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VIRGINIA RACING COMMISSION

August 19th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:34 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman
I. Clinton Miller, Vice Chair
David C. Reynolds
William H. (Trip) Ferguson

COMMISSION STAFF:

Victor I. Harrison, Executive Secretary
David S. Lermond, Jr., Deputy Executive Secretary
Kimberly M. Carter, Office Administrator

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth (Appearing by phone)

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AUGUST 19, 2009

MR. BURNETT: Good morning. The first order of business today before we get into our regular meeting is the appeal hearing on the matter of owner/trainer Annette Eubanks on an appeal of a stewards ruling during our current meet.

Do we have representatives of both the stewards and the horsemen here? Would you introduce yourself on the record, please?

MR. BARTZ: Yes, sir. My name is Philip Bartz. I am one of the principal owners of the horse. The appeal is really on behalf of Crystal Park Stables who owns the horse, and I am one of the principal owners of that.

MR. BURNETT: So you'll be speaking for the LLC?

MR. BARTZ: For the horse, yes.

MR. BURNETT: For the horse. Thank you.

And for the stewards?

MR. GROVE: Philip Grove. I'm associate steward for the Commonwealth. I represent the Board of Stewards.

MR. BURNETT: Mr. Grove, would you come forward so we can have you sit here -- we'll call it

1 counsel table for this purpose.

2 MR. PETRAMALO: I'll sit in-between them as a
3 neutral.

4 MR. BURNETT: That's right.

5 This is an appeal on the record, and I want to
6 make sure that everybody understands the ground
7 rules, at least as I understand it. We have counsel
8 to the Commission on the phone.

9 In recent years, we have amended our rules
10 with respect to riding infractions such that we have
11 reviews on the record of the stewards' rulings, and
12 new evidence is not permitted to be introduced
13 absent a motion and compelling circumstances
14 acceptable to the Commission.

15 The purpose of our amendment of that rule was
16 to avoid having four or five amateur commissioners
17 substituting their judgment for that of three
18 trained and qualified licensed stewards. For that
19 reason, the standard by which we would review this
20 appeal and whatever presentation both sides make to
21 us will be an abuse of discretion standard such that
22 if the Commission were simply to say to themselves
23 that they might rule differently were they in the
24 stewards' box on the day of the offense, that would
25 not be enough to carry the day. It would need to be

1 shown that the stewards abused their discretion in
2 coming to the conclusion they came to.

3 And with that, I think the appellant has the
4 burden and is the moving party, so we'll ask you to
5 go first. I know Mr. Grove has a presentation, but
6 if you would give us in whatever portion you want
7 any kind of an opening statement, then I'll give
8 Mr. Grove the opportunity to do that, then we'll go
9 to your evidence, if that's all right?

10 MR. BARTZ: That will be fine.

11 MR. BURNETT: Thank you.

12 MR. BARTZ: May I approach?

13 MR. BURNETT: Yes. Please.

14 MR. BARTZ: I understand clearly the
15 standards, and I believe this is not a riding
16 infraction, but in the case of a race, there's no --
17 there's not even the exception you indicated for new
18 evidence under your rules.

19 This is my argument. It also includes
20 demonstrative exhibits, which are basically stilled
21 photos taken from the tapes that you're going to
22 see. These are for your convenience. You could
23 recreate them simply by freeze framing it, but this
24 is easier for me to show you because I realize --
25 well, it'll be easier, and if you need to

1 deliberate, you will have them with you.

2 Again, my name is Philip Bartz. I own the
3 race horse or I'm one of the principal owners of
4 Little Ice Patch. I have a very brief opening
5 statement.

6 MR. BURNETT: Thank you.

7 MR. BARTZ: I just wanted to note for
8 everybody here today, it was not my first instinct
9 to be here and appeal this. I'm well aware of the
10 standard, Mr. Chairman, that you just delineated. I
11 also realize you're all busy men, both from your
12 backgrounds and from the agenda you have here today,
13 so I would not be here taking up your time lightly.
14 Also, I would have to say that I imagine in
15 reviewing the stewards' decision, if I was in your
16 shoes, would not be one of my favorite things to do.

17 When I was a deputy assistant attorney general
18 at the United States Department of Justice during
19 the Clinton administration, I had scores of career
20 people reporting to me, and I always wanted to
21 support what they did consistent with doing my own
22 job. I would have to imagine you feel the same way
23 about the stewards here. I also understand,
24 Mr. Chairman, what you said a minute ago, that the
25 stewards have discretion and that you will not

1 overturn a reasonable exercise of that discretion.
2 For all those reasons, my first instinct was not to
3 be here today.

4 Sometimes, however, decisions are made that
5 fall outside any reasonable parameters. It is for
6 those rare cases that this appeal process exists, so
7 you can rectify out and out mistakes that sometimes
8 even the best people can make. It is your job today
9 to hold the stewards accountable for their decisions
10 in those circumstances. I am only here today after
11 careful consideration, because this I truly believe
12 is one of those rare cases where a flat-out mistake
13 was made.

14 This is not an appeal that disputes an
15 exercise of the stewards' judgment. It contests a
16 judgment without record evidence and, indeed, is
17 contrary to the record evidence that you will
18 examine today. I'm confident that after you review
19 the record evidence and hear the arguments that you
20 will agree that the stewards' decision cannot stand.
21 Thank you, Mr. Chairman.

22 MR. BURNETT: Thank you. Mr. Grove?

23 MR. GROVE: Thank you.

24 The first thing I'd like to say, this Board of
25 Stewards does not take it lightly in disqualifying

1 any owner's horse, but this Board of Stewards is a
2 consistent board. We have regular meetings with the
3 riders, and we explain to them and show them in
4 detail what we expect of them and what will not be
5 accepted.

6 I consider myself an expert. I rode in over
7 32,000 races and won almost 4,000 races, and this
8 decision to disqualify this horse was not mine
9 alone. This was an unanimous vote consisting of
10 three individuals hired by the Commission.

11 Having said that, I have nothing more to offer
12 to you at this point.

13 MR. BURNETT: All right. We'll accept that as
14 your opening statement, sir.

15 Mr. Bartz, proceed with whatever evidence you
16 would like to present to us.

17 MR. BARTZ: Okay. Well, this will take just a
18 few minutes, but this is the DVD, which is really
19 the main record in this case.

20 MR. BURNETT: Let me ask whether there's any
21 objection to the use of this DVD or representation
22 from you that it's an accurate reproduction of what
23 the stewards --

24 MR. BARTZ: I talked to Mr. Lermond. We got
25 it from the same source.

1 MR. BURNETT: Well --

2 MR. BARTZ: Okay. I understand. I'm just --
3 okay.

4 MR. BURNETT: I don't have a problem if the
5 stewards don't have a problem. I think if we put
6 that on and they see something --

7 MR. GROVE: We have one loaded that is --

8 MR. BARTZ: But I'd like to show the one that
9 I have. I mean, if there's any differences or they
10 have it cued up in a different way. I mean, if
11 there's any discrepancy afterwards, if they want to
12 say something is not right, that's perfectly
13 reasonable, but I can represent to you that this is
14 straight from the video room over here.

15 MR. BURNETT: Is it -- I guess my question is,
16 which one is shorter?

17 MR. BARTZ: I'm really just trying to -- it's
18 about -- this is about six or seven minutes. I want
19 to put you back there on the day. It basically
20 shows you what happened realtime, and I think to
21 appreciate all the nuances of the arguments and what
22 we're going to show you, you sort of need to be put
23 back there. Besides, it's a race in Virginia. What
24 could be a better thing to watch for a few minutes?

25 MR. BURNETT: I understand that, but I'm just

1 trying to figure out what the difference is between
2 yours and what Mr. Grove has.

3 MR. BARTZ: I don't know what -- I've never
4 seen what they had cued up there, Your Honor. Your
5 Honor. I apologize. Mr. Chairman.

6 MR. BURNETT: Thank you.

7 MR. BARTZ: It is -- well, you can be Your
8 Honor, too. It's all right. You're an honorable
9 guy.

10 I just don't know what it is and, of course,
11 as any good presenter would, I don't like to put
12 something up that I don't even know what I'm going
13 to show.

14 MR. BURNETT: Maybe Mr. --

15 MR. GROVE: The only -- to clarify, the DVD
16 that's in the machine, ready to play was provided by
17 International Sound, and they provided the tapes
18 that we examine, that we look at, that we make our
19 judgment. This is what we deal with every day.

20 MR. BARTZ: If they want --

21 MR. BURNETT: My concern is, Mr. Bartz, is
22 that is the record. What you're offering is
23 technically outside the record.

24 MR. BARTZ: Let me make a suggestion then.

25 MR. BURNETT: I'd love to hear it.

1 MR. BARTZ: Even though it's my burden to go
2 first, perhaps it would be best to let him go
3 through the tape and show what he wants to show, and
4 you can get the feeling from it from that. I won't
5 do that, and then I will pick up after he is done.

6 MR. BURNETT: Is that acceptable to you,
7 Mr. Grove?

8 MR. GROVE: Certainly.

9 MR. BURNETT: Let's do it that way. That's
10 fine. Appreciate your flexibility. That's great.

11 MR. BARTZ: No problem.

12 MR. GROVE: Thank you.

13 I have a few handouts for you. I want to
14 bring you up to speed. Like the gentleman said, I
15 want to take you back to that night. These are
16 the -- this is from my program. These are my notes
17 made on that night that will help you identify the
18 individuals.

19 MR. BARTZ: May I also -- just so you have
20 everything, I have the stewards' decision because
21 that's going to be relevant --

22 MR. BURNETT: That would be fine.

23 MR. BARTZ: -- because it's on the record.

24 The one thing I would just like to say here,
25 their written decision is the record. I assume he's

1 not going to embellish that too much because that
2 would essentially go beyond the argument.

3 MR. BURNETT: We'll try and keep a careful eye
4 on the distinction between argument and new
5 testimony.

6 MR. BARTZ: Thank you, sir.

7 MR. GROVE: These are copies of the
8 regulations that were quoted in the ruling of the
9 stewards.

10 MR. BURNETT: Do you have a copy for
11 Mr. Bartz?

12 MR. GROVE: Uh-huh.

13 MR. BURNETT: Thank you.

14 MR. BARTZ: Thank you.

15 MR. GROVE: You have the ruling provided by
16 Mr. Bartz that I will not embellish, but here is the
17 suspension of the jockey.

18 Now, if you'll give me just a moment --

19 MR. BARTZ: Excuse me. How is the suspension
20 of the jockey relevant? This was after the fact,
21 correct?

22 MR. GROVE: This is part of the facts.

23 MR. BARTZ: Okay.

24 MR. GROVE: Let me just for a moment explain
25 to you how we process a decision, an objection.

1 During the running of a race, there are five cameras
2 on the field. There are two of us gentlemen that
3 watch it on TV, because there are different shots.
4 There are probably five different shots. One person
5 will watch it live. At the conclusion of a race,
6 the jockey will put -- will go to the outrider who
7 has a walkie-talkie direct to us and put a hold on
8 the race if he feels he's been interfered with.

9 At that point we go right to the TV that
10 International Sound provides for us, and we have a
11 computer where we can punch up the exact spot. We
12 can back it up. We can slow it down. We can pause
13 it. We can stop it. We can go to any of those TV
14 angles and look at what's going on.

15 After that, when the rider comes back to the
16 scales, he posts an objection. He tells us what the
17 objection is, where it occurred, and who it's
18 against. At that time we interview the individuals
19 that were involved, the riders that were allegedly
20 bothered. We take their testimony.

21 We turn then to the films. We look at the
22 films in a group, the three of us, and see if what
23 was said by the riders support what we're viewing at
24 the camera angles. At that time we take a vote, a
25 decision is made to disqualify or not to disqualify.

1 On this particular night, it was an unanimous vote,
2 that the horse did, in fact, not only bother one,
3 but bothered two riders.

4 And if we can, we'll move to the films and
5 I'll show you.

6 MR. PETRAMALO: You might want to get closer
7 to the screen.

8 MR. BURNETT: Gentlemen, do you want to move
9 closer to the screen?

10 MR. GROVE: I provided you with the program so
11 you can follow the horses, but we'll update it at
12 the gate.

13 THE REPORTER: I can't hear.

14 MR. BURNETT: Hold on a minute. Let's let the
15 court reporter get to where she can make a record of
16 this. Do you want to come closer, madam court
17 reporter --

18 THE REPORTER: Yes.

19 MR. BURNETT: -- or do you want us to speak up
20 or are you concerned about hearing the tape?

21 MR. HARRISON: I think with all the movement,
22 it was tough for her to hear.

23 MR. BURNETT: Everybody be nice and quiet so
24 only Mr. Grove and the tape are heard that will help
25 the court reporter.

1 Note: The video is being played for the
2 Commission.

3 MR. GROVE: Let me point out the horses that
4 are involved so you may watch them. This is the two
5 horse, Angel Aquarius, ridden by Jockey Geovany
6 Garcia. This is the three horse, Dame Margot,
7 ridden by Ryan Fogelsonger. This is Ms. Eubanks'
8 horse, the sixth horse, Little Ice Patch, ridden by
9 apprentice jockey Josean Ramirez. Bring them on,
10 David.

11 As they go away from the gate, the nine horse
12 sprints clear of everybody and goes over --

13 MR. LERMOND: That's the seven horse.

14 MR. GROVE: Seven horse. Sassy and Shiekh,
15 she will sprint clear.

16 Now slow it down, David. As this horse clears
17 these horses, I'll show you the pan shot so it's
18 clear. This is Ms. Eubanks' horse, Little Ice
19 Patch, he'll cross over. Bring it on, David.

20 MR. BARTZ: Could you freeze it right there?
21 Could you back it up a slide?

22 MR. GROVE: Can I go ahead and give the
23 testimony?

24 MR. BURNETT: Let him go ahead, and you can go
25 back over it.

1 MR. GROVE: Bring it on, David.

2 Right here, this horse is not clear, Ryan
3 Fogelsonger, and he's on his heels, and he's
4 drifting into the path of this horse here. If
5 you'll watch, this rider, Geovany, has taken hold,
6 and Ryan is trying to get off of him. These two
7 horses here. This is Ramirez. He'll look around at
8 these riders because they're yelling at him. Bring
9 it on.

10 MR. BARTZ: Excuse me. When he says they're
11 yelling at him, he can't possibly know that and
12 that's not in the record.

13 MR. BURNETT: We'll give it the weight that it
14 doesn't deserve.

15 MR. BARTZ: Thank you.

16 MR. GROVE: Take it back.

17 MR. LERMOND: All the way back?

18 MR. GROVE: Yes. Go a little further. There
19 you go.

20 As Little Ice Patch crosses over, he crowds
21 and is not clear. He doesn't have sufficient
22 clearance of the six or the three horse, excuse me,
23 Dame Margot. He eventually drifts in right here and
24 has -- right there you can see. He has this horse
25 in tight and was trying to get away from this

1 horse's heels.

2 The tragedy of the whole thing is Jockey
3 Ramirez did not have to cross over at this point.
4 He still has pretty much three-sixteenths of a mile
5 to cross over clearly. He wasn't forced in. He
6 elected to come in. He was careless in allowing his
7 horse to drift into the fence.

8 Now he'll start to cross over, and he's got
9 these horses in tight. Right there, they're on his
10 heels. This horse is on his heels, and this horse
11 is in tight. Go to the pan shot, David.

12 This is the pan shot. It'll show you directly
13 across the racetrack if you were standing at the
14 wire looking across, and what happens here is the
15 horses will run out of the camera. The camera
16 operator doesn't get far enough back. They'll lose
17 him here. So we looked at this, and we couldn't use
18 it for our decision. I'll let you look at it, but
19 they run out of the picture and we can't determine
20 where the incident exactly happened.

21 MR. BARTZ: Could you just run it to the end
22 so they can see the whole race? It might be helpful
23 to them.

24 MR. BURNETT: We're only looking at this
25 event.

1 MR. BARTZ: No, sir. This is partly mine.
2 I'm accommodating you to go first.

3 MR. BURNETT: If it's going to take 30
4 seconds, let it run through.

5 MR. BARTZ: Thank you, sir.
6 This is my horse.

7 MR. BURNETT: Mr. Grove, you're saying that
8 you were unable to observe the foul in this
9 particular tape?

10 MR. GROVE: Yeah. They were trying to get the
11 lead horse, and they couldn't get the last part of
12 the horses in the film.

13 Bring it on, David. We couldn't use this shot
14 to determine so we went to another shot.

15 MR. BURNETT: All right. Why don't you show
16 us that shot since this was not part of your
17 decision?

18 MR. GROVE: Yeah, but I wanted to show you
19 this. You see he's not clear of these horses yet.
20 We can't see what these riders are doing, so we
21 couldn't use this. Okay?

22 So go to your third shot, the last shot.

23 This is Ms. Eubanks' horse. Slow it down.
24 See these riders checking? This horse is not clear.
25 You see his legs. Back it up. Take it back one

1 more time. If you can hold it right there. Come
2 back. You're going the wrong way.

3 Our contention is this horse's back legs,
4 eight is not clear, and this is the head of the
5 horse. His legs reach in front of his head. At
6 this point, this rider has taken hold. This rider
7 here is steadying to get back off of his heels so
8 that he doesn't clip heels and go down. It was a
9 dangerous, careless mistake. He made it, and I
10 don't -- I apologize for the quality of the film,
11 but I'll let it run through so you can see what we
12 looked at.

13 So in our decision, we interviewed all three
14 of these riders.

15 MR. BARTZ: I don't think he can testify as to
16 what they said at this point. They made no
17 transcript of it, Your Honor. If they want to have
18 what the jockeys said, they should have either
19 brought them here or I'm going to -- should be
20 permitted to testify. We've investigated ourselves,
21 what they said, so we won't have a contest about
22 what the jockeys said.

