

1 VIRGINIA RACING COMMISSION

2 May 7, 2014

3 10700 Horseman's Road

4 New Kent, VA 23124

5 Commencing at 10:00 a.m.

6

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COMMISSION MEMBERS:

J. Sargeant Reynolds, Jr., Chairman

10 D.G. Van Clief, vice Chairman

Carol G. Dawson

11 Stran L. Trout

Clinton Miller

12

13

COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary

14 David S. Lermond, Jr., Deputy Executive Secretary

Kimberly C. Mackey, Office Administrator

15 Joseph M. Roney, Director of Security & Operations

C. Richard Harden, DVM, Equine Medical Director

16

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ATTORNEY GENERAL'S OFFICE

Joshua E. Laws, Esquire

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1 MR. REYNOLDS: I'm going to call today's
2 Commission meeting to order, please. Thank you for
3 coming. I certainly expect and hope that this is a
4 productive meeting today.

5 The first item of business is to approve the
6 minutes of the regular meeting of March 27, 2014.
7 The minutes are behind Tab One. Are there any
8 comments, additions, corrections to the minutes? If
9 not, do I hear a motion to approve the minutes?

10 MS. DAWSON: I move that we approve the
11 minutes.

12 MR. TROUT: Second.

13 MR. REYNOLDS: All those in favor?

14 MS. DAWSON: Aye.

15 MR. VAN CLIEF: Aye.

16 MR. REYNOLDS: Motion carries. Behind Tab Two,
17 we have the minutes from our hearing held on April
18 11th, 2014, behind Tab Two. They're pretty basic.

19 MR. TROUT: Mr. Chairman, I move they be
20 approved.

21 MR. REYNOLDS: Do I hear a second?

22 MR. VAN CLIEF: Second.

23 MR. REYNOLDS: Did I get a second?

24 MR. VAN CLIEF: You did.

25 MR. REYNOLDS: Okay. All those in favor?

1 MS. DAWSON: Aye.

2 MR. TROUT: Aye.

3 MR. REYNOLDS: Yes?

4 MR. DUNAVANT: I would like to make some
5 comments on that. I wasn't here for that hearing,
6 but I wanted to inform the Commission that the
7 harness horse people were extremely embarrassed and
8 upset by the Commission's decision to vacate a
9 judge's ruling in that matter.

10 I don't know how many of you are familiar with
11 what Epogen is. Until very recently, we were unable
12 to test for it, and it's a big, bad thing in cheating
13 and horse racing, and I know the job that Dr. Harden
14 has done in trying to catch these individuals that
15 cheat, and they kind of had this person red-handed,
16 and when I was at Rosecroft last week is when I heard
17 about it, and we're kind of the laughing stock of the
18 harness horse industry now for vacating that judge's
19 decision.

20 MR. REYNOLDS: Okay.

21 MR. DUNAVANT: My people want to know is there
22 any way that some criminal charges aside from that
23 can be brought against this individual so that we're
24 assured that he is ruled off everywhere in this
25 country.

1 MR. REYNOLDS: Okay.

2 MR. DUNAVANT: You know, it's just not
3 acceptable to the harness horse people for this
4 individual to be vindicated.

5 MR. REYNOLDS: Okay. Well, are you done?

6 MR. DUNAVANT: Yes.

7 MR. REYNOLDS: I don't think anybody on this
8 commission disagrees with those comments that he was
9 caught red-handed. I'll ask Josh to maybe talk a
10 little bit about why they were let off. It wasn't
11 because of what he did or didn't do, but there were
12 some serious technicalities that arose in this.

13 We all felt that he -- obviously, he did
14 something, they tried to cover it up, but I want to
15 turn it over for Josh to speak to that a little bit,
16 and also maybe to speak about pursuing criminal
17 charges in that thing.

18 MR. LAWS: Good morning. My name is Josh Laws.
19 I'm from the Attorney General's office and I'm
20 counsel for the Racing Commission, and I'll go ahead
21 and address the criminal charge aspect first, and
22 then I will --

23 MR. DUNAVANT: Can you speak up a little bit?
24 I'm old and hard of hearing.

25 MR. LAWS: If you can't hear me, just stop me

1 and ask me to speak louder. I don't have a problem
2 with that.

3 Regarding the criminal charges aspect, we did get
4 in contact with the New Kent Commonwealth's attorney.
5 The Commonwealth's attorney in any jurisdiction in
6 Virginia is the person who is responsible for
7 prosecuting criminal charges.

8 My office generally doesn't handle criminal
9 charges, with some exceptions. We prosecute sexually
10 violent predators and things like that, but this is
11 not one of the areas that we handle. We don't have
12 the jurisdiction to handle it, so we referred it to
13 the New Kent Commonwealth's attorney's office.

14 My understanding from them is that the
15 evidentiary burden in criminal court is you have to
16 prove a charge beyond a reasonable doubt, so it's a
17 higher burden than we have here, and that; one, the
18 evidence just wasn't there to prove a criminal
19 conspiracy, because that's what we would have to
20 charge them with, is a criminal conspiracy.

21 There wasn't enough evidence to meet the beyond a
22 reasonable doubt standard; and two, the people who we
23 would prosecute, mainly, Dean Eckley, is in Ohio, so
24 Virginia doesn't have the authority to actually issue
25 a subpoena or an arrest warrant and then have it

1 enforced in Ohio. He would have to come back to
2 Virginia, then we would arrest him, but beyond that,
3 our criminal enforcement powers stop at our border,
4 so we couldn't, you know, go over to Ohio and bring
5 him back, in other words.

6 And two, the reason that the stewards' decision
7 had to be vacated. In the Virginia regulatory
8 scheme, there's probably eleven things that the
9 Racing Commission personnel have to do in order to
10 preserve the chain of custody and honor the due
11 process rights as established in the regulations, and
12 our folks did a great job; they got ten of eleven.
13 They did by the book on ten. They did exactly what
14 they were supposed to.

15 On the eleventh one, there was a little bit of a
16 hiccup, partly because of the actions of Dean
17 Eckley's agent, but that little hiccup was fatal to
18 the case.

19 Under Virginia Code 2.2, I think it's -- I
20 haven't looked at it in a month. I think it's 2.2 --
21 I'm not gonna quote it. I don't remember it off the
22 top of my head. 2.2-400.2, maybe.

23 There are certain standards that this Commission
24 has to meet when making a decision, and because we
25 had that one hiccup, we couldn't meet that standard,

1 and so it was my advice to the Commission that if
2 they upheld the stewards' decision and it was
3 appealed to the Circuit Court, that there was a
4 greater than not chance that we would lose.

5 So I'm the one who suggested that the decision
6 had to be vacated, because I felt that that's what
7 the law required. I wasn't happy about it. I think
8 you're right that it's a horrible drug and the
9 evidence that we had indicated that he gave that
10 horrible drug to that horse, but unfortunately, the
11 law said that we had to vacate it. I'm not happy
12 about it, but I think that's the --

13 MR. DUNAVANT: Let me ask you this. Now, I can
14 understand that. Is there any way that this
15 Commission or the management of Colonial Downs can
16 make it aware to the other states and jurisdictions
17 that this wasn't just a vacated decision; that there
18 were complications in how this split sample was
19 handled and the Virginia Commission is not letting
20 this individual come back to the state and race?

21 MR. LAWS: Yeah. There's two responses I can
22 give you to that. I know for a fact Colonial Downs
23 has issued a no trespass order to Dean Eckley, and if
24 I'm wrong, please correct me, but he's not allowed
25 back to this racetrack.

1 And two, the decision that I'm drafting, which
2 will be the decision of the Commission once they
3 review it and once they approve it, that's public
4 record. So the factual findings that are contained
5 in that decision lay out what the evidence factually
6 showed occurred. Then it has a legal analysis on why
7 the Commission had to reach the decision it reached.

