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VIRGINIA RACING COMMISSION

January 6, 2016

PATRICK HENRY BUILDING
WEST READING ROOM
1111 EAST BROAD STREET
RICHMOND, VA 23219

Commencing at 10:02 a.m.

COMMISSION MEMBERS:

D.G. Van Clief, Jr., Chairman
Carol G. Dawson, Vice Chairman
J. Sargeant Reynolds, Jr.
Dr. Charles Steger
I. Clinton Miller

COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary
C. Richard Harden, DVM, Equine Medical Director
David S. Lermond, Deputy Executive Secretary
Kimberly C. Mackey, Office Administrator

OFFICE OF AGRICULTURE AND FORESTRY:

Sam Towell, Deputy Secretary of Agriculture and Forestry

ATTORNEY GENERAL'S OFFICE:

J. Duncan Pitchford, Esquire

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1 MR. HETTEL: Let's come to order, folks. This
2 is the first meeting of the new year. We have the
3 entire Racing Commission assembled this morning.
4 It's time to elect a chairman for this year for
5 2016, and I'd like to seek a nomination from J.
6 Sargeant Reynolds, please.

7 CHAIRMAN REYNOLDS: Yes. Mr. Executive
8 Secretary, I'd like to nominate for Chairman of the
9 Virginia Racing Commission, Vice Chairman
10 Commissioner D.G. Van Clief, and I would welcome a
11 second.

12 COMMISSIONER STEGER: Second.

13 COMMISSIONER DAWSON: Second.

14 CHAIRMAN REYNOLDS: Okay. All those in favor,
15 say aye.

16 NOTE: The Commission votes aye.

17 CHAIRMAN REYNOLDS: Those opposed? Hearing
18 none, congratulations, Mr. Chairman.

19 CHAIRMAN VAN CLIEF: You're too quick.

20 COMMISSIONER REYNOLDS: I've worked this group
21 pretty hard.

22 MR. PETRAMALO: You have our condolences.

23 COMMISSIONER REYNOLDS: I love being back at
24 the end of the table.

25 CHAIRMAN VAN CLIEF: Well, I appreciate the

1 consideration. I'm not going to issue any thanks
2 just yet.

3 COMMISSIONER REYNOLDS: The meeting is now
4 yours, Mr. Chairman.

5 CHAIRMAN VAN CLIEF: Thank you. Before we move
6 to the next agenda item, I want to make as my first
7 order of business to thank our previous chairman.
8 Sarge Reynolds has served for the last two years,
9 and I'm not certain that there has been any more
10 contentious and tumultuous period in Virginia
11 racing history, and there have been a few.

12 I think he has done a fantastic job of
13 overseeing this period in a very constructive and a
14 very positive way. He's handled every issue that
15 has come his way. He's done a great job of being
16 the face of the Virginia Racing Commission. We've
17 never had so much in the way of interested media.
18 Just shows what you have to do to get media
19 attention.

20 He's handled it all with a great deal of
21 equanimity and sophistication, and on behalf of my
22 fellow commissioners, I want to thank you, Sarge,
23 for doing a great job and guiding us through. We
24 may have water in the bilges at this point, but the
25 ship is still afloat. Thank you, Sarge.

1 COMMISSIONER STEGER: A round of applause.

2 COMMISSIONER REYNOLDS: Hopefully, the graying
3 process can slow down a little bit. Thank you all.
4 I had a great Commission to work with, a great
5 staff, and I appreciate a great public, great
6 horsemen, and I enjoyed working with the track, but
7 I'm sorry that didn't work out. But anyway,
8 Mr. Chairman, please.

9 CHAIRMAN VAN CLIEF: Hopefully, we will
10 continue to have your services on the Commission.
11 That appointment, I guess, remains to be seen.

12 COMMISSIONER REYNOLDS: We will see.

13 CHAIRMAN VAN CLIEF: As the agenda indicates,
14 the next order of business is the election of a
15 vice chairman, as we are undergoing a complete
16 change of officers here today. Is there a motion
17 to nominate a vice chairman?

18 COMMISSIONER MILLER: I nominate Carol Dawson,
19 Commissioner Dawson, as vice chairman.

20 CHAIRMAN VAN CLIEF: Is there a second?

21 COMMISSIONER STEGER: Second.

22 CHAIRMAN VAN CLIEF: All in favor?

23 COMMISSIONER REYNOLDS: Aye.

24 CHAIRMAN VAN CLIEF: Any opposed? It's
25 unanimous. Congratulations, Madam Vice Chairman.

1 VICE CHAIRMAN DAWSON: Thank you. I second
2 your remarks about the former chairman,
3 Commissioner Reynolds.

4 COMMISSIONER REYNOLDS: Thank you.

5 VICE CHAIRMAN DAWSON: I will just say that
6 I'll try to do my very best to be a good vice
7 chairman and serve the Commonwealth.

8 CHAIRMAN VAN CLIEF: I know we both look
9 forward to working with our fellow commissioners
10 and we will do our very best.

11 Next order of business is agenda item number
12 four. We have an Administrative Process Act
13 hearing. Before we recess the Commission meeting
14 and commence that, I am wondering aloud whether or
15 not we have a reason for the hearing in the first
16 place.

17 Let me just recap to make sure we're all on the
18 same page where we are with TwinSpires' licensure.

19 At our last meeting, the question was on the
20 table as to whether TwinSpires had been or was in
21 compliance with state law. We determined that at
22 the time they were not. They were overdue on fee
23 payments for the relevant parties as stipulated
24 under state law and had not come to an agreement
25 with the VEA with regards to, again, stipulations

1 under state law.

2 So we asked them to please consider complying,
3 gave TwinSpires two days, as I recall, and until
4 five p.m. on the Friday following the last
5 Commission meeting to become compliant; that did
6 not occur.

7 They've indicated they were not going to make
8 the relevant payments, and in accordance with our
9 order, their license was suspended at five p.m. the
10 Friday following the last Commission meeting.

11 I gather that they've continued to do business
12 in violation of that order, and so I'm wondering at
13 this point whether we even need to go forward.

14 But before answering that question, are
15 there -- I don't see Brad Blackwell here today.
16 Are there representatives for TwinSpires?

17 MR. JOHNSON: Yes. Mr. Chairman, my name is
18 Harry Johnson, Hunton & Williams, legal counsel to
19 Churchill Downs for this matter. Mr. Blackwell is
20 not here today, but I'm prepared to address the
21 Commission with Churchill Downs' position on these
22 matters.

23 CHAIRMAN VAN CLIEF: Okay. Given your presence
24 then, I assume that it's your assumption that we
25 are going to go ahead with a hearing, that you do

1 have some -- that you've got something to say to
2 the Commission for TwinSpires?

3 MR. JOHNSON: I do, and let me back up so that
4 it's easier for you all to see me and hear me. Let
5 me first say that Churchill Downs is committed to
6 getting this right, getting an agreement and
7 working this out with everyone, and appreciates the
8 Commission's desire to do the same thing and the
9 attention the Commission has made to this.

10 But given the situation and given that I am a
11 lawyer, I need to now raise the legal defenses to
12 the actions the Commission has taken and may be
13 considering taking.

14 The first thing is for purposes of the hearing
15 today, I don't believe it has been properly
16 noticed, so I don't think the Commission can go
17 forward today. Let me explain the technicalities
18 of how that mistake was made, and then I will
19 explain how it works backwards to affect the
20 attempted suspension of their license.

21 The notice for today's hearing is in the name
22 of Churchill Downs, L.P., doing business as
23 TwinSpires.com. That is not the license holder.
24 The license holder here is Churchill Downs
25 Technology Innovations Company, doing business as

1 TwinSpires. So the notice to hear today for the
2 renewal of the license is improper, so we are not
3 here on proper notice.

4 If you look at the application that was filed
5 for the renewal of the license, it is in the name
6 of Churchill Downs Technology Innovations Company.
7 So I would submit that at the very least, this
8 hearing on the renewal needs to be continued.

9 Now let me work back and go back to
10 December 2014, and let me just explain what I'm
11 going to say here is that Churchill Downs
12 Technology Innovations Company, doing business as
13 TwinSpires, is operating with a license today, and
14 here's how that works.

15 In December of 2014, the Commission authorized
16 the executive director to continue the 2014 license
17 pending the confirmation of compliance, and on
18 December 30, 2014, the executive director did just
19 that.

20 The motion that was passed unanimously by the
21 Commission in December 2014 was that the executive
22 director could continue that license pending
23 further action, and let me get it exactly right.
24 Pending until such time as the VRC can conduct
25 further proceedings related to the conditions

1 described therein; that being the license.

2 Now, when this Commission convened in December
3 and had a hearing to suspend the license of
4 Churchill Downs, it also did so in the wrong name.
5 It did so in the name of Churchill Downs, L.P.
6 That's an entity that to my knowledge does not
7 exist, and so the order that came out on
8 December 16 is in the matter of Churchill Downs,
9 L.P., doing business as TwinSpires. It's important
10 here. If you're going to suspend a license, the
11 order needs to suspend the license in the name of
12 the license holder.