23 MR. BURNETT: At this point, we can determine
24 that he can tell us that he interviewed the jockey
25 without telling us what he said --

1 MR. BARTZ: That's fine.

2 MR. BURNETT: -- and what conclusion he drew
3 as a result of interviewing, which I think we
4 already know --

5 MR. BARTZ: We already know, yes.

6 MR. GROVE: Yes.

7 MR. BURNETT: -- after interviewing those
8 jockeys.

9 MR. GROVE: I guess the point that I was
10 trying to make is that we didn't bypass any segment
11 of the investigation, that we did, in fact,
12 interview all three riders --

13 MR. BURNETT: That's fair enough.

14 MR. GROVE: -- the offending party and the
15 people that got fouled.

16 MR. BARTZ: Fair enough.

17 MR. GROVE: And we used along with the visual
18 evidence to support our decision.

19 MR. BARTZ: I understand.

20 MR. LERMOND: In addition, it was on a
21 speakerphone so all three of us could hear what the
22 jockeys said, not just one.

23 MR. GROVE: But can I say that what the riders
24 said supported what we saw.

25 MR. BURNETT: You can say that, but not tell

1 us what they said. You can say you relied on what
2 they said in reaching your conclusion.

3 MR. BARTZ: And I would like to say --
4 speaking about the rail horse, I talked to him and
5 it doesn't support what they saw.

6 MR. BURNETT: That's as far as either one of
7 you are going to be allowed to go.

8 MR. BARTZ: Thank you very much.

9 MR. BURNETT: Anything further, Mr. Grove, on
10 the film?

11 MR. GROVE: Not on the film, no.

12 MR. MILLER: Mr. Chairman?

13 MR. BURNETT: Yes.

14 MR. MILLER: I have a question about the film.

15 At that point where you pointed up and said
16 that horse wasn't clear and that he clipped heels,
17 did you zoom in on your camera? Did you zoom in?

18 MR. GROVE: No. We're looking at the film
19 that you're looking at.

20 MR. MILLER: But in your investigation, do you
21 have the capability to zoom in closer?

22 MR. GROVE: No.

23 MR. MILLER: You don't?

24 MR. GROVE: No. We have exactly what you're
25 looking at, but we have one of our stewards looking

1 at it through binoculars that are probably seven
2 times the actual. So his conclusion was he was in
3 tight, so he --

4 MR. MILLER: This is an irrelevant question,
5 but for future controversies, why don't you have the
6 ability to zoom in?

7 MR. GROVE: You would have to ask
8 International Sound or --

9 MR. MILLER: I would suggest --

10 MR. GROVE: -- Colonial Downs, they provide
11 what we use.

12 MR. MILLER: Just as a side note, I would
13 suggest to Colonial Downs or whoever hires this
14 contractor that they get someone with the capability
15 to zoom in, just like they do in baseball, football,
16 basketball.

17 MR. GROVE: Hey, listen, I'm on your side.
18 Anything that will make my job easier, I'm for it.

19 MR. MILLER: All right.

20 MR. GROVE: I think maybe that Colonial Downs
21 or whoever provides International Sound's equipment
22 might be against it because I'm sure it's very
23 costly.

24 MR. BURNETT: We'll let that be the subject of
25 another hearing.

1 MR. MILLER: Well, my point is --

2 MR. BURNETT: I understand. It could be
3 helpful.

4 MR. MILLER: My point is all I saw from this
5 film is a fuzzy picture of what you depict is
6 happening. I don't know that it happened.

7 MR. BARTZ: I think I can illuminate it for
8 you.

9 MR. BURNETT: Anything further on the film?

10 MR. GROVE: No. The film is too -- as a group
11 of stewards making a decision, were a better quality
12 on a smaller screen upstairs in our review room. I
13 apologize for this. International Sound did provide
14 it.

15 MR. BURNETT: Understood.

16 MR. GROVE: But the film supported the
17 evidence that the riders and we observed.

18 MR. BURNETT: Now, we went out of the normal
19 process here to allow, because Mr. Bartz was going
20 to look at this film to see if there's any material
21 difference between what you saw here and what your
22 DVD showed.

23 MR. BARTZ: No. In fact, my demonstrative
24 exhibits are from the head-on shot and the pan shot
25 that he just showed. I don't have that shot, but

1 it's not relevant.

2 MR. BURNETT: So are you okay to --

3 MR. BARTZ: I am okay with that.

4 MR. BURNETT: -- accept these as part of your
5 case?

6 MR. BARTZ: I am perfectly willing to accept
7 those.

8 MR. BURNETT: Okay. Let's return to our seats
9 and let him conclude his case, and then, Mr. Grove,
10 we'll come back to you.

11 MR. BARTZ: The only other thing I would ask,
12 Mr. Chairman, is I still get rebuttal at the very
13 end because I should have gone first.

14 MR. BURNETT: Yes. You're going first.

15 MR. BARTZ: Thank you.

16 MR. BURNETT: This was an exercise in
17 determining if this particular piece of evidence was
18 acceptable to both sides. We're still in your case,
19 so go ahead.

20 MR. BARTZ: Okay. If I could turn you to the
21 PowerPoint that I've handed to all of you. I think
22 this is the easiest way to walk through it. We can
23 go to page 2. Let me just start from the beginning
24 so everybody knows who we know are and what we have.

25 The owner of the horse is Crystal Park

1 Stables. As I said, I am one of the principal
2 owners. We never got to see the end of the race.
3 The reason I wanted to see the end, I just like
4 seeing my horse win, you know, because she's a home
5 bred. We still have her grandmother, and she's a
6 Virginia-bred. So we're very proud of her.

7 If you'll go to page 3 of the PowerPoint, the
8 official order of finish in the race, not the
9 official, the running of the race, the actual finish
10 was Little Ice Patch, Dame Margot, Lion In The Sun,
11 Champagne Disco, and Angel Aquarius, and Mr. Grove
12 has done a very good job of illuminating where those
13 horses were and what they were doing. I think the
14 other horse that you should have kept in mind, you
15 saw that one horse sort of coming across because I
16 think it's going to be important when you understand
17 spatial issues, because the lack of spatial evidence
18 that they have is going to be an issue here as well.

19 Now, after the race, the first thing that has
20 to be noted, there was a long gap. There was no
21 stewards' inquiry into the race. As I believe you
22 know, the stewards on their motion if they see
23 something in the race are able to lodge a stewards'
24 inquiry. They saw nothing apparently from the live
25 run. They did not have an inquiry.

1 The record indicates that a lot of time past.
2 You can see it on my film, but several minutes past,
3 and the record indicates that Ryan Fogelsonger on
4 Dame Margot, the second place finisher and
5 postposition two, claimed foul against Josean
6 Ramirez, my jockey, on Little Ice Patch. So, I
7 mean, I just -- so you understand the differences,
8 there's a difference between a jockey's objection
9 and the stewards' inquiry. Now, it doesn't mean
10 they don't inquire afterwards, but it's how the
11 probe is instigated, if you will.

12 Now, the stewards' decision after the race,
13 you just heard this, so if I'm little a repetitive
14 here, I apologize, but I didn't know precisely which
15 order we were going to go in. So only the second
16 place horse, according to the stewards, objected.
17 Yet, after the race, they placed her behind the
18 fifth place finisher. So they placed her fifth. So
19 what we have is no stewards' inquiry, the second
20 place horse complains, and my horse gets moved to
21 fifth place behind the two inside horses.

22 Now, the stewards' explanation, and I think
23 he's done a good job of doing it, but again, because
24 this is on the record, you have to evaluate the
25 decision based on what they said. If you look at

1 Exhibit 24 that I handed up to you, it's on page 3,
2 but here's the essence of their decision, and it's
3 consistent with what Mr. Grove has just said.

4 After listening to the testimony of the rider
5 involved and careful review of the film using
6 multiple angles, it was determined that Jockey
7 Josean Ramirez's actions caused riders Ryan
8 Fogelsonger and Geovany Garcia to check their mounts
9 to avoid clipping heels. I've italicized that
10 because he said it again. And that's an important
11 fact. And therefore placed Little Ice Patch behind
12 both of the horses he -- she's a she, and she's kind
13 of a girly girl. I don't usually like to put sic
14 down, but you know, again, I'm here on behalf of my
15 horse.

16 Now, I think you understand what clipping
17 heels is, but let me make sure you understand.
18 Clipping heels is a situation where one horse
19 essentially is running up behind another horse, so
20 the front legs of the horse and behind may clip the
21 rear heels. In other words, they have to be sort of
22 single file. I mean, behind one another. I mean,
23 that's kind of the idea of clipping heels. Often
24 horses run up on another horse when they can't be
25 constrained. As we go through these demonstrative

1 exhibits, I think it's important to understand what
2 clipping heels is.

3 Now, I think we've already got this straight
4 because, Mr. Chairman, you did a good job of
5 explaining it. Just so we're all on the same page,
6 on page 7 of this, I have -- this is on the
7 stewards' record hearing.

8 This is an on the record review as provided by
9 11 VAC 10-90-50 of the Regulations of the
10 Commission.

11 Am I talking too fast? Are you okay?
12 Sometimes I talk too fast, so I apologize.

13 Only the record evidence that exists here are
14 the videos of the race and the stewards' decision
15 itself. You've basically seen -- that's it. That's
16 the record. You don't have anything else. It's
17 pretty sparse, but that's what you have. That's all
18 they can rely on to justify their decision.

19 In an on the record proceeding -- I just said
20 that. That's all they can rely on.

21 They are not permitted here today, which is
22 why I objected, this is Virginia case law, in an on
23 the record proceeding to provide after the fact
24 evidence or explanations for their decision that are
25 not in the record. I think you've ruled for your

1 record exactly correctly on how you've handled that,
2 Mr. Chairman.

3 MR. BURNETT: Mr. Bartz, let me just interrupt
4 you. And if you prefer that I not, just tell me.
5 Is not their actual ruling part of the record by
6 consent of both of you?

7 MR. BARTZ: Yes, that is the ultimate part of
8 the record. So the video and the record. I may
9 have misspoke. It's really just their decision.
10 Yes. Yes, sir. That is correct.

11 MR. BURNETT: Okay. Thank you.

12 MR. BARTZ: Please feel free to ask me
13 questions or interrupt at any time. I'm happy to do
14 that, because I think in this particular case
15 sunshine is the best disinfectant as Justice
16 Brandeis once said.

17 Now, here's the question presented for you
18 today. Does the record evidence reasonably support
19 the stewards' conclusion that Josean Ramirez on
20 Little Ice Patch, postposition five, forced Ryan
21 Fogelsonger on Dame Margot and Geovany Garcia on
22 Angel Aquarius, postposition one, you've seen this,
23 to take action to, quote/unquote, avoid clipping
24 heels with Little Ice Patch.

25 Now, Crystal Park's position, if you turn to

1 page 9 is this. The stewards' disqualification and
2 particularly the rationale for that decision is not
3 supported by the record evidence. As I go through
4 this tape with still shots, you will see that it's
5 directly contrary to what they say.

6 Now, without record evidence, the
7 disqualification of Little Ice Patch is without a
8 legitimate basis and constituted an abuse of the
9 stewards' discretion, and Little Ice Patch should be
10 restored as the winner of the seventh race on
11 July 25th at Colonial Downs.

12 Now, the record before the stewards, and I'm
13 going to slow it down for you. It's hard to follow
14 there, but my still shots will slow it down for you
15 so you can see it better. Clearly shows that, one,
16 Ryan Fogelsonger on Dame Margot, the person who
17 complained ironically, made contact with Geovany
18 Garcia, the one horse, on the rail. Josean Ramirez
19 on Little Ice Patch did not make Ryan Fogelsonger on
20 Dame Margot do that.

21 The evidence will be clear. Ryan Fogelsonger
22 on Dame Margot and Geovany Garcia on Angel Aquarius
23 were never at risk of clipping heels with Josean
24 Ramirez on Little Ice Patch as the stewards
25 maintain.

1 Let me give you their theory of the case that
2 they just explained to you, because when you look at
3 the pictures, you have to understand it and they
4 prove decisively that this decision, they just got
5 it wrong. I'm not saying they didn't try their
6 best, because I really respect what they do. I
7 haven't ridden in 4,200 races, but you guys just
8 like me can see these pictures like a reviewing
9 court would, because that's really kind of the
10 position you're in.

11 Their theory is my horse came over, bothered
12 the middle horse, Fogelsonger, who was forced to
13 check into the rail horse. That's their theory.
14 It's the fruit of the poisonous tree, if you will.
15 So the order is my horse comes over, Fogelsonger
16 checks, forcing the other horse to check.

17 Now, let's look at the freeze frame evidence,
18 and I want to start with the pan shots because they
19 didn't look at the pan shots hard enough. He told
20 you they couldn't see anything from the pan shots.
21 I'm going to show you you're going to see something
22 very interesting that is directly incongruous with
23 his theory of what happened.

24 Now, turn to Exhibit 1, if you will. I'm
25 sorry for the quality, but given what you've already

1 seen, you can tell. In this first shot, this is
2 just to set the scene. The horse in front is the
3 seven horse, Sassy and Sheikh. The horse, one
4 inside, is Little Ice Patch. That's my horse. The
5 next horse, that's Fogelsonger on the three, and on
6 the rail, you see Geovany Garcia on the two. This
7 picture itself is not important, but as you can see
8 at the bottom of the thing, this is timed. This is
9 seven seconds into this video.

10 At nine seconds, we see them spreading out a
11 little bit more. You see the four horse is still
12 roughly in the same position. Go to video three,
13 and this is where we're going to start to see
14 something definitive in the pan shot before they
15 fade out of the picture as the stewards say. If you
16 look at it right now, all three riders -- Sassy and
17 Sheikh is out in front, so forget about her. My
18 horse is second. All three riders are up. Do you
19 see how they're up? They're not sitting down on the
20 horse. They're all up on the horse.

21 Now, we still -- now, look at the position of
22 the horses, all three of them. They're kind of in a
23 little line there and see where they are, what's
24 happened. Now look at Exhibit 5, go to the next
25 phase, and this is where it gets critical.

1 If you look at my horse, he's up. If you look
2 at -- on Exhibit 5, the three horse, that's
3 Fogelsonger. He's up. He's not checking. The two
4 horse is starting to sit down and check. Let's go
5 to the sixth. It's going to show it even more
6 clearly. He checks so hard. Now, Fogelsonger in
7 this picture, the two horse has now dropped out
8 because he's checked. Fogelsonger is still up and
9 riding his horse. He hasn't checked. My horse is
10 still out there.

11 The next photo, he's totally gone. He's still
12 riding. In Exhibit 7, Fogelsonger is still riding
13 this horse. He has not checked. Now the other
14 horse has checked so bad, and this is what I'm going
15 to say. Fogelsonger is the culprit here, not my
16 jockey who's being vilified for being careless.
17 Fogelsonger is still riding. Now my horse is coming
18 clear in Exhibit 8, and I'm going to show you
19 head-on shots that are gonna -- I'll tie these
20 together for you, so it's all clear.

21 Now you see my horse coming clear in Exhibit
22 9, Exhibit 10. There's really nothing more to see,
23 but you see, here's the critical point from those
24 head-on shots. Their theory of the case that my
25 horse caused it necessarily means that Fogelsonger

1 had to check first. If he's coming over and they're
2 in danger of clipping heels, he's certainly going to
3 endanger the first horse before the second horse.
4 That's not on the pan shots. I'm going to show you
5 the head-on shots because they're going to really
6 confirm it. You see Garcia on the inside horse
7 checking first, which shows that it was
8 Fogelsonger's fault, and I'll give him credit for
9 being cheeky for complaining, but he caused Garcia
10 to check first.

11 Now let's go to the head-on shots because
12 those will definitively show you what Fogelsonger
13 did. We'll start with Exhibit 12, if you would.
14 Let's talk about this shot. Twelve gives you like a
15 nice setup for this. If you look at the horse on
16 the rail, that's Angel Aquarius. That's Garcia, the
17 closest to the rail. One out, that's Fogelsonger on
18 Dame Margot. The horse in the lead, you can't --
19 it's even hard to see my horse, and that's why
20 clipping heels is important. The horse in the lead
21 is actually the seven horse, and my horse is in
22 behind him. You really can't see my horse at all.

23 Go to Exhibit 13, and you still can't -- you
24 now see Fogelsonger is already starting to move over
25 on Geovany Garcia on that rail horse. The horse out

1 in front again is not mine. That's Sweet and Sassy.
2 My horse is well to the outside at this point. Lots
3 of clearance, not even close, if you can see that.
4 She's in behind --

5 MR. BURNETT: Just so I'm clear on what you
6 see, looking at Exhibit 13, the two inside horses,
7 Aquarius and Dame Margot, and then the lead horse,
8 and then your horse?

9 MR. BARTZ: Yes. That is correct.

10 MR. BURNETT: That's what you're seeing?

11 MR. BARTZ: That is what you're seeing.

12 As you saw -- as Mr. Grove pointed out, and
13 he's right, the seven horse kind of rocketed out and
14 really carried over, which I think may be part of
15 the problem. I think Jockey Fogelsonger may have
16 saw that horse out of the corner of his eye and
17 flinched, because these next few are really the
18 smoking gun.

19 Now look at 14, you can see Fogelsonger
20 drifting in further now on Angel Aquarius. My horse
21 is still not even -- you can't even see it. She's
22 outside the lead horse. She's well outside those
23 horses right now.

24 Now let's look at Exhibit 15, and we can come
25 back to this. Now in 15 you can see Fogelsonger

1 beginning to make contact with Angel Aquarius. He's
2 been drifting in steadily and now he's making
3 contact. My horse is still well out to the side.
4 You can see lots of space while these two horses are
5 starting to make contact.

6 Let's see go to Exhibit 16. Now he's drifted
7 in even further. Again, you can see substantial
8 clearance. My horse is still outside that front
9 horse there. These two horses are now making
10 contact. At this point Fogelsonger is responsible
11 for what happens. He initiated the contact.

12 Let's look at 17. Now it's clear. You can
13 see this corresponds to the pan shot. You can see
14 he's now starting to drive. With no reason at all,
15 he's driving Geovany Garcia into the rail. Geovany
16 Garcia is starting to check, just like we saw on the
17 pan shot, and we'll go back through it.

