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Division of Pari-Mutuel Wagering v. Caple, 362 So. 2d 1350 (Fla. 1978)

Chuck Talley

Constitutional Law—Due Process—Horse Trainer Held Strictly Liable for the Condition of Horses—*Division of Pari-Mutuel Wagering v. Caple*, 362 So. 2d 1350 (Fla. 1978).

On August 18, 1974, an investigator of the Division of Pari-Mutuel Wagering and a security officer of Calder Race Course, Dade County, Florida, searched the barn area and tack room assigned to W. F. Caple. The searchers discovered three hypodermic needles and syringes containing a vitamin substance in an unlocked cabinet.[1] As a result of the discovery, Caple was charged with violation of rules 7E-1.06(15) and (16) of the Florida Administrative Code (rules (15) and (16)).[2]

The stewards[3] of Calder Race Course conducted a formal hearing on August 21, 1974, concerning the charges. On the basis of their findings, the stewards suspended Caple's license for a period of sixty days during which time he was denied privilege of the grounds and was unable to enter in a race any horse in which he owned an interest.[4] The next day Caple obtained a temporary injunction staying the enforcement of his suspension.[5]

Caple appealed the ruling of the stewards to the Director of the Division of Pari-Mutuel Wagering and then to the Board of Busi-

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1. Division of Pari-Mutuel Wagering v. Caple, 362 So. 2d 1350, 1352 (Fla. 1978). *See generally* Brown v. Waldman, 177 A.2d 179, 181 (R.I. 1962), where Vitamin B was held to be a drug.

2. 362 So. 2d at 1352. The rules provide:

> (15) No person within the grounds of a racing association where race horses are lodged or kept, shall have in or upon the premises which he occupies or has the right to occupy, or in his personal property or effects, any prohibited drugs, or any hypodermic syringe, hypodermic needle, or other device which could be used for the injection or other infusion into a horse of a drug, stimulant or narcotic, without first securing written permission from the stewards. Every racing association, upon the grounds of which race horses are lodged or kept, is required to use all reasonable efforts to prevent the violation of this rule.
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> (16) All medicines, drugs, or medications of any nature shall be kept or stored at all times in a securely locked cabinet, locker, or room. It is the responsibility of the trainer to see that this rule is complied with. Any trainer or other person found guilty of the violation of this rule shall be fined or suspended, or both.

Fla. Admin. Code R. 7E-1.06(15)-(16). Most jurisdictions impose a punishment on the trainer only after a horse is actually drugged. *See, e.g.*, Jamison v. State Racing Comm'n, 507 P.2d 426, 427-28 (N.M. 1973); O'Daniel v. Ohio State Racing Comm'n, 307 N.E.2d 529, 530 n.2 (Ohio 1974); State *ex rel.* Morris v. West Virginia Racing Comm'n, 55 S.E.2d 263 (W. Va. 1949). Rules (15) and (16), however, impose liability on the trainer for the mere possession of the drugs in question. Both types of regulations are directed at minimizing the possibility of a racehorse being illegally drugged.

3. Stewards are officials who manage the affairs of race tracks. The Random House Dictionary of the English Language 1395 (J. Stein ed. 1966).

4. 362 So. 2d at 1352.

5. *Id.*

ness Regulation. Both the Director and the Board held hearings and affirmed the ruling of the stewards.[6] Having exhausted his administrative remedies, Caple petitioned the Third District Court of Appeal for certiorari, but his petition was denied.[7]

The Division of Pari-Mutuel Wagering then filed a motion in circuit court to dissolve the temporary injunction. Caple responded with a motion for entry of a permanent injunction.[8] On July 26, 1976, the circuit court granted Caple's motion and declared rules (15) and (16) unconstitutional[9] on the authority of *State ex rel. Paoli v. Baldwin.*[10] On appeal, the district court upheld the trial judge's ruling, but certified the issue to the Supreme Court of Florida as a question of great public concern.[11] In *Division of Pari-Mutuel Wagering v. Caple,* the Florida Supreme Court was asked to determine whether a horse trainer is an absolute insurer under rules (15) and (16).[12] The Florida Supreme Court accepted jurisdiction of the issue.[13] Overruling its earlier decision in *Baldwin,* the court quashed the district court's finding of unconstitutionality and remanded the case with instructions to dissolve the permanent injunction.[14] The court concluded that rules (15) and (16) were reasonable and constitutional because the rules promoted the legitimate government goal of preventing the illegal drugging of horses.[15]

The purpose of this note is to demonstrate that although strict liability is imposed on horse trainers, this absolute standard is appropriate in light of the activity involved and the procedural protections provided for the trainer. As part of this analysis, this note

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6. Brief for Petitioner at 5, Division of Pari-Mutuel Wagering v. Caple, 362 So. 2d 1350 (Fla. 1978).