13 So I respectfully submit to the Commission that
14 I understand what you were trying to do, but
15 legally, I don't think you did it effectively.

16 I'm happy to share all of this with counsel or
17 with the Commission to explain it in more detail
18 and provide you the documents which are all I think
19 already in the Commission's record, but let's get
20 back to what I think the Commission wants and what
21 Churchill Downs wants.

22 We need -- I know you've heard it before and I
23 know you're frustrated by it, but we need some more
24 time. I believe we can make some progress with the
25 relevant stakeholders on reaching an agreement to

1 resolve all of this. You know, as with all
2 negotiations, nobody's going to be completely
3 happy, but you're going to get something. What the
4 Commission will get, what the Commission will get
5 is Churchill Downs doing business in Virginia with
6 a license and the money from that advance deposit
7 wagering going to support horse racing in Virginia.

8 So I provided the legal arguments and I have
9 others if the Commission reconvenes to suspend the
10 correct license, but I submit that given some more
11 time, an agreement can be reached.

12 So what I would submit to the Commission is the
13 appropriate thing to do is to continue this,
14 continue this entire matter until your next
15 meeting, give the parties time to get together.

16 In consultation with counsel yesterday, we
17 discussed perhaps submitting a status report to the
18 Commission, the status of negotiations about, you
19 know, approximately two weeks before your next
20 meeting so that you knew when you were coming in
21 here what the status of those negotiations were,
22 and it would give you time to take whatever actions
23 you deem necessary.

24 So to reiterate, I understand the Commission
25 may be thinking about actions that it wants to take

1 now, but I would submit that I don't believe that
2 would be in compliance with the law, and I know
3 you're committed to compliance with the law, as is
4 Churchill Downs. Thank you.

5 CHAIRMAN VAN CLIEF: Any questions for
6 Mr. Johnson from our Commission?

7 COMMISSIONER MILLER: Mr. Chairman.

8 CHAIRMAN VAN CLIEF: Commissioner Miller.

9 COMMISSIONER MILLER: Mr. Johnson, I'm
10 Commissioner Miller. I was outside of the room
11 when you began, but I think I got the substance of
12 your comments. You were talking about the
13 Commission giving authority to the executive
14 secretary to handle the license in December of
15 2014. Did you mean 2015?

16 MR. JOHNSON: No. I actually meant 2014.

17 COMMISSIONER MILLER: So you're going back to
18 December '14?

19 MR. JOHNSON: Yes, yes, yes. So when the
20 Commission reconvened in November and then December
21 to act on the license, it was actually acting on
22 the 2014 license, which was still in effect.

23 COMMISSIONER MILLER: Another question. Would
24 you agree that the 2015 license to operate in 2015
25 now is gone? I mean that license terminates at the

1 end of the year; does it not?

2 MR. JOHNSON: The 2014 license is still in
3 effect today. The 2015 license was never issued.
4 It was never renewed in 2015.

5 COMMISSIONER MILLER: Explain to me how the
6 2014 -- you say that 2014 license was continued
7 into 2015; is that what you're alleging?

8 MR. JOHNSON: It was continued until such time
9 as the VRC can conduct further proceedings relating
10 to the conditions described therein.

11 COMMISSIONER MILLER: So you're saying on
12 December 31st of any calendar year, the license
13 issued on January 1st of that calendar year does
14 not expire?

15 MR. JOHNSON: This Commission, I believe, is
16 authorized to continue a license, and that's what
17 the Commission did, and that 2014 license is still
18 in effect by your own motion.

19 COMMISSIONER MILLER: But would you agree that
20 you continue a license for one year to the next?
21 The license becomes the license from the following
22 year; does it not?

23 MR. JOHNSON: You continue it --

24 COMMISSIONER MILLER: Yeah. If you have a
25 license in 2014 January --

1 MR. JOHNSON: I see.

2 COMMISSIONER MILLER: -- that license would end
3 on December 31st, 2014. If we through some process
4 say that license can be continued and then that
5 license goes into 2015 and becomes the 2015
6 license; does it not?

7 MR. JOHNSON: If that's what the Commission
8 did, then perhaps that's the case.

9 COMMISSIONER MILLER: No, no. Excuse me. Mr.
10 Chairman, may I redirect my question to the
11 executive secretary?

12 CHAIRMAN VAN CLIEF: Please.

13 COMMISSIONER MILLER: The license that is
14 issued by the Virginia Racing Commission; is that
15 not an annual license?

16 MR. HETTEL: It is. All licenses are annual.

17 COMMISSIONER MILLER: And do the annual
18 licenses run from January 1st of whatever year to
19 December 31st of whatever year?

20 MR. HETTEL: That's correct.

21 COMMISSIONER MILLER: Is that correct?

22 MR. HETTEL: That's correct.

23 COMMISSIONER MILLER: So on December 31st of
24 whatever year, whatever license is out there --

25 MR. HETTEL: Yes.

1 COMMISSIONER MILLER: -- unless that license is
2 through some magic continued to become a license
3 for the following year, that license terminates?

4 MR. HETTEL: Yes.

5 COMMISSIONER MILLER: So would you agree that
6 in the past, if perhaps through some magic a
7 license has gone over to the next year, but when
8 that license goes over to the next year, is that
9 not the license --

10 MR. HETTEL: It's that year's license.

11 COMMISSIONER MILLER: -- is that not the
12 license for that following year?

13 MR. HETTEL: It becomes that year's license.

14 COMMISSIONER MILLER: Okay. I just wanted to
15 get that part cleared up. Do you disagree with
16 that, sir?

17 MR. JOHNSON: I disagree only to this extent
18 and with all due respect.

19 COMMISSIONER MILLER: No. No. You don't have
20 to respect.

21 MR. JOHNSON: well, I do anyway.

22 COMMISSIONER MILLER: No. No.

23 MR. JOHNSON: I promise you, I do.

24 COMMISSIONER MILLER: Let's not go through all
25 this senatorial stuff. we don't need that.

1 MR. JOHNSON: Okay. But you did not continue
2 it to the following year. You made -- there was a
3 motion made to stay the expiration of the ADW
4 license until such time as the VRC can conduct
5 further proceedings related to the conditions
6 therein. You did not say until -- for the calendar
7 year 2015. You said until such time as the VRC can
8 conduct further proceedings.

9 COMMISSIONER MILLER: So it's your contention,
10 Mr. Johnson, that the Commission then trumped the
11 rules and regulations of the Commission --

12 MR. JOHNSON: I don't believe it --

13 COMMISSIONER MILLER: -- by putting some other
14 qualification in the license other than the end of
15 the calendar year?

16 MR. JOHNSON: I don't believe you trumped it.
17 I wouldn't agree with that characterization. I
18 think you're authorized, you're authorized to
19 continue licenses when you all think it's
20 appropriate, and I would respectfully suggest that
21 that's what you did here, and perhaps -- from
22 reading the transcript, I think you were thinking
23 this would be a temporary thing, but that's not how
24 you acted. Your action was until such time as the
25 VRC can conduct further proceedings.

1 COMMISSIONER MILLER: So on December 31st of
2 2014, the license of 2014 did not terminate; is
3 that correct?

4 MR. JOHNSON: That's correct.

5 COMMISSIONER MILLER: And on December 31st of
6 2015, the 2015 license did not terminate?

7 MR. JOHNSON: There was never a 2015 license,
8 per se. We were still operating -- Churchill Downs
9 was still operating under the 2014 license, whose
10 expiration had been stayed by the Commission.

11 COMMISSIONER MILLER: So you operated in 2015
12 under your 2014 license, despite the fact that our
13 regulations say otherwise?

14 MR. JOHNSON: We operated under the 2014
15 license. I don't believe that's despite the
16 regulations.

17 COMMISSIONER MILLER: Okay.

18 MR. JOHNSON: I think you were fully authorized
19 to continue that 2014 license for as long as you
20 deemed fit.

21 COMMISSIONER MILLER: And your company has
22 applied for a 2016 license; has it not?

23 MR. JOHNSON: That's correct.

24 COMMISSIONER MILLER: And you do not have a
25 2016 license as of yet, do you?

1 MR. JOHNSON: We have a license. It's the 2014
2 license that is still in effect, and we have
3 applied for a 2016 license pursuant to the
4 regulations which say December 1 of each year, you
5 have to submit your application for renewal.

6 COMMISSIONER MILLER: One more question. So
7 the December of 2015 action taken by the Virginia
8 Racing Commission suspending the 2015 license is
9 not valid, in your opinion?

10 MR. JOHNSON: It's not valid. The attempt to
11 suspend the license that was in effect. I hesitate
12 to call it the 2015 license because that's not --
13 that's not what you did.

14 COMMISSIONER MILLER: However you would
15 categorize it or whatever character you give to it,
16 whatever license you had in 2014, I mean 2015 --

17 MR. JOHNSON: Right.

18 COMMISSIONER MILLER: -- we say it was a 2015,
19 you say it was a 2014 license. But in any event,
20 according to our rules and regulations, at midnight
21 December 31st, 2015 without further action from
22 this Commission, that license expires
23 automatically; does it not, whether it was a 2014
24 license as you -- the character you give it as a
25 2014 license, or whether it was a 2015 license as

1 we say, as at least I would say it was, at midnight
2 on December 31st of 2015, a significant event
3 happened regarding that license, in that according
4 to our rules and regulations, that license expired;
5 did it not?