8 But the factual findings are public record, so
9 what the Commission believes the facts show and what
10 the Commission found as facts, the activity that Dean
11 Eckley engaged in and his agent engaged in will be
12 public record, and any state that wants to look at it
13 can look at it.

14 MR. DUNAVANT: But I'm saying I don't know are
15 they gonna want to hunt it down. Is there some way
16 you can send that to them so you know they get it?

17 MR. LAWS: I think a 49 cent stamp would be the
18 easiest way to do it. I'm not saying that the
19 Commission will.

20 MR. DUNAVANT: My association could do that, if
21 necessary?

22 MR. LAWS: Yeah. Any person, any corporation,
23 anybody who thought it would be good to let those
24 bodies know about it can send it.

25 MR. PETRAMALO: Doesn't it get included in the

1 RCI database?

2 MR. HETTEL: They only publish rules. In terms
3 of the complete analysis of the law, I'm not sure
4 they do that. We can certainly send it to them
5 though. It's like ejection notices. They don't
6 include that in their database.

7 MR. REYNOLDS: Mr. Van Clief.

8 MR. VAN CLIEF: Could I just, speaking as an
9 individual, I'd like to have a brief comment as well.
10 Just so there's no question, and for the record, yes,
11 we are familiar with EPO. We know what it does and
12 how it works and why it's bad and what it can do to
13 horses, as well as to the integrity of the sport.

14 Nobody more than this Commission wanted to mete
15 out what we felt was gonna be justice, and had there
16 not been a serious legal obstacle to doing that, I'm
17 sure we would have been on record with something that
18 you would have found much more satisfactory.

19 I'd also like to make the point that I think this
20 Commission is attuned to those types of issues as
21 perhaps any, and I would point out that at this
22 juncture, we are one of only four states and probably
23 one of the first to have approved the new and
24 substantially tougher medication rules. So it's very
25 much in our gun sites and we are looking to be as

1 tough as we can on those kind of perpetrators.

2 MR. DUNAVANT: Thank you.

3 MR. REYNOLDS: Okay. Is that all?

4 MR. DUNAVANT: Yep.

5 MR. REYNOLDS: Thank you.

6 Before we get to the next part of the meeting, I
7 actually wanna take a minute to welcome back
8 Commissioner Clint Miller. Clint, I don't know why,
9 but great to have you back. We need you and it's
10 great to see you again after a couple years.

11 Commissioner Miller is a past chairman of this
12 Commission. He brings a lot of experience to the
13 table and we look forward to working with you.

14 MR. MILLER: Thank you.

15 MR. REYNOLDS: Thank you for joining us again.

16 MR. MILLER: I think I'm glad to be back. I
17 really appreciate it.

18 MR. REYNOLDS: We're glad to have you.

19 With that, I will move on to Commissioners'
20 comments, and I will start with Commissioner Miller,
21 if you have any comments.

22 MR. MILLER: No comments, except, again, I look
23 forward to working with all of you. I missed all of
24 you. I really did.

25 MR. REYNOLDS: Commissioner Trout.

1 MR. TROUT: Just I'll point out once again the
2 Board of Supervisors member Ron Spears is here with
3 us today monitoring this and trying to figure out how
4 the county is gonna balance the budget without the
5 horsemen and Colonial Downs coming together on some
6 kind of an agreement. I told him not to take a check
7 home today.

8 MR. REYNOLDS: We're gonna get it done.
9 Commissioner Dawson?

10 MS. DAWSON: Yes. Thank you. First of all, I
11 do want to say that I do echo everything that
12 Commissioner Van Clief just said about the Eckley
13 case, that he accurately reflects how the Commission
14 feels.

15 Secondly, I don't know how many of you have read
16 the Richmond Times-Dispatch this morning, which I
17 always try to do, and I didn't have time to bring it
18 with me, but there is an editorial on the editorial
19 page about a gentleman who just passed away who was a
20 very accomplished gentleman.

21 But what the editorial did not say was that he
22 was also a native Virginia Thoroughbred breeder. His
23 name is Kenneth Tomlinson. He was an old friend of
24 mine and had nothing to do with the horse world, but
25 it was significant to me, because the last time I

1 heard from him was about the Colonial Downs
2 horsemen's contract dispute and his saying to me that
3 I do hope you will do everything possible to make
4 sure that we do have racing at Colonial Downs this
5 year.

6 So I just want to comment that he was one of the
7 people that supported racing in the Commonwealth and
8 he will be very much missed. I know he was a member
9 of the ETA and very active in the Thoroughbred
10 industry. So he deserved the accolades he got in the
11 Times-Dispatch, but they forgot to mention his horse
12 connections.

13 MR. REYNOLDS: Thank you, Commissioner.

14 I guess with my comments, you know, here we are,
15 it's May 7, 2014, and we still don't have racing
16 dates. We have been talking and talking since
17 January about this. Obviously, we've had many
18 articles in the paper about this, and quite frankly,
19 it's time for the talking to stop and it's time for
20 action.

21 I blame myself for a little bit. In my business
22 world, I'm an extremely patient person. I've always
23 negotiated with extreme patience and not pushing too
24 hard, just let the sides come together. It's worked
25 well in my life; it's not working well now.

1 So in my mind, today is the day. Today is the
2 time to take action. I think I urge my fellow
3 commissioners that we will take action today and we
4 will pass a resolution and we will have racing dates
5 in 2014.

6 That's about all I have to say. I could go on
7 for hours, but I've talked to almost all of the
8 stakeholders many, many times, Mr. Jacobs many, many
9 times, Debbie, Ferris and Frank some, and it's just
10 time for action, and with that, I'll turn it over to
11 Commissioner Van Clief.

12 MR. VAN CLIEF: Thank you, Mr. Chairman. I
13 agree with your comments about the four months of
14 fruitless negotiations that we've undergone.

15 I'm sorry we are sitting here as late in the year
16 as it is without a contract, and I only wish that the
17 way we handled it had been a little different.

18 After 17 years, regardless of the nature of the
19 dust-up, these parties have always managed to come to
20 a compromise, work out a business plan and go
21 forward. Certainly would have helped if they would
22 have done that again, but here we sit.

23 I'd like to, if I could, Mr. Chairman, maybe take
24 a few minutes to just make some personal observations

25 --

1 MR. REYNOLDS: Yes.

2 MR. VAN CLIEF: -- about where we are and our
3 job, and I'll be prepared, if you would desire at
4 whatever point during the meeting if you wish to make
5 a motion, and I will talk a little bit about that.

6 My view is that we are at a tipping point,
7 perhaps an historic tipping point in the history of
8 Virginia racing, which if you think about it actually
9 goes back a couple hundred years.

10 As the Chairman said, it's time to take action.
11 I think failure to do so and in that regard failure
12 to run racing dates during 2014 potentially has the
13 direst of consequences for our sport and our
14 industry.

15 As I think everyone in the room knows, it's the
16 Racing Commission's responsibility not just to
17 regulate our sport, but we're charged with the
18 responsibility of sustaining it, of promoting it, and
19 if we can, of growing it, and I think that's turned
20 into a bigger job than regulating it at this point.

21 when you think about what racing, as the point of
22 the spear, if you will, supports in this state, it
23 supports a tremendous amount of commerce and
24 agriculture. whether it's training centers, breeding
25 farms, lay-up operations, whatever the nature of the

1 operation, racing helps to support, and certainly
2 over the last 17 years has directly supported the
3 maintenance of thousands of acres of green space. It
4 helps to develop and maintain a commerce not just of
5 racing and breeding, which we focus on as our key
6 constituents a lot of the time, but all the
7 collateral industries with which you're all familiar.

8 whether it's the back office functions like
9 insurance and accounting, or things you see as you
10 drive along the road; the production of feed,
11 equipment manufacture and sales, fencing, tack,
12 veterinary services. The list goes on, and on, and
13 on, and whether you express it as GEP or financial
14 impact or whatever stats you like to use, racing
15 supports an infrastructure, even as limited as racing
16 is here Virginia, which develops millions of dollars
17 in revenues, tax base and in capital assets.

