEW YORK CITY OFF-TRACK BETTING**
: **CORPORATION,**
: **Debtor.**
:
:
-----X

STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL

The New York Racing Association, Inc. (“*NYRA*”), pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure and Local Rule 8007-1 of the United States Bankruptcy Court for the Southern District of New York, hereby designates the record and sets forth the issues presented on appeal to the United States District Court for the Southern District of New York from the *Order for Relief* [Docket No. 64] and *Opinion and Order Overruling Objections of New York Racing Association, Inc., New York Thoroughbred Horsemen’s Association, Inc., and New York Thoroughbred Breeders, Inc. to Debtor’s Bankruptcy Petition and Statement of Qualifications Under Section 109(c)* (the “*Opinion and Order*”) [Docket No. 63] entered by the

United States Bankruptcy Court for the Southern District of New York (the “*Bankruptcy Court*”) in the above-captioned case on March 22, 2010, and from each and every part thereof.

Statement of Issues Presented on Appeal¹

1. Did the Bankruptcy Court err in determining that the New York City Off-Track Betting Corporation (“*NYC OTB*”) met the statutory eligibility requirements to be a debtor under chapter 9 of title 11 of the United States Code (the “*Bankruptcy Code*”), as set forth in section 109(c) of the Bankruptcy Code?

2. Did the Bankruptcy Court err in determining that NYC OTB filed its petition for relief under chapter 9 of the Bankruptcy Code in good faith pursuant to section 921(c) of the Bankruptcy Code?

Designation of Items to Be Included in the Record on Appeal²

<u>ITEM</u>	<u>DOCKET NO.</u>	<u>DOCUMENT</u>
1.	1	Voluntary Petition
2.	2	Declaration of Robert J. Garry in Support of the Chapter 9 Petition and the Statement of Qualifications
3.	3	Declaration of Raymond Casey in Support of the Chapter 9 Petition and the Statement of Qualifications
4.	4	List of Creditors Holding 20 Largest Unsecured Claims
5.	6	Statement of Qualifications Under Chapter 9 of Title 11 U.S.C. §109 <i>et seq.</i>
6.	33	Objection of The New York Racing Association, Inc. to Debtor’s Bankruptcy Petition and Statement of Qualifications Under Section 109(c)
7.	34	Joinder of New York Thoroughbred Horsemen’s Association, Inc. in the Objection of The New York Racing Association, Inc. to Debtor’s Bankruptcy Petition and Statement of Qualifications Under Section 109(c)

¹ NYRA reserves the right to modify, restate and/or supplement the following issues on appeal to the extent permitted by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

² Each designated item includes any attached exhibits.

<u>ITEM</u>	<u>DOCKET NO.</u>	<u>DOCUMENT</u>
8.	37	Joinder to Objection of New York Thoroughbred Breeders, Inc.
9.	38	Response of District Counsel 37, Local 2021 to the Objection of New York Racing Association, Inc. to Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c) and Statement in Support of Debtor's Chapter 9 Petition
10.	39	Limited Statement of Yonkers Racing Corporation in Support of Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c)
11.	40	Response of New York City Off-Track Betting Corporation to Objection of the New York Racing Association, Inc. to the Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c)
12.	41	Joinder of Local 858, International Brotherhood of Teamsters to Response of The New York City Off-Track Betting Corporation to Objection of The New York Racing Association, Inc. to the Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c)
13.	42	Joinder of DC 37 Benefits Fund Trust and DC 37 Med-Team to Response of District Counsel 37, Local 2021 to the Objection of The New York Racing Association, Inc. to Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c) and Statement in Support of Debtor's Chapter 9 Petition
14.	44	Qualified Statement of Empire Resorts, Inc. in Support of Response of New York City Off-Track Betting Corporation to Objection of The New York Racing Association, Inc. to the Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c)
15.	52	Transcript of hearing held on January 20, 2010 regarding Objections to Petition
16.	57	Debtor's Statement of No Objection to Admissibility of NYRA Exhibits and Reservation of Rights
17.	59	The New York Racing Association, Inc.'s Statement of No Objections to Admissibility of Debtor's Exhibits and Reservation of Rights
18.	61	Transcript of telephonic hearing held on February 18, 2010
19.	62	Transcript of Evidentiary Hearing held on February 22, 2010 regarding Objections to Petition
20.	63	Written Opinion signed on 3/22/2010 Overruling Objections of The New York Racing Association, Inc., New York Thoroughbred Horsemen's Association, Inc., and New York Thoroughbred Breeders, Inc. to Debtor's Bankruptcy Petition and Statement of Qualifications Under Section 109(c)

