

1 VIRGINIA RACING COMMISSION

2 OCTOBER 2, 2019

3 STATE CORPORATION COMMISSION  
4 TYLER BUILDING  
5 COURTROOM C  
6 1300 EAST MAIN STREET  
7 RICHMOND, VA 23219

8 HEARING OF  
9 MS. SUSAN COONEY APPEAL FOR RACE #10  
10 HELD ON AUGUST 10, 2019 AT COLONIAL DOWNS  
11  
12  
13  
14  
15

16 In Attendance

17 Commission Members:

18 D.G. Van Clief, Jr., Chairman  
19 Stuart Siegel, Vice Chairman  
20 J. Sargeant Reynolds, Jr.

21 Commission Staff:

22 David S. Lermond, Jr., Executive Secretary  
23 Kimberly C. Mackey, Business Manager

24 Attorney General's Office:

25 Robert N. Drewry, Esquire

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1           CHAIRMAN VAN CLIEF: Okay, everybody. I  
2 am going to call to order this session of the  
3 Virginia Racing Commission and we will convene  
4 the Commission as a public meeting pursuant to  
5 Virginia Code 2.2-3700.

6           The Commission stewards on August 10th  
7 with regards to the tenth race at Colonial  
8 Downs disqualified the entrant Speed Gracer  
9 from first, placing him fourth. That decision  
10 has been appealed and contested on behalf of  
11 Quest Realty, the owners of Cooney Racing  
12 Stables, LLC, and we will hear testimony and  
13 consider submissions in that regard today.

14           Before I go any further, I would like to  
15 ask our counsel, Mr. Drewry, if he would like  
16 to outline the conditions or ground rules for  
17 us that we need to keep in mind as we go  
18 through the process.

19           MR. DREWRY: Yes, sir, Mr. Commissioner.  
20 Thank you. So just as Mr. Chairman said, the  
21 hearing is being held pursuant to the Virginia  
22 Racing Commission regulations, but it's  
23 convened as a public meeting given that there  
24 are at least three commissioners.

25           Further, if any Commissioner determines

1 that he or she has a conflict of interest or  
2 cannot afford to bear an impartial view, that  
3 Commissioner shall not take part in the review.  
4 That's within the regulations of the Virginia  
5 Racing Commission.

6 Lastly, this is at the outset.  
7 11VAC10-90-50 requires reviews of stewards'  
8 decisions involving the outcome of a race or  
9 riding/driving infraction to be conducted on  
10 the record of the stewards' proceedings.

11 Subsection Six of that same regulation  
12 limits presentations by both sides to arguments  
13 and comments regarding the record of the  
14 stewards' hearing which is before you.

15 CHAIRMAN VAN CLIEF: We do have one note  
16 here. Commissioner Nixon has advised me she  
17 feels she has a conflict of interest or at  
18 least a potential conflict of interest and  
19 would like to recuse herself. So with  
20 appreciation for that consideration,  
21 Commissioner Nixon, we'll accept that and  
22 release you from duty for the moment.

23 COMMISSIONER NIXON: Thank you.

24 CHAIRMAN VAN CLIEF: Thank you. All  
25 right. Our order of march today is we'll start

1 with whatever testimony the appellate would  
2 like to submit.

3 MR. QUINAN: Thank you, Mr. Chairman. My  
4 name is Mike Quinan. I'm an attorney with  
5 Thompson McMullan. I'm here representing Quest  
6 Realty, which is the owner of Speed Gracer.  
7 Here with me today is Alexis [inaudible], who  
8 is in-house counsel for Quest Realty and Susan  
9 Cooney, who is Speed Gracer's trainer.

10 My understanding as Mr. Drewry just  
11 explained is that what's before the Commission  
12 today is just the record of the stewards'  
13 hearing, and therefore, I don't plan to put on  
14 witnesses to testify outside of that. I'm  
15 simply going to discuss it and review it with  
16 you and offer comments on it.