7. Caple v. Division of Pari-Mutuel Wagering, 321 So. 2d 475 (Fla. 3d Dist. Ct. App. 1975).

8. 362 So. 2d at 1352.

9. *Id.*

10. 31 So. 2d 627, *rev'd on rehearing,* 31 So. 2d 630 (Fla. 1947).

11. Division of Pari-Mutuel Wagering v. Caple, 350 So. 2d 488 (Fla. 3d Dist. Ct. App. 1977), *quashed and remanded,* 362 So. 2d 1350 (Fla. 1978).

12. *Id.* at 489. No proof of negligence or carelessness on the trainer's part was needed to support his suspension. FLA. ADMIN. CODE R. 7E-1.06(16). Strict liability is the essence of an absolute insurer rule. *See* Isaacs v. Powell, 267 So. 2d 864, 866 (Fla. 2d Dist. Ct. App. 1972).

13. FLA. CONST. art. V, § 3(b)(3) provides: "The supreme court . . . [m]ay review by certiorari any decision of a district court of appeal . . . that passes upon a question certified by a district court of appeal to be of great public interest . . . ." The district court had certified the issue to the Florida Supreme Court because of changes in the Code and the lapse of time since the *Baldwin* decision. 350 So. 2d at 489.

14. 362 So. 2d at 1356.

15. Id. at 1354-55.

will examine the *Baldwin* precedent and compare it to the laws of other states.

Florida law before *Caple* concerning absolute insurer rules for horse trainers is slight. The Florida legislature created a State Racing Commission in 1931.[16] This enactment began the state regulation of the horse racing industry. The Racing Commission proceeded to construct and adopt the Rules of Horse Racing in 1942.[17] These included absolute insurer rules 109 and 117 which were declared unconstitutional in 1947 by the *Baldwin* court.

In *Baldwin,* the State Racing Commission[18] suspended a trainer when it was discovered that a urine sample from his horse contained traces of benzedrine.[19] The trainer was suspended even though he presented evidence that the horse had been drugged by a stableboy. On appeal, the trainer attacked rules 109 and 117 of the Rules of Horse Racing.[20] These rules made a horse trainer an absolute insurer of the horses entered in a race. The trainer argued

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16. Ch. 31-14832, 1931 Fla. Laws 679 (current version at FLA. STAT. § 550.02(3) (1979)). The powers and duties of the racing commission were described in Ch. 35-17276, § 2, 1935 Fla. Laws 1179, which provided:

> To make rules and regulations for the control, supervision and direction of applicants, permittees, and licensees, and for the holding, conducting, and operating of all race tracks, race meets and/or races held in this State, provided such rules and regulations shall be uniform in their application and effect, and the duty of exercising this control and power is hereby made mandatory upon such Commission.

These powers and duties have been expanded and are now under the auspices of the Division of Pari-Mutuel Wagering of the Department of Business Regulation. *See* FLA. STAT. § 550.02 (1979).

17. *Baldwin,* 31 So. 2d at 629.

18. The State Racing Commission was a board created by the Florida Legislature to manage the horse racing industry. Ch. 31-14832, 1931 Fla. Laws 679 (current version at FLA. STAT. § 20.16 (1979)).

19. 31 So. 2d at 628.

20. *Id.* at 629. Rules 109 and 117 provided:

> 109 - No person shall administer, or permit to be administered in any manner whatsoever, internally or externally, to any horse entered or to be entered in a race, any stimulant, depressant, hypnotic or narcotic drug, of any kind or description, prior to a race or work-out.
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> 117 - The trainer shall be the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of a third party. Should the chemical or other analysis or saliva or urine samples or other tests prove positive, showing the presence of any narcotic, stimulant, chemical or drug of any kind or description, the trainer of the horse may be suspended or ruled off, and in addition, the foreman in charge of the horse, the groom and any other person shown to have had the care or attendance of the horse may be suspended or ruled off in the discretion of the Commission, and for a like second or subsequent finding shall be ruled off.