6 MR. JOHNSON: I disagree.

7 COMMISSIONER MILLER: Okay. All right. I'm
8 just trying to get to the point of where we are
9 today.

10 MR. JOHNSON: Sure.

11 COMMISSIONER MILLER: You have indicated that
12 the notice regarding whatever we were going to do
13 today was not valid. Well, that's fine. I mean I
14 would -- if that's your contention, I certainly
15 wouldn't want to argue over that note.

16 I mean if there's some defect in that notice,
17 we certainly wouldn't want to do anything with a
18 defective notice.

19 I would suggest that the Commission do nothing
20 today. I would also suggest to you to notify your
21 wagerers and shut down your operation immediately.
22 Should have been done earlier.

23 MR. JOHNSON: Well, I respect, Mr. Miller, your
24 views on that. We firmly believe that we are
25 operating with a license now that --

1 COMMISSIONER MILLER: Okay.

2 MR. JOHNSON: -- that action that was taken in
3 December was just as defective as the notice for
4 this hearing.

5 COMMISSIONER MILLER: Mr. Chairman, I would
6 suggest that makes the necessity for us having a
7 lawyer and for Churchill having a lawyer absolutely
8 necessary, and that's something that you all should
9 address before a judge, I suspect. Thank you.

10 CHAIRMAN VAN CLIEF: Thank you. I'm not
11 certain I understand the point you're making with
12 regards to a 2014 continued permission or license
13 to operate versus 2015.

14 Let me ask our executive secretary. Bernie,
15 other than whatever action you took in December of
16 2014, what action did this Commission take?
17 Refresh our memory with regards to a 2015 license
18 for TwinSpires.

19 MR. HETTEL: To the best of my recall, and I
20 will call on my staff, there was an application
21 made by TwinSpires; was there not, Dave --

22 MR. LERMOND: Yes. There was.

23 MR. HETTEL: -- in 2015 for a 2015 license, and
24 to the best of my knowledge, it was acted on by
25 granting. The 2016 license was made application on

1 whatever day it was. Dave, do you have the --

2 MR. LERMOND: I do. It was sent by
3 December 1st.

4 MR. HETTEL: Yeah. So by December 1st of this
5 previous year, '15, there was an application made
6 for '16. So I'm not sure -- the argument I believe
7 you're espousing is by the act of the Racing
8 Commission giving TwinSpires, Churchill Downs or
9 whatever name we'll call that company, a license to
10 be perpetually recognized until they took some
11 other action, I believe for further consideration.
12 well, there's been further consideration, I
13 believe.

14 So I'm not sure where the active license is or
15 when that '14 slash '15 license expired and why
16 Churchill Downs, if your argument is correct, why
17 they felt it necessary to make an application for
18 '15 and for '16.

19 MR. JOHNSON: First of all, I do not believe
20 that the 2015 license renewal application was ever
21 acted upon.

22 MR. HETTEL: Okay.

23 MR. JOHNSON: We have no indication that it was
24 ever approved or denied, and the reason is because,
25 frankly, all of this controversy and then the law

1 changed, and I think the Commission wanted to act
2 on the Churchill Downs issue in December, in
3 November and December of 2015.

4 But in trying to explain, although licenses
5 ordinarily are calendar year licenses, they have a
6 duration for a calendar year, Churchill Downs was
7 issued a license, and that license is in effect
8 until either the calendar year ends or the
9 Commission does something to continue it, and that
10 is exactly what happened in 2014.

11 CHAIRMAN VAN CLIEF: Mr. Johnson, is your
12 argument with regards to the December 2015
13 suspension, that that did not properly take place
14 because of a defective notice? Is that the sole
15 argument there?

16 MR. JOHNSON: No. That's not the sole
17 argument, but the notice for that hearing was
18 defective, but also the order itself is in the
19 improper name. The order itself suspending the
20 license suspends a license that doesn't exist
21 because the entity named as a license holder on the
22 order doesn't exist.

23 CHAIRMAN VAN CLIEF: I simply note that
24 Mr. Blackwell representing TwinSpires made no
25 mention of that during the course of the hearing,

1 and nor was it ever pointed out as an issue up
2 until now.

3 At any rate, I agree with Commissioner Miller.
4 I would suggest that TwinSpires cease and desist
5 doing business in Virginia immediately. That's
6 just an opinion, and I would ask counsel to
7 communicate with you and take whatever action is
8 necessary and appropriate under the Racing Act.

9 For moving along, do we need a motion to
10 side-step this hearing or would the consensus of
11 the Commission be to move on to the next item?

12 MR. PITCHFORD: Mr. Chairman, I believe given
13 the nature of things, it would be proper if the
14 Commission's desire is to continue the hearing that
15 there be a motion and a vote taken, and I think the
16 Commission can note for the record that the
17 continuance is at the request of Churchill.

18 CHAIRMAN VAN CLIEF: If it's the consensus of
19 the Commission that a continuation makes no
20 representation about TwinSpires' prerogative to do
21 business in the Commonwealth, does that need to be
22 noted?

23 MR. PITCHFORD: Mr. Chairman, the motion can
24 take the form the Commission desires. If that's
25 the desire of the Commission, I would say that

1 should be included in the motion.

2 CHAIRMAN VAN CLIEF: All right. In that case,
3 I think it would be appropriate if we did have a
4 motion, number one, to continue the hearing. And
5 Mr. Hettel, if we can convene immediately after the
6 meeting and get a notice out ASAP, it would be my
7 desire this continuation be as brief as possible
8 and that we take action before the end of the
9 month.

10 MR. HETTEL: Yes, sir.

11 CHAIRMAN VAN CLIEF: I would also suggest that
12 the Commission reinforce its obvious desire at the
13 meeting last month, and that the motion include a
14 sentiment that TwinSpires is not authorized to do
15 business in the Commonwealth at this time. It
16 would be our opinion that they cease and desist
17 until we can bring this matter to hopefully a
18 satisfactory conclusion.

19 VICE CHAIRMAN DAWSON: Mr. Chairman, can I just
20 ask. Are you making this proposal on the grounds
21 that we agree that the so-called alleged defective
22 decision or lack of a proper title for the licensee
23 makes this ineffective and therefore we need to go
24 back and do it again?

25 CHAIRMAN VAN CLIEF: Good point. I am not

1 suggesting that we admit that TwinSpires by virtue
2 of a potentially defective notice has the privilege
3 to continue doing business. It's clear they have
4 not paid the relevant fees under state law, and
5 whatever the technicalities might be, it's my
6 opinion that they should not be doing business
7 until we can get it resolved.

8 And a side note, we agree with what you said,
9 Mr. Johnson, before. It has always been all of our
10 hopes that TwinSpires will continue to do business
11 and be a part of Virginia industry going forward.
12 Under the current circumstances, I don't think
13 that's possible. So it would be my opinion that
14 our motion not imply or grant consent to continue
15 business, such that it is to the date of the
16 hearing.

17 VICE CHAIRMAN DAWSON: I agree with that, and I
18 think we should make that clear, because I agree
19 with your premise the company should not continue
20 to do business until their just debts are paid.

21 CHAIRMAN VAN CLIEF: Commissioner Miller.

22 COMMISSIONER MILLER: Mr. Chairman, I think the
23 calendar speaks for itself. Whatever motion we
24 make, this is a motion to continue the hearing on
25 the request of the applicant for a 2016 license; is

1 it not?

2 CHAIRMAN VAN CLIEF: That's correct.

3 COMMISSIONER MILLER: All right. So we all
4 know that according to the calendar, the applicant
5 does not have a 2016 license at this time; is that
6 not correct? would you agree with that? You don't
7 have a 2016 license right now, do you?

8 MR. JOHNSON: We have a license that's in
9 effect.

10 COMMISSIONER MILLER: Okay, but you don't have
11 a 2016 license.

12 MR. JOHNSON: The regulations don't refer to
13 licenses by year.

14 COMMISSIONER MILLER: Okay.

15 MR. JOHNSON: They talk about when they expire
16 and our license has not expired.

17 COMMISSIONER MILLER: The applicant takes the
18 position that a license from this Commission, an
19 annual license from this Commission is terminated
20 by some means other than the end of the annual
21 period. That's fine.

22 I think the record is clear whatever motion we
23 make, that from January 1 of 2016 until January 6th
24 of 2016, the applicant, if it is still operating in
25 Virginia, is operating illegally.

1 In that spirit and with that premiss, I guess
2 is the way to say it, I would move that the
3 application for a 2016 license which was to be
4 heard today be continued until a future date at
5 the -- and we're doing so at the request of the
6 applicant because the applicant says it did not
7 receive proper notice.