18 Let's look at 18. It's even more clear. My
19 horse -- still my horse is behind another horse.
20 Remember what they said, everybody, that they were
21 in danger of clipping heels. If they were really in
22 danger of clipping heels, my horse would have to be
23 in front of him. You can't even see my horse. He's
24 not in front of either one of those horses. You
25 talk about a zoom, you can freeze this. They could

1 have done this.

2 Now here's the real smoking gun --

3 MR. FERGUSON: I have a question. Am I
4 allowed to ask a question?

5 MR. BURNETT: Yes, please.

6 MR. FERGUSON: On Exhibit 18 --

7 MR. BARTZ: Yes.

8 MR. FERGUSON: -- is the No. 6 horse the
9 fourth one out?

10 MR. BARTZ: The No. 6 horse actually you
11 cannot even see it. She has blocked -- the view of
12 her is blocked by the lead horse.

13 MR. FERGUSON: Okay.

14 MR. BARTZ: You can't see her at all, and
15 again that's going to be relevant, too.

16 MR. BURNETT: And what Trip is asking is, the
17 horse that's on the outside is actually from your
18 testimony the fifth or your view of the record, your
19 argument, the fifth horse out from the rail. Am I
20 right?

21 MR. BARTZ: That is correct. That is correct.
22 Yes.

23 MR. BURNETT: What you're telling us is,
24 looking at Exhibit 18, there are what appear to be
25 two horses at the rail a little behind, and then

1 there are really two horses, yours being in the rear
2 and the other horse taking the lead.

3 MR. BARTZ: Correct, sir. And you see them --
4 you can clearly see them making contact. You can
5 see the one and the two --

6 MR. BURNETT: See the two inside horses.

7 MR. BARTZ: You can clearly see space
8 between -- you can't really see my horse, but
9 wherever it is, she's nowhere near those two.

10 MR. PETRAMALO: Can I ask a question because
11 I'm confused now? Is there a horse that you say we
12 can't see here?

13 MR. BURNETT: That's what he said.

14 MR. BARTZ: My horse you can't see. My horse
15 is in behind. They can't see it.

16 MR. BURNETT: I don't want to testify for you,
17 but if I understand what you're saying so that we're
18 all clear, if you look at Exhibit 18 and from a lay
19 perspective would count one, two, three horses out
20 from the rail, what you're telling us is that third
21 horse is really two horses.

22 MR. BARTZ: Correct.

23 MR. PETRAMALO: That can't be. There's ten
24 horses in the race.

25 MR. BARTZ: No, there's 11 horses in the race.

1 MR. PETRAMALO: There's two scratches.

2 MR. BARTZ: There were 11 horses in the race,
3 and I can get the --

4 MR. PETRAMALO: Ten and eleven were scratched.

5 MR. BARTZ: There was an entry at the last --

6 MR. PETRAMALO: Okay. All right.

7 MR. BARTZ: I'm not claiming I'm that far
8 outside. I'm claiming -- I mean, they're not that
9 wrong. I'm not suggesting that -- you know, but
10 they're still wrong.

11 If you go back, you see this checking. If you
12 go back to exhibits -- if you go back to Exhibit 4,
13 you see this is showing again the same thing, that
14 Fogelsonger is riding, if you go to four, five, six,
15 you see that Garcia is checking out because if we
16 look at the head-on shot, because he's being bumped
17 and jostled by Fogelsonger. Of course, there's
18 nothing better for a jockey than to blame somebody
19 else for what he's doing, but the fact of the matter
20 is they're bumping.

21 Look at 19. This is where -- they're now
22 bouncing off each other. My horse is still clear,
23 and you certainly can't see from this head-on shot
24 or any shot that she's not clear.

25 And 20, you now see Fogelsonger comes back.

1 He's now being bounced back. As he said, he's being
2 bounced off the two horse. We go on through it, and
3 you see that they're jostling, and by this point in
4 these head-on shots, they're gone. I just put 20,
5 21, 22, 23 in for completeness.

6 Now, let me then -- now that you've seen the
7 evidence slowed down and directly, again the
8 standard is clear, while the stewards have
9 discretion -- if we go to page 14 of my
10 presentation, please. Thank you.

11 While the stewards have discretion in making
12 their decisions, there must be evidence in the
13 record to support their decision so it constitutes
14 reasoned decision making. I'm not saying they're
15 not experts, and I'm not saying they didn't think
16 long and hard, but there must be visual evidence in
17 the stewards' record that reasonably supports the
18 stewards' conclusion that Little Ice Patch forced
19 Ryan Fogelsonger on Dame Margot and Geovany Garcia
20 on Angel Aquarius to take action to avoid clipping
21 heels with Little Ice Patch, because recall --
22 recall again, only Fogelsonger complained according
23 to the stewards, but they didn't just put me second.
24 They blamed me for what Fogelsonger is doing to the
25 five. They're saying it's all my horse's fault.

1 That's what they're saying.

2 MR. BURNETT: Just so that I'm clear on that.
3 Are you suggesting that they are not legally
4 empowered to make that placement or that's just
5 further evidence of their mistake?

6 MR. BARTZ: They're legally empowered to do
7 it, but it's clearly evidence of their mistake and
8 what I'm saying, since this is an on the record
9 proceeding, I'm showing you the pictures that they
10 have, and you have to decide whether a reasonable
11 person could have reached a conclusion -- when those
12 two horses are bumping and my horse you can't see,
13 that my horse caused that.

14 MR. BURNETT: Okay. Understood.

15 MR. BARTZ: That's what they say --

16 MR. BURNETT: You're offering that evidence
17 for the purpose of undermining their decision-making
18 process --

19 MR. BARTZ: Yes, sir.

20 MR. BURNETT: -- not to say that they acted --

21 MR. BARTZ: Not even their process. I mean,
22 their process might have been fine. I'm saying
23 their decision is just flat out wrong, and it's
24 contrary to the pictures that you can see. You can
25 listen to what they say, but your eyes will show you

1 what happened.

2 MR. MILLER: Mr. Chairman?

3 MR. BURNETT: Yes, sir.

4 MR. MILLER: Would it have made a difference
5 to you if they would have placed your horse second,
6 would you be here today?

7 MR. BARTZ: No, sir, that would not make any
8 difference at all, because the wrong-doer here, my
9 horse did nothing wrong --

10 MR. MILLER: But you're saying they placed
11 your horse last --

12 MR. BARTZ: Placed in fifth.

13 MR. MILLER: -- that's surplusage.

14 MR. BARTZ: Well, it's not just surplusage,
15 sir. That's a good question. They said my horse
16 caused the foul against the horse on the rail, so I
17 understand why they put my horse there. If my horse
18 had, in fact, fouled the fifth place finisher, a
19 horse will be and they have the power to move a
20 horse behind anybody it bothered.

21 What I'm saying is that shows that they're
22 saying my horse was the cause of the foul on the one
23 horse. That's what I'm trying to say. They had the
24 power to do that. I'm just saying they're just flat
25 out wrong.

1 Now, for the reasons I just went through, the
2 record evidence exculpates my horse. I mean, it
3 shows that she didn't do what they said. Again, I
4 would ask you to go back and look at Exhibits 15
5 through 18, where you see Fogelsonger's horse and
6 Fogelsonger making contact with the one horse,
7 because that's really the foul they're talking
8 about.

9 It's really the rail horse that they're
10 moving, because that's why they moved me fifth.
11 They're saying the rail horse got bumped around, and
12 it's my horse's fault. That is the essence of the
13 decision. That is why they moved my horse to fifth.
14 Like I said, think about the sequence of this as I
15 showed you from the pan shot. If the theory of the
16 case was right, Fogelsonger should have checked
17 first, and then Garcia, but the evidence is clear
18 it's the other way around.

19 Now, I think that's the end of the inquiry,
20 because my horse -- you know, it's like *My Cousin*
21 *Vinny*, she didn't do it. However, that's not my
22 burden. It is not the burden of me here today, and
23 it's not your -- it's not what you're supposed to be
24 doing when you review this, that I have to prove
25 that she didn't do it.

1 Even giving them all the discretion they want,
2 if they want to say it's not exculpatory, every
3 ounce of discretion you can give them, that's not
4 enough to show that my horse didn't do it. The
5 stewards are obligated based on the record that they
6 have, that Josean Ramirez on Little Ice Patch forced
7 Ryan Fogelsonger on Dame Margot and Geovany Garcia
8 on Angel Aquarius to check in order -- again, to
9 avoid clipping heels. Avoid clipping heels. My
10 horse isn't even in front of them when they're
11 hitting each other. My horse is off to the side or
12 you can't even see it.

13 So what I'm saying here, if you go to page 17,
14 is that the initial burden of proof is on the
15 stewards. It's not Crystal Park's burden to prove
16 that Little Ice Patch committed no foul. You have
17 to be able to look at it and say a reasonable person
18 could conclude that that bumping on the rail between
19 the two and the three horse, that was my horse's
20 fault. If you don't, if you can't, because there's
21 not sufficient visual evidence, or their visual
22 evidence I think is exculpatory -- what I would say
23 here, given the standards of review, again I don't
24 have to show that she didn't do it. They have to
25 show that she did. You can't even see my horse in

1 some of those photos. There's no evidence to
2 support the conclusion that Josean Ramirez on Little
3 Ice Patch forced Ryan Fogelsonger on Dame Margot to
4 take action to avoid clipping heels with Little Ice
5 Patch or otherwise excused Ryan Fogelsonger from
6 drifting in and making contact with Geovany Garcia
7 on Angel Aquarius. Again, if you look at Exhibits
8 15 through 18, just the opposite it shows.

9 So unless -- again, I love to quote movies in
10 arguments, but unless the laws of physics don't
11 apply on that turf course out there, because the two
12 horse, Geovany Garcia on Angel Aquarius checks
13 first, totally opposite of what they're saying.
14 Unless the laws of physics don't apply, then their
15 discretion isn't broad enough, and they may be
16 jockeys, but they're not physicists.

17 Now, I want to point something else out,
18 because one of you asked an excellent question, and
19 this goes to whether or not they have sufficient
20 evidence in the record to support their decision.
21 And that's spatial evidence. When he starts showing
22 you the horses coming over, think about the lead
23 horse. On those head-on shots of Sassy and Sheikh,
24 if you look at -- let's go back and look at Exhibit
25 3.

1 The horse out in front is the seven horse. If
2 you look at Exhibit 4, it's the seven horse.
3 She's -- they're not claiming it. She's clear of
4 all those horses. You can see it from the pan shot.
5 They say they can't see anything from the pan shot,
6 which is also damning to their point of view. What
7 I'm saying is there's no way from those photos that
8 you can see that my horse wasn't clear. You could
9 not see that and if you cannot see it, I know they
10 have expertise. They can't just, well, I think it
11 happened.

12 It's like -- you guys watch football. You
13 watch video replay, hockey perhaps some of you. If
14 you can't -- you know, you've got to be able to see
15 it. They can't assume or guess and fill in the
16 blanks, and here they don't even need to do that.
17 You can see Fogelsonger driving the other horse in
18 the rail when my horse isn't there.

19 So based on this record, there is no way they
20 have sufficient evidence to disqualify me and it's
21 their burden in the first instance to do that, and
22 what he showed you changes nothing.

23 So where does that leave us? We go to page
24 20. I would submit to you that the record evidence
25 that you have, there's only two possible orders of

1 finish. You were asking where my horse should be.
2 The one possibility would have been to disqualify
3 Dame Margot, Fogelsonger's horse, for driving
4 Garcia's horse into the rail.

5 The official order of finish, this is one
6 option that you would have to restore this, would be
7 Little Ice Patch first, Lion In The Sun second,
8 Champagne Disco third, Angel Aquarius, then Dame
9 Margot, because she's the horse that -- if there was
10 a foul committed here, it was committed by
11 Fogelsonger on Dame Margot.

12 The other possibility would be to have no
13 change of the running of the race and just leave
14 Dame Margot where it is. The stewards maintain that
15 the five horse didn't complain. He didn't say
16 anything. He didn't think the trouble was worth
17 objecting to according to them, okay, then leave
18 Dame Margot up. That's okay. I don't care what
19 they do with those horses, but what I do know is you
20 can't take my horse down based on this record.

21 This is not an exercise of discretion. It is
22 simply indisputably wrong. As I said before, I
23 wouldn't be here today if I thought this was a
24 discretionary call, I understand that, but these
25 pictures don't lie.

1 So what's the bottom line? Page 21, given the
2 stewards -- the record that the stewards had,
3 there's nothing to support their judgment that
4 she -- that other horses were doing what they were
5 doing to avoid clipping heels with her. It's just
6 not there.

7 Go back, look at it again, Exhibit 15, Exhibit
8 16, Exhibit 17, Exhibit 18, and you tell me that
9 those two horses making contact, that Fogelsonger on
10 the horse second from the rail is doing that in
11 order to avoid clipping heels with my horse. I defy
12 any reasonable person, any person to reach that
13 conclusion. That's why I'm here today.

14 Now, there was no basis to disqualify my
15 horse. It should be restored to first place, that
16 she won the race. As I said before, she is a
17 registered Virginia-bred and as a Virginia-sired
18 horse, she is entitled to a first place purse of
19 \$18,212. I really appreciate you listening so
20 attentively. I know it was long and laborious, but
21 I understand that without careful attention to
22 detail, we can't get this right. Thank you.

23 MR. BURNETT: Any questions from any
24 commissioners at this point?

25 MR. MILLER: Mr. Chairman?

1 MR. BURNETT: Please.

2 MR. MILLER: I know I'm probably talking too
3 much. I'm having a little trouble with exhibits --
4 maybe you can clarify it or someone in the room can
5 clarify exhibits -- starting with 16, 17, 18, 19,
6 20 --

7 MR. BARTZ: Yep.

8 MR. MILLER: -- 21, 22, yeah, 22. I'm having
9 a problem -- we're looking head-on at these horses
10 coming at us. You say that these exhibits show
11 Fogelsonger, Jockey Fogelsonger riding into the
12 other horse, but as I look head-on, how do I know --
13 how do I know they're side by side?

14 MR. BARTZ: Well, that's where -- and they
15 can't do it for my horse, but if you go back to the
16 pan shots, if you go back to Exhibits 4, 5, and 6,
17 you can see where the two horses are, in fact,
18 checking out of that hole. You can see in Exhibit
19 4, for example, Garcia on the two horse is up and
20 riding without checking. You look at Exhibit 5, and
21 you see he's now sitting down on that horse. He is
22 checking there. You look at Exhibit 6, he's out of
23 the hole altogether.

24 Look, if you can't -- let me make a further
25 point. If you don't think you can see anything,

1 that Fogelsonger did anything wrong, and you can't
2 tell spatially, you certainly can't say that my
3 horse did anything, that would lead to the
4 conclusion that you should leave the order of finish
5 as it originally occurred.

6 MR. MILLER: Well, I'm not saying what I can
7 see shows someone doing anything wrong or doing
8 anything right. All I'm saying is that it's just
9 hard to tell from this -- these photographs. You
10 assert that the horse next to the inside is bumping
11 the horse, riding into the horse on the inside.
12 That may be so.

13 It may be, though, these photographs could be
14 depicting the horse that's next to the inside is
15 coming up and is going out in front of the horse on
16 the rail to some degree. I can't tell. I can't
17 tell -- I mean, you say he's riding into him and
18 bumping, that's fine. I'll take that for what it
19 is, but I can't tell by looking at this picture that
20 that's what occurred.

21 MR. BARTZ: Commissioner Miller, that's a fair
22 point. If you can't tell that's what occurred, what
23 I'm also saying, if you can't tell that's what
24 occurred, that my horse -- my horse that's on the
25 outside of those caused all that to happen, if you

1 can't tell, then their decision is not reasonable.

2 MR. MILLER: Well --

3 MR. BURNETT: Any other questions?

4 Mr. Bartz --

5 MR. LERMOND: Commissioner Miller --

6 MR. BURNETT: Hold on.

7 MR. LERMOND: I'm just going to talk about the
8 film.

9 MR. BURNETT: You're going to talk about it in
10 your case.

11 MR. LERMOND: No, about the way I was
12 operating it.

13 MR. BURNETT: I realize that, but that's part
14 of your case.

15 With respect to the duty of Mr. Fogelsonger,
16 is it your position that if a horse is coming over
17 on him, he does not have a legal right to or a
18 riding right, if you will, to anticipate that and
19 move away from him? In other words, does he have to
20 take the hit to call a foul?

21 MR. BARTZ: He -- excuse me. He has to be
22 forced to take that action. I mean, race riding is
23 hard.

24 MR. BURNETT: I'm really asking --

25 MR. BARTZ: But, I mean, race riding, putting

1 horses in tight quarters and doing things like that,
2 that's part of the game. I mean, if a jockey --
3 good jockeys don't get unsettled that easily. That
4 horse was put -- I think what may have happened,
5 that horse that was out in the lead cutting across,
6 it may have frightened him or unsettled him. Now,
7 that's -- in that sense, did the seven horse cause
8 him to do it in his mind? Okay. Maybe. But that's
9 not a legitimate --

10 MR. BURNETT: Well, let me just paint a
11 picture for you, and I'm not suggesting this is the
12 evidence, and we're not going to hear what the
13 jockeys said. I just want to make this illustration
14 so I can understand where you're coming from on a
15 legal point.

16 MR. BARTZ: Yes.

17 MR. BURNETT: If Fogelsonger is yelling at the
18 jockey on your horse to get off me, get off me,
19 you're cutting me off, get off me, and he doesn't
20 get off him and he keeps coming, before Fogelsonger
21 makes contact, if he crowds to the left, is he
22 entitled to do that?

23 MR. BARTZ: If that was the judgment that you
24 reached and it was --

25 MR. BURNETT: No, no judgment. I'm just

1 asking if that were true --

2 MR. BARTZ: Yes.

3 MR. BURNETT: -- if that were the facts --

4 MR. BARTZ: Does he have to take the hit, no.

5 MR. BURNETT: And I don't know. There's no
6 evidence of that.

7 MR. BARTZ: If it's a reasonable -- but again,
8 I'm guess I'm saying if that's -- the way you
9 painted it, it's clearly a reasonable reaction by
10 Fogelsonger under the facts you just illuminated.
11 And in that case, yes, but that is something of a
12 judgment call.