18 After having sat on this Commission for now 16
19 months and watched this, what has become a glacial
20 process draw out over four months, I'm convinced that
21 we have to have adequate days of live racing to
22 continue to support that infrastructure and those
23 jobs, much of which is the life work of some of our
24 citizens and residents of this state while we
25 transition to a new model.

1 we certainly have no objection to moving away
2 from the status quo, and some of you heard me opine
3 that I'd like to move away from the status quo as
4 quickly as we can.

5 I think our responsibility as commissioners is to
6 our entire industry and our constituents, and that
7 includes our horsemen, our breeders and our
8 racetrack.

9 we don't deny that Colonial Downs has every right
10 to turn a profit and to deliver a positive return on
11 their investment to their shareholders, and they made
12 it clear they need a new model. We agree.

13 But I believe that to go dark, if you will, to
14 not have live racing of the type we've had this year
15 invites disaster.

16 we are already leaving a lot of money on the
17 table. The numbers that we were just given this
18 morning would indicate an estimated \$17 million-plus
19 in lost handle and a total lost revenue in excess of
20 \$620,000, among them the relevant stakeholders.

21 so I think it is absolutely essential that we go
22 forward with racing this year, that we do it in a
23 manner that will support a Thoroughbred race meet,
24 and that we do it as swiftly as possible to get back
25 in to action our satellite wagering facility, stop

1 leaving these dollars on the table, and perhaps most
2 importantly of all, we have turned off our customer
3 base. We are hearing from them almost every day, and
4 when horse racing loses customers -- and we talked
5 about this trend before.

6 Just to remind you, the latest study done by
7 McKenzie Associates a couple of years ago indicated
8 that racing nationally is losing four percent of its
9 customers every year; not a sustainable trend.

10 I don't know what we're losing here now, but they
11 will go away if we continue doing what we're doing,
12 which is nothing, and they may not come back. So
13 digging ourselves out of a hole any deeper than we've
14 already dug is not a pleasant prospect.

15 Personally, I am prepared to offer a motion to
16 the Chair and to my fellow commissioners that will
17 mandate a five-week 25-day meet, run during the
18 customary summer dates.

19 I offer it as a transitional year. I think it's
20 important that we run during this transition, but I'm
21 also going to ask my fellow commissioners to recommit
22 to a serious planning process that will result in a
23 new business model which will give Colonial Downs
24 what it justifiably wants and needs in terms of
25 building new product, high-end racing, but at the

1 same time provides continuity for our racing
2 infrastructure so that there is enough racing to
3 maintain that infrastructure and those jobs.

4 I think we also need to commit to building a
5 Virginia racing partnership, one that has been
6 shattered. I've always looked at racing as a
7 partnership. With the state, it's a regulated
8 agency, so here we sit representing the state, the
9 racetrack operator and the horsemen.

10 That partnership has obviously been fractured,
11 but I'm an eternal optimist, and I think we can put
12 it back together and I think we must.

13 I think if we don't race this year, then we risk
14 a permanent fracture of that partnership, and without
15 such partnership, it's my opinion as well that
16 developing the political wherewithal to go get done
17 what we're going to need to get done to build a new
18 model is going to be very, very difficult, if not
19 impossible.

20 To give some credit where it's due, throughout
21 this sort of painful negotiating period, there have
22 been some creative ideas, and I think there are some
23 exciting concepts which have been put on the table,
24 and I would love to see us follow up on them.

25 Mr. Chairman, thank you.

1 MR. REYNOLDS: Thank you, Commissioner. With
2 that, we'll go to the executive secretary's report.

3 MR. HETTEL: Yes, sir.

4 MR. REYNOLDS: Do we have any committee reports
5 today?

6 MR. HETTEL: No.

7 MR. REYNOLDS: Okay. Go ahead. I'm sorry.

8 MR. HETTEL: Okay. No problem.

9 I'd like to start my report by asking Dr. Al
10 Griffen, the host of the Gold Cup, to give us a brief
11 synopsis of an excellent weekend and a huge, huge
12 crowd and growth of pari-mutuel wagering in Virginia.

13 MR. GRIFFEN: Thank you. I bring good news
14 today. The 89th running of the Virginia Gold Cup was
15 held this past Saturday, and in attendance, we had
16 over 70,000 people, which was up probably about
17 12,000 to 15,000 over our previous high.

18 The course held well. Despite the torrential
19 rains, the course held up throughout the day well. I
20 think that with that number, we are well on schedule
21 to reach our goal of over 100,000 attendees for our
22 two-day race meets in spring and fall.

23 Handle was up over 67 percent over last year, so
24 just over 135,000.

25 when you look at the breakdown of bets, you can

1 see the very unsophisticated nature of the better.
2 Most of them were win wets. Basically, we have a lot
3 of new blood here who are totally uninitiated as it
4 comes to betting on horse racing. Great opportunity
5 in our eyes.

6 we had only 42 horses running in six races,
7 including the Virginia-bred flat. Little
8 disappointed in that. I think it was due to the
9 conditions that we've had to hold to through the
10 National Steeple Chase Association, but which we have
11 the opportunity to change and to improve and upgrade
12 next year.

13 Anecdotally, for the first time ever during the
14 course of the day, I had three different people, all
15 sober and well-heeled, who came to me and asked how
16 they could purchase a steeple chase horse. There was
17 enthusiasm I can say that I hadn't encountered
18 before. So to me, I think that speaks to the
19 enthusiasm that day generated.

20 I'll answer any questions anybody has.

21 MR. HETTEL: Thank you, Doctor. Michael
22 Pearson.

23 MR. REYNOLDS: We have questions.

24 MS. DAWSON: I do have a question for you.

25 MR. GRIFFEN: Sure.

1 MS. DAWSON: At the end of the day when,
2 especially right after the Gold Cup, the fourth race,
3 a lot of people were lined up to try to cash tickets.
4 In the program, it said that tickets could not be
5 cashed after 6:30. Some people had to get out of
6 there. They didn't have time to stand in line.

7 MR. GRIFFEN: Right.

8 MS. DAWSON: It should be clear in the program
9 what the alternative is. I think there was something
10 mentioned about calling the Gold Cup office.

11 MR. GRIFFEN: Right. In the program, it states
12 they can be cashed in at the Gold Cup offices between
13 now and next year. I think it's six months to do
14 that.

15 MS. DAWSON: Is it six months? Is that right?

16 MR. LERMOND: Six months. Yes.

17 MR. HETTEL: It would last until the next time
18 we were there with the International. It would be
19 good that day also.

20 MS. DAWSON: Okay.

21 MR. GRIFFEN: It's printed in the program,
22 maybe not hi-lighted enough.

23 MS. DAWSON: Yeah. I think it needs to be.

24 MR. GRIFFEN: Certainly.

25 MS. DAWSON: As you said, there were a lot of

1 uninitiated betters there.

2 MR. GRIFFEN: Right.

3 MR. REYNOLDS: Do you have a bet on how many
4 outstanding tickets you have?

5 MR. GRIFFEN: No. I don't have that.

6 MR. REYNOLDS: How did it go this year versus
7 last year? You all had a lot of growing pains.

8 MR. GRIFFEN: We did. What we found was that a
9 couple times, we were able to postpone the start by a
10 couple of minutes to accommodate the lines. Talking
11 to the tellers afterwards, there were very few, if
12 any, people that did not get to place their bet.
13 Most people were betting on the following race.
14 There was a little bit of, again, an initiation.
15 People would stand in line, get to the beginning and
16 not know what to do.