Id.

that the absolute insurer rules were "so capriciously arbitrary as to be of no legal force and effect."[21] The *Baldwin* court initially held that a regulation which tended to promote or fulfill a lawful purpose was not inherently arbitrary or unreasonable.[22] On rehearing, however, the court abandoned this holding and concluded that due process does not permit an agency to revoke a license, the key to a trainer's livelihood, without providing a hearing at which the trainer may present legitimate defenses.[23] The *Baldwin* court relied heavily on a Maryland case, *Mahoney v. Byers*,[24] to decide that the rules in question created an irrebutable presumption of guilt in violation of the trainer's right to due process of law.[25] *Baldwin* placed Florida in the minority of states that reject the constitutionality of absolute insurer rules.[26]

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21. *Id.* at 630.

22. *Id.* at 629. Justice Adams dissented claiming rules 109 and 117 stripped trainers of a valuable property right without due process of law. *Id.* at 630.

23. *Id.* at 630-31.

24. 48 A.2d 600 (Md. 1946). In *Mahoney*, a drug present in the horse's urine was found to be conclusive evidence that the trainer was guilty by the Racing Commission. *Id.* at 602. The trainer filed for a writ of mandamus to compel the Comission to rescind its order and restore the trainer to good standing. The lower court ordered the writ to issue and the appellate court affirmed. *Id.* at 602, 604. The court held that the irrebuttable presumption destroyed the right to offer evidence to establish innocence and that it was arbitrary and therefore void. *Id.* at 603.

25. 362 So. 2d at 1353. An irrebuttable presumption is a "conclusive presumption which requires a finding of the presumed fact once the underlying evidence is introduced. . . . Evidence tending to rebut it is not admissible." H. BLACK, BLACK'S LAW DICTIONARY 1067 (5th ed. 1979). The Supreme Court has noted that irrebuttable presumptions often infringe on rights granted by the due process clauses of the fifth and fourteenth amendments. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 644 (1974).

26. 362 So. 2d at 1354. Illinois is the only state which continues to hold absolute insurer rules unconstitutional, Brennan v. Illinois Racing Bd., 247 N.E.2d 881 (Ill. 1969), while many states accept the constitutionality of absolute insurer rules. *See, e.g.*, Sandstrom v. California Horse Racing Bd., 189 P.2d 17 (Cal.), *cert. denied*, 335 U.S. 814 (1948) (court found that rules which make the trainer an absolute insurer of his horse's condition were constitutional); Maryland Racing Comm'n v. McGee, 128 A.2d 419 (Md. 1957) (court found there was substantial evidence to justify the findings of the Racing Commission and therefore it was not the court's role to substitute their judgment for the Commission; however, it stated that there was no necessity to decide if the rule could be validly applied where the trainer had taken every precaution); Dare v. State, 388 A.2d 984 (N.J. Super. Ct. App. Div. 1978) (court held that rules which hold the trainer absolutely responsible for the horse's condition were constitutional); Jamison v. State Racing Comm'n, 507 P.2d 426 (N.M. 1973) (court held that rules which hold the trainer strictly accountable for his horse's condition were constitutional); O'Daniel v. Ohio State Racing Comm'n, 307 N.E.2d 529 (Ohio 1974) (court held that the insurer rule which imposes strict liability upon a trainer for his horse's condition is constitutional); State *ex rel.* Spiker v. West Virginia Racing Comm'n, 63 S.E.2d 831 (W. Va. 1951) (court held that rules which make a trainer strictly liable for the horse's condition and which mandated the return of the prize money won by a drugged horse were constitutional).

