

## Update on a Perfect World

By Chris E. Wittstruck, Esq.



For well over a decade, harness racing operations tied to the family of David H. Brooks, specifically Perfect World Enterprises and Bulletproof Enterprises (“Bulletproof”) have been dominant mainstays in North America. By winning major stakes like the Little Brown Jug and the Cane Pace, the Brooks clan has established its place among the ranks of our sport’s top owners. As breeders, Brooks-connected entities have produced the likes of Not Enough and If I Can Dream. In fact, in 2009 alone campaigners bred by the Brooks family were responsible for over \$12M in purse earnings. The success of this family in our sport is undeniable. Equally undeniable is the firestorm of controversy surrounding David H. Brooks and his related entities, both in and out of the sport. Through contracts with the U.S. military and countless law enforcement agencies, publically traded DHB Industries amassed a fortune in the tactical body armor business. The question is whether the shareholders of the company received their fair shares of this fortune. That question will soon be answered via a jury verdict in a months-long criminal trial alleging massive securities fraud by David H. Brooks pending in a Federal courtroom in Long Island, New York. The testimony at this trial has provided a wide view into the workings of DHB and the aforementioned racing operations. The details emanating, some quite salacious, have been widely reported and are not part of this article; nor does this article attempt to handicap what the verdict will be. Simply, the following will provide a factual update as to how present events involving the Brooks family are affecting our industry and what the future may hold.

Subsequent to David Brooks’ indictment in 2007, Jeffrey Brooks, David’s brother, racing under the name of Bulletproof, became a prolific and wildly successful campaigner of Standardbreds in North America. The meteoric rise of Bulletproof to the top of the ownership ranks in 2009 brought out the usual resentment that often permeates our industry, though there was not even a scintilla of evidence the stable was cheating in any way. Then, in the middle of January 2010, David Brooks had his pre-trial house arrest bail conditions revoked based upon allegations by prosecutors that David secreted millions of dollars in company cash overseas. More importantly, the prosecution contends it has surveillance evidence that may show that Jeffrey Brooks might have facilitated the purported cover-up.

Though not charged with any crime, Jeffrey’s operations immediately became a target of the Ontario Racing Commission (“Ontario”). On January 28 of this year the commission indefinitely suspended the licenses of Jeffrey, David’s ex-wife, their two children, Bulletproof and a handful of other Brooks-controlled racing stables without affording either a pre-suspension hearing or a definite post-suspension hearing date. The suspensions did more than prevent Ontario harness tracks from accepting entries. The commission warned all other licensees that the transfer of horses from the suspended individuals and entities would only be valid with the written permission of the commission. In effect, Jeffrey and the Brooks clan were left with hundreds of horses they could neither race nor sell in Ontario.

Based upon the doctrine of reciprocity, both the United States Trotting Association and the New York State Racing and Wagering Board followed Ontario’s lead and indefinitely

suspended Jeffrey Brooks and Bulletproof. With the prospect of economic annihilation of his racing operations, Jeffrey Brooks sued both the U.S.T.A. and the New York regulators in Federal Court in New York on February 16. Within days of the lawsuit's filing, both the U.S.T.A. and the New York Racing Board granted a stay of their respective reciprocal suspensions of Jeffrey and Bulletproof based upon Jeffrey's filing of an appeal with both entities. Additionally, on April 12 the Pennsylvania State Harness Racing Commission directed that state's harness tracks to continue to accept Bulletproof entries.

The story in New Jersey is different. Since the Ontario suspension, the Garden State has refused to allow Jeffrey or Bulletproof to participate. Inasmuch as almost a sixth of the operation's 2009 earnings were generated at the Meadowlands, Jeffrey's attorneys moved swiftly to regain valid license status. A complaint was filed in Federal District Court in New Jersey on March 12, and was amended and supplemented on May 12.

The amended and supplemental complaint was filed against the New Jersey Racing Commission and its members based upon two distinct grounds. The first ground alleges a misapprehension of fact by the Commission. The complaint refers to Jeffrey's plight as "a classic case of guilt by association." Simply, Jeffrey's claim is that he has no connection whatsoever to any criminal activity that may or may not have been committed by his brother David, and thus there is no factual basis for the suspension.

The second ground alleges that a racing license is a property right, and that New Jersey either is ignorant of or is ignoring that the U.S. Constitution requires at the very least a definite post-suspension hearing be held within a meaningful time and manner. The claim is that since Ontario never afforded Jeffrey and Bulletproof such a right, New Jersey is in violation of federal law by suspending licenses based upon Ontario's actions. On this second point, the complaint references that at a hearing held on May 5 by racing judges at Freehold, those judges refused to stay the Ontario suspension based upon their belief that Ontario, "had attempted to schedule a hearing." Jeffrey's lawyers countered that the "attempt" was not legitimate because Ontario did not and has yet to comply with pre-hearing discovery obligations.

In addition to seeking an injunction (court order) against New Jersey from interfering with Bulletproof's right to race, the complaint seeks actual damages in a sum exceeding \$6,000,000.00. New Jersey has not yet filed an answer or motion in the lawsuit. Whether New Jersey remains steadfast in its refusal to accept entries or ultimately capitulates and stays their suspension order pending a hearing in Ontario remains to be seen. New Jersey aside, what also remains to be seen are the significant implications this entire affair could have upon this continent's harness racing industry. First, consider that it is estimated Bulletproof alone owns in excess of 400 Standardbreds. The other Brooks-controlled entities combined might add an additional 400 or more to this number. If David Brooks is acquitted, and there is no other legal process filed against him or any family member, Brooks-related stables might remain a force to be reckoned with for years to come.

If, however, David is convicted of serious federal felonies, will the Justice Department pursue forfeiture of David's assets, including his racing and breeding stock? Possibly, the transfer of horses between the Brooks brothers is completely legitimate. If, however, intra-family transfers are investigated as an attempt to evade forfeiture, the at-risk assets arguably could include the entire equine holdings of the clan.

The federal government is not in the business of campaigning or breeding horses. If forfeiture occurs, liquidation of these four-legged assets would soon follow. The dispersal of hundreds of Standardbreds through public auction within a compressed time frame would create a glut of hip numbers at a point in time when everybody is already feeling the pinch. Flooding the market could have a devastating impact on the overall value of the breed, and spell trouble for commercial breeders who rely on the sales ring for the economic viability of their respective businesses. The same result could occur if the horses are attached by private creditors to satisfy debts. In sum, a Brooks clan dispersal could amount to the largest horse sale in harness history; and that would simply not be a good thing, given the laws of supply and demand.

One thing is for sure: When it comes to the Brooks family and North American harness racing, it's far from a perfect world.

**Chris E. Wittstruck, an attorney and Standardbred owner, is the founder and coordinator of the Racehorse Ownership Institute at Hofstra University, New York and a charter member of the Albany Law School Racing and Gaming Law Network.**