17 MR. REYNOLDS: Right.

18 MR. GRIFFEN: So that still is a learning curve
19 we're trying to help with.

20 MR. REYNOLDS: That's great. Congratulations.

21 MR. PETRAMALO: Commissioner Dawson, I'd like
22 to point out that I made several wagers while I was
23 there, but not once did I have to stand in line to
24 cash a ticket, so.

25 MR. HETTEL: Excellent handicap.

1 MR. PETRAMALO: We'll be back in the fall.

2 MR. REYNOLDS: That's great.

3 MR. PEARSON: I would like to say that's why we
4 send Mr. Petramalo.

5 MR. HETTEL: Mr. Pearson, do you have any
6 comments you'd like to make, other than the
7 handicapping?

8 MR. PEARSON: I think that as a person that has
9 watched racing for a very long time, that so many
10 things in racing are on a downturn nationally, it's
11 really been invigorating for me to watch Gold Cup
12 become a player in this picture.

13 And to a person that's particularly jaded from
14 being at a racetrack 55 years my last birthday, I've
15 had some sort of professional license for 55 years, a
16 long time. To see the enthusiasm of the public at
17 those races.

18 After watching a million races that are just
19 races, just the distribution of funds made me feel
20 good about our sport, and I think that there's
21 something to be taken from that, from all the
22 participants in this room, but I think it has to be
23 recognized and accepted before you're going to be
24 able to make any progress. Thank you.

25 MR. HETTEL: Thank you. Okay. We'll get now

1 to the impasse of the 2014 Thoroughbred days, and I'd
2 like to call on either Ian or Jim. would you like to
3 begin this discussion on where you are with the 2014
4 race meet?

5 MR. STEWART: Sure. Good morning. This
6 morning, let's start with the facts. On December 11,
7 2013, the VRC ordered 25 race days over five weeks.
8 This was perceived to be a status quo solution. In
9 extended negotiations, we offered to race more days
10 to compensate for cost.

11 On January 28, 2014, the contract with the HBPA
12 expired. On January 30, 2014, I wrote Mr. Hettel a
13 letter, which Colonial Downs reiterated its
14 previously stated willingness to sign the same
15 contract as before and run the 25 days.

16 On February 4, 2014, upon the HBPA's continued
17 refusal to extend the contract, the VRC ordered
18 Colonial Downs to stop taking wagers on the
19 Thoroughbred races in the OTBs. No matter what else
20 you hear today, these are the facts.

21 Today, we find ourselves in a very ironic
22 position. The HBPA, after three months of
23 unsuccessfully trying to muscle Colonial Downs into
24 giving in to it's demands, decides they want to do a
25 contract and race 25 days after all.

1 while it's certainly admirable that they appear
2 to have realized the futility and self-destructive
3 nature of their actions, it's not that easy to turn
4 the clock back and pretend the last three months
5 never happened.

6 In the three months from February to the end of
7 April, the HBPA's actions cost the state \$240,000 and
8 the localities \$125,000 in lost pari-mutuel bets. It
9 has cost the Breeders Fund \$100,000, the Thoroughbred
10 purse account \$670,000. Ironically, the harness
11 purse account has been the sole beneficiary, by my
12 calculation, gaining \$119,000. This obviously is the
13 time of year when the interest in horse racing is at
14 its peak.

15 This has cost Colonial Downs approximately \$1.5
16 million against it's operating plan. Four of our
17 OTBs are closed. A number of people lost their jobs
18 or had their hours reduced. Today, we find ourselves
19 in a very different place than we were three months
20 ago.

21 So now, the HBPA wants to turn the clock back and
22 race 25 days, a return to status quo. Unfortunately,
23 that's not possible. The operating funds to pay for
24 the 25-day meet were never generated because there's
25 been no Thoroughbred wagering in the OTBs for the

1 last three months. So how can we have status quo at
2 25 days after losing three months worth of revenue?

3 To argue that another low-end race meet will
4 achieve the mandate to promote and sustain and grow
5 Virginia racing while promoting excellence is a
6 pretty big stretch. What's the point of Colonial
7 Downs spending another \$1 million to pay for a
8 five-week meet that does not advance the strategic
9 vision of Virginia racing?

10 In spite of this, if the HBPA is prepared to
11 reimburse us for our losses in the last three months,
12 we'll run the 25-day meet and we're prepared to spend
13 the next ten days negotiating the details.

14 In the event the HBPA does not agree, we're
15 prepared to run several weekends for the Breeders
16 Fund money. This will require horsemen to join the
17 request with us for the standard 18 percent and 22
18 percent take-outs. We invite those who would like to
19 race to do so. We're trying to make the best of the
20 current situation.

21 We live in kind of a funny world. For some
22 reason, many people believe nothing is anyone's fault
23 and there are no consequences. The harsh reality is
24 this.

25 Since February, every stakeholder in Virginia

1 Thoroughbred racing has lost something. It is
2 somebody's fault and there are consequences. Simply
3 pretending the last three months never happened is
4 not an answer. To suggest we can simply return to
5 the status quo is not an answer. Even with 25 days
6 of racing, we're operating slightly above a
7 break-even cash flow on a huge investment. We cannot
8 operate at a loss.

9 Horse racing in Virginia requires a long-term
10 plan that recognizes the strategic and economic
11 reality. Nothing else is sustainable. It's very
12 difficult to force somebody to keep doing something
13 that loses money. It's time to move beyond the
14 short-term battles to achieve short-term goals and
15 look to the future. The sooner we contract a
16 long-term economic model that works, the sooner we
17 get back to racing.

18 MR. HETTEL: Thank you, sir. Mr. Petramalo or
19 Stephanie?

20 MR. PETRAMALO: Yes. Let's talk about the
21 facts in specifics, as opposed to generalities. We
22 were here -- well, let me back up. We started
23 negotiating with Colonial Downs for a new contract in
24 late summer, early fall of 2013. That contract, of
25 course, included race days. We got to December and we

1 had reached no agreement on the issue of race days.

2 As you will recall, Colonial Downs submitted a
3 request for four weeks, 12 days. We submitted a
4 request for eight weeks, 32 days. That was
5 consistent with the long-established -- and when I
6 say, "long-established", I'm talking ten-year formula
7 that we use for determining race days.

8 We took \$200,000 -- when I say, "we", this is
9 Colonial and the horsemen now. We took \$200,000,
10 divided it into the available purse money to ride at
11 race days. Well, the formula yielded 30 days for
12 2014. Colonial reneged on the formula.

13 So we extended our contract which expired on
14 December 31st three different times through
15 January 29. We were getting nowhere, and on
16 January 29, I had a conversation -- we were supposed
17 to be here in the meeting, but it was called off
18 because of snow.

19 That same day, I had a conference call with Ian
20 and Jim, and we agreed that we were at a stalemate
21 and that there was no sense in negotiating further.
22 That meant the contract expired with the third
23 extension, and by law, not by any action of the HBPA.
24 By law, without a contract, the OTBs had to shut down
25 the Thoroughbred racing.

1 Now here's where we were in terms of race days at
2 that point. This was an agreement between the
3 principals, Ian and myself, on seven weeks, 28 days.
4 However, Colonial said we can only do that if you
5 reimburse us or give us \$300,000 toward overhead
6 expenses. Our counter was, no, we'll do 150,000, but
7 not 300,000. So that's where the stalemate was; not
8 really a big problem.

9 The Commission set up professional mediation
10 through the McCammon group. When we went to
11 mediation, I thought we were there with 7/28 and the
12 difference between us being 150,000. During that
13 mediation, the HBPA upped its counter offer to
14 \$280,000, only \$20,000 apart.

15 Colonial rejected it, and for the first time says
16 we want to run two weeks for a total of six days,
17 high-end boutique meet. Well, the mediator threw his
18 hands up in frustration and said we're not going
19 anyplace on this.

20 About a week or two later, we came back to this
21 Commission on St. Patrick's day, and this Commission
22 proposed a compromise; seven weeks, 21 days, cutting
23 back from the seven. We agreed to that and put that
24 in writing to the Commission. Colonial rejected it.