As a result of *Baldwin,* the Racing Commission had the burden of proving negligence on the part of the trainer before it could suspend a trainer's license or levy a fine. In 1968, the Racing Commission revised its regulations and once again adopted absolute insurer rules, despite the fact that such rules had been declared unconstitutional 21 years before.[27] Relying on *Baldwin,* the circuit court and the Third District Court of Appeal in the *Caple* case declared rules (15) and (16) to be unconstitutional.[28] But the failure of the *Baldwin* court to recognize the power of a state to impose strict liability persuaded the Florida Supreme Court to conclude that an absolute insurer rule for horse trainers was constitutional and, therefore, that the *Baldwin* holding was improper.[29]

The *Caple* court noted that the *Baldwin* decision treated a regulation that imposed strict liability as facially unconstitutional even though the United States Supreme Court had declared the concept of strict liability to be constitutional over a quarter of a century before *Baldwin.*[30] Strict liability is recognized as constitutional in certain areas.[31] In one case, Justice Harlan noted that the states retain the police power to protect the public health, morals, and safety, as well as the general common good.[32] Therefore, Florida has the power to regulate the horse racing industry if such is necessary for the public good. In another case, Justice Frankfurter commented that Congress has preferred to place the hardships of consumer protection upon those who have had the opportunity, before entering a business, to familiarize themselves with the conditions imposed on that business.[33] Horse trainers have the opportunity, and are required, in obtaining a license, to familiarize themselves with and to abide by the rules and regulations of their

27. These rules appear in the Florida Administrative Code today in the same form as they did in 1971, which was the last time it was revised. *See* Introduction, FLA. ADMIN. CODE R. 7E-1.

28. 362 So. 2d at 1356. In Wilkey v. Board of Business Regulation, 314 So. 2d 17 (Fla. 1st Dist. Ct. App. 1975), the court affirmed the revocation of Wilkey's license due to violations of rules (15) and (16). This decision was consistent with *Baldwin* because evidence showed that Wilkey was personally responsible for the violations. 314 So. 2d at 19.

29. 362 So. 2d at 1353-54.

30. *Id.* at 1355. *See, e.g.,* United States v. Balint, 258 U.S. 250 (1922); Shevlin-Carpenter Co. v. Minnesota, 218 U.S. 57 (1910).

31. *See, e.g.,* United States v. Freed, 401 U.S. 601 (1971); Morissette v. United States, 342 U.S. 246 (1952); United States v. Balint, 258 U.S. 250 (1922).

32. Western Turf Ass'n v. Greenberg, 204 U.S. 359, 363 (1907).

33. United States v. Dotterweich, 320 U.S. 277, 284-85 (1943).

profession.[34] Consequently, the trainers are in a position to know the regulations and are aware of the risks involved in the horse racing industry. Accordingly, the trainers should bear the responsibility of consumer protection instead of the innocent public.

For a better understanding of the rationale used by the *Caple* court, it is helpful to examine how other courts have handled absolute insurer rules. Many jurisdictions have upheld the use of strict liability rules in the horse racing industry. The California Supreme Court examined absolute insurer rules in *Sandstrom v. California Horse Racing Board*[35] and noted that the imposition of strict liability by statute or judicial decision did not automatically violate the due process clauses of the federal or state constitutions. The court considered *Baldwin* and distinguished it, noting that *Baldwin* failed to recognize the power of the state to impose strict liability.[36] The *Sandstrom* court adopted the stance that strict liability may be applied as long as the rule is reasonable.[37] To determine the reasonableness of the California regulations at issue, the court examined the nature of the regulated activity. Due to the amount of wagering involved, the California court found that the wagering public deserved the protection afforded by holding horse trainers strictly liable if a horse was found drugged.[38]

Like California, West Virginia holds a trainer strictly liable if a horse is found drugged. The West Virginia Supreme Court of Appeals used reasoning similar to that used in *Sandstrom* to conclude that imposition of strict liability for illegal drugging was reasonable in the horse racing business.[39] Accordingly, the court held that the absolute insurer rule promulgated by the Racing Commission of West Virginia was a proper and necessary exercise of state power to regulate a business.[40]

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34. *See, e.g.*, FLA. ADMIN. CODE R. 7E-1.02(3); CODE MD. REG. R. 09.10.01.25(B)(7); W. VA. ADMIN. REG. R. 469.

35. 189. P.2d 17, 20 (Cal.), *cert. denied*, 335 U.S. 814 (1948).

36. *Id.* at 23.

37. *Id.* at 21.