17 Before I start doing that, I did want to  
18 join the chorus and address the silver lining  
19 here, which is the fact that this is arising  
20 out of racing at Colonial Downs which is, you  
21 know, a fantastic achievement by the Commission  
22 and by all the parties sitting in this room,  
23 many, many of the parties sitting in this room  
24 who worked very hard to make that happen, and  
25 by all reports it has just been an unmitigated

1 success, so congratulations to all.

2 I also wanted to make clear that we're not  
3 here today to criticize the stewards or to  
4 attack or contest their good will, their skill,  
5 their dedication. They've got a tough job and  
6 nobody gets everything right all of the time  
7 and in this one instance, we believe they  
8 didn't make the right decision in disqualifying  
9 Speed Gracer, but we certainly appreciate,  
10 applaud the job that the stewards do out there  
11 every day.

12 We are here to talk about the tenth race  
13 at Colonial Downs on August 10, 2019. That was  
14 a big race, the Edward P. Evans Stakes. The  
15 purse for that race was \$100,000. Of that,  
16 \$60,000 is to go to the first place winner,  
17 \$6,000 is to go to the fourth place winner.

18 Those particular prizes, first and fourth  
19 place, are significant because Speed Gracer was  
20 the first to cross the finish line. But after  
21 the stewards' inquiry, Speed Gracer was  
22 disqualified and demoted to fourth place and we  
23 do believe that disqualification was undeserved  
24 and should be overturned.

25 So at the finish line what we had was

1 first place, Number 3, Speed Gracer. Second  
2 place, Number 6, River Deep, and third place,  
3 Number 7, Black Prong, and fourth place, Number  
4 5, KD's Cat Bird. KD's Cat Bird is the horse  
5 that was interfered with one way or another.

6 As I've already noted, after the horses  
7 crossed the finish line, the stewards posted an  
8 inquiry and disqualified Speed Gracer, demoting  
9 him to fourth place, so that promoted River  
10 Deep to first, Black Prong to second and KD's  
11 Cat Bird to third. After the stewards did  
12 that, they did that after reviewing the video  
13 and based on their finding, Speed Gracer had  
14 bumped KD's Cat Bird and interfered with KD's  
15 Cat Bird's run.

16 Quest Reality filed a timely request for  
17 the Commission to review the stewards' decision  
18 and as we discussed, the stewards' review is  
19 limited to the record of -- the Commission's  
20 review is limited to the record of the  
21 stewards' hearing, which principally in this  
22 matter includes the stewards' report and the  
23 video that the stewards reviewed, and we're  
24 going to be looking at both of those, but the  
25 video is the best evidence of what really

1 happened and the stewards relied on the video.  
2 We won't delay too long in getting to the  
3 video, but first let me tell you what you  
4 should look for when you're watching the video.

5 One, there was some contact between Speed  
6 Gracer and KD's Cat Bird, but that contact did  
7 not interfere with KD's Cat Bird's race. There  
8 was a significantly greater contact shortly  
9 after between KD's Cat Bird by Black Prong.

10 You'll see in the video that this is what  
11 caused KD's Cat Bird rider to check his mount  
12 and this contact with Black Prong is what  
13 really interfered with KD's Cat Bird's race.

14 By the time that happened, Speed Gracer  
15 was already effectively -- had already  
16 effectively passed KD's Cat Bird. In fact,  
17 that contact by Black Prong pushed KD's Cat  
18 Bird behind Speed Gracer, not in to Speed  
19 Gracer. Speed Gracer had nothing to do with  
20 any interference with KD's Cat Bird's race.  
21 The interference was fully the fault of Black  
22 Prong. That's what you'll see on the video.

23 Before I show you the video, I want to  
24 show you the two other Commission's regulations  
25 to make sure that we're focused now on the

1 correct one.

2 Rule 11 Virginia Administrative Code  
3 10-140-210 is the interference rule. This is  
4 the rule that was cited in the notice that was  
5 given of the hearing today, but this is not the  
6 right rule. This rule provides that no jockey  
7 shall jostle another horse to interfere with  
8 that jockey or horse.