13 MR. BURNETT: From where we sit, it's
14 speculation.

15 MR. BARTZ: Exactly. Correct.

16 MR. BURNETT: I just want to know, using that
17 as an example what --

18 MR. BARTZ: Yes.

19 MR. BURNETT: Okay. Any other questions?

20 All right. Any further evidence, Mr. Bartz?

21 MR. BARTZ: No. That's my presentation. I
22 just reserve any rights to go last, if you will.

23 MR. BURNETT: We'll let you respond.

24 MR. BARTZ: Thank you, sir.

25 MR. BURNETT: Mr. Grove, anything on behalf of

1 the stewards at this point, your case?

2 MR. GROVE: Just quickly, I'll close with --

3 MR. BURNETT: Let me stop for a moment. Is it
4 your desire that we incorporate what you had to say
5 at the film there as part of your case now so you
6 don't have to go back through it?

7 MR. GROVE: No. I don't need to go back
8 through it.

9 MR. BURNETT: Thank you.

10 Any objection to that?

11 MR. BARTZ: No, sir.

12 MR. BURNETT: Thank you.

13 MR. GROVE: Just quickly in closing, Mr. Bartz
14 criticized Ryan Fogelsonger's style. I don't know
15 that, you know, it's correct. I couldn't tell you
16 if Ryan Fogelsonger rides up high or down low or
17 what, you know, each individual has his own style.
18 I think, as I counted them, 22 times Mr. Bartz said
19 about it being clear. It's not a clear. He did a
20 great job with the still frames, but none of this is
21 real clear to me. We can't really see his horse a
22 lot of the time.

23 He quoted a law of physics. I will quote a
24 law of human nature, and that is me first. When his
25 horse drifts over, Ryan Fogelsonger is taking care

1 of himself first. He's going to try to get away
2 from those heels because Mr. Bartz has never hit the
3 ground on a 40 mile an hour horse. Mr. Fogelsonger
4 has. He's going to protect himself. He's going to
5 crowd that inside horse, hopefully that Ramirez will
6 go on or it will clear or he'll take off of him,
7 that's why he gets into the inside horse.

8 Secondly or thirdly, whatever, is his
9 statement that we didn't see the incident because we
10 didn't post any inquiry. We don't post inquiries on
11 every incident. We look at the films. This came
12 pretty quick to us. We had a hold. There was
13 action going on. We also in our duties have to make
14 sure that the correct order of finish is put up. We
15 have to get everybody back in safe and sound. Yes,
16 we post inquiries sometimes. Sometimes we do not.
17 That is not a criteria for disqualification.

18 I think in closing, he's done an excellent job
19 with his presentation on the film shots, but I think
20 it is not clear, but it is clear to us on the
21 testimony of the riders and on the films that we
22 looked at and all the angles that had Mr. Ramirez --
23 had Josean just kept his horse straight or taken the
24 pressure off, there would have been no
25 disqualification, the only horse coming in is his

1 horse. The two horses on the inside are keeping a
2 straight horse.

3 If Josean straightens his horse, takes the
4 pressure off, there is no disqualification and we
5 wouldn't have been here today. He failed to do that
6 and he was suspended, and he did accept the
7 suspension. He is not here to protest his
8 suspension. He accepted it because he was wrong.

9 MR. BARTZ: First -- can I respond?

10 MR. BURNETT: We'll accept that as argument.

11 MR. BARTZ: Can I respond?

12 MR. BURNETT: Does that conclude your
13 comments, Mr. Grove?

14 MR. GROVE: The only other thing that I would
15 add into it is Mr. Bartz spoke for Jockey Geovany
16 Garcia.

17 MR. BARTZ: No, I didn't.

18 MR. BURNETT: Well, let's hear what he had to
19 say.

20 MR. GROVE: In our interview with him --

21 MR. BARTZ: Your Honor, he's not going to go
22 into this because he's adding new evidence because
23 he's got a problem here. He can't do that.

24 MR. BURNETT: We're not going to hear what he
25 said, only that you listened to him.

1 MR. GROVE: We listened to him, and he made a
2 good explanation to us.

3 MR. BURNETT: Okay.

4 MR. GROVE: But my contention is, you know,
5 with all the diligence that he put this together, it
6 doesn't prove anything. It's a good presentation,
7 and he's done an excellent job presenting his case.
8 Thirdly, I'll say or finally I'll say is we, the
9 Board of Stewards, do not take pride and do not take
10 it lightly that we disqualify a horse. Mr. Bartz
11 has a lot to lose here. He's a Virginia-bred. He's
12 entitled to a \$10,000 bonus. He raised the horse.
13 He's got a lot involved, but we have a lot involved,
14 too. We have the safety of every horse out there,
15 and the safety of every rider out there to
16 represent. That's what we did.

17 MR. BURNETT: Thank you.

18 Rebuttal?

19 MR. BARTZ: I would like to respond briefly.
20 I think what he just said, his first remark, and if
21 you can get the transcript back realtime, he's just
22 made your decision for you. He just said you can't
23 really tell what happened out there.

24 MR. GROVE: Excuse me.

25 MR. BARTZ: We can get the transcript out.

1 MR. BURNETT: First of all, we accepted that
2 as argument. One --

3 MR. BARTZ: Yes.

4 MR. BURNETT: -- we heard what we heard.

5 MR. BARTZ: What you heard and you have a
6 transcript. What I'm saying is, the burden is on
7 them. If they can't really tell, just like in any
8 sporting event, they can't change the finish. I'm
9 sorry, but he just said what he really thinks, and
10 you guys have been raising this point like you can't
11 tell. If that's -- if that's what you find, then
12 you have no choice but to reverse what they did.

13 Secondly, you know, getting it right, blaming
14 Ramirez for something that Fogelsonger did, that
15 doesn't prevent anything. Ramirez took the days. I
16 mean, this isn't his appeal, but if we're going to
17 start throwing this in, he was injured. This is a
18 lot of trouble to be down here today. I got clients
19 who are waiting for me. I came down the night
20 before. My wife and daughter came down with me to
21 support me. I mean, this is not a fun thing for me
22 to do. I'm only here -- and it's not because this
23 is a lot of money. I love my horse and I'm
24 representing her more than anything else, but by God
25 it's like sometimes things just have to be done

1 right. If they would just admit they made a
2 mistake, it would make it easier, and he essentially
3 just did.

4 He essentially said they made a mistake when
5 he said you can't tell what happened. I'm not -- if
6 I'm quoting it wrong, I apologize, but she's got it
7 right down there what he said. I think he said it
8 three or four times. If it wasn't exactly, then it
9 was words to that effect. If you -- if that's true,
10 he's wrong, and just should admit they made a
11 mistake. Thank you.

12 MR. BURNETT: Thank you.

13 Anything further from either party? Any
14 questions from commissioners at this point?

15 All right. I want to confess that I don't
16 know whether we are required to deliberate in public
17 or whether we --

18 MR. BARTZ: No. I think you go into executive
19 session.

20 MR. BURNETT: -- go into executive session. I
21 think it's executive session. If Mr. Bartz doesn't
22 have an objection, then that's what we'll do.

23 MR. BARTZ: That's fine.

24 MR. MILLER: Mr. Chairman?

25 MR. BURNETT: We have the case here from the

1 parties.

2 MR. MILLER: Where's our lawyer?

3 MR. BURNETT: She's on the telephone.

4 MR. BARTZ: I'm happy to let you guys talk
5 candidly. I think that makes sense anyway.

6 MR. BURNETT: We'll retire to the conference
7 room and make a decision and come back to you
8 shortly.

9 NOTE: The Commission went into executive
10 session, following which the hearing resumes as
11 follows:

12 MR. BURNETT: We'll come back into session for
13 the conclusion of the appeal concerning the
14 disqualification of Little Ice Patch.

15 The Commission has met and considered the
16 excellent presentations and arguments made by both
17 sides. It is the conclusion of the Commission that
18 there is insufficient evidence to overturn the
19 conclusion of the stewards. That decision will be
20 reduced to writing and provided to all parties
21 within ten days in accordance with our regulations.

22 Is there any further evidence -- any further
23 matters to be undertaken on this appeal today?

24 All right. Thank you all for coming.

25 MR. BARTZ: Thank you.

1 MR. BURNETT: We'll conclude that appeal and
2 move to our regular session.

3 We're going to change our schedule a little
4 bit today, because in consideration of our neighbors
5 and citizens from Brickshire and their concern with
6 the issue of the fly population, we thought we would
7 take that issue up first before moving into our
8 regular agenda.

9 Is there anyone here from the Brickshire
10 community that would desire to speak to us? If you
11 would come forward one at a time and identify
12 yourself for the court reporter, we'd be pleased to
13 hear you.

14 MR. PULASKI: There's only one of us, and
15 that's myself. My name is Bob Pulaski.

16 MR. BURNETT: Mr. Pulaski, welcome and --

17 MR. PULASKI: I've learned a lot today and
18 what you do with my money from Colonial Downs.
19 Believe me, I lose a ton of money in here.

20 MR. BURNETT: Well, we're not pleased that
21 you're losing, but we're very pleased that you're
22 here contributing to the handle.

23 MR. PULASKI: There's three of us here from
24 Brickshire. We're residents of Brickshire. I've
25 been living in Brickshire for the last five years,

1 and I have a real major complaint. We don't know
2 where to go. Okay? We've tried everything we
3 possibly can, calling the health department, things
4 like that with flies. It's gotten to a point now
5 that you can't even go out of your house, and we
6 know that happens twice a year, at the end of
7 thoroughbred racing and at the end of the harness
8 racing, but we've got to have help. I mean, there's
9 got to be something done.

10 Last year, Stan Bowker, is that how you
11 pronounce his last name?

12 MR. BURNETT: Bowker, yes.

13 MR. PULASKI: He talked to me. We developed a
14 dialogue communication, and he told me a couple
15 things that were very helpful. He told me Colonial
16 Downs sprays for flies every other day, and he got
17 them to spray for flies every day. Okay?

18 The other thing they did is Colonial Downs
19 cleaned out the lower stables and did not clean out
20 the upper stables properly, and he got them to do
21 that. That's what he told me.

22 The third thing is Colonial Downs was not
23 transferring the manure out of the area in a timely
24 manner. He also assisted with that, and he really
25 did an excellent job with that.

1 But I noticed over the last five years, it has
2 gotten worse. The last -- two weeks ago, I mean,
3 you couldn't go out of your house. It was a
4 disgrace.

5 There's a neighbor that moved in, and I got
6 his e-mail. His name is Rick Cole. He said to me,
7 his exact words were and I have it in writing, this
8 is not an exaggeration. Four days of working in my
9 garage over the past two weekends, wife and him
10 killed 500 flies and he was bitten 50 times. That's
11 not right.

12 I have a letter from David Gaines. He is a
13 doctor with the health department, and he came up
14 with some things that I would like to present that I
15 think would be helpful to the fly situation. I
16 mean, I was not aware that there is a potential for
17 anthrax with these flies, and I'm sure you people
18 aren't. There's a potential for anthrax, equine
19 infectious anemia, and there's other diseases that
20 these flies possess. And along with the swine flu
21 that's coming up, we need to do something.

22 He said this can -- he can give us issues, and
23 I have it in his letter, where he can help reduce
24 the amount, but we've got to get Colonial Downs -- I
25 mean, whatever they want us to do, we'll do it as

1 neighbors. That's why we're here.

2 I want to show you people something. These
3 are glue boards that have been in my garage for two
4 days, okay, near the pedestrian door. This is two
5 days. How would you like to go outside and come
6 back into your house and get this in your house?
7 Here's other pictures of glue strips. This is how
8 serious this is.

9 We need your -- I'm telling you, we need your
10 help. Whatever you want us to do, we'll do as a
11 neighborhood, but tell us what direction you want us
12 to march and we'll march.

13 Do you guys have anything else?

14 MS. CORBETT: The only thing I will say is --

15 MR. BURNETT: Ma'am, would you state your name
16 for the record, please?

17 MS. CORBETT: I'm sorry.

18 MR. BURNETT: Thank you.

19 MS. CORBETT: I'm sorry. My name is Constance
20 Corbett. I live in Brickshire, Belle Green.

21 One of the things that really came home to me
22 was when I had a visitor, an unexpected visitor, and
23 I had to open the front door, and in order to speak
24 to that person, I had to go -- close the front door,
25 either bring them in the house or close the front

1 door and go outside and speak to them because the
2 house just filled up with flies.

3 Now, I don't know if we have the correct
4 information, but it seems that at the end of the
5 season -- during the season that the truck comes in,
6 and correct me if I'm wrong, every other day, and
7 takes out manure, what is not taken out -- and the
8 truck is not big enough to take it all out, and what
9 isn't taken out is put into a pit. And what is
10 accumulated on the day that the truck that does not
11 come in is also put into that pit. At the end of
12 the season, when we really get this influx of flies
13 is when that pit is cleaned out, and what has
14 happened is that the larva and everything is allowed
15 to grow in that pit.

16 So to me a simple and hopefully doable
17 solution would be for the truck to come in every
18 day, and the truck to be big enough to cart the
19 manure away every day. Forget the pit, because even
20 with the health department's letter, you cannot --
21 the pit just allows everything to fester, and then
22 when you wait until August to take it out, that's
23 when you really create a problem. They say you can
24 spread it out instead of putting it in a pit, but of
25 course, that would require a lot more space and

1 probably a lot more labor, be a lot more labor
2 intensive.

3 So one suggestion we have is that the truck
4 comes in every day during the season and the truck
5 is big enough to take it all out, so that you don't
6 have to store it and accumulate it, and then create
7 this issue at the end of each season.

8 MR. BURNETT: Thank you.

9 MR. ISBELL: I think I want to chime in, too.

10 MR. BURNETT: Please do.

11 MR. ISBELL: My name is Don Isbell.

12 THE REPORTER: I'm sorry. What is your name?

13 MR. ISBELL: Don Isbell.

14 THE REPORTER: How do you spell your last
15 name?

16 MR. ISBELL: I-S-B-E-L-L. I live on the same
17 street that they do. As bad as they are outside,
18 it's when they get into the house that drives me
19 crazy.

20 Most of our houses in our neighborhood have
21 two-story great rooms and when you get flies loose
22 in a space like that, I spend 30 minutes every day
23 hunting down flies. It aggravates me to no end.
24 They land on my counter in the kitchen, it's black
25 marble, black granite, and you can't see them. They

1 can hide in plain sight. It just -- I carry a
2 flyswatter with me all day long, and it is an
3 aggravation.

4 MR. BURNETT: Well, let me -- this may come as
5 cold comfort, but I think there may be some benefit
6 in this.

7 First, we as a Commission are appointed by the
8 governor by law and we're a regulatory body. So our
9 obligation is to see to it that racing is carried on
10 in a legal and proper way in the state of Virginia,
11 and that is mostly with regard to the way -- what
12 you saw here earlier today, the way the races are
13 run, the way the parties are regulated, that
14 gambling is carefully monitored, and all the rest.

15 We are also required to be sure that the
16 licensee; that is, Colonial Downs, is in compliance
17 with law. To the extent that they're not in
18 compliance with law, we have certain procedures by
19 which we can work with them, sanction them, call it
20 what you like, to bring them into compliance and
21 have them doing what is required by law for them.

22 Absent their violating some law or regulation
23 of the Commonwealth, we're powerless to do more than
24 jawbone them and to ask them to be good neighbors
25 and all the rest. And in saying that, I'm not

1 suggesting that they haven't been good neighbors,
2 because I know -- and I've looked into this a little
3 bit. I went down the backstretch today looking for
4 the flies, and was told that the migration had more
5 or less ended for this season.

6 MR. PULASKI: Correct.

7 MR. BURNETT: I recognize it as an intense
8 period of time when you are inundated with flies,
9 and I don't think anybody disputes what you are
10 telling us factually about what happens. The
11 question is, what can be done about it. And as with
12 everything, there are certain practicalities.
13 Believe it or not, the manure is actually purchased
14 by mushroom farms in Pennsylvania. They come and
15 get it, and they are of certain size, and trucks
16 that travel that distance to get it and have only
17 certain capacity to haul it away. Certain kinds of
18 fly insecticides are applied, other organic type of
19 efforts are undertaken to -- that are
20 environmentally sound are taken to reduce this fly
21 population.

22 What I would suggest is that we find a way to
23 jointly get to the bottom of the situation
24 factually, find out exactly what it is we're dealing
25 with, and I think the doctor's letter, an

1 entomologist, am I saying that word correctly?

2 MR. PULASKI: Correct.

3 MR. BURNETT: What he had to say seemed to me
4 to be a very good start, and I -- it seems to me
5 that we need to get to the bottom of this factually,
6 and then decide -- thank you, sir -- what we can
7 reasonably do together so that everybody co-exists
8 as good neighbors, and this business that is working
9 very hard to try and survive in a very difficult
10 environment succeeds, and that you all have the
11 lifestyle and residential environment that you
12 purchased when you came here. And I would simply
13 ask Mr. Weinberg or Mr. Stewart to chime in in any
14 way and supplement what I had to say.

15 MR. STEWART: Well, I would like to say a
16 couple things.

17 MR. BURNETT: Okay.

18 MR. STEWART: There's no question there are a
19 lot of flies, and I personally intensely dislike
20 flies personally. I entirely sympathize with the
21 problem. That's why I've directed our people to
22 always do what we can to mitigate that problem.

23 Dawes Lee, our director of facilities, perhaps
24 can just kind of run through everything that we do
25 do.

1 MR. LEE: Well, as Mr. Stewart said, I'm Dawes
2 Lee, the director of facilities here at Colonial
3 Downs. I've been here three years, and we've had
4 the same problem for the three years since I've been
5 here, and I can go over what we do to try and
6 alleviate the problem.

7 I'm assuming this helps, and I can see that it
8 doesn't completely do away with them, but the horses
9 came in here May 16th. May 18th, which was a
10 Monday, they came in on Saturday, the 16th.
11 May 18th, on a Monday, we started weekly putting out
12 10,000 parasitic wasps a week. A pinch goes into
13 every occupied stall and into the manure pit.