25 Colonial then came back with -- excuse me. I

1 believe that the next thing that happened was
2 Colonial came back with three scenarios rejecting
3 seven weeks, 21 days. They came back with three
4 scenarios, which can be fairly characterized as
5 centering around a six-day boutique meet in the fall
6 with high purses, and Colonial also said, look, we
7 need a long-term agreement.

8 We rejected that for reasons that I won't get in
9 to, but we countered. We said, okay, here's what
10 we'll do. We will agree to seven weeks, 21 days in
11 the summer, and we'll agree to a three-day boutique
12 meet, and because you want stability, we'll do a
13 two-year deal. Well, Colonial rejected that also.

14 The next thing that happened was the Commission
15 got involved again and proposed a compromise of six
16 weeks. We accepted that; Colonial rejected that.

17 Then Commissioner Reynolds on behalf of the
18 Commission sent out a letter to us and said, look,
19 this is it. Time to act. We're gonna give you until
20 May 1st. Make another attempt at reaching an
21 agreement, and we did that.

22 I had conversations with Jim Weinberg, and he
23 said Jeff Jacobs is willing to come up here and meet
24 with the horsemen, but let's see first of all whether
25 we can agree with some concepts to see whether it

1 makes any sense for him to do so.

2 The concepts were as follows. Colonial wanted to
3 split the purse account in the following fashion.
4 Two-thirds to a summer meet and one-third to a fall
5 boutique, and I said that's no problem. We pretty
6 much proposed that in the 7/21 scenario that we did.

7 He said, however, Colonial wants the option to
8 use that one-third money from the purse account or
9 income from Instant Racing to reimburse its apparent
10 \$1.5 million loss. My response was I think it highly
11 unlikely that our board would ever agree to use purse
12 money to reimburse you, but I propose the following.

13 Colonial says they lost a million-and-a-half, and
14 at that point, we figured our loss was about a half a
15 million. I said, well, subtract our half from your
16 million-and-a-half, leaving a net of \$1 million, and
17 with regard to your reimbursement of that sum, we'll
18 take it from Instant Racing, if and when it comes,
19 but my board will not agree to use purse money for
20 that. A day or two later, Jim Weinberg came back and
21 said that's not acceptable to Colonial.

22 So here we are. You decide who's at fault here.
23 I think there's enough blame to spread among all
24 sides, including the Racing Commission. I think
25 you're to blame, and I kind of put that in quotes,

1 because you were too lenient on us. We were diddling
2 around for four months going absolutely noplacE, and
3 here we are almost in the middle of May when the back
4 side usually opens up for shippers. So we're way
5 behind the curve at this point.

6 But I think it's simply wrong to say that now
7 everything has, as Ian says, everything has changed
8 and we can't go back and do the five weeks, 25 days.

9 They are as much to blame for losses as we are.
10 All they had to do is sit down and be reasonable, the
11 same way they've done every year for at least the
12 last 13 years that I've been involved. This year was
13 different. It's my way or the highway. That was
14 their view.

15 But in any event, so here we are today. While
16 we're not happy with five weeks, 25 days, we
17 understand that those are the days that the
18 Commission has assigned. We can't wait any longer,
19 so we will run those days and we will cooperate. And
20 when I say, "cooperate", that means we will execute a
21 contract with Colonial for this year, that for all
22 intents and purposes is the same as the contract we
23 had last year.

24 Now, Colonial says, well, we're not gonna do
25 that. Well, I suggest it's now time that you start

1 acting as a regulatory agency that has the
2 responsibility to make and enforce decisions that are
3 in the best interest of Virginia racing.

4 You have the authority to direct Colonial Downs
5 to run the five weeks, 25 days that you've assigned,
6 even if they don't want to run them, because if they
7 don't, the statute makes it quite clear that you,
8 quote, shall revoke their license to operate the OTBs
9 if they do not run the assigned days.

10 As I said, we'll cooperate, we'll execute a
11 contract, and I don't think there's anymore time
12 for delay.

13 MR. DUNAVANT: The harness horsemen are
14 concerned. We heard rumors that as Frank just
15 mentioned, they might shut down the OTBs and take
16 their license. We have a contract for this year, and
17 we feel like that would kind of be stepping on the
18 harness horsemen's shoes if you were to shut down the
19 wagering in the OTBs when we have a contract to race
20 and we don't think that's proper.

21 MR. REYNOLDS: We're aware of that. Thank you.

22 Bernie, do we need go into a closed meeting
23 today?

24 MR. HETTEL: Yes, sir. We do. We have a
25 personnel matter we need to talk about.

1 MR. REYNOLDS: Can we do that after the public
2 participation towards the end of the meeting?

3 MR. HETTEL: Sure. Absolutely. It would be
4 the last item.

5 MR. REYNOLDS: I'd like to make it the last
6 item, so those who want to leave and not stick around
7 for that --

8 So I want to move to the public participation.
9 We have a lot of folks from the public today. If you
10 all would like to speak, you're welcome to. If you
11 would like to speak, please just stand up and state
12 your name, please, for the record. Would anybody
13 from the public like to speak?

14 MS. COSLEY: Actually, I do. As the Gold Cup
15 --

16 MR. REYNOLDS: What's your name?

17 MS. COSLEY: My name's Catherine Cosley [ph].
18 I actually live locally. As I mentioned back on
19 March 17th, I came on the back side of the racetrack
20 as a hot walker and just a horse enthusiast, and now
21 five years later, I now own two Thoroughbred race
22 horses.

23 As the representative from the Gold Cup
24 identified, part of this is growing the sport, and I
25 now am getting in to the sport at a time period

1 wherein it's more of a low point, and I just want
2 people to realize that there are people out there
3 that are enthusiastic about this, and that unless
4 this goes forward for somebody as small as myself,
5 I'm not gonna be able to continue moving in that
6 direction, unless there's something here locally for
7 me to be able to race my horses, and that's all I
8 have to say.

9 MR. REYNOLDS: Thank you. Anybody else?
10 Debbie?

11 MS. EASTER: Debbie Easter, Virginia
12 Thoroughbred Association. I think as I've stated
13 before at previous meetings, I think it's unfortunate
14 that we've gotten to this point. Obviously, for us
15 to grow racing and for Colonial Downs to be
16 successful, hopefully successful, that we all have to
17 go forward as partners. As Chairman Van Clief said,
18 that's -- we're not acting like good partners here at
19 this point.

20 I'm interested in Mr. Stewart's comments about
21 the couple days they might propose, a couple weekends
22 with Breeders Fund money, because that's the first
23 we've heard of that proposal, and being a
24 representative of the Breeders, I think I would have
25 loved to hear that phone call before it was put out

1 in public here.

2 But I do think, you know, there are those of us
3 that are open minded. We know the model is broken.

4 Chairman or Commissioner Van Clief's Blue Ribbon
5 Committee. We've all said we're open minded. We
6 need to look at the whole situation. We need to
7 study what's going on.

8 We know that Colonial -- nobody's arguing that
9 they don't lose money while we're having live racing
10 here, and the model is broken and we got it. I would
11 just let everybody know that this is a transitional
12 year and that people are very open minded to talking
13 about the future and making it a win-win for
14 everybody. Thank you very much.

15 MR. REYNOLDS: Thank you. Any more? Yes,
16 ma'am.

17 MS. GODSEY: My name's Karen Godsey, and I've
18 been a trainer down here the last ten years and I
19 have a training center in Ashland, Virginia.

20 If we don't have racing days this year, I leave
21 here, I have to send probably 15 horses out-of-state.
22 I probably need to lay off two people. I need to
23 call my feed man and tell him I probably don't need
24 but half the feed you're bringing me. My hay man,
25 all that kind of stuff. So it's gonna affect people

1 like me greatly.