9 The rule that really applies to what is  
10 before you today is Rule 220, third party  
11 interference. That provides that if a horse or  
12 jockey interferes with or jostles another  
13 horse, the aggressor may be disqualified unless  
14 the interference was wholly caused by the fault  
15 of some other horse or jockey. So it's really  
16 Rule 220 that you need to be looking at rather  
17 than Rule 210.

18 So let's see now if we can look at the  
19 video. To give you little bit of an  
20 explanation, I've got three different video  
21 files up here. One is at regular speed, one is  
22 slow motion and one is a bit of a zoom in on  
23 the horses at issue.

24 I think it's worth looking at all of them.  
25 In fact, I think you need to watch them a



1 couple times. I'll try to stop them at  
2 appropriate places to really make sure you see  
3 what went on, especially because there are  
4 going to be three split screens. There are  
5 three different camera angles that are all  
6 shown at the same time, as you'll see.

7 So this is the tricky part. Okay. This  
8 is why I practiced this. All right. The sound  
9 is -- this is the full-speed video. What you  
10 can see here is the yellow cap, orange cap and  
11 the orange side; that is Black Prong, Number 7.  
12 This jockey wearing the green cap, and you'll  
13 see over here the green saddle towel; that's  
14 KD's Cat Bird. That's the horse that was  
15 interfered with, KD's Cat Bird. Number 3,  
16 Speed Gracer, has the blue saddle towel here  
17 and the white cap; so right over here. I'm  
18 going to let it run at full speed once, then  
19 I'll pause it a little bit.

20 What you can see is that it was Black  
21 Prong here who really came over and not KD'S  
22 Cat Bird over behind and not in to Speed  
23 Gracer. Speed Gracer is here.

24 This is the moment where there was some  
25 touching. What you'll see here is, although I

1 don't even know if you could say it amounted to  
2 jostling, there was some touching but didn't  
3 interfere with KD's Cat Bird's race or run  
4 right at this point.

5 KD's Cat Bird is still coming full on and  
6 is not being interfered with, but watch the  
7 extent to which Black Prong here comes over  
8 onto KD's Cat Bird and pushes KD's Cat Bird  
9 over, and also watch how far ahead Speed Gracer  
10 is by the time that happens.

11 Okay. Coming over and from the front view  
12 it's a little bit difficult to see exactly how  
13 far Speed Gracer is in front of KD's Cat Bird,  
14 but if you look at this camera one over here,  
15 especially as we move on a bit, you'll see that  
16 Speed Gracer has substantially moved ahead and  
17 you can tell the moment when the interference  
18 happened and it's just about when the horses --  
19 this white line is right in front of them.

20 You can see the reaction by the jockey  
21 sitting on KD's Cat Bird, but by the time it  
22 effectively happens, there's no way that Speed  
23 Gracer had anything to do with the interference  
24 that caused the jockey on KD's Cat Bird to  
25 check its mount.

1           I would ask you to watch this video one  
2 more time and then we'll look at the slow  
3 motion. Let's take a look this time at camera  
4 eight down here which shows a view from behind  
5 which also provides a good perspective.

6           It's a little blurrier, but you can  
7 certainly see green on KD's Cat Bird and you  
8 can see at this point how far Speed Gracer is  
9 pulling ahead. Now this is where Black Prong  
10 comes over and pushes KD's Cat Bird right  
11 behind Speed Gracer, not in to Speed Gracer.

12          Let me show you because I think it's  
13 helpful, the slow motion. All right. Let's  
14 give this a try. All right. Here is where we  
15 go into the real slow motion. This camera one  
16 is especially important in the slow motion.

17          You can tell. Look where Black Prong is  
18 at this point when Speed Gracer is already  
19 almost cleared past KD's Cat Bird and the  
20 interference has not happened yet. It is right  
21 about there or a little bit past, but you'll  
22 see the reaction by the jockey on KD's Cat Bird  
23 right there. Right there.