14 Starting that same week when the horses start
15 coming in, we empty -- the stalls are cleaned daily.
16 We empty the pans starting at ten o'clock after
17 training is over, and we empty those pans until
18 eight o'clock at night, sometimes nine o'clock at
19 night, carrying it to the manure pit. The
20 tractor-trailers do come almost every day and pick
21 up what's in the pit at that time, but if they come
22 at four o'clock in the afternoon, naturally what we
23 put in there after four o'clock is not going to get
24 picked up until the next day anyway.

25 Once the horses leave, and they left on August

1 the 1st, that's when it seems like the flies get
2 worse. We start spraying almost daily. On Sunday,
3 August 2nd, we started using this chemical called
4 Shockwave, and I brought a thing over here on that.
5 We start cleaning the stalls out. After the
6 horsemen are gone, on that Monday, we start cleaning
7 the stalls out. It takes about two weeks to do
8 that. So we started August, I guess, 3rd, Monday,
9 August 3rd, and the 14th, the last bit of manure and
10 straw was picked up, which was last Friday. That's
11 why I guess the problem is starting to go away.

12 We do that every year. The same thing every
13 year. I mean, we stay on top of it. It's not like
14 we're not trying to do anything, because I
15 sympathize, too, because we have guys that eat lunch
16 down here in this maintenance shop, and we have
17 those fly glue strips also, and it's just loaded
18 every day. We have the same issue at the building
19 over here. I mean, we're doing everything we can to
20 cut back on the flies.

21 MR. STEWART: And J. D., our track man, he's
22 been at numerous racetracks. I thought it might be
23 helpful to have him kind of explain what --

24 MR. THOMAS: I'm J. D. Thomas. I'm the track
25 man here at Colonial Downs. I've been involved in

1 racetrack management since 1985. I've been a track
2 superintendent at Delaware Park, Pompano Park, and
3 naturally here.

4 Colonial Downs does more for fly control than
5 any of the previous racetracks I've been to. Just
6 about every racetrack uses the larva-eating wasps,
7 but none of those racetracks fog. We can't fog with
8 the horses in the stable area. The horses last day,
9 they left August 2nd. August 3rd, we were fogging
10 on a Sunday, and we fog pretty much every day with
11 that product Shockwave that Dawes Lee just explained
12 to you.

13 The manure isn't the biggest problem with the
14 flies. The flies like to annoy you. They like to
15 annoy the horses, too. When the horses leave,
16 they're looking for somebody else to annoy. It's
17 not only the manure. And getting back to the larva,
18 we have those parasitic wasps that we spread every
19 week. Each stall gets a little bit, and then the
20 pit gets it, and these wasps eat larva. With that
21 and the fogging, you know, we're pretty much doing
22 the best we can do.

23 MS. CORBETT: You can't get rid of the pit? I
24 think that's -- because you have an accumulation of
25 manure in that pit.

1 MR. THOMAS: The flies get worse for you after
2 the horses leave, correct?

3 MS. CORBETT: Yeah. It's always like the
4 first two weeks of August.

5 MR. THOMAS: After the horses leave?

6 MS. CORBETT: Yeah. After the horses leave
7 and when they're cleaning out --

8 MR. THOMAS: So the problem isn't really the
9 pit. It's that the horses are gone.

10 MR. LEE: Yeah, because the pit is there
11 for --

12 MR. THOMAS: The flies like to annoy horses
13 and people.

14 MR. BURNETT: Well, you got really two issues.
15 One is the production of the flies themselves.
16 They're being produced from somewhere, and I think
17 Ms. Corbett is suggesting that they're coming out of
18 the pit. Maybe; maybe not. I don't know factually.
19 The scientist might be able to help us with that.
20 And the other is where do these flies go, and when
21 they don't get their meat in the barns, they're
22 looking for the human style it sounds like.

23 MR. THOMAS: Right.

24 MR. BURNETT: You know, and I wonder if there
25 is -- what this amateur thinks of is, is there a way

1 to have some sacrificial substitute from when the
2 horses leave to our friends at Brickshire? I mean,
3 is there some type of attractive box or something
4 that they might go to and eat a poison and die? It
5 seems to me it's the kind of thing that Virginia
6 Tech might well be able to help us with, the health
7 department might be able to help us.

8 MR. THOMAS: It might be. I'm not aware of
9 it.

10 MR. STEWART: I spoke with Dr. Gaines when Vic
11 forwarded me this letter, and I guess this is from a
12 couple years back. He's got a couple suggestions in
13 here. Biology was far from my strong point in
14 academics, and so I didn't know that it takes two to
15 three weeks to develop a fly, a fly egg, but at any
16 rate, he suggests three things. One of them is
17 stable cleanings can be removed from the site and
18 spread on a field so that it dries. I don't think
19 we can legally do that because there's issues with
20 storm water runoff. We had to go through an
21 extensive permitting process to put the manure pit
22 where it is. So I think for us to do that is
23 probably illegal unless we somehow change some
24 stuff.

25 He suggests that the stable cleanings can be

1 hot compost by somehow -- and I talked to him about
2 this. I guess you have to create some more piles,
3 and then get a front end loader and turn the stuff
4 over. We don't do that. I guess we could. But he
5 says the just third solution is to take the manure
6 away, and he says that it's done on a weekly basis.
7 A weekly basis. That would be once a week. Removal
8 will eliminate the breeding materials long before
9 the flies have a chance to develop. I'm happy to do
10 whatever it takes to get rid of the flies.

11 MR. LEE: Mr. Stewart, can I interrupt? We do
12 move the manure over, flip it over every day. That
13 is done every day, because what we do is we load it
14 on one side of the pit and we move it to the other
15 side so the truck can back down in there. So we
16 do -- we are revolving the manure and straw.

17 MR. STEWART: Well, see, I've learned
18 something else. It looks to me like if somebody has
19 a different suggestion, if there's something else
20 that can be done, I'm happy to entertain that.

21 MR. FERGUSON: Can I ask a question of you
22 guys in the back? Would a residual insecticide
23 affect the wasps? Would it also kill those? In
24 other words, would they --

25 MR. LEE: Is what we're spraying kill the

1 wasps that we're putting out?

2 MR. FERGUSON: If you put a residual down like
3 Malathion, would it also kill these wasps that eat
4 the larva? Are they mutually exclusive?

5 MR. LEE: I don't know the answer to that. I
6 don't know. I would think it would, but I don't
7 know.

8 MR. BURNETT: What's obvious here is that the
9 track is trying very hard to do something. It's
10 also obvious that we're not at a hundred percent
11 solution.

12 MR. PULASKI: Could I make a suggestion?

13 MR. BURNETT: Please.

14 MR. PULASKI: Could we possibly have two pits
15 instead of one, and then clean one and dump the
16 manure in the other pit and rotate them every two or
17 three days? Would that be of benefit, you think?

18 MR. STEWART: I mean, I guess theoretically
19 you can. If I understand it right, we take all the
20 manure out every day?

21 MR. LEE: Out of the pit?

22 MR. STEWART: Yeah.

23 MR. LEE: No. It's probably not all gone
24 every day, but every two or three days.

25 MR. BURNETT: Could that pit be covered?

1 Would that make any difference if you put a tarp
2 over the pit?

3 MR. LEE: With the size of that pit, it would
4 be awfully large.

5 MR. BURNETT: Okay. Frank's got an idea.

6 MR. PETRAMALO: Well, I'm a little confused.
7 As I understand it, there's not a fly problem as
8 long as the horses are here. It's only when the
9 horses leave that the fly problem arises. Is that
10 the same as saying that if when the horses leave,
11 all of the stalls were cleaned and the manure pit
12 was empty, that there wouldn't be a fly problem?
13 Because it seems to me that's critical to attacking
14 the fly problem here. I want to know what's causing
15 them.

16 MR. BURNETT: And that's why I think we need
17 to get to the bottom of the facts first, because you
18 might find yourself putting a great effort into what
19 you just suggested, which is everything needs to be
20 super clean the day the horses leave, and there's
21 still a fly problem because, in fact, there's an
22 existing population that is still evolving, and it
23 doesn't have any horses so it goes to Brickshire.

24 Do you have anything to help us with, Doc?

25 DR. HARDEN: I have a couple thoughts. One is

1 the fog might be killing your wasps. So you go fog,
2 then all of a sudden, these larva hatch. I don't
3 know if that's the case or not, but that's something
4 to look at.

5 The other thing is I don't know that I would
6 attack the pit as being the problem because that's a
7 form of a hot compost. Every management practice
8 I've ever studied dealing with horse manure, they
9 say put it in a pile, let it compost itself. The
10 heat in there that it generates kills the larva,
11 whatever. You'll have flies on the surface, but not
12 inside the bulk of the thing. So I think the hot
13 compost pit as we're using it is probably an
14 excellent measure, even though -- and it's a focal
15 point if you're for looking flies, but I think the
16 flies are on the outside, not inside the pit.

17 MS. CORBETT: So maybe the answer is to find
18 another host, if there is such a thing, for the
19 flies when the horses leave when there's someone
20 else for them to go bite instead of us.

21 MR. BURNETT: Exactly. I think everybody
22 seems pretty satisfied that it's about a two- to
23 three-week time frame where they need to finish
24 their eating and die, is what it amounts to.

25 MR. PETTY: Is it a coincidence that it's a

1 two-week period, and it takes these guys two weeks
2 to clean the barns out?

3 MR. BURNETT: I think that's Frank's
4 observation.

5 MR. PETTY: Is it possible if you could
6 somehow -- if you guys could hire 50 guys or
7 whatever and get it all done at once, would that --
8 I think everybody has hit on it. I don't think it's
9 the pit; it's when the horses go. There are
10 machines that you'll see at a horse farm. I don't
11 know if they're specific to the horse fly type fly
12 versus the house fly type fly that you guys are
13 seeing based on what I've seen in the box, and there
14 are -- they have them and they come in different
15 shapes and sizes, but you go to some of these bigger
16 horse farms, and you'll see these machines sitting
17 around that are fly traps. And so maybe there's
18 some mechanical host versus bringing in a flock of
19 sheep and putting them --

20 MR. BURNETT: Put them around the perimeter
21 someplace between the barns and the neighborhood on
22 their way --

23 MR. PETTY: Or maybe you just need a flock of
24 sheep.

25 MR. BURNETT: It strikes me that the cleaning

1 of the stalls is essentially a manpower issue.

2 MR. PETTY: It's a thousand stalls.

3 MR. BURNETT: Yes, but interestingly when all
4 the horses are here, all those stalls get cleaned
5 every day because you have all those grooms, but the
6 horsemen are allowed to leave without cleaning their
7 stall. And guess who gets to do it at the expense
8 of the racetrack?

9 MR. PETTY: Well, that might be the answer.

10 MR. BURNETT: So perhaps we should talk to
11 Mr. Petramalo about talking to his people and see if
12 there's a way -- I mean, enforcement is tough.
13 Maybe it's a deposit; maybe it's something else.
14 We're trying to attract horsemen to come here, and
15 the more difficult we make it for them to be here,
16 the less likely they are to come. We've been
17 working very hard to make this backstretch a very
18 welcoming place for the horsemen, and I don't think
19 it's too much to ask of a guy that before he leaves
20 his stalls are all cleaned up and his barn is
21 cleaned up, and he'll be welcomed back next year.
22 Maybe there's some way that we can provide an
23 incentive.

24 MR. PETTY: And you may only have to do it
25 once because you may find that doesn't help.

1 MR. BURNETT: Right.

2 MR. PETTY: It may simply be the fact that the
3 horses leave that causes the population to relocate,
4 manure or no manure.

5 MR. BURNETT: Right. It may take a year or
6 two or three to really get to the bottom of it, but
7 I think a multi-prong approach, because I can see
8 how it could be a distraction, to have this level of
9 flies.

10 MS. CORBETT: You just can't use your patio.

11 MR. BURNETT: Right. There's no dispute about
12 how unpleasant it is for everybody. Maybe we can
13 ask Doc to revisit some of our scientific friends
14 perhaps at Virginia Tech and any local health
15 department people that could help us or the state
16 health department people in Richmond. We could look
17 at what the horsemen might be willing to do next
18 year in terms of cleaning up, and we can examine
19 this manure pit issue some, as well as some form of
20 post horse departure trap that would act as a
21 substitute for food rather than people, who they can
22 not only bite and irritate, but can infect.

23 MR. PULASKI: Okay.

24 MR. FERGUSON: I was in the hotel business. I
25 know y'all have heard this a hundred times. I was

1 forced to learn something about fleas and roaches
2 and things like that because we had restaurants.

3 MR. BURNETT: Only at your competitors hotels,
4 right?

5 MR. FERGUSON: And what we learned is this
6 fog -- the fog only kills what's alive and flying
7 right then and there, but you have to come in behind
8 the fog with the residual. Now, when you put these
9 residuals on these organic mediums -- media, we'll
10 call it, it kills them, too.

11 Being a horse owner, I've spent a lot of money
12 on Malathion. You put the residual on the screens
13 and the walls and everything and don't try to kill
14 the organic, but the residual is important. It has
15 to be -- you have to follow-up the fog with the
16 residual because the flies are going to land
17 somewhere, and they're always licking their feet and
18 things like that. So the residual will work if you
19 just spray the sides of the stalls and the screens
20 and everything, and that includes your house, to put
21 the residuals on your screens and things. It smells
22 bad for the first day or so, it does, but it works.
23 So when the flies land, it poisons them. I found
24 that that worked pretty well.

25 MS. CORBETT: What is this product?

1 MR. BURNETT: Malathion.

2 MR. PULASKI: Is that in the store?

3 MR. FERGUSON: I don't know. I don't know
4 what's out there.

5 MR. BURNETT: I'm not sure.

6 MR. FERGUSON: Just find some residual,
7 whatever it is. The secret ingredient in these
8 things are called Pyrethrins, and you look at all of
9 your -- your better quality insecticides have
10 Pyrethrins in them because Pyrethrins aren't toxic
11 to animals and things. They're only toxic to
12 insects.

13 MR. PULASKI: I have a screened in porch, and
14 I sprayed those screens with Off. I thought it
15 would work, and within --

16 MR. FERGUSON: It's a repellent.

17 MR. PULASKI: It's two days, they're back
18 there again.

19 MR. FERGUSON: Those are just repellents. You
20 need something with Pyrethrins, P-Y-R-E --

21 MR. LEE: The Shockwave that we use, that's
22 what it is. We put an oil in it to make it stick
23 to -- we mix it with a vegetable oil to make it
24 stick to the walls for the flies to land on and kill
25 them.

1 MR. FERGUSON: Go with that, and then the
2 organic, give it a shot. But you homeowners, you
3 know, get something with some Pyrethrins in it,
4 spray it as a residual on the windowsills, all
5 around your screens and doors. I have the same
6 problem up in the mountains because I'm surrounded
7 by cattle farms and things. I'm like you,
8 Mr. Isbell, I'm walking around driving my wife and
9 daughter crazy with the flyswatter.

10 MS. CORBETT: We keep a flyswatter in every
11 room.

12 MR. FERGUSON: They think I'm a nut walking
13 around doing this.

14 MS. CORBETT: Got them in every room.

15 MR. BURNETT: Tell them they're not alone.

16 MR. PULASKI: I was not aware of this, but a
17 fly actually has a lifespan of three to eight weeks,
18 and each female fly can lay 800 eggs. So that's
19 enough to really have their own army.

20 MR. BURNETT: Well, it would be nice if we
21 could figure out a way that that army never makes it
22 to your neighborhood.

23 MR. PULASKI: Concur with that.

24 MR. BURNETT: Can we provide some way we can
25 have some feedback on this? We've got a little

1 while to work on it, but maybe towards the end of
2 the year we can revisit this, towards the end of
3 this year, a few months, revisit this while we're
4 making plans for next year's season.

5 MR. PETRAMALO: Well, but wait a minute. It
6 occurs after the harness meet, too.

7 MR. BURNETT: I'm not sure it does because of
8 the weather.

9 MR. LEE: I don't think it does --

10 MS. CORBETT: It's not as --

11 MR. PETRAMALO: It's not as bad.

12 MR. LEE: -- at that time of the year.

13 MR. BURNETT: Too cold at night.

14 MS. CORBETT: August is the main area, 90-day
15 time.

16 MR. BURNETT: We can start with the August
17 techniques. If they need to be transferred to the
18 harness meet, we could do that, but --

19 MS. CORBETT: Right.

20 MR. BURNETT: Let's see if we can attack this
21 over the next 90 days in terms of the thinking part
22 of it, and then we can figure out what is affordable
23 and reasonable from a business standpoint to
24 implement, so we have plenty of time to ramp up to
25 it for next year.

1 MR. PULASKI: That would be great. I talk to
2 Dawes a lot, and he has helped me out significantly
3 with other problems in Brickshire, you know, maybe
4 him and I can communicate --

5 MR. BURNETT: That would be great.

6 MR. PULASKI: -- and he can tell us when
7 there's a meeting or something like that, and we can
8 get representatives again to --

9 MR. BURNETT: That would be great.

10 MR. PULASKI: I appreciate your time and the
11 way you handled this to put us forward so we
12 don't -- because I have to go home and iron and
13 scrub the floor and wash windows.

14 MR. BURNETT: Are you sure you don't want to
15 stay a little longer?

16 MR. PULASKI: I got a limit. I have to go
17 back. My wife will beat me up.

18 MS. CORBETT: We will leave the pictures of
19 the flies for you.

20 MR. BURNETT: That's all right. I read the
21 letter, got a good picture in my head, and saw some
22 pictures on the internet.

23 MR. PULASKI: Again, thank you.

24 MR. BURNETT: You know about Mr. Harrison, our
25 executive secretary.

1 MR. PULASKI: Yeah. He sent Bill O'Bryan an
2 e-mail, because everybody communicates with me, and
3 I appreciate everyone's help in helping us out with
4 this.

5 MR. BURNETT: Great. Thank you so much for
6 joining us.

7 MR. PULASKI: Thank you for putting us ahead
8 of everybody.

9 MR. BURNETT: Gentlemen, we're going into the
10 regular meeting. The first item is to approve our
11 meeting minutes of July 15th. Has everybody had an
12 opportunity to look at those? They're under Tab 2.