8 Now, before we vote on the motion to continue
9 this hearing on this application, I would like for
10 the counsel for the applicant to indicate to us
11 whether or not he feels it necessary because of
12 this name differentiation he has raised today, do
13 you want the Commission to give another formal
14 notice in whatever name you think is necessary, or
15 will you go forward on your application based upon
16 the previous notice if we continue it to a date
17 today?

18 MR. JOHNSON: I would suggest that to comply
19 with the Administrative Process Act in Virginia, a
20 formal notice has to be issued. I don't know that
21 I can waive that and I'm not willing to waive the
22 proper notice.

23 COMMISSIONER MILLER: Okay. That's fine.

24 MR. JOHNSON: I would also point out that I am
25 not moving to continue the hearing. I'm here to

1 object to the hearing going forward today. I was
2 making a suggestion that I think to correct it,
3 what you need to do is to properly notice it to a
4 future day.

5 So I want to make it absolutely clear on the
6 record I'm not asking for a continuance of this
7 hearing or moving for it. I'm here to say it was
8 done improperly. It was in the wrong name;
9 therefore, under the Administrative Process Act of
10 Virginia, it can't go forward today. And to go
11 forward, it has to be done in the proper name and
12 in compliance.

13 Also, again, I need to get these on the record
14 because I don't know where this is leading. To the
15 extent the Commission is proposing to take some
16 action or to put in a motion whether Churchill
17 Downs Technology Initiatives Company is in
18 compliance, that has not been noticed for today and
19 no evidence has been taken, and I would suggest
20 that that should not be a part of any motion that
21 you might make to reschedule a hearing.

22 COMMISSIONER MILLER: Okay. Mr. Chairman.

23 CHAIRMAN VAN CLIEF: Commissioner.

24 COMMISSIONER MILLER: I'll remake my motion,
25 but before I make my motion, I want the minutes to

1 reflect that according to records of the Virginia
2 Racing Commission, the applicant by whatever name
3 is in non-compliance as of this date for 2016.

4 I want the minutes to also reflect that
5 non-compliance began at the least at 12:01
6 January 1st of 2016, and that they continue in
7 non-compliance until this day.

8 I would also like the minutes to reflect so
9 far, we have heard nothing from the applicant
10 relating to its 2015 activities, and that
11 apparently as of this time, I would like the
12 minutes to reflect that from our last meeting of
13 this Commission until now, that -- Bernie, what was
14 that date we gave him to comply? December the 18th
15 was it?

16 MR. HETTEL: December 18th.

17 COMMISSIONER REYNOLDS: December 18th.

18 COMMISSIONER MILLER: That from December 18th
19 of 2015 through midnight of December 31st of 2015,
20 that the applicant was also in non-compliance
21 according to our records, and that at the next
22 meeting of this Commission, if action has not been
23 initiated by the next meeting of this Commission,
24 it's my intent to make a motion on that date that
25 we go forward with whatever enforcement provisions

1 we can to impose whatever penalty the Commission
2 feels necessary for the non-compliance for 2015 and
3 for the non-compliance of 2016, and whatever other
4 action the Commission may deem appropriate toward
5 this applicant.

6 CHAIRMAN VAN CLIEF: I concur and ask that that
7 be included in the minutes.

8 COMMISSIONER MILLER: And our stenographer has
9 gotten all that. Now, so I move now that we
10 continue the -- because of the question about the
11 defect in the notice that we don't need to go
12 through that hassle; therefore, I move that we
13 issue a new notice for a new hearing date on the
14 applicant under its appropriate name, which will be
15 given to our executive secretary today in the exact
16 form that the company requests, and that the
17 secretary then give notice to that company in the
18 exact form as given to our executive secretary
19 today and at the address that is given to our
20 executive secretary today and all necessary parties
21 that the applicant feels is necessary to get the
22 notice under the Administrative Process Act, and
23 that that notice go forward and that we set a date
24 in the future at whatever date is convenient to
25 hear the applicant's position on this 2016 license.

1 CHAIRMAN VAN CLIEF: Thank you. There is a
2 motion. Is there a second?

3 COMMISSIONER REYNOLDS: Second.

4 CHAIRMAN VAN CLIEF: Thank you. Is there any
5 discussion? All those in favor?

6 NOTE: The Commission votes aye.

7 CHAIRMAN VAN CLIEF: Any opposed? Motion
8 carries unanimously. Thank you, Mr. Johnson.

9 MR. JOHNSON: Thank you.

10 MR. PETRAMALO: May I be heard?

11 CHAIRMAN VAN CLIEF: Mr. Petramalo, you may.

12 MR. PETRAMALO: I think Mr. Johnson said that
13 there had been no findings with regard to
14 compliance. I don't think that's correct, because
15 at the December meeting, there was a good bit of
16 discussion and testimony about compliance; namely
17 at that time, the Racing Commission staff had
18 calculated that since July 1st of 2015, Churchill,
19 excuse me, TwinSpires had not paid the statutory
20 four percent to the Virginia Equine Alliance, and
21 as of October had not paid the statutory five
22 percent to the horsemen's organizations and the one
23 percent to the state Breeders' Fund, and I believe
24 the state calculated -- the staff calculated that
25 the total sum due was \$668,000 as of the end of

1 November.

2 Mr. Blackwell was here; he did not contest
3 that. So the point is that there was a finding,
4 which was the predicate, by the way, for the
5 suspension that beginning July 1st, whatever
6 license they had, TwinSpires was not in compliance.

7 Now if this is going to be an issue, I would
8 suggest that your notice that goes out under the
9 proper name notice also the issue of compliance in
10 2015 and going through 2016, because I don't think
11 there's any doubt that TwinSpires is continuing to
12 take wagers from Virginians after January 1st of
13 this year.

14 COMMISSIONER MILLER: Mr. Chairman.

15 CHAIRMAN VAN CLIEF: Commissioner Miller.

16 COMMISSIONER MILLER: Mr. Petramalo raises a
17 good point. So I would move that the notice that
18 goes out regarding this 2016 license, I assume,
19 well, we probably should go into session with our
20 counsel.

21 Can we have the hearing on the renewal of the
22 application or on their application for 2016, have
23 that hearing and have it combined with the hearing
24 on the non-compliance for the 2015 license,
25 including the fact that the allegation that from

1 July 1st, 2015 until the end of 2015 and even up
2 until --

3 MR. PETRAMALO: Today.

4 COMMISSIONER MILLER: -- to whatever date the
5 hearing is, that they have been in non-compliance
6 and therefore, they may be subject to, in addition
7 to other normal penalties, they may be subject to
8 the legal issue as to whether or not there ought to
9 be some return of -- well, wagers, I guess --

10 MR. PITCHFORD: Okay.

11 MR. MILLER: -- from July 1 from their alleged
12 non-compliance until the day we have the hearing.

13 MR. PITCHFORD: Mr. Commissioner, the hearing,
14 the scope of the hearing under the Administrative
15 Process Act matters that may be heard are
16 determined by what's contained in the notice.

17 So if the notice includes the matters other
18 than the request for a 2016 license, that would
19 have to be set forth in the notice.

20 whether or not the Commission maybe has already
21 accomplished that task that you have raised by
22 previous action, that may be an issue of further,
23 as you suggested earlier, lawyering between the
24 lawyers, and that issue can be addressed in due
25 course.

1 But if the Commission desires for matters to be
2 included in the hearing notice, certainly, we can
3 craft the notice to cover those matters that the
4 Commission deems appropriate.

5 COMMISSIONER MILLER: Mr. Chairman, in order to
6 maybe make it a cleaner, as clear as possible when
7 you get into these legal disputes, make it as clean
8 as possible, I suggest that the notice by the
9 executive secretary for the hearing on the
10 application for 2016 be noticed for one hearing,
11 and also send out a notice for an additional
12 hearing on the same date relating to their
13 non-compliance in 2015, their non-compliance as
14 indicated by Mr. Petramalo; that is, the failure to
15 make the appropriate payments alleging -- well,
16 they failed to make the appropriate payments, and
17 the allegation is that from that date, July 1st of
18 2015 until whatever date it's paid, that so long as
19 that applicant has not paid that sum, that they are
20 not in compliance with their 2015 license and may
21 be subject to penalties under the law. would that
22 be --

23 MR. PITCHFORD: Mr. Commissioner, I believe
24 that you're requesting some advice of counsel here,
25 then perhaps that might be better addressed in

1 closed session, and if you would like to make the
2 motion to do so --

3 COMMISSIONER MILLER: Let's do that.

4 CHAIRMAN VAN CLIEF: Let's do please have a
5 motion to go into closed session.

6 COMMISSIONER STEGER: Mr. Chairman, before we
7 go into closed session, I may offer just a couple
8 observations. One is I think we all want to see a
9 constructive result from all of this. We want to
10 see TwinSpires operating in Virginia.

11 Secondly, I share the chairman's disappointment
12 that the representative did not notice that the
13 name of the company was not proper at the last
14 meeting. That could have been handled and resolved
15 some of this.

16 But third, and this is the most important
17 thing. I would urge that the parties retain a
18 professional mediator. Regrettably, I've been
19 involved in more litigation than I'd like to admit.
20 Often, these are individuals who are former judges.
21 They are very fair and constructive and it helps to
22 avoid the enormous expense of litigation which is
23 incurred by both parties in this thing.