24          That's how far ahead Black Prong is when  
25 the real interference happened. It is not

1 correct to attribute that interference to Speed  
2 Gracer when Speed Gracer was that much farther  
3 ahead.

4 At the risk of showing you too much, I'm  
5 going to let you see what the third video on  
6 here. These videos are on a thumb drive here  
7 and I'm perfectly willing to make the thumb  
8 drive available to use as many times as you  
9 want during your deliberations.

10 If you need the laptop to view it, you all  
11 can use the laptop, but I think the more times  
12 you view this, the more times it's evident what  
13 was going on.

14 So this is just -- let me slow this down a  
15 little bit as well -- a little bit of a closer  
16 view. Once again, here is Black Prong. You'll  
17 see how far he comes over. He's over here now.  
18 He's coming over and we'll see how, you saw it  
19 on the other one, how far ahead Speed Gracer  
20 was. So again, I hope you'll take more time to  
21 look at the video during your deliberations if  
22 you need to.

23 What I want to show you now, we've offered  
24 a set of findings and conclusions and I found  
25 extra ones, but you may already have copies of

1 the findings and conclusions we submitted  
2 yesterday. I've got more if you'd like to have  
3 them.

4 what we're proposing happened is this,  
5 paragraph three on Page Two. The stewards'  
6 explanation is not supported by video footage.  
7 The video of the head-on and side camera angles  
8 conclusively shows, one: At the top of the  
9 stretch, River Deep is first on the rail with  
10 Black Prong second two paths over while KD's  
11 Cat Bird and Speed Gracer are advancing on the  
12 outside from the back of the pack.

13 Two: Across the track in deep stretch  
14 from the rail position out are River Deep,  
15 Black Prong, KD's Cat Bird and Speed Gracer.

16 Three: From the outside, Speed Gracer  
17 brushes KD's Cat Bird on the inside and then  
18 passes by a length, but in so doing does not  
19 cause KD's Cat Bird to lose momentum. That's  
20 exactly what that video showed.

21 Four: After Speed Gracer passes KD's Cat  
22 Bird, Black Prong on the inside veers sharply  
23 right, pushing KD's Cat Bird into the next lane  
24 and forcing his jockey to pull back on the  
25 reins and check to avoid running into Speed

1 Gracer, who is a length in front and five.

2 Because of Black Prong's interference,  
3 KD's Cat Bird lost momentum and finished behind  
4 Black Prong, River Deep and Speed Gracer.  
5 That's what we propose the Commission ought to  
6 make as a finding of fact in this matter.

7 Now, I just want to compare that to what  
8 the stewards' report says. I won't read the  
9 whole thing, but down in the far left  
10 highlighted there. After the stewards found  
11 that Speed Gracer bumped KD's Cat Bird twice in  
12 the deep stretch, the stewards found that the  
13 second bump forced KD's Cat Bird inward,  
14 causing the jockey to check his horse, Number  
15 5, KD's Cat Bird, when in tight quarters.

16 I think we saw in the video that it was  
17 Black Prong, not Speed Gracer, that caused that  
18 to happen a few moments later. During the  
19 stretch run Number 7, Black Prong, drifts out a  
20 little but left plenty of room for the Number  
21 5, KD's Cat Bird.

22 Again, clearly, in the video, Black Prong  
23 doesn't drift out a little; KD's Cat Bird does.  
24 Black Prong comes over significantly into the  
25 lane in which KD's Cat Bird was running and did

1 not leave plenty of room for KD's Cat Bird.

2 This says: If Speed Gracer had not bumped  
3 the Number 5, KD's Cat Bird inward, the Number  
4 5 would not have had to check his mount.

5 That's just not what the video shows at all.

6 So we think the video, which is part of  
7 the stewards' record and speaks for itself, and  
8 with all respect to the stewards who had a  
9 tough job and had a lot of races to look at  
10 that day and there was a lot going on, we just  
11 think they got this one wrong.