13 MR. LEE: Thank you.

14 MR. BURNETT: Thank you.

15 MR. MILLER: I move to approve.

16 MR. BURNETT: The chair seconds. It's been
17 moved and seconded that the minutes be approved.
18 All in favor indicate by saying aye.

19 NOTE: The motion is made by Commissioner
20 Miller and seconded by Commissioner Burnett. All
21 were in favor. The motion carries.

22 MR. BURNETT: I don't know if the record
23 reflects it or not, but Commissioner Brown,
24 Mr. Brown is not with us today. So the votes on
25 anything unanimous would be the four remaining

1 commissioners.

2 Any fellow commissioners have any comments on
3 the variety of subjects that we've taken up so far
4 today or anything else for that matter?

5 I'll join my fellow commissioners in silence
6 on that item.

7 Committee reports. Do we have any committee
8 reports today?

9 MR. HARRISON: I have a comment.

10 MR. BURNETT: What's the comment, sir?

11 MR. HARRISON: We'll be convening the meeting
12 of the rules making committee. This would be in
13 reference to the whip rule, and I thought maybe Iain
14 Woolnough or Katherine, you might want to speak to
15 this issue at this point.

16 MR. WOOLNOUGH: Yeah. It's been -- Iain
17 Woolnough, the VHHA. The Rules Committee has
18 recommended there be changes in the whip rules and
19 adopted by a number of states right now. And
20 Dr. Dunavant, president of the VHHA, would like this
21 Commission and the Rules Committee to review this
22 and adopt this policy. It has to go through the
23 Rules Committee, but it's endorsed by the VHHA.

24 MR. HARRISON: Do you want to describe it for
25 a second?

1 MR. WOOLNOUGH: Well, basically what it does
2 is -- most of what's in there right now is in
3 Virginia's rules, but the main change is that you
4 must keep a rein in each hand from start to finish
5 of a race. There will be no more one handed coming
6 back and you whip back here. It must be from here.
7 It must be strictly wrist action.

8 MS. SMITH: There are also some parameters --
9 excuse me. Katherine Smith. There are also some
10 parameters about the area -- even with holding the
11 whip, most are right-handed, where you can continue
12 to whip, but it's a wrist flick rather than the
13 wailing away kind of action that we've seen in the
14 past. There are also restrictions on how -- what
15 area.

16 MR. BURNETT: What part of the horse you can
17 hit?

18 MS. SMITH: Right. Between the forks of the
19 cart itself or the bike itself, and areas that you
20 can whip in legally. There is also a restriction on
21 the length of the whip, making it -- like a
22 thoroughbred whip, there's a snapper on the end.
23 There's restrictions on the size and the lengths of
24 the whip snappers to make it a less painful device
25 to begin with. We would like to adopt those same

1 rules that pretty much are already in use in
2 Indiana, Delaware --

3 MR. WOOLNOUGH: Delaware has them.

4 MS. SMITH: -- and Pennsylvania.

5 MR. BURNETT: Does the USTA put out a model
6 rule or something to that effect that's simply
7 adopted in their form, or is it for us to rewrite or
8 to write the original verbiage?

9 MR. WOOLNOUGH: USTA has not come out and
10 endorsed it, the one that came from the model rules
11 committee of RCI.

12 MR. BURNETT: All right. So we would use --
13 we would be looking at whether or not to adopt RCI's
14 model rule?

15 MR. WOOLNOUGH: Whether to adopt or modify it.
16 We would prefer it be adopted as is.

17 MS. SMITH: We like it as is.

18 MR. HARRISON: But even in lieu of the rule,
19 this message can be brought to the drivers, the
20 harness drivers.

21 MS. SMITH: Absolutely. That did take place,
22 I think, in the state of Indiana last year. They
23 were -- the Rules Committee had not met in a timely
24 enough manner to get the rule on the books before
25 the meet began, but essentially the chief steward

1 held a meeting with all the drivers and said this is
2 the way it's going to be. These -- you know, this
3 is the way it's going to be -- you know, these are
4 what we're going to be measuring, what we're going
5 to be looking at. There will be sanctions in forms
6 of warnings until such time as the rule does become
7 official, because I don't think you can actually
8 fine without the rule being in effect.

9 MR. WOOLNOUGH: Correct.

10 MR. BURNETT: Do we have time to get the rule
11 on the book for this harness meet?

12 MR. LERMOND: No.

13 MR. BURNETT: No. It's not a rule of racing
14 that is -- is it a matter of our Commission meeting,
15 or is it a matter of --

16 MR. LERMOND: Well, we still have to get the
17 Rules Committee together, and then I still don't
18 think we'll have enough time. I think one solution
19 could be, I talked to some of our judges about it
20 already, that we just need to enforce the rule we
21 have on the books more strictly. I don't know
22 personally if holding both reins and keeping --
23 whipping and holding the rein in one hand is going
24 to send the horse mixed signals, like do you want me
25 to turn this way or do you want me to speed up.

1 The USTA has not weighed in on this rule.
2 I've heard that they're going to have a rule of
3 their own later this year, closer to the end of the
4 year. I thought it might be wise to see what they
5 have to say since a lot of our rules of harness are
6 based on the USTA rules and the rule book. We
7 actually defer to that when we don't have a rule
8 that covers the specific instance.

9 MR. BURNETT: It sounds like you're going to
10 have a lively discussion at the rules meeting.

11 MR. PETRAMALO: Well, this just deals with the
12 use of the whip, though, correct? Not the
13 construction of the whip?

14 MR. LERMOND: That's correct.

15 MR. PETRAMALO: At some point we ought to
16 address the -- not only the use, but more
17 importantly, the construction of the thoroughbred
18 horses because if you've seen the *Trade Press* within
19 the last month, more and more states are going to
20 the use of this thing, requiring this padded-type
21 whip being used. And while we experimented with it,
22 it's not required by our rules, although there is a
23 RCI model rule that requires this.

24 MR. BURNETT: Well, that's a good segway into
25 another question I had, and that is there's been

1 further back and forth on the toe grab rule
2 apparently as a result of a bunch of horses having
3 the ground break out from underneath them leaving
4 the gate at Delaware. How scientific a sampling
5 that was, I'm not sure, but it allowed an additional
6 sixteenth of an inch. If I'm not mistaken, it went
7 from a quarter of an inch to three-sixteenths or
8 something like that.

9 MR. PETRAMALO: Two millimeters to four
10 millimeters.

11 MR. BURNETT: Okay. There it is. That's what
12 it was. So it might make sense to put that issue on
13 the agenda for the rules meeting. I'm not
14 suggesting there be a conclusion drawn, but at least
15 to revisit what the state of the art is at this
16 point, what the thinking is, get a little ahead of
17 the game in the event we want to make a change if we
18 want to make a change.

19 Anything else you would like to tell us about
20 those exciting developments with the whip?

21 MR. WOOLNOUGH: No. We would just ask that
22 our Rules Committee just have that discussion.

23 MR. BURNETT: Good.

24 MR. WOOLNOUGH: Put Virginia -- again, we've
25 not been a follower, we've always been a leader.

1 We'd like to see that continue.

2 MR. BURNETT: It gives us something to talk
3 about. I think the ones that hate the whip rules
4 the most are the jocks, and then their trainers, and
5 then the owners. The fans kind of like them from
6 what I can tell. Maybe the hard core horse players
7 don't, but I think they tend to be popular. Those
8 types of things seem to be more humane treatment of
9 the horse, and therefore, supported by the general
10 population, which makes for good public relations in
11 my view. So hopefully you'll get the word out if a
12 rule like this passes.

13 MS. SMITH: They took a long look at the test
14 application last year, and there's a lot of
15 information that you can take a look at on-line.
16 The Indiana Department of Agriculture has that
17 information. They basically looked at the changes
18 in race times, if there were changes, in the amount
19 of driver objections, and the amount of infractions
20 that were noted by the judges. There was
21 essentially no change at all. You would have
22 thought that those changes would have been reflected
23 in the race times themselves, but there wasn't a
24 change at all. They looked at, I think, about 60
25 days of racing.

1 MR. BURNETT: Great.

2 MS. SMITH: It's some good reading.

3 MR. BURNETT: Thank you.

4 Anything further involved on that comment,
5 Mr. Harrison?

6 MR. HARRISON: Nothing further.

7 MR. BURNETT: All right. No other committee
8 reports. We move to the Executive Secretary's
9 report, and the first item is the approval of racing
10 officials.

11 MR. HARRISON: Yes. I would recommend that
12 you approve the racing officials as proposed by the
13 track. That would be Craig Andow, Racing Secretary;
14 Carl Kloentrap, Assistant Racing Secretary; Diane
15 Stevenson, Program Director; Jack Remy, Paddock
16 Judge; Crystal Remy, Stall Manager/Assistant
17 Identifier; Danielle Barr, Executive Secretary in
18 the secretarial sense of that word; Phil Martin,
19 Paddock for Head Numbers and Saddle Pads; Wes
20 Franklin, Paddock Blacksmith; Charles Williams,
21 Paddock maintenance; and Phil Martin for Paddock --
22 for Head Saddles and Paddles.

23 MR. BURNETT: Are these folks all known to you
24 and veterans of these meets? No new additions we're
25 aware of?

1 MR. HARRISON: Not that I'm aware of.

2 MR. BURNETT: Do we have a motion?

3 MR. MILLER: I so move.

4 MR. FERGUSON: Second.

5 MR. BURNETT: It's been moved and seconded to
6 approve the Racing Officials for the 2009
7 Standardbred Meet. All in favor indicate by saying
8 aye.

9 NOTE: The motion is made by Commissioner
10 Miller and seconded by Commissioner Ferguson. All
11 were in favor. The motion carries.

12 MR. BURNETT: Approval of judges for the
13 harness meet.

14 MR. HARRISON: I would ask that you approve
15 the judges as submitted. That would be Jean Chalk,
16 as Senior Commission Judge; George Hickman,
17 Commonwealth Judge; and Brent McLaren as
18 Commonwealth Judge.

19 MR. FERGUSON: So move.

20 MR. MILLER: I'll second.

21 MR. BURNETT: It's been moved and seconded.
22 All in favor indicate by saying aye.

23 NOTE: The motion is made by Commissioner
24 Ferguson and seconded by Commissioner Miller. All
25 were in favor. The motion carries.

1 MR. BURNETT: Mr. Harrison, if we could, while
2 we're on that subject for a moment, the subject of
3 judges, if I might ask Mr. Lermond if the completion
4 of your duties as a steward in the thoroughbred meet
5 now causes you to have all of your necessary hours
6 as a steward certification. Am I right about that?

7 MR. LERMOND: I do actually. Yes. Thank you.

8 MR. BURNETT: Congratulations, and we'll look
9 forward to seeing more of you as a fully qualified
10 steward.

11 MR. LERMOND: Thank you.

12 MR. BURNETT: Item C, deadline for submitting
13 request for 2010 live racing dates.

14 MR. HARRISON: Yeah. I just want to remind
15 everyone to -- I'm sure it's not necessary, but I
16 don't want to wait until March or April to fully
17 address this subject. If we can have it done, we
18 can begin talks and have this resolved in the
19 December time period, January at the latest, I would
20 certainly appreciate it, and so I'm sure would
21 everybody else involved.

22 MR. PETRAMALO: Do we have a deadline now?

23 MR. WEINBERG: The Commission gets to set it.

24 MR. BURNETT: What's the druthers of the
25 parties?

1 MR. PETRAMALO: March 15th.

2 MR. BURNETT: Not when we're going to get
3 there after all the argument. When are we going to
4 start arguing?

5 MR. WEINBERG: We've been using December 1.

6 MR. BURNETT: December 1.

7 MR. PETRAMALO: December 1.

8 MR. BURNETT: Is there any reason to depart
9 from that in any direction?

10 MR. STEWART: I don't think so.

11 MR. PETRAMALO: No.

12 MR. BURNETT: Let's stay with December 1, and
13 let's see if we can depart from the duration of our
14 discussion.

15 MR. PETRAMALO: We've already started.

16 MR. BURNETT: Hope springs eternal.

17 MR. PETRAMALO: We've already started.

18 MR. BURNETT: Wonderful.

19 MR. STEWART: I'm sure Mr. Petramalo will be
20 much more reasonable this year.

21 MR. BURNETT: Hope all the parties will.

22 MR. PETRAMALO: Hope springs eternal, and she
23 just left.

24 MR. BURNETT: The next item is -- I'm sorry.
25 Anything further?

1 MR. HARRISON: No, sir.

2 MR. BURNETT: Thank you.

3 Update on the 2009 Thoroughbred Meet from
4 Colonial Downs.

5 MR. STEWART: Thank you.

6 We completed our 2009 Thoroughbred Meet on
7 July 28th, and I think all things considered, it was
8 pretty successful. This year we ran 40 days versus
9 45 days last year. However, we ran 379 races, which
10 at the rate of nine races per day, which is the rate
11 we ran in 2008, 2009 was really the equivalent of a
12 little over 42 days. We averaged 8.9 horses per
13 race, which was a pretty good increase over last
14 year when we had 7.9. Our daily average purse was
15 181,000, which was down about 15% from the prior
16 year.

17 Our average attendance increased. We were at
18 1,668 in '08 to 1,712 in '09. Our on-track per
19 capita wager was \$74.84, which is arguably basically
20 the same as last year, \$75.60. I think we round
21 both to 75 bucks.

22 As you know, the TrackNet boycott was a major
23 contributor to a reduction in our out-of-state
24 signal sales, which went from about \$960,000 in
25 handle per day last year to 628 this year, but that

1 decline cannot all be attributed to TrackNet as
2 wagering in general has declined significantly from
3 last year nationwide. In my opinion, that fact
4 makes maintaining our live meet per capita this year
5 all the more impressive.

6 The Virginia Derby turned out pretty well.
7 While our attendance was down from 9,000 to 8,000,
8 in my opinion this was primarily because a lot of
9 our folks that come to the track never made it off
10 the highway. There were tremendous traffic problems
11 that day, but that day our wagering on track was
12 actually up about 2% with fewer people. I think we
13 did a better job this year of distributing our
14 wagering terminals and getting -- we did a couple
15 things. We used the walk around teller a little
16 more than we've used in prior years. We got some
17 more of our self-service stuff out to where the
18 people were.

19 The race itself was an excellent race. It was
20 won by the Battle of Hastings. Unfortunately,
21 Battle of Hastings didn't go on to the Secretariat,
22 which was won by a horse that he beat twice in
23 Virginia.

24 MR. BURNETT: Did you say unfortunately or
25 fortunately?

1 MR. STEWART: Unfortunately.

2 MR. BURNETT: All right.

3 MR. STEWART: As you probably know, our alumni
4 continue to do well. For example, Gio Ponti, the
5 2008 Virginia Derby winner has been winning big
6 races all summer, and perhaps our alumni success
7 will lead to an upgrade to the grade one status for
8 the Virginia Derby next year.

9 I guess the only thing I would say is by the
10 end of the meet, the turf track was pretty much used
11 up. I think we ran as many races out there as we
12 possibly could.

13 MR. BURNETT: Do you attribute that used up
14 piece to weather conditions? A difference in the
15 way you maintained it? Number of races? What are
16 the factors that --

17 MR. STEWART: Well, I can throw out my
18 opinion. I'm not the expert on the turf track out
19 there, but the weather was pretty wet at the
20 beginning of the meet. I think that kind of
21 contributed towards it. Maybe J. D. has got a few
22 words. He ran out the door on me.

23 MR. PETRAMALO: I agree. I think we were off
24 the turf for five and a half days, and there were
25 some days that we probably shouldn't -- some

1 additional days that we probably should have come
2 off. What happens is when you got the wet track and
3 you run it, it gets really chewed up, but that said,
4 as long as J. D. is not here I'll say this, he and
5 his crew did a wonderful job in maintaining both the
6 dirt course, and in particular, the turf course. I
7 mean, they were out there all the time trying to fix
8 it up. You know, you can see the difference.

9 Our desire to have horses run on the grass
10 resulted in nine and a half starters per race
11 running on the grass and that translates into more
12 handle, more competitive racing, et cetera. So it's
13 always, you know, a desire on one hand to keep
14 running on the grass, and on the other hand, you've
15 got to be wary of what you're doing to the surface
16 because of the wet weather. Generally speaking,
17 both surfaces were in very good shape for most of
18 the meet.

19 MR. BURNETT: The fence was moved in the
20 normal course?

21 MR. PETRAMALO: Yeah, every a five days.

22 MR. REYNOLDS: Mr. Chairman? What about the
23 traffic, is that simply the beach traffic on a
24 Saturday afternoon or --

25 MR. STEWART: Well, the beach traffic was a

1 contributor, but I think what really was painful
2 that day is there was major problems on I-95. We
3 had one of our senior executives that was flown to
4 Washington that was coming to the race, and it took
5 him six hours to drive down. There were also
6 accidents on 64 as well. So I don't know that it
7 was a perfect storm, but there was several factors
8 that just made it -- driving on 64 was basically a
9 gridlock that day, which is frustrating. What can
10 you do? At least it didn't rain.

11 MR. BURNETT: All right. Anything further on
12 the 2009 Thoroughbred Meet?

13 Why don't we move into Colonial Downs' plans
14 for the harness meet in 2009.

15 MR. STEWART: I brought a couple people to
16 join me for this conversation. Darrell, you guys
17 want to come up and talk to them?

18 We're getting ready for the harness meet. I
19 spoke with Craig Andow, the Racing Secretary. He
20 runs the operation on the racing side. He's very
21 optimistic. He thinks we'll have 5 to 600 horses
22 here on the grounds, which is pretty good. He
23 thinks there will be more than last year. I think
24 we'll do pretty well.

25 I would like Darrell Wood to spend a minute or

1 two talking about our media promotion plans. I also
2 have Robin Dale here that runs our group sales, give
3 us some -- a little update on what we're doing
4 there, and Kris Iwan handles all of our social
5 networking marketing, perhaps she can update you a
6 little bit on Facebook and stuff like that.