2 Mr. Wilson here, I train a horse for him. We're
3 waiting to set up a van, depending on what happens in
4 this meeting, whether he stays here and races, keep
5 supporting Virginia racing, or we'll be sending him
6 out-of-state.

7 MR. REYNOLDS: Thank you. Yes, ma'am.

8 MS. MCKENNEY: My name's Jessica McKenney.
9 I -- for Colonial Downs at the Dogwood Classic. I
10 got my trainer's license last year. Looking forward
11 to a great meet this year.

12 I had a stakes horse, a Virginia-bred stakes
13 horse that holds a track record that I pretty much
14 gave away yesterday. I claimed him two or three
15 years ago for 16,000 here. I pretty much gave him
16 away yesterday, because I figured since Colonial
17 Downs didn't come to agreement before the Derby that
18 we're done.

19 It breaks my heart to give away these horses that
20 I put my blood, sweat and tears in to, because we're
21 talking about losses because people can't come
22 together on something. It's not just my livelihood;
23 it's my passion and it's my life, and it's not just
24 playing games about who did what and pointing fingers
25 at somebody.

1 It's so frustrating to see all the bad
2 information circulating, when I know that Frank and
3 the HBPA has been willing to negotiate, that they
4 have had other options, and then we come in here and
5 get something like Mr. Ian has proposed that's just
6 outrageous, that if anyone can sit here and can
7 listen to this, I just want to get up and leave.

8 I have some people that are trying to sell some
9 straw. Do you know anybody that would like to buy
10 some? Because we're sitting on it. She can send it
11 to Delaware, but she'd rather, you know, sell it to
12 these people here.

13 These good people like Karen, like Stephanie that
14 have farms here, they're stuck in a lurch.

15 what are we gonna do? Time for bickering is
16 over. Let's make a decision whether we close it down
17 or we work something out, because it's a wonderful
18 facility and a wonderful place and it has got great
19 people, so I really hope we can come up with
20 something.

21 MR. REYNOLDS: Thank you. Anybody else?

22 NOTE: There is no response.

23 MR. REYNOLDS: Okay. Let's see. I think it's
24 time for our motion.

25 MR. VAN CLIEF: All right. Mr. Chairman, I'm

1 prepared to offer a motion as follows. Whereas the
2 Virginia Racing Commission's charged with a
3 responsibility of sustaining and developing the
4 Commonwealth's native horse racing industry, and
5 whereas as Colonial Downs and the Virginia HBPA,
6 after not less than four months of negotiation,
7 mediation and attempted compromise have not reached
8 agreement on a contract for conduct of live racing
9 during 2014, and whereas it is our belief that
10 failure to conduct a live race meet in 2014 would do
11 irreparable harm to the state's horse racing and
12 breeding industries, we the Virginia Racing
13 Commission hereby direct Colonial Downs to conduct a
14 2014 summer race meet of not less than five weeks in
15 25 days duration, and further direct that training
16 and stabling facilities necessary to sustain such
17 race meet be made available to horses and their
18 connections which would participate in the meeting.

19 we further direct the Virginia HBPA and Colonial
20 Downs to immediately enter the necessary contractual
21 agreements necessary to conduct such race meeting and
22 necessary to immediately commencing operation of the
23 state's satellite wagering network.

24 we further direct that such contract be submitted
25 to the Commission -- I'm going leave this open, but I

1 would have said within ten days, so let's be specific
2 on that before we leave -- but I'll include it as
3 within ten days following this meeting, so that any
4 approvals necessary may be issued by the Commission
5 without delay.

6 Now, as a footnote, my ten-day period was as fast
7 as I could make it, while we still give legal notice
8 of a meeting. So that is subject to change if the
9 Commission or others think it appropriate.

10 MR. REYNOLDS: Yes, sir.

11 MR. VAN CLIEF: While making the motion, I
12 wanted to also stipulate that the 2014 contract be
13 transitional in nature.

14 I want to be clear with all the parties that the
15 Commission does believe we need to develop a new
16 model. We need to pursue some of the initiatives
17 that have been mentioned to us in recent weeks, and
18 we will convene the industry stakeholders for the
19 purpose of developing such an updated racing model
20 and pursuing the implementation of productive new
21 initiatives.

22 Such a plan will be designed to give Virginia
23 racing the opportunity to reverse its present
24 declining trends and to support growing racing and
25 breeding industries within the state.

1 we're gonna ask the stakeholders who are
2 currently convened under the auspices of our VRC
3 so-called Blue Ribbon panel to continue to make
4 immediate and best efforts to reach agreement
5 regarding the specifics of a new business model.
6 It will be our intent to use such a model as the
7 basis for a multi-year contract, so we can hopefully
8 give some stability and a chance for progress to the
9 industry going forward.

10 MR. REYNOLDS: Thank you, Mr. Van Clief. Are
11 there any questions from the commissioners before I
12 entertain a motion?

13 MR. TROUT: Mr. Chairman, just a brief comment.
14 I think this is a good resolution that tries -- we've
15 heard a lot of concern about who is responsible for
16 what, and some of that responsibility has been placed
17 on this Commission, and I think this is an effort by
18 the Commission to try to make things work, at least
19 assuming that it does go through.

20 I think that this is a valid and appropriate
21 action to be taken by this Commission at this time in
22 order to try to preserve and move forward horse
23 racing in Virginia, pari-mutuel betting in
24 particular. Thank you.

25 MR. REYNOLDS: Okay. Ms. Dawson?

1 MS. DAWSON: Mr. Chairman, I agree with
2 Commissioner Trout. I don't know whether this
3 resolution will be adopted, but I do ask that if it
4 is, could we have the authority to amend it and
5 correct it grammatically in a couple places?

6 MR. REYNOLDS: Yes.

7 MS. DAWSON: All right.

8 MR. VAN CLIEF: Just a comment, too. I think
9 anything I write, it's implicit that it needs to be
10 corrected grammatically, so I say absolutely.

11 One other technical point, too. It occurs to me
12 that obviously, this Commission voted in December to
13 pre-approve, for lack of a better description, a
14 five-week, 25-day meet.

15 So technically speaking at this point, should the
16 motion be couched as a reiteration of that approval
17 or a reconfirmation of that approval, Counselor?
18 From that standpoint, how should we technically couch
19 that?

20 MR. TROUT: Would Counsel take a look at that?
21 That was actually something where the Commission said
22 if such a contract comes before the board, it was
23 something we would consider favorably or at least
24 vote on it.

25 This actually is probably a stronger document

1 that is coming up now, and Counsel, he's pondering
2 about it, so he's thinking. You gotta worry when an
3 attorney starts thinking.

4 MR. LAWS: The Commission assigned racing days
5 in December 2013. I don't think at this point that
6 assignment of racing days currently as things are now
7 can be reopened. I don't think it can be done anew,
8 so I think phrasing it as a reiteration of a previous
9 order would be proper.

10 MR. VAN CLIEF: Mr. Chairman, I amend my motion
11 to move that we reiterate our action in December.

12 MR. REYNOLDS: Okay. Are there any other
13 comments?

14 MR. TROUT: One thing you mentioned with the
15 ten-day period, we do need to -- unless this would
16 constitute pre-approval, we do need to meet and to
17 approve the contract; is that correct, Counsel?

18 MR. LAWS: Yes.

19 MR. VAN CLIEF: Is ten days appropriate at this
20 point? Is that something that -- I would think if
21 the parties can agree, they would deliver a contract
22 for approval within ten days.

23 MR. TROUT: As far as notice of the meeting,
24 can this meeting be continued to another date that
25 might be less than the ten days, or is that ten days

1 pretty much an administrative law requirement for
2 notice?

3 MR. LAWS: I think ten days is what it is, but
4 the Commission can issue a notice every day saying
5 that ten days from now we're gonna have a hearing,
6 and once the contract is agreed to, that way the
7 notice would already be out there and you could just
8 rescind the notices that are irrelevant.