12 So what really happened out there was that  
13 the interference was wholly caused by the fault  
14 of some other horse, not Speed Gracer. We ask  
15 that the stewards' disqualification of Speed  
16 Gracer in the tenth race at Colonial Downs on  
17 August 10, 2019 should be overturned and Speed  
18 Gracer be restored to his rightful place as  
19 first place finisher.

20 We propose the findings and conclusions  
21 and I've got more copies of those if you need  
22 them. I would like to offer you the thumb  
23 drive if you want to review it during your  
24 deliberations. If you need the laptop, that's  
25 fine.

1 I also have a set of binders with the  
2 still photos that were just pulled from the  
3 videos if those would be helpful. I've got  
4 three binders with color photos. They're just  
5 still photos pulled from the video. To tell  
6 you the truth, I think the videos are the most  
7 significant evidence.

8 I'm not sure whether I need to offer into  
9 evidence in formality of this the video or any  
10 --

11 MR. DREWRY: I don't think it would hurt.  
12 It's going to be in the record anyway.

13 MR. QUINAN: Okay. Well, I do want to  
14 make sure I offered into evidence the video and  
15 of course the regulations are the regulations.  
16 They don't have to be, but the stewards'  
17 report, as well as we'd like to make sure  
18 that's in evidence.

19 The findings and conclusions are in the  
20 nature of a pleading, so I don't think those  
21 need to be made an exhibit, but thank you. If  
22 you have any questions, I'd be glad to try to  
23 respond.

24 CHAIRMAN VAN CLIEF: All right. We'll  
25 include both the copy of the video and the



1 ruling as evidence and I think we may take you  
2 up on your offer to utilize the materials you  
3 have there, including the still photos in your  
4 notebook if we could do that.

5 MR. QUINAN: That would be great.

6 CHAIRMAN VAN CLIEF: It might be useful.  
7 At this point, Mr. Quinan, if there is nothing  
8 further you'd like to present?

9 MR. QUINAN: No. That's our case.

10 CHAIRMAN VAN CLIEF: Okay. Thank you very  
11 much. At this point then, I think it would be  
12 appropriate to call on our stewards, and  
13 Mr. Zimmerman, who represents the stewards, to  
14 present whatever they care to and make any  
15 comments both on their judgment and  
16 Mr. Quinan's argument.

17 MR. ZIMMERMAN: Thank you. Before we look  
18 at the video further, I'll let you know a  
19 little bit of how we operate. There are two  
20 stewards in the stand. Two of them are  
21 watching the race live with their binoculars.  
22 The third steward is at a video wall where  
23 we've got large screens, high definition.  
24 We're able to slow it down, speed it up.

25 In this case, all three of us saw the

1 incident. We hung the inquiry sign. Next, we  
2 get a phone call from the trainer of KD's Cat  
3 Bird claiming foul, specifically against the  
4 winner.

5 Next, we get a call from the outrider that  
6 the rider of KD's Cat Bird is claiming foul  
7 against the winner. Not against Black Prong,  
8 but against the winner.

9 So then we obviously are reviewing the  
10 video. We've got three pieces of evidence.  
11 We've got the testimony from the riders which  
12 we take later before we make a ruling. We have  
13 what we saw watching the race live and we've  
14 got the video.

15 Turning to the video, it's important, and  
16 Dave, maybe you could help me here, to back up  
17 and take a look at what happens before the  
18 video that we've just seen.

19 The horse on the outside is Speed Gracer.  
20 Look where they are on the race course and look  
21 how far they came across that racetrack. Bump.  
22 Another bump. Those horses clipped heels  
23 there. It's lucky that horse didn't come down  
24 in front of that field of horses.

25 That was careless riding on the part of --

1 let's take a look at it again. He makes no  
2 effort to correct -- the course's straightest  
3 path for that horse is straight to the finish  
4 line. There's no reason for him to drift all  
5 the way across -- halfway across the racetrack.  
6 He's swinging his arm instead of getting his  
7 horse turned and straightened out. Bumps a  
8 couple times.