7 MR. BURNETT: You mean explain to all of us
8 how that works?

9 MR. STEWART: I cannot. Little too old for
10 that. All right, Darrell.

11 MR. WOOD: Well, from a promotion/marketing
12 standpoint, I think we're going to try to keep the
13 harness meet kind of like we do with the
14 thoroughbred meet. We have two major events in the
15 summer, the Turf Cup and the Derby, and those are
16 the two big races, but there's also, you know, some
17 nice festivals and parties that go hand in hand with
18 that.

19 For the harness meet, we got the obvious
20 Virginia-Bred Day, the Day of Champions, which this
21 year is going to be on November 7th. The neat thing
22 about this year is it falls on the Breeders Cup
23 simulcast. Last year it didn't. So that gives us a
24 leg up right there.

25 We're also going to do -- we talked about this

1 over the years, but we're going to do an All Breeds
2 Day, and we're going to have a parade of carriages
3 that day, which used to take place at Strawberry
4 Hill up until several years ago. We're going to
5 have different breed demonstration between the races
6 that day and --

7 MR. FERGUSON: When was that, Darrell?

8 MR. WOOD: November 7th. And if it works out,
9 we'd like to -- one of the biggest requests we've
10 had over the years is people that want to try and
11 run their horse on the track here. The thought is
12 that after the last race, for a donation to maybe an
13 organization like Dream Catchers Therapeutic Riding
14 Center, we let people, you know, take a circuit on
15 the track with a horse and really encompass all the
16 breeds together that day.

17 MR. BURNETT: This is for the old, fat,
18 gray-haired guy who wants to jump on his quarter
19 horse and ride as fast as it'll go on the racetrack,
20 is that what we're talking about?

21 MR. WOOD: It is, and it's in the discussion
22 phase right now, that aspect of it. It'll be a neat
23 day and really would -- it's the last day of the
24 season, and we think we'll have a good day.

25 The other event, we don't have the Patriot

1 Trot this year. We've run an Octoberfest
2 celebration the past few years with so-so results.
3 So we're going to take a lot of the elements that we
4 do on Turf Cup Day with a festival called the
5 Rhythm, Bets 'n Brews, incorporate live music, some
6 cocktail libation aspect to it. We're going to call
7 it the Wild Turkey Festival and have a turkey stew
8 competition, have turkey legs to try to attract the
9 Virginia Tech alumni, and have a turkey trot race on
10 the track itself that afternoon. So those are the
11 two big events that we're going to put a lot of our
12 marketing and media resources in.

13 We're going to do a couple events that
14 baseball teams have done pretty well over the years.
15 We're going to use the Jumbotron and have movie
16 night after the races one night, show the movie
17 *Dreamer*, which was out a few years ago with Dakota
18 Fanning. Invite people to bring their blankets and
19 lawn chairs out onto hopefully the dormant turf
20 course and the track and watch the movie there.

21 We're also going to try -- baseball has had a
22 lot of success with knitting events here in the past
23 couple years. They've got a Stitch 'N Pitch that
24 major league and minor league baseball teams do.
25 We're going to have ours called Knit Place & Show,

1 and we're going to invite all knitters from all over
2 the area to come out and, you know, hopefully have a
3 decent event.

4 MR. FERGUSON: When is that, Darrell? What
5 day? I have a friend that knits.

6 MR. WOOD: September 27th.

7 MR. BURNETT: I got a friend that knits too,
8 so I want to be able to describe this to her as to
9 what she would or wouldn't be doing if she went to
10 the racetrack on Knit Place & Show.

11 MR. WOOD: Baseball really has embraced this
12 the last couple years. It started with the minor
13 leagues, now major league. Every major league team
14 has got a stitch and pitch day. They've had a lot
15 of success with it. We're going to mix that in with
16 some family weekends and some poker tournaments and,
17 you know, hopefully have a good show.

18 MR. BURNETT: What do the knitters do? I
19 mean, they're just in the company of each other
20 basically?

21 MR. WOOD: It's almost like a subculture.
22 They meet monthly at libraries, Panera Breads, and I
23 think for a chance for all the -- what baseball
24 found, for everybody to get together, compare
25 patterns and, you know, whatever.

1 MR. BURNETT: Darrell doesn't knit apparently.

2 MR. PETTY: I'm not getting it.

3 MR. WOOD: We wanted to create horse themes,
4 lap throws that we could make and the drivers bring
5 down in a PR campaign to a senior center.

6 MR. FERGUSON: Can cross stitchers show up?

7 MR. WOOD: I think so.

8 MR. BURNETT: Crocheting?

9 MR. PETRAMALO: I think also on one Sunday
10 we're going to have two steeplechase races with the
11 harness cart again like we did last year.

12 MR. FERGUSON: What dates are those?

13 MR. PETRAMALO: I believe it's September 13th,
14 whatever that Sunday, that weekend.

15 MR. WOOD: Opening weekend.

16 MR. PETRAMALO: Last year I think we had a --

17 MR. FERGUSON: That's Grandparents Day.

18 MR. PETRAMALO: -- daily double.

19 MR. FERGUSON: What do we have on the 13th?

20 MR. PETRAMALO: Steeplechaser and a harness
21 steeplechase. It's really pretty interesting.

22 MR. FERGUSON: How do you have a steeplechase
23 pulling a cart?

24 MR. PETRAMALO: No, you're not going to pull a
25 cart.

1 MR. BURNETT: It's hell when they go over the
2 fence.

3 MR. FERGUSON: There's no ramps or anything.

4 MR. REYNOLDS: What are the overall dates?

5 MR. WOOD: September 8th through November 7th,
6 eight weeks, 36 days.

7 MR. FERGUSON: So you have two -- what do you
8 call the September -- what do you call it, a
9 championship race? What did you call it?

10 MR. WOOD: The steeplechase?

11 MR. PETRAMALO: No. The Day of Champions is
12 the seventh.

13 MR. WOOD: November 7th.

14 MR. FERGUSON: What were these other -- the
15 two big -- what did you call them?

16 MS. IWAN: The Wild Turkey Festival.

17 MR. WOOD: The Wild Turkey Festival is October
18 3rd.

19 MR. WEINBERG: Two steeplechase?

20 MR. FERGUSON: Is it two steeplechase races?

21 MR. WEINBERG: Yeah, on one Sunday,
22 September 13th.

23 MR. FERGUSON: Okay. Gotcha.

24 MR. STEWART: Robin, maybe you can talk about
25 group sales for a second.

1 MS. DALE: Sure. I'm Robin Dale.

2 A couple of things we've been working on is,
3 of course, to attract the people that already have
4 been coming and, of course, the new people. With
5 the economy basically like it was this year, we did
6 not see some people return during thoroughbred, but
7 we did some new people.

8 So we've done a mailing over the last couple
9 years to kind of embrace both, and this is basically
10 what we sent out as an example, which I thought
11 captured the harness really well, and it also gives
12 an offer on the back, which is -- we found that the
13 barbecue is -- I don't know why that goes with horse
14 racing, but everybody loves it so we put a special.

15 But another thing that we've done, and we've
16 incorporated into our Facebook, which, you know,
17 Kristin will cover in a little bit, is a half off
18 offer that starts -- it starts now and goes through
19 August 31st.

20 So other than that first barbecue special you
21 see on there, the other packages are half off. So
22 we think that that will drive a lot of traffic, and
23 the response in the last few days that we put it up
24 have just, you know, been outstanding. So we hope
25 that that drives, you know, some pre-registration to

1 the racing season.

2 Another thing is, we do have a couple of good
3 groups coming in. One of them that we have had in
4 the past that, you know, we try to incorporate and
5 bring over into the racing season is the Richmond
6 volleyball tournament, and this year we figured
7 that'll probably bring about a thousand people out,
8 which should be a nice attendance. So if we can get
9 even a portion of those people to come in to, you
10 know, participate in the actual racing, that's, you
11 know, a good turn out. A couple of the other groups
12 that we have right now are about 200, you know, and
13 has the probability of maybe increasing.

14 The suites themselves are starting to pick up,
15 and the nice thing about this year is we dabbed on
16 some renovation to the suites, which, you know,
17 improves our package a little bit with the addition
18 of a huge tent that's out on the green area right
19 now. So we think, you know, being fall, being the
20 favorite time to be outside, you know, that again
21 with that barbecue-type festive idea that we'll have
22 more groups that look into that situation. We do
23 have one that has booked out there already, and we
24 are offering incentives for September at a reduced
25 price leader to see if we can attract that business,

1 which we've not enjoyed in the past.

2 The new communications, too, that we have in
3 our favor this year is also the enhanced appearance
4 on Facebook. Prior to Kristin coming on board, we
5 really didn't have any type of Facebook or fan page,
6 so to speak, which is something that we're working
7 on, and I'll let her tell you about, that I think
8 offers us a great opportunity to be able to put
9 things out there right away. And with this half off
10 and book before August 31st, the response we've
11 gotten just off of that is proof that, you know,
12 there's a large crowd that we've been missing, that,
13 you know, this affords that opportunity for us.

14 So, Kristin, if you want to tell them a little
15 bit about Facebook.

16 MS. IWAN: Good morning. I have a few
17 handouts I'll pass out. Like Robin said, I've been
18 challenged with building up our internet presence.
19 As you said, you don't need to be too old or too
20 young. Facebook is growing pretty large with an
21 older demographic. In fact, from ages of 35 to 54
22 that demographic has increased 276% since January,
23 and 55 and older has increased 194% since January.
24 So you really don't have to be afraid if you feel
25 like you're too old or too young. Get on in there.

1 It's easy and fun.

2 What it allows me to do is to touch base with
3 about 3,000 people at a time. I can update them
4 quickly and efficiently on exciting offers that we
5 have from group sales, great deals that they can do
6 with just reserving tables, promotions, and as you
7 can see on the first page there, that's what we call
8 a wall. I do harness trivia. So this is helping me
9 to bring harness racing awareness to young people,
10 old people, everybody, and let them really get
11 involved with Colonial Downs so that they'll want to
12 come out, but they'll know what they're watching.
13 They'll know what they're seeing. They get a little
14 history of harness racing once or twice a week,
15 whenever I do these questions. So it's really fun.

16 We can advertise a couple different ways. If
17 you see on the handout, on the third page, this is
18 what's called our fan page, and to the right of that
19 page or right here on this little side, you see
20 Colonial Downs Racetrack. That's just a little ad.
21 This little ad can pop up on tons and tons of
22 different people's pages. We can filter it to focus
23 on local Virginians, maybe we can focus on a certain
24 demographic, but we can get this out to anybody
25 really quickly, and right now our fan page is

1 growing about a hundred fans a day. So we're really
2 getting out there. And if you can see -- well, let
3 me get ahead of myself.

4 The first two pages are called a personal page
5 for Colonial Downs. This is off our Facebook. The
6 personal page allows me to just update right away,
7 anytime. I have -- yesterday I had 2,400 friends,
8 so today maybe a few more. We might be up to 2,500.
9 I haven't checked yet. I can reach those people
10 right away. I can send them birthday wishes, things
11 like that, right away. It's really fun.

12 MR. BURNETT: Can't they also post on the
13 page, and you need to be able to edit --

14 MS. IWAN: Yes.

15 MR. BURNETT: -- or such that stuff that you
16 don't want on there doesn't --

17 MS. IWAN: Yes. Very simply. If anybody
18 posts any negative complaints, I can go right in and
19 delete them, and then send them a nice message
20 saying, "Thank you for your complaints. I've
21 addressed them, and we'll take care of it,"
22 something like that.

23 MR. BURNETT: So you have a filtering
24 mechanism?

25 MS. IWAN: I do.

1 MR. BURNETT: You encourage people to get on
2 there and make entries on the wall --

3 MS. IWAN: Correct.

4 MR. BURNETT: -- but at the same time, they've
5 got to come through you before they get there?

6 MS. IWAN: Correct. That's why I have to
7 spend pretty much all day and night checking it
8 every few minutes, which is fine. They can also I-M
9 me, instant message me. If anybody has any
10 questions, I can answer them right away. They can
11 get to me really quickly.

12 It's easy for any of you guys to join in.
13 What we're hoping to do is build up the Virginia
14 horse racing family, either by Facebook, Blogspot,
15 MySpace, Twitter, Lincoln, these are all ways that
16 we can all connect and reach our own fan base
17 together. So anytime anybody ever sees articles
18 about interesting harness racing tips, stories, feel
19 free to e-mail them to group sales, then I can post
20 them conveniently to these websites, and get people
21 involved and excited and come out to the track.

22 MR. BURNETT: Would you send each of the
23 commissioners an e-mail with addresses where we
24 might send interesting things that we come across?

25 MS. IWAN: Absolutely. I'm reached at group

1 sales at Colonial Downs dot com, but I can --

2 MR. BURNETT: Just so we have it and can hit
3 the reply button or --

4 MS. IWAN: Sure.

5 MR. BURNETT: -- stick it in our Outlook
6 someplace.

7 MS. DALE: Any list that you come up with
8 since we're -- you know, we're dependent totally on
9 a social, you know, presence, whether it be on-line
10 or just some wonderful Excel that you have, and we
11 can send something out like this. Since we're in it
12 together, we invite anybody, you know, that can
13 offer us help.

14 MS. IWAN: As you can see, the first two
15 pages, yesterday I posted five harness trivia
16 questions, and within seconds I had responses right
17 away. So anytime if you think of anything that
18 you'd like me to post up that you think would be
19 interesting, I have a hard time getting to all the
20 articles myself so I could always use the help, and
21 love to keep everybody involved.

22 MR. BURNETT: I take it you're reaching out to
23 the harness association folks, and the VTA folks,
24 because that connection seems to me would be real
25 helpful?

1 MS. IWAN: Absolutely. Absolutely. My hope
2 is that we can all work together and, like I said,
3 Virginia horse racing family, keep it together and
4 we can attract more business.

5 MR. PETRAMALO: How does one visit this
6 Facebook?

7 MS. IWAN: Well, first you'll just have to go
8 to Facebook dot com --

9 MR. PETTY: Buy a computer first.

10 MS. IWAN: -- sign in. The first page every
11 time you go to Facebook dot com, just sign in.

12 MR. PETTY: Buy a computer.

13 MS. IWAN: Right. Buy a computer, plug it
14 in --

15 MR. PETTY: Just kidding.

16 MS. IWAN: -- turn it on, access internet.
17 Facebook dot com. It's easy. Right when you go to
18 that, it asks you would you like to sign up, put
19 your name -- you have to click yes, put in your
20 name. You have to put your age in there.

21 MR. PETRAMALO: Right.

22 MS. IWAN: But you can tell it not to tell
23 anybody. I know some of the ladies asked me that
24 earlier. And then you're signed in. That's all you
25 have to do.

1 MR. PETRAMALO: And then how do I get to
2 Colonial Downs?

3 MS. IWAN: In the search bar, just as any web
4 page, just like Google, type Colonial Downs. We
5 have two pages, Colonial Downs and Colonial Downs
6 Racetrack. They're a little bit different. The
7 personal page, the first two pages I handed you was
8 Colonial Downs and this one is called Colonial Downs
9 Racetrack. It looks a little different. Facebook
10 world users would understand that this is fan page
11 versus a personal page, but same information, same
12 easy way to connect.

13 MR. BURNETT: Then you can have all kinds of
14 friends, Frank.

15 MR. PETRAMALO: I don't want any.

16 MS. IWAN: You can ignore the friends, too.

17 MR. BURNETT: We can post things on your wall,
18 Frank.

19 MS. IWAN: Right. You can tag him in crazy
20 pictures that you had over the weekend.

21 MR. PETRAMALO: Interesting. I'll try it.

22 MR. BURNETT: All right. Anything else?

23 Thank you very much.

24 MS. IWAN: My pleasure.

25 MR. BURNETT: I'm tickled to see that you are

1 all using this social networking because --

2 MS. IWAN: We're all getting together.

3 MR. BURNETT: It's a big deal. If you haven't
4 been paying attention, newspapers are having a tough
5 time, and it's because of all this social
6 networking.

7 MS. IWAN: Absolutely.

8 MR. BURNETT: I find in my business that
9 people find me through the internet about three or
10 four hundred percent more often now than they did
11 even three or four years ago. It's a remarkable
12 difference. I think if you don't get on that train,
13 you're going to get left.

14 MS. IWAN: Happy to bring everybody on board.

15 MR. BURNETT: And if you can pull Frank along,
16 it would be terrific.

17 MR. PETRAMALO: Oh, yeah.

18 MR. REYNOLDS: Peter will be your friend.

19 MR. BURNETT: I promise to be your friend,
20 Frank. Whether he'll reciprocate or not, I'm not
21 sure.

22 All right. Do we have anything else on the
23 harness meet?

24 MR. STEWART: Not on the harness meet, no.

25 MR. BURNETT: All right.

1 MR. STEWART: I do have a couple other
2 thoughts, though.

3 MR. BURNETT: Wonderful to hear any further
4 thoughts you have, please.

5 MR. STEWART: Well, we wouldn't want the
6 meeting to pass without talking about account
7 wagering, so I would like to spend a few minutes
8 talking about that.

9 MR. BURNETT: All right.

10 MR. STEWART: As I said last month, I've
11 previously spent a lot of time trying to explain the
12 complexity and the nuances of account wagering in
13 Virginia. As I said before, I think that was a
14 mistake. Therefore, I'm going to continue to
15 concentrate on the simplicity of the issue.

16 The fundamental question is this. What is the
17 purpose of account wagering? It's been stated many
18 times that the purpose of OTBs is to support live
19 racing, so I do not believe that it's a stretch to
20 conclude that the purpose of account wagering, the
21 purpose of ADW is to support living racing as well.

22 I think the easiest way to explain the
23 significance of this is to go back to the very
24 beginning. Suppose at the beginning before there
25 was Colonial Downs, there were two companies that

1 wanted to conduct pari-mutuel wagering in Virginia.
2 One company wanted to build a series of buildings
3 where customers could go to wager with live tellers,
4 as well as eat and drink while watching races on
5 television. For simplicity sake, we'll call this
6 the OTB company.