9 MR. REYNOLDS: Ten days would be Saturday,
10 May 17th, so the earliest date would be May 19th.
11 That's 12 days.

12 MR. VAN CLIEF: My intent was to turn up the
13 heat as high as we possibly could to get the parties
14 to come together and get back to us, since time is
15 now of the essence.

16 MR. PETRAMALO: I don't know the answer to this
17 question, but is this approval of the contract
18 something that you could delegate to the executive
19 secretary in the same fashion that in the past you
20 delegated to the executive secretary approval of ADW
21 license renewals? I don't know the answer to that.

22 MR. VAN CLIEF: I'd ask Counsel, and if we can,
23 then I would amend my motion again to authorize the
24 executive secretary and chairman to approve it.

25 MR. LAWS: I don't know the answer to that off

1 the top of my head. I'll look in to it and be happy
2 to talk to you and Jim about it as well.

3 MR. REYNOLDS: Anything within our authority
4 that we could do to expedite it, certainly, we want
5 to do.

6 MS. EASTER: I don't know if I'm allowed to
7 have a question right now, but certainly one of the
8 stumbling blocks has been the reimbursement of
9 colonial in this matter, and I don't know if you all
10 have to meet to be more specific in your resolution,
11 so that that doesn't become a stumbling block in the
12 next ten days.

13 MR. REYNOLDS: Personally, that's gonna be
14 their problem. As a Commission, we're gonna direct
15 five weeks, 25 days of racing, and we're gonna use
16 everything within our power to see that that happens.

17 As far as reimbursement, they're gonna have to
18 figure that out themselves. If somebody wants to
19 differ, that's fine.

20 Commissioner Miller?

21 MR. MILLER: Mr. Chairman, there's always
22 disadvantages to being a lawyer. One of the
23 disadvantages is that you always should be certain
24 about exactly what you're voting on, and since this
25 is such a contentious issue to begin with, perhaps

1 let me suggest that while we're in our -- well,
2 either while we're in our closed meeting, someone be
3 delegated to put the words of this resolution down
4 exactly.

5 MR. REYNOLDS: Yes.

6 MR. MILLER: Because once you pass a resolution
7 that has a binding legal effect, it should say what
8 it's supposed to say without any subsequent
9 anticipated amendments or changes in the resolution
10 to satisfy someone's question about what does the
11 resolution say.

12 In other words, let's have the resolution exactly
13 set down exactly what it's supposed to say, so that
14 that if someone does want to and ancillarially
15 attack -- if that's a word -- the resolution, they
16 have the exact resolution that we voted on, not some
17 uncertainty. Am I making myself clear?

18 MR. REYNOLDS: You are.

19 MR. MILLER: In other words, let's put it down
20 so that every word means what it says, and so that
21 there's no doubt, so everyone has a clear
22 understanding about exactly what the resolution says,
23 because any party would have a right to attack the
24 passage of the resolution.

25 MR. REYNOLDS: Right.

1 MR. MILLER: I assume -- and it's a contentious
2 issue, so I can't assume that all the stakeholders
3 are gonna be satisfied with whatever resolution we
4 pass. I would hope they would be, but they may not
5 be, and they're gonna have to have an opportunity to
6 say this is what's wrong with the resolution.

7 MR. REYNOLDS: Right. I would agree with you
8 that we need to vote on something that's clear and
9 concise. Now, my question is if we went into a
10 closed meeting to draft this, is that legal for us to
11 sit there and draft it, or do we have somebody
12 working on it while we're in our closed meeting?

13 MR. MILLER: I would suggest we have somebody
14 working on it.

15 MR. LAWS: We can go into closed session for
16 more than one reason, and we can do it for a
17 personnel reason and also in anticipation of probable
18 litigation. So when it's appropriate to make the
19 motion to go into closed meeting, I'll list those two
20 reasons, and at that point, we can talk about the
21 personnel issue and draft the appropriate language in
22 a clear and unambiguous language for the motion.

23 MR. MILLER: I think Jim has an observation.

24 MR. WEINBERG: I just wanted to add to
25 Commissioner Miller's observation. I think the last

1 resolution was this was a reiteration of a order
2 previously entered in December, to which Colonial
3 Downs has no objection.

4 To the extent this is an amendment and it seeks
5 to change the order, Colonial Downs would just note a
6 procedural objection.

7 I think the Commission, under the Administrative
8 Process Act, has an obligation to notify the parties,
9 look, at this meeting, we are going to amend or
10 consider an amendment of a preexisting order and put
11 us on notice so that we are prepared to address those
12 issues that come up.

13 So with all due respect, I don't think the agenda
14 that was circulated for this meeting did that, so I
15 didn't want to hold that back, have a lot of effort
16 go into a resolution and then object on procedural
17 grounds.

18 Substantively, I think what you have urged the
19 parties to do, Mr. Stewart said in his remarks we're
20 prepared to do, to have those discussions to see if
21 we can come to a contract in the next den days. I
22 offer that up in a sign not to be obstructionist, but
23 to try to be helpful.

24 MR. REYNOLDS: No, no, no. It's good to know
25 all that up front. Thank you.

1 Do you think we should go into closed session?
2 Do you want to read the order?

3 MR. LAWS: Yeah. I have the cite on my phone.

4 MR. REYNOLDS: Okay.

5 MR. LAWS: At this point, is there a motion to
6 go into closed meeting under 2.2.37(11a) of the
7 Virginia Freedom of Information Act, and specifically
8 the Provision A7 and also A1 to discuss legal advice,
9 to receive legal advice on probable litigation
10 related to the motion that has been discussed, and
11 also to discuss personnel and employment matters
12 regarding the Commission staff?

13 Is there a motion to go into closed hearing for
14 those reasons?

15 MR. REYNOLDS: So moved.

16 MS. DAWSON: Second.

17 MR. LAWS: Any objection?

18 NOTE: There is no response.

19 MR. REYNOLDS: All those in favor?

20 MR. VAN CLIEF: Aye.

21 MR. LAWS: Opposed?

22 NOTE: There is no response

23 MR. LAWS: We'll go into closed session.

24 NOTE: There is a recess from 11:04 a.m.
25 until 11:43 a.m.; thereafter, the meeting continues

1 in public as follows:

2 MR. LAWS: At this point, is there a motion
3 that confirms that under 2.2-3712, otherwise known as
4 the Virginia Freedom of Information Act, only public
5 business matters lawfully exempted from open meeting
6 requirements under that law were discussed during the
7 closed meeting, and only such public business matters
8 as were identified in the motion by which the meeting
9 was closed were heard, discussed or considered in the
10 meeting by the public body?

11 MR. REYNOLDS: So moved.

12 MS. DAWSON: Second.

13 MR. LAWS: All those in favor?

14 MR. REYNOLDS: Aye.

15 MS. DAWSON: Aye.

16 MR. VAN CLIEF: Aye.

17 MR. LAWS: Any objection?

18 NOTE: There is no response.

19 MR. LAWS: Back in open meeting.

20 MR. REYNOLDS: Thank you all for your patience.

21 I'm gonna turn the floor over to Commissioner Van
22 Clief, who will read our motion.

23 MR. VAN CLIEF: Mr. Chairman, I'll withdraw the
24 motion I made earlier, and in the interest of
25 clarification, I'll submit the following.

1 I make a motion to reconfirm the Commission's
2 December 2013 decision; namely, the Virginia Racing
3 Commission hereby directs Colonial Downs to conduct
4 2014 Thoroughbred race meet -- I'm sorry -- a 2014
5 Thoroughbred race meet of five weeks and 25 race days
6 duration. Further, the Commission stands ready to
7 approve any contract agreed to by Colonial Downs and
8 the Virginia HBPA.

9 Additionally, once a contract is approved by the
10 Commission, Commission staff will immediately take
11 action to direct that any satellite wagering
12 facilities currently closed by operation of law be
13 promptly reopened.