9 That inside horse does come out. We've  
10 got testimony from that rider. That was not  
11 something that escaped our attention.

12 So before the race is made official, we  
13 spoke with three riders; the rider of KD's Cat  
14 Bird who made a claim of foul against the  
15 winner. We spoke to the jockey on Speed Gracer  
16 and we also spoke to the rider on Black Prong,  
17 who was to the inside.

18 Now, the rider claiming foul said he'd  
19 been fouled by the winner. We asked him what  
20 about the bump from the inside. He said that  
21 wasn't a problem. All the pressure came from  
22 the outside.

23 We talked to the rider on Black Prong. He  
24 said my horse did come out. He bumped the  
25 other horse. They were pretty much alongside

1 each other. KD's Cat Bird was moving well.  
2 Looked like it was gonna go past Black Prong,  
3 but the horse on the outside took away the  
4 room. There wasn't any room for that horse.  
5 He got pushed back, clipped heels and luckily  
6 nobody came down. The rider stood up, had to  
7 take back and get speed by the neck.

8 Now, the last thing that the stewards want  
9 to do is take a horse down. When you go to  
10 steward school and they talk about Keene  
11 Dangerfield -- DG, you probably knew Keene  
12 Dangerfield. He was a widely respected steward  
13 in Kentucky and he has a few guiding principles  
14 that they teach in steward school and about  
15 every other continuing education course you  
16 attend.

17 One of the most important principles is  
18 when in doubt, leave it alone. Well, the  
19 stewards were not in doubt in this case. It  
20 was unanimous. The rider got three days for  
21 careless riding. It was a dangerous situation  
22 and we disqualified the horse who we thought  
23 had caused -- you can see the rider belatedly  
24 cocks that horse's head to the outside, but  
25 he'd come four or five lanes over. Bump, bump,

1 bump.

2 Now the horse heels got clipped that  
3 pulled in front. Wasn't Black Prong whose  
4 heels got clipped and it wasn't Blank Prong  
5 that the rider claimed foul against. It was  
6 Speed Gracer.

7 So I think you may have some doubt in your  
8 mind, but I think when you look to substitute  
9 your judgment for the expert opinion of the  
10 stewards who listened to the riders' testimony,  
11 watched the race live and watched this video  
12 quite a few times, I would keep Keene  
13 Dangerfield's admonition in mind. When it  
14 doubt, you leave it alone. Any questions?

15 CHAIRMAN VAN CLIEF: Could we see that  
16 video from the top of the stretch one more  
17 time, please?

18 MR. ZIMMERMAN: Yes.

19 CHAIRMAN VAN CLIEF: And don't stop it.  
20 Just play it.

21 MR. LERMOND: Would you like to see it in  
22 slow motion or?

23 CHAIRMAN VAN CLIEF: That's good.

24 MR. ZIMMERMAN: That's Speed Gracer on the  
25 outside making a -- fortunately not straight.

1 CHAIRMAN VAN CLIEF: Let's do it one more  
2 time, please.

3 MR. LERMOND: Sure. We can do it as many  
4 times.

5 MR. ZIMMERMAN: Speed Gracer continues to  
6 drift in. Careless and dangerous.

7 CHAIRMAN VAN CLIEF: Do my fellow  
8 Commissioners have any questions for any of the  
9 speakers here?

10 MR. DREWRY: You all are not allowed to  
11 speak, unfortunately. Solely on the appeal  
12 between Speed Gracer and the stewards.

13 CHAIRMAN VAN CLIEF: For the record, the  
14 only admissible testimony is from the  
15 appellants that have appeared here.

16 MR. DREWRY: The parties. The other  
17 parties that received notice are required by  
18 regulation to receive notice of the hearing.