24 I don't see the differences of view as
25 irreconcilable here, and I think if people can sit

1 down in a closed environment that it can be
2 resolved. So I would strongly urge everyone
3 involved to retain a professional mediator to help
4 bring this to a closure.

5 We want to have a win-win for both parties. We
6 want you all to do business in Virginia. We don't
7 want protracted litigation for several years. It's
8 extensive, time consuming, and it damages everybody
9 involved. So I hope that you can do that, and if
10 you can't do that, I'd like to know why at the next
11 meeting.

12 CHAIRMAN VAN CLIEF: Thank you.

13 COMMISSIONER MILLER: I move we go in closed
14 session. Mr. Counsel, read whatever is necessary
15 remarks that lead to a closed session.

16 MR. PITCHFORD: Thank you. Mr. Chairman, in
17 accordance with the provisions of Section
18 2.2-3711(a)7 of the Code of Virginia, I move the
19 Commission go into closed meeting for the purposes
20 of consultation with legal counsel and briefings by
21 staff members or consultants pertaining to actual
22 or probable litigation, where such consultation or
23 briefing in open meeting would adversely affect the
24 negotiating or litigating posture of the public
25 body; and consultation with legal counsel employed

1 or retained by a public body regarding specific
2 legal matters requiring the provision of legal
3 advice by such counsel concerning agenda item
4 number four, the application, the APA hearing for
5 TwinSpires. The commissioners will only ask
6 counsel questions and will not engage in
7 deliberation or any other activity.

8 CHAIRMAN VAN CLIEF: That motion has been made
9 by Commissioner Miller. Is there a second?

10 COMMISSIONER STEGER: Second.

11 VICE CHAIRMAN DAWSON: Second.

12 CHAIRMAN VAN CLIEF: Thank you. All in favor?

13 NOTE: The Commission votes aye.

14 CHAIRMAN VAN CLIEF: Any opposed? Thank you.
15 We will adjourn to executive session.

16 NOTE: There is a recess from 10:55 a.m.
17 until 11:28 a.m.; thereafter, the meeting continues
18 as follows:

19 CHAIRMAN VAN CLIEF: Thank you very much for
20 your forbearance and patience.

21 MR. JOHNSON: Mr. Chairman --

22 CHAIRMAN VAN CLIEF: We need a motion.

23 MR. JOHNSON: I'm sorry.

24 CHAIRMAN VAN CLIEF: We're technically still in
25 executive session. We need a motion to bring us

1 back in to open session.

2 MR. PITCHFORD: Mr. Chairman, Section 2.2-3712
3 of the Code of Virginia requires certification by
4 this Commission that such closed meeting was
5 conducted in conformity with Virginia law.

6 Therefore, be it resolved that the Virginia
7 Racing Commission certifies to the best of each
8 members' knowledge only public business matters
9 lawfully exempted from open meeting requirements
10 under the Virginia Freedom of Information Act, and
11 only such public business matters as were
12 identified in the motion convening the closed
13 meeting were heard, discussed or considered by the
14 Commission in the closed meeting.

15 CHAIRMAN VAN CLIEF: I believe we have that
16 motion from Commissioner Reynolds.

17 COMMISSIONER REYNOLDS: Yes.

18 CHAIRMAN VAN CLIEF: Is there a second?

19 VICE CHAIRMAN DAWSON: Second.

20 COMMISSIONER STEGER: Second.

21 CHAIRMAN VAN CLIEF: All in favor?

22 NOTE: The Commission votes aye.

23 CHAIRMAN VAN CLIEF: Any opposed? Motion
24 carries unanimously. We are back in open session.
25 Commissioner Miller.

1 COMMISSIONER MILLER: I have a motion to make
2 before we do anything else. I move to withdraw my
3 previous motion that the executive secretary be
4 directed to issue a notice for a hearing on
5 non-compliance. I move to withdraw that motion.

6 CHAIRMAN VAN CLIEF: There's a motion and a
7 second. Do we have a second?

8 VICE CHAIRMAN DAWSON: Second.

9 CHAIRMAN VAN CLIEF: We have a second. All in
10 favor?

11 NOTE: The Commission votes aye.

12 CHAIRMAN VAN CLIEF: Any opposed? Thank you,
13 Mr. Miller.

14 MR. PITCHFORD: Mr. Johnson, do you wish to be
15 heard?

16 MR. JOHNSON: I would.

17 CHAIRMAN VAN CLIEF: would you like to be heard
18 at this point, Mr. Johnson?

19 MR. JOHNSON: Yes, please. Mr. Chairman,
20 Commission, I have been on the phone with my client
21 and had a rather lengthy conversation and would
22 just like to offer that in response to Commissioner
23 Steger's suggestion for a professional mediator,
24 that Colonial, excuse me, Churchill Downs, let me
25 get the names down here.

1 COMMISSIONER REYNOLDS: We've already been
2 there.

3 MR. JOHNSON: Churchill Downs is willing to do
4 that and accepts that as a good recommendation for
5 trying to get this resolved as quickly as possible.

6 I've had a brief discussion with Mr. Daniel
7 about an appropriate mediator, and we certainly
8 agree with the name that was suggested and we're
9 willing to try to get this done as quickly as
10 possible.

11 COMMISSIONER STEGER: Thank you.

12 MR. JOHNSON: I just want to reiterate I thank
13 the Commission for the patience that you all have
14 shown, and Churchill Downs really is committed to
15 horse racing in Virginia and getting a resolution
16 to this. Thank you.

17 CHAIRMAN VAN CLIEF: Thank you, Mr. Johnson. I
18 appreciate that. What we're talking about up here
19 is the conversation we've had with counsel and a
20 remark I made earlier that it was the Commission's
21 desire that we ask counsel to take whatever action
22 is appropriate and necessary to enforce the
23 Virginia Racing Act, specifically with regards to
24 TwinSpires and the circumstances surrounding the
25 questions we've been discussing today. I think

1 Commissioner Steger has a point to make in that
2 regard.

3 COMMISSIONER STEGER: I would say I think
4 because of the timing, we should proceed with that,
5 but I would also like to be sure that we delay that
6 so we have a chance for the mediation to take a
7 constructive process.

8 CHAIRMAN VAN CLIEF: So Mr. Pitchford, in that
9 case, I think our request to you and the office of
10 the Attorney General still stands, but we ask that
11 you defer as necessary to allow the mediation to
12 hopefully be profitable. The end game we're all
13 looking for is to find ourselves with TwinSpires
14 operating in the Commonwealth of Virginia and
15 continuing to do business here.

16 One last point in this regard and the issue on
17 the 2016 license still is pending, so Mr. Hettel,
18 we would ask that we reschedule the hearing with
19 proper and appropriate notice.

20 I think we all want to see this happen as
21 quickly as possible. This is an urgent question
22 and the issue of whether or not TwinSpires is going
23 to continue to operate in the state is of import to
24 all of us.

25 I would suggest we may have to make the rounds

1 of the Commission after the meeting, but let me ask
2 the Commission if they can tell us right now. Can
3 we set this for Thursday the 21st of this month?
4 January 21st.

5 VICE CHAIRMAN DAWSON: That's fine.

6 COMMISSIONER MILLER: That's fine.

7 COMMISSIONER REYNOLDS: All right.

8 CHAIRMAN VAN CLIEF: All right. In that case,
9 Bernie, we ask that we issue appropriate notice to
10 all parties setting it for the morning of the 21st
11 of January.

12 MR. HETTEL: Yes, sir.

13 COMMISSIONER STEGER: Do we start at ten?

14 CHAIRMAN VAN CLIEF: Are you all right on that
15 day?

16 COMMISSIONER STEGER: I have a meeting, but I
17 think --

18 CHAIRMAN VAN CLIEF: Rather than our usual ten
19 o'clock hour, why don't we make that eleven
20 o'clock? All right. Thank you all very much.

21 We move on to the next order of business, which
22 is the approval of the December 16th meeting
23 minutes. Those were distributed to all of the
24 commissioners. Have you all had a chance to review
25 those, and if so, are there any questions, changes,

1 modifications? If not, I need a motion to approve.

2 COMMISSIONER STEGER: I move approval.

3 CHAIRMAN VAN CLIEF: Second?

4 COMMISSIONER MILLER: Second.

5 CHAIRMAN VAN CLIEF: All in favor?

6 NOTE: The Commission votes aye.

7 CHAIRMAN VAN CLIEF: Any opposed? Minutes of
8 the December 16 meeting are approved.

9 New business. We have a Gold Cup contract.
10 Bernie, can I ask you to brief the group quickly on
11 what's contained in that contract?

12 MR. HETTEL: The contract is the continuation
13 between the Virginia HBPA and the Gold Cup. It's
14 by and large a continuation of what has been
15 previously approved. We've got Dr. Allison here
16 this morning and Frank Petramalo to agree, I guess.
17 I don't know. Any complications, Doctor?