38. *Id.* Based on a four percent tax, the revenue to the California Horse Racing Board was $16,563,763.36 for the fiscal year 1945-46. *Id.*

39. State *ex rel.* Morris v. West Virginia Racing Comm'n, 55 S.E.2d 263, 274 (W. Va. 1949).

40. *Id.* The rule provided:

> The saliva of the winner of each and every race shall be taken, and from such other horses as the Stewards may direct. In all such cases the trainer shall be held responsible for the condition of his horse or horses, except in case of unavoidable absence of the trainer, when the stable foreman or groom in charge of the horse or horses shall be held responsible, and in the event of the horse or horses from

Similarly, the Ohio Supreme Court in *O'Daniel v. Ohio State Racing Commission*[41] determined that horse racing was an area subject to extensive regulation and that strict liability could properly be imposed. The Ohio court cited *Sandstrom* for the proposition that no irrebuttable presumption was created by the Rules of Racing adopted by the Ohio State Racing Commission.[42] Since liability was not based upon the actual drugging of a horse or the failure to exercise proper care while protecting a horse, a presumption of either of these two occurrences would not affect the trainer's case. The court reasoned that the trainer is an insurer and therefore liable if a horse is drugged, regardless of who administered the drug.[43] Another Ohio court stated that the seemingly harsh rule which imposed strict liability on trainers was not unreasonable in light of three factors: (1) the rule's purpose, (2) the business the rule helped regulate, and (3) the evil that could arise if such rules were not implemented.[44] If applied to Florida, a consideration of these factors would seem to indicate that Florida's rules (15) and (16) are similarly reasonable.

In *Sanderson v. New Mexico State Racing Commission,*[45] the New Mexico Supreme Court held that strict liability could be imposed as a condition to the granting of a license to a horse trainer. To obtain the license, a trainer had to agree to abide by all the rules and regulations of his profession.[46] The New Mexico court later held in *Jamison v. State Racing Commission*[47] that the intent to drug or the knowledge of a drugging by the trainer was not needed to impose liability on the trainer. The rule in New Mexico requires the trainer to be strictly accountable for the condition of a

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which said saliva has been taken shall have been found by the Chemist to show evidence of the administration of narcotics, said responsible person so offending shall be suspended for not less than six (6) months and the case referred to the West Virginia Racing Commission for any further action deemed necessary.

Id. at 265-66.

41. 307 N.E.2d 529, 532-33 (Ohio 1974).

42. *Id.* at 531-32.

43. *Id.* at 533.

44. Fogt v. Ohio State Racing Comm'n, 210 N.E.2d 730, 733 (Ohio Ct. App. 1965). This court ruled that the absence of an intent requirement does not render an absolute insurer rule unconstitutional. *Id.*

45. 453 P.2d 370, 372 (N.M. 1969). Unlike *Baldwin*, the *Sanderson* court clearly stated that a license carried no vested property rights, and therefore, that a license is not a right protected by the due process clauses of the federal and state constitutions. *Id.* If the license is not protected by the due process clause, then the imposition of strict liability cannot deprive the horse trainer of any constitutional right which relates to the due process clause.

46. *Id.* at 372.

47. 507 P.2d 426, 428 (N.M. 1973).

horse entered in a race; thus, the trainer is liable merely because he has entered a drugged horse in a race regardless of whether the trainer has knowledge of the horse's condition.[48]

Maryland's position with respect to the constitutionality of absolute insurer rules appears to be changing. After the *Mahoney* decision (cited by *Baldwin* as persuasive precedent), the Maryland Racing Commission promulgated a rule which imposed an absolute duty on trainers to guard their horses.[49] In *Maryland Racing Commission v. McGee*,[50] the Maryland Court of Appeals went to great lengths in dictum to report that the absolute insurer rules of other jurisdictions did not violate the constitutional rights of trainers. While refusing to rule on the more precise question of whether trainers could constitutionally be held guilty if they had taken all possible measures to ensure the safety of their horses, the court stated that there was no need for the presentation of evidence which indicated that the trainer himself had drugged the horse.[51] The court affirmed the revocation of the trainer's license in light of evidence which indicated only that the trainer did not take all possible precautions.[52] Since this case may indicate that Maryland is modifying its strict liability rule, the opinion arguably implies that if the trainer had taken all possible precautions for the horse's safety, he would not be held liable.[53]

In comparison to the acceptance of absolute insurer rules in the majority of states, there is one state that continues to hold absolute insurer rules unconstitutional. As rationale for its stance, in *Brennan v. Illinois Racing Board*,[54] the Illinois Supreme Court stated that a strict liability rule would accomplish no more than a

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48. *Id.*

49. Rule 111 provided that:

> No person shall administer, or cause or knowingly permit to be administered, or connive at the administration of, any drug to any horse entered for a race. Every owner, trainer, or groom must guard, or cause to be guarded, each horse owned, trained or attended by him in such manner as to prevent any person or persons from administering to the horse, by any method, any drug prior to the time of the start of the race which is of such character as to affect the racing condition of the horse.