19 MR. QUINAN: Mr. Chairman?

20 CHAIRMAN VAN CLIEF: Mr. Zimmerman,  
21 anything further?

22 MR. ZIMMERMAN: No.

23 CHAIRMAN VAN CLIEF: Mr. Quinan.

24 MR. QUINAN: I was going to say if I could  
25 make a quick point. I don't have a lot to say,

1 but it appears that the stewards have a problem  
2 with Speed Gracer moving over before the  
3 interference happened, and to tell you the  
4 truth, I'm not in a position to comment on that  
5 because that's not what's before you today.  
6 what's before you today is who caused the  
7 interference.

8 Even if there was a problem, as I said,  
9 I'm not prepared to admit that or address it,  
10 but even if there was a problem with Speed  
11 Gracer moving too far over from one lane to  
12 another, even if that is a problem, when Black  
13 Prong came over and knocked KD's Cat Bird  
14 behind Speed Gracer, that was the interference  
15 that was wholly caused by the horse or the  
16 other jockey, which means it satisfied this in  
17 the regulation and that means that the horse  
18 that interfered or jostled the horse previously  
19 cannot be disqualified under your own  
20 regulation.

21 So that's my only point, is there may have  
22 been a number of things that have gone on in  
23 the course of that race, but once Black Prong  
24 came over and pushed KD's Cat Bird behind Speed  
25 Gracer like that, then Black Prong was the

1 aggressor for purposes of the interference.  
2 Thank you.

3 CHAIRMAN VAN CLIEF: Thank you.

4 MR. ZIMMERMAN: May I speak again?

5 CHAIRMAN VAN CLIEF: Mr. Zimmerman.

6 MR. DREWRY: Then the attorney will get  
7 the last word.

8 MR. ZIMMERMAN: There's no question that  
9 Black Prong contributed to the situation. He  
10 wasn't, as that regulation says, wholly and  
11 solely responsible for what happened. There  
12 were several bumps coming down the line.

13 KD's Cat Bird didn't clip heels with Black  
14 Prong. The jockey and trainer didn't claim  
15 foul against Black Prong. He contributed to  
16 it, but he was surely, in the stewards'  
17 opinion, not wholly responsible for what  
18 happened.

19 CHAIRMAN VAN CLIEF: Mr. Quinan?

20 MR. QUINAN: I don't have anything further  
21 to add. Thank you.

22 CHAIRMAN VAN CLIEF: Okay. Thank you. I  
23 think it would be appropriate at this juncture  
24 for us to go into closed session for purposes  
25 of discussing with counsel.



1           So I would like to move that the VRC move  
2 into closed session for the purpose of  
3 consulting legal counsel on the administrative  
4 appeal matter before us, a matter lawfully  
5 exempted from the open meeting requirements  
6 under 2.2-3711(8)(7), which allows for  
7 consultation with legal counsel regarding  
8 specific legal matters or pertaining to actual  
9 or probable litigation.

10           I'll make a motion that we go into closed  
11 session.

12           COMMISSIONER SIEGEL: Second.

13           CHAIRMAN VAN CLIEF: Thank you very much.  
14 Dave, have we got a place we can go?

15           MR. QUINAN: If I can suggest, maybe the  
16 rest of us could clear the courtroom if you  
17 want to view the videos on these screens here,  
18 because I'm not sure I could effectively move  
19 it back into that conference room and make it  
20 work.

21           CHAIRMAN VAN CLIEF: Okay.

22           MR. QUINAN: If counsel wants me to, I can  
23 show them how to --

24           MR. DREWRY: I'd like to think I'm  
25 technologically savvy.

1           CHAIRMAN VAN CLIEF: That's a fair  
2 suggestion. Let's go ahead and do that if  
3 everybody doesn't mind and we'll let you know  
4 when we're done and we'll finish it up here.

5           NOTE: The hearing goes into closed  
6 session at 11:40 a.m. and further discussion is  
7 held in private; thereafter, the meeting  
8 resumes at 12:06 p.m. as follows:

9           CHAIRMAN VAN CLIEF: Okay, everybody.  
10 Thank you for your patience and bearing with  
11 us. The first thing we need to do is to take  
12 ourselves out of closed session.