18 DR. ALLISON: No.

19 MR. HETTEL: Frank, any complications?

20 MR. PETRAMALO: No, sir.

21 MR. HETTEL: Mr. Chairman, I'd suggest we seek
22 motion for approval.

23 COMMISSIONER MILLER: So moved.

24 CHAIRMAN VAN CLIEF: Thank you, Commissioner
25 Miller. Is there a second?

1 VICE CHAIRMAN DAWSON: Second.

2 CHAIRMAN VAN CLIEF: Second, Commissioner
3 Dawson. Any questions or discussion with regards
4 to the motion to approve the Gold Cup HBPA
5 contract? All in favor?

6 NOTE: The Commission votes aye.

7 CHAIRMAN VAN CLIEF: Any opposed? Thank you.
8 Motion carries unanimously.

9 Mr. Executive Secretary, could you brief us
10 quickly on Xpressbet?

11 MR. HETTEL: XpressBet, Mr. Petramalo is here.
12 Frank, could you give us a few words of
13 encouragement with your good work with Xpressbet in
14 coming to an agreement?

15 MR. PETRAMALO: Yes.

16 MR. HETTEL: I expect signatures today?

17 MR. PETRAMALO: Yes. We submitted to you what
18 I call the executory copy of the rebate contract.
19 I'm authorized to represent on behalf of Xpressbet
20 that they agree to the terms of the contract and
21 that their president has signed.

22 The other person who has to sign it is on
23 vacation. On our side, two of the three parties
24 have signed it. We need a third signature. Bottom
25 line is we will have a complete document signed by

1 all of the parties to you within a day or two.

2 Let me quickly just back up and explain to you
3 what this is all about. For many years, at least
4 since 2008, we've had what we call a rebate
5 contract with Xpressbet. When I say we, on one
6 side there was Xpressbet, the online wagering
7 company, and on the other side was Colonial Downs
8 and the two horsemen's organizations; the
9 Thoroughbred people, my group, and the harness
10 people, Dr. Woogen's group.

11 Under that contract, we had a quid pro quo. We
12 agreed to rebate to Xpressbet a certain percentage
13 of the money that was sent to us under the
14 statutory scheme. It was kind of a complex
15 formula.

16 In return, Xpressbet sold to Colonial Downs
17 EZHorseplay signals from tracks that it controlled;
18 namely, Gulf Stream, Santa Anita, the Maryland
19 tracks, et cetera.

20 That agreement expired in December of 2015. We
21 have subsequently negotiated a new three-year
22 contract which takes us through 2018. The formula
23 is somewhat different, but basically, here is an
24 easy way to look at it.

25 Xpressbet under the statute contributes

1 eleven-and-a-half percent of Virginia handle back
2 to Virginia. A percent-and-a-half goes to the
3 Racing Commission, one percent goes to the state
4 Breeders' Fund, and the other nine percent is
5 split. Four percent goes to the Equine Alliance
6 and five percent goes to the horsemen's group.

7 Under this agreement for the first year,
8 Xpressbet winds up paying nine percent. In other
9 words, we're rebating two-and-a-half percent. In
10 the second and third year, they get a three percent
11 rebate, so they're paying eight-and-a-half percent.

12 In return, they have agreed to sell to the VEA,
13 if and when it operates its own ADW company,
14 certain signals which they control. Gulf Stream,
15 Gulf Stream West, the two tracks in Maryland, Santa
16 Anita, a track in northern California and a track
17 in Oregon at rates that are very, very favorable to
18 us. That's the quid pro quo.

19 Also in the contract is what the lawyers call a
20 most favored nation clause. That's what Xpressbet
21 wanted in the contract. That means if we were to
22 ever negotiate a contract with another online
23 wagering company that gave them better terms than
24 Xpressbet, Xpressbet also would get the better
25 terms. That's the sum and substance of what the

1 contract is.

2 CHAIRMAN VAN CLIEF: Thank you very much,
3 Frank. Are there any questions on the part of the
4 Commission? Do we have a motion on the table?

5 COMMISSIONER MILLER: I move we approve the
6 contract of Xpressbet, VEA and the horsemen.

7 COMMISSIONER REYNOLDS: Second.

8 COMMISSIONER MILLER: Second.

9 CHAIRMAN VAN CLIEF: Thank you, Commissioner
10 Miller. Commissioner Reynolds has seconded. All
11 in favor?

12 NOTE: The Commission votes aye.

13 CHAIRMAN VAN CLIEF: Any opposed? The motion
14 to approve carries unanimously.

15 That brings us to the public comment period.
16 As usual, there's an opportunity for any of the
17 public to make a statement or just unload whatever
18 is on your mind. We'd ask that you, as before,
19 maintain a maximum of five minutes duration to your
20 comments, if that, and I'll now open it to the
21 public. Yes.

22 MR. QUINAN: Mr. Chairman, Michael Quinan. I'm
23 from Christian & Barton, counsel for VHBPA. I
24 think I can actually keep this within five minutes,
25 for once.

1 It relates to the date of the next hearing of
2 the Commission. That same date, the 21st, this
3 struck me after you passed that motion setting that
4 date.

5 That date is the date of the annual meeting of
6 the Virginia Bar Association. Mr. Johnson is
7 currently the president of the Virginia Bar
8 Association, and if all goes according to plan on
9 that date, I'll be named general counsel to the
10 Virginia Bar Association, so it would be a
11 difficulty for either of us, I think, to be
12 anywhere other than in Williamsburg at the VBA
13 meeting that day.

14 If there's any way possible that a date could
15 be selected that would accommodate us.

16 CHAIRMAN VAN CLIEF: Okay. I'll simply ask,
17 Bernie, if you would, perhaps we can circulate the
18 Commission and get this done after the meeting.

19 MR. HETTEL: Okay.

20 CHAIRMAN VAN CLIEF: We'll get that notice out
21 and keep that in mind.

22 MR. QUINAN: Thank you.

23 CHAIRMAN VAN CLIEF: Are there any comments
24 from the group? If there are none, then I would
25 like to ask Jeb or Debbie on behalf of the VEA.

1 I had an opportunity earlier this week to chat
2 with both Debbie and Jeb about the VEA's game plan
3 for this year, given the fact that the pieces
4 always seem to be moving around the game board in
5 our industry, and they expressed an interest in
6 taking a few minutes this morning to sketch out
7 their vision for the coming year and perhaps
8 beyond.

9 I think that would be important. I think it's
10 absolutely key that we all be on the same page, and
11 so sharing a vision and developing that vision
12 together is going to be, I think, an important part
13 of our job going forward.

14 So if you all are prepared to do that, we'd
15 love to hear from you for a few minutes this
16 morning. If you would like to go past the five
17 minute maximum, you're more than welcome to do so.

18 MR. HANNUM: Great. Thank you. Thank you,
19 Commissioners. I'll start out and then I'll ask
20 Debbie to comment as well, then I'll call upon Tom
21 Eshelman, who is the executive director of the
22 Shenandoah County fair for a few comments from him
23 as well.

24 Just as a little bit of background, at the end
25 of December of 2015, the Alliance board and all of

1 our sort of associate members got together and two
2 commissioners, Commissioner Miller and Commissioner
3 van Clief, were able to observe and participate.

4 We had a one-day essentially retreat, which was
5 the first time we've really been able to take our
6 foot off the gas and really think about how we
7 wanted to go forward and reflect on some of the
8 things we accomplished in 2015.

9 That was an all-day session, so I'm just going
10 to summarize two of the key priority areas that we
11 determined to be of importance for the organization
12 to focus on for 2016 and 2017.

13 So really, it came down to two issues. One is
14 infrastructure, so site selection and
15 infrastructure improvements is the first bucket,
16 and the second bucket being revenue generation. So
17 we really felt those were the two important areas
18 for the Equine Alliance to be focused on as we move
19 forward.

20 Regarding infrastructure, as we all know here,
21 the critical issue for both harness and
22 Thoroughbred is defined as sites that we can use
23 long-term for racing for the two different breeds.
24 We're fortunate that we have an opportunity out at
25 the Shenandoah County fair at Woodstock to renovate

1 their existing half-mile harness track, which
2 they've held harness racing there for almost 100
3 years.

4 In order to do so, in order to have pari-mutuel
5 wagering and to get it up to standard, it will
6 require investment, and we've taken some
7 preliminary steps to move forward with that.

8 We had a site visit out at Woodstock
9 January 4th and 5th with Gray Kuhn [ph], who is a
10 nationally renowned track designer and consultant,
11 who came out with an engineering and contracting
12 firm to look at the site and to develop a blueprint
13 to how we could move forward and invest in that
14 site and make it not only a great facility for
15 Virginia, but really for the entire Mid-Atlantic.
16 So that's an exciting opportunity.

17 So I'll pause right there and just let Tom
18 Eshelman sort of speak to that and let him just
19 sort of speak to his board's thinking behind this
20 project as well.

21 MR. ESHELMAN: Thank you, Mr. Chairman and
22 Commission and thank you, Jeb. My name is Tom
23 Eshelman. I've been manager of the Shenandoah
24 County fair, and we're working very closely with
25 the VEA and the VHHA and we've had several

1 meetings.