7 The other company's business plan was to allow
8 people to stay at home and wager on races on their
9 computer or watching on their computer or on their
10 own television. For simplicity, we'll call this the
11 ADW company.

12 So both companies submit their business plans
13 to the Virginia Racing Commission. VRC analyzes the
14 plans and comes to the startling conclusion that
15 neither plan provides for live horse racing in
16 Virginia. Since live horse racing is a prerequisite
17 for pari-mutuel wagering in Virginia, there's now a
18 problem. Each company understands that live racing
19 requires a huge capital investment, and rarely is
20 profitable. However, both companies want to execute
21 their pari-mutuel wagering business plans because
22 these are problems. So both the ADW company and the
23 OTB company will have to conduct live racing, either
24 separately or jointly together.

25 Now, given the large capital investment

1 required, why build two tracks when you really only
2 need one? So they move the model of conducting live
3 racing jointly. At that point the question is, how
4 much of the live racing costs should each company
5 bear? One equitable answer would be to prorate the
6 cost based on handle.

7 MR. FERGUSON: Based on what?

8 MR. STEWART: Handle.

9 Now, obviously we cannot go back to the
10 beginning. However, the basic principles remain
11 true today. Today there are five ADW companies and
12 one OTB company. It just so happens that the OTB
13 company has to bear the cost of live racing. I
14 think it stands to reason the ADW company should
15 bear their proportionate share of the cost of the
16 live racing facility and the live racing. So how
17 much is that?

18 I'll get Mr. Weinberg to -- I have a little
19 handout. Today is a big day for handouts.

20 Since we don't have a complete accounting for
21 2009, in 2008 live thoroughbred racing had a net
22 cost before pari-mutuel taxes of slightly over
23 \$1,750,000. That's the net cost after revenue or
24 before pari-mutuel taxes. Live standardbred racing
25 had a net cost before pari-mutuel taxes of 694,000.

1 The year-round operation and maintenance of the New
2 Kent racing facility, this racetrack, that building
3 over there, these barn areas, is a net cost, and the
4 reason it's a net cost is Robin actually sells the
5 building periodically and makes a few dollars. We
6 operate the Kentucky -- we run Kentucky Derby
7 simulcast and a few other things. It has a net cost
8 of \$1,960,000.

9 In addition, the cost of the facility is a
10 little over \$50 million, including periodic
11 improvements, spread over a number of years in the
12 form of depreciation, which really all depreciation
13 does is take your capital expenditures and spread
14 them over a period of time. That's \$1,147,000. The
15 total live racing cost is a little over five and a
16 half million before pari-mutuel taxes. This
17 represents the direct cost of these operations, the
18 net of the revenue. These costs do not include our
19 general office and administrative costs, such as my
20 salary, our accounting department, Jeanna's salary,
21 the money we pay Mr. Weinberg, anything that is not
22 directly part of the live racing operation.

23 Now, live racing also requires purse money.
24 The figures I just quoted include the purse money
25 generated by live racing operations, but that's only

1 a small fraction of the total purse money required.

2 In addition to the money included previously
3 generated by the live meets, another 8,268,000 in
4 purse funds is required to come from the OTBs and
5 the ADW companies. This brings the total cost of
6 live racing in 2008 before taxes to approximately
7 \$13,820,000, which is sort of the first little
8 section of the handout.

9 The second section shows the handle for the
10 OTBs and the five ADW companies through July, and
11 then prorating it, simply dividing the number by
12 seven and multiplying by 12, extrapolating I guess
13 is a better word, to December 31st. If you take the
14 live racing costs of 13.8 million and divide by the
15 handle, which is 178.9 million, annual live racing
16 cost as a percentage of combined OTB and ADW handle
17 is 7.2%.

18 This brings us to pari-mutuel taxes. The
19 total pari-mutuel tax bill for 2008 is a little over
20 4.1 million dollars. This supports the VRC and
21 provides incentives for the localities that allow
22 pari-mutuel wagering. In my opinion, if there were
23 no pari-mutuel taxes paid in Virginia, there would
24 be no live racing in Virginia.

25 Of the total pari-mutuel tax bill, the OTB

1 company paid 95% of it. The OTB company pays on the
2 average 2.64% combined to the state, the locality,
3 and New Kent. While the statutory amount to the ADW
4 company is only half a percent, there's frankly no
5 reason why they should be given preferential tax
6 treatment. They're regulated by the VRC, just like
7 the OTB company, and they should, therefore, bear
8 their proportional cost of that regulation,
9 including the proportional cost of the regulation of
10 the live meet.

11 Unlike the OTB company, the ADW companies have
12 not invested money in Virginia facilities. They
13 don't employ any Virginians other than Mr. Scoggins,
14 and I've rarely seen any Virginia media advertising.
15 There's no justification to give these ADW companies
16 preferential tax treatment given their lack of
17 investment in Virginia.

18 Fairness would say that they should pay their
19 proportional share of the total pari-mutuel tax
20 bill. If they did so, everyone would pay 2.31% on
21 handle. Currently, Colonial Downs basically
22 subsidizes the ADW companies tax burden, and a
23 source market fee in my opinion should reimburse
24 Colonial Downs for the subsidy.

25 In addition, if it is determined that everyone

1 should contribute equally 1% of the handle to the
2 Breeders Fund, you combine all of these amounts, the
3 cost of live racing, taxes to the Breeders Fund, it
4 comes too 11.03% of handle. The legislation that
5 took effect July 1st requires a combined rate of 11
6 and a half percent be paid, which in my opinion is
7 not too far off the mark.

8 There's no question that 11 and a half percent
9 is a significant amount of handle to pay for live
10 racing in Virginia. However, that is basically what
11 it currently costs. There's no reason why companies
12 with ADW business models should be treated any
13 differently than companies with OTB business models.
14 The truth is 11 and a half percent represents the
15 reality of the situation in which we find ourselves.
16 In my opinion, it is a fair price for the right to
17 conduct pari-mutuel wagering in Virginia.

18 MR. BURNETT: Questions? May I ask questions?

19 MR. STEWART: Absolutely.

20 MR. BURNETT: I'm struck by the 11% being what
21 the statute is, but to see that goes toward either
22 there being no need for any kind of rebates for
23 these ADWs or acknowledging that there is apparently
24 some business reality out there that if there isn't
25 a rebate, they ain't coming.

1 This is the first blush for me, but just
2 thinking about it, the practical result of this is,
3 I think, that if you tell the ADW companies you've
4 got to pay the full 11 percent or see you later,
5 several of them are going to say, "See you later."
6 I think that's a fear of sorts, and we had that
7 discussion about whether or not you can and can't
8 make rebates and all that.

9 But the fact that we're having that discussion
10 suggests that the business reality is that if this
11 is what is charged to the ADWs, they're not coming.
12 So how do we reconcile this logical and carefully
13 worked out percentage of 11% with the business
14 reality that if that's what you insist on and that's
15 what's fair and that's the way it is, you're out of
16 business. How do you put those two together?

17 MR. FERGUSON: My question is, isn't this
18 already done by statute?

19 MR. STEWART: Well --

20 MR. BURNETT: On some levels.

21 MR. FERGUSON: With the new laws that took
22 place July 1?

23 MR. WEINBERG: Yeah. I think this is in
24 response to, well, is 10% real? I think the answer
25 is, well, that's what you got to -- I mean, that's

1 what the cost is. That's the cost structure in this
2 state. I understand your question, Peter, you know,
3 it's a game of poker.

4 MR. STEWART: I mean, is the reality that
5 Colonial Downs given that it already has all the
6 money invested forced to subsidize the other ADW
7 companies? Maybe it is; maybe it isn't. I don't
8 know. The question is, is 11 and a half percent a
9 reasonable amount? My point this morning is, or
10 this afternoon probably by now --

11 MR. BURNETT: It is this afternoon. If we
12 accept all of your assumptions, and there are
13 several, of course --

14 MR. STEWART: The first response is, well, you
15 know, the numbers must be wrong. Obviously, I'm
16 happy --

17 MR. BURNETT: Or perhaps the numbers are
18 stated in a fashion that the proponents of them
19 would benefit from them and still retain integrity
20 and a straight face. Obviously, you're not going
21 to -- I mean, some would say, for example, just to
22 pick one, that amortization is a little deceptive
23 because at the end of your amortization period,
24 you're not prepared to part with that racetrack for
25 zero because you still got something. We all know

1 that that are in real estate. So that's something
2 that's a nice little thing for a tax benefit. There
3 is maintenance, and there is some prudent
4 depreciation, I think, but just those kinds of
5 examples.

6 MR. FERGUSON: Where is amortization?

7 MR. BURNETT: Up on the top.

8 MR. PETRAMALO: Depreciation.

9 MR. BURNETT: I'm sorry. Same thing.

10 MR. STEWART: I mean, I guess we could do it a
11 different way. We could -- they represent 28% of
12 the handle. We could sell them 28% of the racetrack
13 for about \$14 million. I take the money upfront.

14 MR. REYNOLDS: Explain to me -- Mr. Chairman?

15 MR. BURNETT: Yes, please.

16 MR. REYNOLDS: Additional purse money is 8.2.

17 MR. STEWART: Well, in my numbers up here for
18 the net cost of the live thoroughbred meet, the
19 thoroughbred meet generates purse money, but from
20 Colonial Downs' P&L perspective, that purse money is
21 in that number. It's not a very big number, but
22 it's in that number.

23 MR. BURNETT: You're talking about on track
24 betting?

25 MR. STEWART: Right. Exactly.

1 MR. BURNETT: He just uses the additional
2 first distribution, which comes out of the blended
3 handle of 20%, which is a revenue source as an
4 expense --

5 MR. STEWART: Right.

6 MR. BURNETT: -- or whatever you're going to
7 add into it.

8 MR. STEWART: I'm trying to demonstrate -- I'm
9 trying to capture the money that comes from the
10 OTBs, that comes from the ADW sources.

11 MR. BURNETT: All of which come from the
12 blended take-out.

13 MR. STEWART: Right.

14 MR. BURNETT: Say you had two hundred million
15 dollars in handle a year, blended take-out might
16 generate 35 million dollars or whatever that number
17 is, gross, and then you start paying out all
18 these --

19 MR. STEWART: Well, you take roughly 5% of the
20 gross handle that becomes your purse --

21 MR. BURNETT: Well, no. I wasn't saying purse
22 money. I'm saying the total blended take-out. If
23 it's 20% on 200 million dollars, you've got 40
24 million dollars to start your operation. You then
25 start chomping away at that and down you come.

1 MR. STEWART: Right.

2 MR. BURNETT: And this eight million dollars
3 is part of that. So from the standpoint of an
4 expense, it comes under an expense item, it takes
5 out of that 40 million bucks.

6 MR. STEWART: Right. It's a cost of live
7 racing.

8 MR. BURNETT: Right. Or an annual cost of
9 doing business because you're required to conduct
10 live racing, so that amount has to be spent by
11 statute.

12 MR. STEWART: Correct.

13 MR. FERGUSON: So what are we being asked to
14 do today?

15 MR. STEWART: Nothing.

16 MR. BURNETT: Try and understand this thing.

17 MR. STEWART: I'm just trying to --

18 MR. BURNETT: We thank him for helping us his
19 position.

20 MR. FERGUSON: Thank you.

21 MR. STEWART: Part of the education process.

22 MR. BURNETT: It is an education. It's
23 helpful to have this stuff.

24 MR. STEWART: I have an odd feeling we may
25 talk about this subject again.

1 MR. BURNETT: Imagine that.

2 MR. DALE: Excuse me for just a minute.

3 MR. BURNETT: Yeah, Duke.

4 MR. DALE: You mentioned that depreciation is
5 an arguable number, but that 53 million was a real
6 cash out item -- you know, interest, you know,
7 there's always -- they're squishy, so --

8 MR. BURNETT: That's all I'm saying. You've
9 got to take something off there. I mean, somebody
10 put up 53 million bucks, and at the end of 30 or 41
11 and a half years or whatever it is, then I'm going
12 to get all of it back in today's dollars.

13 Any questions, folks? Further discussion,
14 observations? Frank, do you want to pitch in on
15 this at all?

16 MR. PETRAMALO: No. I agree with Ian's
17 analysis. The picture is a bit more complex when
18 you look at it from an ADW standpoint, but that
19 said, when they complain to this Commission that
20 they can't do business here in Virginia at 11, 11
21 and a half percent, I think you just have to bear in
22 mind a couple things. When we started out this
23 whole process, TVG was paying 10 and a half percent.
24 They did quite well.

25 There are a number of factors involved in

1 that, but also as I've pointed out to the Commission
2 a number of times, the ADWs, if they want to do
3 business in Virginia may have to pay higher rent
4 than when they're doing business in West Virginia.
5 It costs me more to rent an office in D.C. than it
6 does in Richmond, but what the ADWs do in those
7 places where they operate for the most part, they
8 pay no rent, so it's all going into their pocket.

9 When they come to Virginia, it costs them more
10 than they perhaps would like to pay, but if they
11 want to do business here, that's the cost of doing
12 business.

13 MR. BURNETT: I've got to tell you I'm a
14 little troubled by that argument for this reason.
15 The same reason I'm troubled by the National Racing
16 Compact's thought and RCI's thought of adopting the
17 so-called New York Racing Compact Model, which is
18 we'll have a compact. We can all reach uniformity,
19 and we'll all be in this together as long as none of
20 us are forced to change any of our rules.

21 So it seems to me that we continue to
22 vulcanize ourselves in racing and that your argument
23 that, wow, you're getting a hell of a deal over
24 there in New Mexico so we can stick it to you a
25 little bit here is maybe reality between the

1 difference in rents in New York and in the country,
2 but the fact of the matter is that it ultimately
3 causes these separate markets and people competing
4 against each other rather than working as an
5 industry as a whole to draw fans.

6 MR. PETRAMALO: Well, the flip side to that is
7 without any regulation in the state of Virginia, you
8 allow the ADWs to, quote, stick it to everybody
9 uniformly, which means stick it --

10 MR. BURNETT: If we didn't have any
11 regulations?

12 MR. PETRAMALO: Yeah.

13 MR. BURNETT: No, no, no. I'm not suggesting
14 we go without it.

15 MR. PETRAMALO: We're one of the few states
16 that regulates account wagering.

17 MR. BURNETT: Oh, yeah. And I'm all for it.
18 I'm just saying we shouldn't look at our rate as
19 being, you can afford to pay this because you're
20 getting over in other states. They should pay what
21 is the right rate nationally, period, and, you know,
22 whether that rate turns out to be 11 and a half
23 percent or something else, I don't know, but I don't
24 like the argument that you're getting over over
25 there, so we want some of that money over here.

1 MR. REYNOLDS: Yeah, but that's reality.

2 MR. WEINBERG: With all due respect, that
3 would be great if account wagering providers were
4 sitting in the room and listening and saying that's
5 something we aspire to, but I mean, they control
6 that model.

7 MR. BURNETT: True. But I worry that this --
8 you know, if you don't want to play in Virginia,
9 don't, and they may say, "Right you are." That's
10 what I worry about.

11 MR. WEINBERG: Right. By all reports -- by
12 some reports --

13 MR. FERGUSON: That's a legitimate worry.
14 Like Jim said, that's poker.

15 MR. BURNETT: It is.

16 MR. WEINBERG: We're the fifth largest market
17 for an ADW company. So the question is, do you
18 really believe knowing that in the largest market
19 they've been paying this rate for sometime, but
20 they're going to walk away from say the fifth
21 largest market because they just don't think the
22 margins are great enough?

23 MR. BURNETT: Well, if Frank and his folks
24 would quit raising those host fees, and round and
25 round we go. I hear you. I hear you. How it

1 shakes out -- I think I probably should have bought
2 Jean Dixon's crystal ball instead of just being the
3 underbidder, then I could have looked into it and
4 told y'all what was going to happen.

5 MR. PETRAMALO: Very interesting.

6 MR. BURNETT: Anything else? Any members of
7 the public wish to -- I'm sorry. Dave?

8 MR. LERMOND: I just had one thing I wanted to
9 ask Mr. Stewart. On the pari-mutuel taxes, Ian, I
10 always thought it was a blended rate of 1.7 for
11 bricks and mortar and then half a percent for the
12 ADWs. That would take us to three if it's --

13 MR. STEWART: Well, 2.64 is what we pay.

14 MR. HARRISON: Are you adding in local taxes?

15 MR. STEWART: I'm adding in local taxes.

16 Absolutely.

17 MR. BURNETT: And the horse -- Lexington Horse
18 Center and Marion duPont. I mean, they've got to
19 put every --

20 MR. LERMOND: Well, that comes out of --

21 MR. BURNETT: Going back to the 40 million
22 dollars of the blended 20%, all these numbers come
23 out of that 20% in one form or another regardless of
24 what's paid to it and then repaid to it. Is it
25 additive to your 1.75, or is it part of the 1.75

1 that goes to the horse center, for example?

2 MR. LERMOND: Part of it.

3 MR. BURNETT: Part of it. I mean, obviously,
4 you don't want to double bill, but --

5 MR. WEINBERG: Right. But New Kent County, is
6 that in your 1.75?

7 MR. LERMOND: No. It's only the state.

8 MR. WEINBERG: Okay.

9 MR. BURNETT: I think that's what you're
10 trying to achieve, add all of those numbers together
11 and they are what they are.

12 MR. STEWART: Yeah, the total bill.

13 MR. BURNETT: Yeah.

14 All right. Members of the public wish to
15 address us? We've had a little of that already
16 today.

17 All right. Not seeing any. Next meeting
18 September 16th, everybody okay with that?

19 I don't think there's any need for closed
20 meeting today. Thank you all for coming. Motion to
21 adjourn?

22 MR. FERGUSON: So move.

23 MR. BURNETT: Second.

24 NOTE: The motion is made by Commissioner
25 Ferguson and seconded by Commissioner Burnett. All

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were in favor. The motion carries.

MR. BURNETT: Thank you.

Note: The proceedings concluded at 12:27 p.m.

CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on August 19th, 2009, New Kent, Virginia, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the meeting and other incidents of the hearing herein.

Given under my hand this 28th day of August, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011