Maryland Racing Comm'n v. McGee, 128 A.2d 419, 420 (Md. 1957) (current version of rule 111 at CODE MD. REG. R. 09.10.01.11(D)).

50. 128 A.2d 419, 423-24 (Md. 1957).

51. *Id.* at 424-25.

52. *Id.*

53. *Id.*

54. 247 N.E.2d 881, 884 (Ill. 1969). The court stated that "it is a fundamental principle of Anglo-Saxon justice that responsibility is personal and that penalties may not be inflicted on one person because of another's acts." *Id.* at 883.

rule based on fault because under both types of rules, a trainer would be motivated to protect his horses.

In addition to these state courts, federal circuit courts of appeal have recognized and approved the absolute insurer rule. The Fourth Circuit held that an absolute insurer rule deters the drugging of horses and induces trainers to provide better care for their horses.[55] Absolute insurer rules protect both the health of the horse and the horse racing industry and therefore, the court concluded, such insurer rules are reasonable and do not violate procedural due process.[56]

The Seventh Circuit concluded that an Illinois regulation, which mandated that the prize money be withheld from the owner of the drugged winner and redistributed among the owners of the other horses in the race, did not violate the drugged racehorse owner's right to procedural due process despite the absence of a determination of fault.[57] The court noted that this punishment was not as harsh as would be the suspension of a trainer's license.[58] Despite the existence of an irrebuttable presumption, the court held that the rule was constitutional in that it was not based upon "an arbitrary, irrational or unreasonable standard."[59]

The ability to impose strict liability on horse trainers is within the powers of the Division of Pari-Mutuel Wagering as the Florida legislature has given the Division the broad power to promulgate the rules and regulations which govern horse racing.[60] This imposition of strict liability for horse trainers is reasonable due to several factors. First, the health of the horses needs to be protected. Sec-

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55. Hubel v. West Virginia Racing Comm'n, 513 F.2d 240, 243-44 (4th Cir. 1975).
56. *Id.* at 244.
57. *Edelberg v. Illinois Racing Bd.*, 540 F.2d 279, 284-85 (7th Cir. 1976).
58. *Id.* at 284.
59. *Id.* at 286.
60. *See* FLA. STAT. § 550.02 (1979) which provides in pertinent part:

> The Division of Pari-Mutuel Wagering of the Department of Business Regulation shall carry out the provisions of this chapter. . . . Make rules and regulations for the control, supervision and direction of all applicants, permitees and licensees, and for the holding, conducting and operating of all racetracks, race meets, races held in this state . . . may take testimony concerning any matter within its jurisdiction and issue summons and subpoenas for any witness . . . ."

Id. at .02, .02(3).

In addition to the horse racing industry, Florida has utilized strict liability rules in other areas. *See* FLA. STAT. § 767.04 (1979) which provides that dog owners should be liable for damages for persons bitten. *See also* Donner v. Arkwright-Boston Mfrs. Mut. Ins. Co., 358 So. 2d 21 (Fla. 1978) (only available defenses to dog owner are those expressed in the statute); Issacs v. Powell, 267 So. 2d 864 (Fla. 2d Dist. Ct. App. 1972) (owner of a wild animal is strictly liable for injuries inflicted by it).

ond, the government of Florida acquires a pecuniary benefit from maintenance of public confidence in the sport. Since the Florida pari-mutuel industry is a significant source of tax dollars, it should be well guarded to ensure the continuation of these revenues.[61] Third, the state should protect the interests of the innocent betting public.[62] And finally, as one case stated, "[h]orse racing, at its best, is difficult to control, and would be practically impossible to regulate if every governing rule and regulation was made dependent for validity upon the knowledge or motives of the person charged with a violation."[63] Viewed as a whole, these factors present valid justifications for a strict liability rule.[64]

Despite the lack of a mens rea requirement, Florida's absolute insurer rules give the accused a fair opportunity to disprove the charges brought against him. When the investigator from the Division of Pari-Mutuel Wagering cited Caple for violation of rules (15) and (16), the Division did not suspend Caple's license until a formal hearing was held before the stewards.[65] Chapter 120, Florida Statutes,[66] allows a defendant to appeal a steward's ruling to

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61. *See* Brief for Petitioner at 17. In the fiscal year 1976-77, thoroughbred horse racing was the source of over twenty-one million dollars in tax revenue for Florida. *Id.* at 19.