2 This past week, it started coming together. As
3 Jeb said, we've hired, I guess it's like getting a
4 really great director for your movie by bringing in
5 Mr. Kuhn, and the end result is going to be I think
6 something Virginia can be very proud of.

7 The investment in this track is going to equal
8 two years' worth of temporary investment that we
9 had at Oak Ridge. We're looking for a long-term
10 home for harness racing, Virginia harness racing at
11 Woodstock.

12 My board is behind it unanimously. There's a
13 lot of sacrifices being made. Facilities are going
14 to be destroyed that have been there for 99 years.
15 Roads are going to be changed. But we see this as
16 an investment in our future as well.

17 If you've never been to the Woodstock site,
18 it's adjacent to I-81, hotels, restaurants, very
19 easy to get to, and we feel it's gonna be a great
20 home.

21 The end result of the track is we feel very
22 strongly what we're gonna end up with is probably
23 one of the premier half-mile tracks on the east
24 coast.

25 This gentleman has been involved with Little

1 Brown Jug, Yonkers and other tracks across the
2 country and across the world and we feel very
3 strongly that this is gonna be a permanent home.

4 Facilities are there. They're on the grounds
5 and we're welcoming this opportunity. We're
6 welcoming the VHHA and we're hoping they'll make
7 this a long-term home for a long time to come, and
8 we're hoping to do racing there for the entire
9 month of September this year, and preparations are
10 already under way to get ready for the construction
11 that could start in as little as sixty days, so
12 we'll see what happens. We're proud to be part of
13 it.

14 MR. HANNUM: Thank you, Tom. That's a project
15 once we have the engineering blueprint together,
16 then we'll have a formal estimate developed, but
17 that's gonna be a half a million, \$600,000 project
18 to get Woodstock to the level that it would need to
19 be.

20 The second thing to comment on is Morven Park.
21 We've spoken about Morven before the Commission.
22 Things sort of moved slowly through the end of
23 summer and through the fall. Morven Park has been
24 going through some changes. Their long-time
25 executive director retired, and so they have a new

1 executive director in place and the board has
2 reached out to the Alliance reaffirming their
3 commitment to make Morven Park the site for flat
4 racing on sort of the Kentucky downs model for the
5 Thoroughbreds. So they're very committed to it.

6 we're closing in on finalizing the lease. We
7 had a similar site visit out at Morven Park with an
8 engineer where a plan is being put together.

9 while Morven Park was a very nice steeplechase
10 course, based on feedback from horsemen and
11 jockeys, we determined that some of the significant
12 undulations in the current course would need to be
13 leveled out. Again, sort of on the Kentucky downs
14 model, so there would be some up and down, but not
15 significant rolling that is there right now. So
16 the engineers have looked at that and are
17 developing their plan for making those changes.

18 So the type of course we want to have at Morven
19 Park would be able to host our graded stakes in
20 time and would be proper flat racing with a gate
21 and flat jockeys, and while we welcome the
22 steeplechase horses, it would be primarily flat
23 horses from the neighboring tracks and from
24 Virginia.

25 So this is gonna be an expensive item as well.

1 Budget for this is still under way, but we estimate
2 that this will be a project somewhere between 700
3 and \$900,000 to get this project done. That
4 includes the engineering, but also the fences,
5 paddocks and rebuilding the steward stand, et
6 cetera.

7 But it's really an enormously exciting
8 opportunity to have the commitment of the Morven
9 Park board and the commitment of the Shenandoah
10 County fairground for these two sites to be the
11 long-term home for Thoroughbred and harness racing
12 in Virginia.

13 We of course as an Alliance will continue to
14 support the Virginia Gold Cup as robustly as we
15 can. Dr. Allison and his team do such a good job
16 there, that we find that sometimes the best thing
17 we can do is buy our tickets and show up and get
18 our hot dogs and bet and he handles the rest of it.
19 So that's a well-oiled machine we are happy to have
20 as part of our Alliance.

21 Oak Ridge, we had a great meet there in the
22 fall, but as Tom alluded to, it was very expensive.
23 We knew that was gonna be the case. It's a great
24 site. The Holland family were just wonderful
25 partners and we want to work with them long-term.

1 Our hope is that if we can establish Woodstock
2 as the home for harness racing, Oak Ridge could in
3 time then be converted as an additional place for
4 flat racing and steeplechase racing, which is
5 really sort of how it's suited long-term, but that
6 is a discussion we'll be having with the Holland
7 family.

8 But just in terms of the cost, the tents, you
9 know, the offices, the generators, all those sorts
10 of things would be a recurring cost that Woodstock
11 would not have because we have all that
12 infrastructure.

13 In terms of our open stakes in the
14 Virginia-bred races, we'd be looking to have those
15 races out-of-state again to continue to provide
16 those opportunities for horsemen.

17 As you know this past fall, the feature race at
18 Laurel was won by a Virginia-bred horse, so that
19 speaks to the importance of having these races,
20 whether they be out-of-state for a temporary
21 period.

22 So in terms of infrastructure, the investments
23 that we look to make in 2016 would be providing the
24 long-term stability for Thoroughbred and harness
25 going forward.

1 So while we see a limited race schedule this
2 year, we obviously would then be in a position to
3 have an enhanced race schedule in 2017. But if all
4 goes well at Woodstock, we would have an eight-day
5 meet there this fall, and our races and our open
6 stakes and Virginia-bred races as well.

7 So switching to revenue generation, the second
8 key priority for the Association, we've had three
9 national companies review opportunities for opening
10 the OTB network in Virginia.

11 We've had two formal presentations before the
12 Alliance. We have a third company that is
13 literally as we speak driving up and down Virginia
14 reviewing sites, looking at potential places where
15 OTBs could be open, and we hope to have a proposal
16 from the third company.

17 So we're moving forward with that as quickly as
18 we can, and we're also looking to see what
19 opportunities there may be for the Alliance to open
20 an OTB more quickly, perhaps in advance of some of
21 these national companies coming in. But these
22 things are things that are happening right now, and
23 we'll keep the Commission posted as they develop.

24 We look to work with Xpressbet and TVG to
25 continue to promote Virginia ADW activity, which is

1 very important to us. We have a wonderful fan and
2 supporter network that's been developed through the
3 successful steeplechase races and the breeders and
4 Frank's organization over the years, and we're
5 looking to do more of a proactive outreach for
6 people that are coming to the races and enjoying
7 the races, to explain to them what the Alliance is
8 doing and encouraging them to become active
9 wagerers through our ADW partners.

10 So that's just kind of a quick overview of the
11 two key priorities; infrastructure and revenue
12 generation. I'll leave it to Debbie to fill in any
13 gaps that I left, and we have Scott Woogen here as
14 well, if he'd like to make any comments on the
15 harness racing. So thank you, and obviously, I can
16 answer any questions.

17 MS. EASTER: I think Jeb covered our vision of
18 what we think for the next few years, but I'll add
19 a little more rah-rah to it.

20 I'm very excited about what's going on. I
21 think we have -- at Morven Park, not only are we
22 trying to redevelop the racetrack there, but their
23 plan there is to redevelop the whole horse
24 facilities and look at this as a multi-use horse
25 park where they'll have rings inside of our track

1 that they will use when we're not running.

2 Once again, the cost savings there because of
3 the permanent barns and the fact that we're in
4 Northern Virginia and all that is very positive,
5 and as Jeb said, taking little hills out.

6 We actually with the track are looking -- the
7 engineer was looking at doing something even better
8 than that, banking the turns. Unfortunately, we
9 won't be Colonial Downs or Laurel's turf course,
10 but we will be hopefully better than Kentucky Downs
11 and a place that we can be proud of.

12 As we said before, we wanted to have the racing
13 back here in 2016, but as we got to talking to
14 horsemen, we just didn't feel like the course,
15 cutting the grass and just moving into Leesburg was
16 gonna get done what we needed to get done.

17 So I think we're all very excited about what
18 this course can be, and while we understand you
19 alls' apprehension about taking the races
20 out-of-state, we hope that you will understand that
21 nobody wants to bring them back in the state better
22 than the horsemen of Virginia, so we need to give
23 our guys opportunities until we can give them a
24 place to race.

25 At Woodstock, I wish that you all -- I think

1 Commissioner Van Clief and Commissioner Miller, we
2 were all just very impressed with Tom's
3 presentation about what they're gonna do there, and
4 I think it's just really a neat facility and an
5 opportunity that the harness guys haven't had for a
6 long time; that they have somebody that wants them
7 there, that wants to build business, and hopefully,
8 that's gonna make things grow in Virginia.

9 I'll speak about brand. I think that's
10 something that's gonna be important that hopefully
11 Commissioner Van Clief can help us with.

12 As Jeb alluded to, we've got an association,
13 the Gold Cup, that has created the greatest brand
14 that you could ever want. We have the largest
15 sporting event in Virginia that's held right there
16 at Great Meadow every year. We're bringing this
17 whole concept of country racing. We're bringing
18 racing to beautiful venues. It's something brand
19 new that hasn't been tried. We're bringing it to
20 beautiful venues where people have fun.