<u>ITEM</u>	<u>DOCKET NO.</u>	<u>DOCUMENT</u>
21.	64	Order For Relief signed and entered on March 22, 2010
22.	72	Notice of Appeal
23.	76	Letter, dated January 14, 2010, from Raymond V. Casey to Charles E. Hayward [NYRA Ex. A]
24.	76	Testimony of Charles E. Hayward at Public Hearing on January 8, 2010 before the Assembly Standing Committees on Racing & Wagering and Corporations, Authorities and Commissions, and the Senate Standing Committees on Racing, Gaming & Wagering and Corporations, Authorities and Commissions [NYRA Ex. B]
25.	76	Summary of Memorandum of Agreement Between DC 37, Local 2021 and NYC OTB, ratified January 6, 2010 [NYRA Ex. C]
26.	76	Memorandum of Understanding, dated November 13, 1998, between The New York Racing Association, Inc. and NYC OTB regarding NYRA Simulcast Signal [NYRA Ex. D]
27.	76	Office of the New York State Comptroller, Report 2008-S-147, "An Assessment of NYC Off-Track Betting Corporation's Financial Condition and Governance," dated August 13, 2009 [NYRA Ex. E]
28.	76	Task Force on the Future of Off-Track Betting in New York State, "A Report to the Governor and the Legislature of the State of New York," dated January 13, 2010 [NYRA Ex. G.]
29.	76	Chapter 115 of the Laws of 2008 [NYRA Ex. H]
30.	76	Article V-A of the New York Racing, Pari-Mutuel Wagering, and Breeding Law (the " Racing Law ") [NYRA Ex. I]
31.	76	Article VI of the Racing Law [NYRA Ex. J]
32.	76	Article X of the Racing Law [NYRA Ex. K]
33.	76	Transcript from Public Hearing held on January 8, 2010 before the Assembly Standing Committees on Racing & Wagering and Corporations, Authorities and Commissions and the Senate Standing Committees on Racing, Gaming & Wagering and Corporations, Authorities and Commissions [NYRA Ex. L]
34.	76	Summary of Testimony to be Presented by Debtor at the February 22, 2010 Hearing [[NYRA Ex. M]
35.	76	Diagram drawn by Meyer S. Frucher at deposition taken on February 10, 2010 [NYRA Ex. N]
36.	76	Summary of Restructuring Plan for Off-Track Betting Corporation, dated February 4, 2010 (11 page document) [NYRA Ex. O]

<u>ITEM</u>	<u>DOCKET NO.</u>	<u>DOCUMENT</u>
37.	76	Legislative History of Chapter 115 of the Laws of 2008, <i>reprinted in</i> New York Legislative Service, Inc. [NYRA Ex. Q]
38.	76	Summary of Restructuring Plan for Off-Track Betting Corporation, dated February 4, 2010 (3 page document) [NYRA Ex. S]
39.	76	Boston Consulting Group, “New York City Off-Track Betting Corporation: A Plan for Transformation and Growth” [NYRA Ex. U]
40.	76	Handwritten notes from Robert J. Garry’s files re: “Stress Test” [NYRA Ex. V]
41.	76	Handwritten notes from Robert J. Garry’s files re: Citibank [NYRA Ex. W]
42.	76	Handwritten notes from Robert J. Garry’s files re: Bank of America, dated January 5, 2010 [NYRA Ex. X]
43.	76	Restructuring OTB draft presentation, dated December 1, 2009 [NYRA Ex. Y]
44.	76	Handwritten notes from Robert J. Garry’s files re: JP Morgan Chase, dated January 6, 2010 [NYRA Ex. Z]
45.	76	Emails between Kent Hiteshew, Mary Ellen Egbert, and Robert J. Garry re: Meeting Request, dated November 6, 2009 [NYRA Ex. AA]
46.	76	Emails between Vishal Rawal, Jasper Jackson, and Robert J. Garry re: Draft OTB Letter, dated February 8, 2010 [NYRA Ex. BB]
47.	76	Transcript of Deposition of Raymond Casey [NYRA Ex. CC]
48.	76	Transcript of Deposition of Robert Garry [NYRA Ex. DD]
49.	76	Proposal to Underwrite a Municipal Bond Offering, J.P. Morgan [NYRA Ex. EE]
50.	76	Confidentiality/Non-Disclosure Agreement between The New York Racing Association, Inc. and New York City Off-Track Betting Corporation, dated as of October 23, 2009 [NYC OTB Ex. 2]
51.	76	Legislative Bill Drafting Commission Program Bill #218 [NYC OTB Ex. 7]
52.	76	Governor’s Program Bill 2010 Memorandum regarding Bill #218 [NYC OTB Ex. 8]

Dated: April 19, 2010
New York, New York

/s/ Brian S. Rosen
Brian S. Rosen, Esq.

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

- and -

100 Federal Street, Floor 34
Boston, MA 02110

*Attorneys for The New York
Racing Association, Inc.*