62. *Id.* at 17.

63. Fogt v. Ohio State Racing Comm'n, 210 N.E.2d 730, 733 (Ohio Ct. App. 1965).

64. Due to the similarities between criminal laws and regulations such as rules (15) and (16), an examination of the liability concept as related to criminal law will be informative. In his text on criminal law, Professor LeFave suggests six areas that should be examined to determine if a strict liability rule can be imposed without violating due process requirements. LaFave suggests that those persons who develop and apply the rule should investigate several factors: the reason for the law; the reasonableness of requiring people to comply with it; the stigma associated with conviction; the severity of the penalty; whether the regulation is based on common law; and whether the legislature intended that there be a specific mens rea requirement. W. LAFAVE, MODERN CRIMINAL LAW 133-35, 138-39 (1978). Of these criteria, two in particular may militate against applying the doctrine in the *Caple* situation. First, the penalty imposed on a trainer might seem to be too severe. To prohibit a trainer from practicing his profession for sixty days or more may appear overly stringent when compared to the possible imposition of a small fine. But compare *Caple* with United States v. Flum, 518 F.2d 39 (8th Cir. 1975), where the defendant was convicted of attempting to board an airplane while possessing a dangerous, concealed weapon. The court held that since the statutory penalty, a maximum fine of $1000 or imprisonment for not more than one year, or both, was relatively minor, no reason existed to prevent the imposition of strict liability. *Id.* at 43. According to the *Flum* rationale, Caple's suspension cannot be considered overly harsh.

Second, the potential stigma attached to Caple's suspension may argue against imposition of a strict liability rule. Caple's good name could be associated with the drugging of horses which would thereby hinder his employment opportunities by destroying his reputation as an ethical trainer. It is questionable, however, whether this potential stigma would be sufficient to prevent the use of strict liability rules.

65. 362 So. 2d at 1352.

66. (1979). Procedures are laid out in FLA. STAT. § 120.57(1)-(2) (1979).

both the Division of Pari-Mutuel Wagering and the Department of Business Regulation. Caple pursued both courses of review. Also, judicial review is available after the hearing by the Department.[67]

Since the standard is strict liability, the defendant's available defenses are severely limited. The *Baldwin* court noted that there were only three defenses available to a trainer: (1) that the test indicating the presence of a forbidden drug was faulty, (2) that the person charged was not the trainer, or (3) that the alleged drugged horse had not been entered in a race.[68] The *Caple* court added another defense by stating that in cases involving acts completely beyond the control of the trainer, no punishment will be administered.[69] For example, a trainer would not be punished for having drugs in an unlocked cabinet if there was evidence that someone had forcefully entered the trainer's barn and removed the lock from the cabinet. In this instance, the trainer would technically have violated the regulation in that the cabinet containing drugs was no longer locked, but the *Caple* court stated that under such conditions, it would obviously be inequitable to punish the trainer.[70]

In summary, it should be noted that the *Caple* court concluded that an absolute insurer rule as stated in rules (15) and (16) is reasonable in "light of its overall purpose, the business to which it relates, and the potential evil which it is designed to prevent."[71] The court in *Caple* used the sound reasoning of other jurisdictions to support a ruling that encompasses slightly more than the rulings in these other jurisdictions. In addition to the consideration of the reasonableness of rules (15) and (16), Florida statutes provide a trainer with an adequate opportunity to raise any defense. In light of these circumstances, the burden placed on the Florida trainers by a strict liability rule is justifiable.

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67. FLA. STAT. § 120.68 (1979).

68. 31 So. 2d at 630. In view of rules (15) and (16), the third possible defense is no longer available, *see* note 2 *supra*.

69. 362 So. 2d at 1354, n.12.

70. *Id.*

71. *Id.* at 1354 (quoting Fogt v. Ohio State Racing Comm'n, 210 N.E.2d 730, 733 (Ohio Ct. App. 1965)).