21 People pay good money to go to the races and to
22 Gold Cup. That's unheard of in the flat game. If
23 we could take the Gold Cup's brand of being able to
24 attract people to the races like they do, and take
25 the Kentucky Downs brand of quality racing and how

1 they're able to package their signal and sell it,
2 those are two of the things we want to put together
3 and try to have happen in Virginia. Now I'm not
4 gonna say this is gonna happen over night, but it
5 gives us something to build for.

6 I think that some of Frank's folks would ask
7 about our Colonial strategy. Unfortunately, there
8 is no Colonial strategy now because they're out of
9 the picture. But if Colonial Downs would be made
10 available to us, I think we'd all be interested in
11 being there, but at that, we would come up with
12 some kind of strategy, but we're not gonna spend a
13 lot of time dealing with that right now until we
14 know what's going on there.

15 I guess the other big thing that I think is
16 gonna be important as Jeb alluded to is that the
17 Gold Cup, Fox Field, Montpelier, Middleberg, they
18 all get great attendance and we've got built-in
19 lists of people that may not be horse owners and
20 may be more of that they just enjoy the experience
21 of being out there that day, but at least we've got
22 a very targeted list that if we can market to and
23 try and move these people from being just social
24 come-to-the-races guys to maybe turning them over
25 to being wagerers and even better, owners of horses

1 in Virginia.

2 So I think all of this, we've got a big task in
3 front of us, but these are things we're thinking
4 about and talking about, and I think we would love
5 all of you alls' expertise, because all of you on
6 this Commission are very accomplished people, and
7 hoping that we can continue to move forward
8 positively more than we have in the past.

9 I would hope that TwinSpires, Churchill Downs,
10 would come in and join us also, because the whole
11 reason this wagering was -- ADWs, OTBs are
12 important in Virginia is to support this industry
13 and make racing go. So if that's not what people
14 want to do, then you're missing the boat. Thank
15 you.

16 CHAIRMAN VAN CLIEF: Thank you, Debbie. Dr.
17 Woogen, did you want to say something?

18 DR. WOOGEN: I'll say quickly I sit here and I
19 see an opportunity that I don't think is available
20 anywhere else in the country. We have a state
21 where we have the Virginia Equine Alliance
22 committed to grow racing in the state.

23 We have three horsemen groups, steeplechase,
24 harness, Thoroughbred all with the same goal, all
25 working together, all just looking forward to the

1 future, and we have a Racing Commission on the same
2 page.

3 In a small state surrounded by states that have
4 casino gambling, track operators living off of
5 casino gambling, we have to come up with a new
6 model to make Virginia grow.

7 This is it. This is wonderful. There's no
8 contention, there's no hidden agenda. This is all
9 about growing the sport that we love.

10 In Woodstock with the help of Tom and his
11 people, we have the opportunity to bring horse
12 racing back to the way harness racing was meant to
13 be; half-mile track in front of large audiences,
14 close-up, get a good feel for the racing, but now
15 with a modern track which means high banking, good
16 track surface so that we can generate the speeds
17 that are necessary today, and with Gray Kuhn, who
18 is the preeminent racetrack builder for harness
19 racing across the world, we have the opportunity to
20 have probably the best half-mile track in the
21 country.

22 So we really appreciate all the support of the
23 Commission, the support of the VEA, and I'm looking
24 forward to a future that we couldn't have without
25 the type of organization that's been built here.

1 So I thank you.

2 CHAIRMAN VAN CLIEF: Thank you.

3 COMMISSIONER REYNOLDS: well said.

4 CHAIRMAN VAN CLIEF: I think that's an exciting
5 new year's message. If you listened to all that,
6 you see an industry where we're starting to grow
7 again, emerging new venues. I wish everybody in
8 the room could have heard Tom Eshelman's
9 presentation last month. It's great stuff.

10 A growing race schedule, not a shrinking one, a
11 renaissance of our OTBs, the stabilization of our
12 ADW market and the growth of that market, a new
13 Virginia racing brand and a customer growth
14 strategy. I think it sounds great, so
15 congratulations to all of you for not only paddling
16 in the same direction, but actually starting to
17 move up stream a little bit. It's very exciting,
18 and I know I speak for all of my colleagues. We're
19 prepared to do whatever we can to help move the
20 agenda along.

21 We now come to the part of the meeting where
22 commissioners may comment. I'm gonna start with
23 our most recent chairman and move from left to
24 right. Commissioner Reynolds.

25 COMMISSIONER REYNOLDS: Mr. Chairman, I want to

1 reiterate what you just said. It was great to
2 listen to the enthusiasm, and I know that you all
3 have worked tirelessly and hard. It seems like we
4 are moving in the right direction.

5 I just reiterate what the chairman said. We're
6 here to help, so let us know what we can do to move
7 this along. But I love what I heard today, and
8 hopefully, we'll get TwinSpires back in the tent
9 and we look forward to getting that resolved as
10 well. Thank you.

11 CHAIRMAN VAN CLIEF: Thank you. Commissioner
12 Steger.

13 COMMISSIONER STEGER: I first of all want to
14 thank former Chairman Sarge Reynolds for his
15 dedication and the new chairman and vice chairman
16 for their willingness to take on this task. I have
17 to say I have been riding horses since I was five
18 years old almost every day of my life, and this is
19 very exciting. I'm looking forward to seeing great
20 success. Thank you.

21 CHAIRMAN VAN CLIEF: Commissioner Dawson.

22 VICE CHAIRMAN DAWSON: Yes. I don't have a
23 whole lot left to say, but I would like to thank
24 Sarge Reynolds for having led the Commission
25 through some difficult times, and I'm sure that we

1 all appreciate that.

2 COMMISSIONER REYNOLDS: Thank you.

3 VICE CHAIRMAN DAWSON: I want to also say that
4 I really am thrilled to hear about what Debbie and
5 Jeb and Dr. Woogen and Tom Eshelman have told us
6 today. It's very exciting because we only dreamed
7 about it about a year ago that this would happen,
8 and here it is. So we congratulate you and pledge
9 that our support will be there.

10 I'm especially thrilled to hear that there will
11 be good news for the harness horsemen. I'm really
12 anxious to see that new track come about and will
13 be anxious to go and be there. So good job and
14 keep working and we'll be there to support you.

15 And again, with our friends from TwinSpires, I
16 again do hope that some resolution can be worked
17 out before our next meeting. Thank you.

18 CHAIRMAN VAN CLIEF: Commissioner Miller.

19 COMMISSIONER MILLER: I would just second what
20 everyone said, and I do want to make a special
21 thank you to the horsemen, harness horsemen,
22 Thoroughbred, the VEA, everyone, Gold Cup, Dr.
23 Allison, everyone that has worked so hard to keep
24 things going here in Virginia after some very
25 trying circumstances.

1 I do think the future looks good for racing in
2 Virginia and I'm looking forward to working with
3 Commissioner Van Clief and Commissioner Dawson as
4 we go forward.

5 CHAIRMAN VAN CLIEF: Thank you.

6 COMMISSIONER MILLER: And of course the other
7 commissioners, too, but under their leadership.

8 CHAIRMAN VAN CLIEF: Thank you very much, and
9 hopefully, we're gonna spread the tasks around as
10 much as possible.

11 COMMISSIONER MILLER: Oh, and I should thank
12 the staff. Our staff works under very trying
13 circumstances. They really do. I want to
14 publically thank them for their efforts.

15 And it comes to mind also the fact that, you
16 know, for the last year or so, the assistance we've
17 gotten from the Department of the Secretary of
18 Agriculture, Secretary of Agriculture department,
19 hands down the effort they put into racing is
20 tremendous.

21 You know in the past, we've just been an, I
22 don't know how you would characterize it in the
23 scheme of the growth and structure, but to have the
24 secretary take such a particular interest in what
25 we're doing and trying to help us achieve the goal

1 that I think the legislature intended us to
2 achieve, the secretary and the department and all
3 those people, we thank them.

4 CHAIRMAN VAN CLIEF: I think it's a great
5 point. I think we enjoy a relationship with not
6 only the secretary but the administration as a
7 whole that not many industries in many states
8 enjoy. So the stars are certainly aligned. I hope
9 it's gonna be a productive and know it's gonna be
10 an exciting year.

11 we have had our closed session for the day, I
12 believe. I don't think we need to go there again.

13 Before we adjourn, Bernie, if we could get
14 together and let's get cracking on a date for the
15 hearing for TwinSpires. We want to get that done
16 as quickly as possible.

17 That having been said, is there a motion to
18 adjourn?

19 COMMISSIONER REYNOLDS: So moved.

20 CHAIRMAN VAN CLIEF: Second?

21 VICE CHAIRMAN DAWSON: Second.

22 CHAIRMAN VAN CLIEF: Any opposed? Thank you
23 very much. Thank all of you.

24 NOTE: The meeting is adjourned at 12:02
25 p.m.

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CERTIFICATE OF COURT REPORTER

I, Sandra G. Spinner, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 13th day of January, 2016.

SANDRA G. SPINNER

COURT REPORTER