13           So with that in mind, I move that the  
14 Virginia Racing Commission's closed meeting  
15 pursuant to 2.2-3711(a)(8)(7) be adjourned and  
16 that the VRC return immediately to open session  
17 and whereas, 2.2-3712(d) requires certification  
18 by the VRC that such closed meeting was  
19 conducted in conformity with Virginia law.

20           Now therefore, be it resolved that the VRC  
21 hereby certifies that, one, only public  
22 business matters lawfully exempted from open  
23 meeting requirements by Virginia law were  
24 discussed in the closed meeting; and Number  
25 Two, only such public business matters as were

1 identified in the motion convening closed  
2 meeting were heard, discussed or considered by  
3 the Virginia Racing Commission.

4 We now need to take a roll call vote.  
5 Commissioner Siegel.

6 COMMISSIONER SIEGEL: Yes.

7 CHAIRMAN VAN CLIEF: Vice Chairman  
8 Reynolds.

9 COMMISSIONER REYNOLDS: Yes.

10 CHAIRMAN VAN CLIEF: I vote aye as well.  
11 Thank you very much. Motion passes. We are  
12 now back in open session.

13 I'll briefly make a statement on behalf of  
14 my fellow Commissioners and then I'll ask them  
15 if they have anything to add to it.

16 First of all, I'd like to point out that  
17 one of our most weighing and serious  
18 responsibilities as a Commission is to ensure  
19 the Commonwealth of Virginia that we enforce  
20 the highest quality, fairest sport with the  
21 greatest level of integrity that we can  
22 possibly ensure and we are doing our best to do  
23 that here today.

24 That having been said, we have reviewed  
25 the record on multiple occasions here today.

1 we've listened carefully to the comments and  
2 the arguments made by the parties. We have  
3 watched the video record that has been  
4 submitted to us today and we've done so, I want  
5 to point out, with particular attention to the  
6 totality of the stretch run beginning at the  
7 head of the stretch and carrying on throughout  
8 the race.

9 We feel from what has been submitted to us  
10 on the record today that we are prepared to  
11 uphold and that evidence upholds the stewards'  
12 ruling; therefore, I would like to entertain a  
13 motion from either of my fellow Commissioners  
14 to uphold the stewards' ruling with regards  
15 particularly or specifically I should say to  
16 the order of finish in the tenth race at  
17 Colonial Downs on 10 August 2019.

18 COMMISSIONER REYNOLDS: So moved.

19 COMMISSIONER SIEGEL: Second.

20 CHAIRMAN VAN CLIEF: Thank you. We have a  
21 motion and a second. All in favor, signify by  
22 saying aye.

23 NOTE: The Commission votes aye.

24 CHAIRMAN VAN CLIEF: Any opposed? The  
25 motion carries unanimously. The stewards'

1 ruling is upheld and we will issue a written  
2 decision shortly. Thank you very much.

3 with that, I think we can go ahead and I'd  
4 ask for a motion to adjourn. Before I do that,  
5 any further comments from either of you that  
6 you'd like to put on the record? Okay. Thank  
7 you very much. We do need a motion to adjourn.

8 COMMISSIONER REYNOLDS: So moved.

9 CHAIRMAN VAN CLIEF: Thank you.

10 COMMISSIONER SIEGEL: Second.

11 CHAIRMAN VAN CLIEF: All in favor, signify  
12 by saying aye.

13 NOTE: The Commission votes aye.

14 CHAIRMAN VAN CLIEF: Any opposed? No. We  
15 are adjourned. Thank you all very much for  
16 your patience.

17  
18 NOTE: The hearing is adjourned at  
19 12:10 p.m.

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## 1 CERTIFICATE OF COURT REPORTER

2  
3 I, Sandra G. Spinner, hereby certify that  
4 having first been duly sworn, I was the Court  
5 Reporter at the meeting of the Virginia Racing  
6 Commission at the time of the hearing herein.

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

10 Given under my hand this 30th day of December,  
11 2019.

12  
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14 \_\_\_\_\_  
15 Sandra G. Spinner  
16 Court Reporter  
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