14 MR. REYNOLDS: Are there any questions or
15 discussion?

16 MS. DAWSON: I second that motion.

17 MR. REYNOLDS: Okay. All those in favor say
18 aye.

19 MR. MILLER: Aye.

20 MS. DAWSON: Aye.

21 MR. TROUT: Aye.

22 MR. REYNOLDS: The motion carries.

23 To follow up on that, I'd like to set the next
24 race meeting date. What I'd like to see by that
25 date, if not before, is for you all to enter into

1 your new contract and bring it before the Commission
2 for our consideration for approval on that date.

3 I was thinking the best dates for me are
4 May 19th. That's the earliest we can do it. I'd
5 love to pick that date or May 21st. Do those dates
6 work?

7 MR. STEWART: I cannot be here on May 21st.

8 MR. REYNOLDS: All right. We got a bull's eye
9 on May 19th. Does that work?

10 MR. PETRAMALO: Yes.

11 MR. REYNOLDS: Stephanie?

12 MS. NIXON: Good.

13 MR. REYNOLDS: Great. Commissioners?

14 MR. TROUT: That's fine.

15 MR. MILLER: Fine.

16 MR. TROUT: Ten a.m.?

17 MR. REYNOLDS: Our next meeting will be on
18 May 19th, 2014 at ten o'clock in the morning, I guess
19 right here, if the horsemen will allow us to come in
20 here.

21 MR. PETRAMALO: Yes.

22 MR. REYNOLDS: Frank, did you have a question?

23 MR. PETRAMALO: Well, I just wanted to be clear
24 that in December, we had applied for eight weeks, 32
25 days in the summer. Colonial had likewise applied in

1 the summer for four weeks, 12 days and the Commission
2 came back and said, well, we're awarding the same
3 schedule that we did last year.

4 You didn't include in your motion the direction
5 to run five weeks, 25 days in the summer.

6 MR. REYNOLDS: we talked about that, and we
7 would like as a Commission to see it run in the
8 summer, but the exact motion that was put forth that
9 we approved just said five weeks, 25 days.

10 In years past, I believe the Commission has
11 always left it to you all to figure out the exact
12 dates when you all would run and you have always come
13 to an agreement on that.

14 Josh, do you want to explain why we couldn't put
15 summer in there?

16 MR. LAWS: Because it wasn't in the
17 December 2013 motion, I didn't think it was proper to
18 include any other additional instructions that were
19 not made in December 2013, because I don't think
20 currently as we sit today, the Commission has the
21 authority to make any additional instruction.

22 MR. PETRAMALO: well, let me just suggest the
23 following. I think I've got the transcript here, but
24 my recollection is the motion was to run five weeks,
25 25 days as you did in 2013. Then as you did in 2013,

1 in my interpretation, includes running in the summer,
2 because that's what we did in 2013.

3 MR. LAWS: If you do have that language?.

4 MR. WEINBERG: I have the transcript and I'm
5 afraid that's not what it says.

6 MR. REYNOLDS: I have exactly what I read right
7 here.

8 MR. HETTEL: Go ahead and read that verbatim
9 back.

10 MR. REYNOLDS: I'll read the whole thing. I
11 made some comments before I made the motion, but the
12 motion itself, I'm gonna go backwards. The motion
13 itself said: Mr. Chairman, I make the motion that
14 the Virginia Racing Commission grant approval to
15 Colonial Downs for 25 days of Thoroughbred racing
16 over five weeks for 2014.

17 Colonial Downs and the Virginia HBPA shall work
18 together to mutually agree upon the dates, days and
19 times for the 2014 meet.

20 Now, I'll go back and read what I said leading up
21 to that motion.

22 Mr. Chairman, before I make my motion, I would
23 like to make a few comments. I am certainly
24 disappointed that Colonial Downs and the Virginia
25 HBPA were unable to agree on racing dates for 2014;

1 therefore, they have left this important decision to
2 this Commission.

3 For three years, I have heard debate after debate
4 for more dates versus fewer dates. Beauty is in the
5 eye of the beholder and the constituency that one
6 represents.

7 As a commissioner, I ask myself what is in the
8 best interest of the overall health of Virginia
9 racing and its path forward. Right now, that path is
10 treacherous and unclear.

11 The overall health of the Thoroughbred racing
12 nationally and Virginia in particular face extremely
13 challenging times. I've heard over and over that the
14 mission of Virginia horse racing is to promote,
15 sustain and grow the native industry.

16 At this point in time, I believe we are in a
17 situation where all we need -- where we all need to
18 work together for the survival of this industry first
19 and foremost. Only then can we promote, sustain, and
20 the ultimate goal, grow this industry again.

21 How do we do this? I'm not sure at this point,
22 but what I am sure of is that we have a room full of
23 people who have the best interests of Virginia racing
24 in their hearts.

25 Yes, each stakeholder represents different

1 constituencies, but we all share the passion and the
2 determination to make this work. We just don't have
3 agreement on a path forward.

4 I am encouraged by the recent formation of a Blue
5 Ribbon panel chaired by Commissioner Van Clief.
6 Although our work is not finished, I do believe we
7 have identified the major issues that need to be
8 addressed. We must find agreement on the best path
9 forward.

10 The various stakeholders continue to disagree on
11 race days and how we define quality racing. I am
12 confident that what will come out of the panel will
13 be an overall consensus and an executable game plan;
14 however, none of that will matter if we don't work
15 together and execute that plan. To repeat, that can
16 only happen if we all work together.

17 Now as far as the racing dates go for this year,
18 I have studied both the proposals thoroughly and
19 clearly, and the two proposals are worlds apart.

20 My fervent hope is that through our work early
21 next year on the Blue Ribbon panel, we can bridge
22 that gap. I am not a fan of the status quo, or as
23 some say, splitting the baby. I believe that last
24 year's results are inconclusive and don't think that
25 enough data exists to vote for one extreme or the

1 other.

2 Therefore, I will propose the following motion to
3 repeat the weeks and days that Colonial Downs and the
4 Virginia BPA agreed to last year without reliance on
5 last year's Commission for final arbitration.

6 Again, this Commission stands ready and committed
7 to working with all of the stakeholders to move
8 Virginia racing forward.

9 MR. PETRAMALO: Let me just read what
10 Commissioner Siegel said at Page 51: Between now and
11 the next meeting, if these parties would like to come
12 back and make some alternate suggestions they can
13 agree upon, whether it be fewer days or more weeks or
14 vice versa, this is Commission will entertain that,
15 but the idea was to do what you agreed to do last
16 year, only because you couldn't agree to do anything
17 else.

18 That's what I took to mean agreeing to do what
19 you did last year was 5/25 in June and July.

20 MR. REYNOLDS: Okay.

21 MR. PETRAMALO: I mean what I don't want us to
22 get hung up on, is if we get in discussions with
23 Colonial Downs and Colonial -- with regard to a new
24 contract, and they say, well, guess what, we'll run
25 5/25, but in the fall, it's part of the harness heat

1 and we're back to where we started.

2 MR. REYNOLDS: You make a good point.

3 MR. VAN CLIEF: Just again, speaking
4 individually, my intent, and as you probably noticed
5 in my original draft, was that we avoid running the
6 Thoroughbred meet concurrent with the harness dates.

7 My reason for that is not so much that I don't
8 think Thoroughbreds and harness horses can't coexist,
9 they probably can, but I think that the risk that we
10 would be undertaking as an industry to run a
11 Thoroughbred race meeting with the only facility on
12 which to race a turf course at our disposal in
13 September is too risky.

14 All it's gonna take is one hurricane to blow your
15 race meeting away, and the industry would potentially
16 be in serious financial risk. So I would oppose a
17 concurrent Thoroughbred harness meet for just that
18 reason.

19 MR. REYNOLDS: Mr. Laws, does that -- and we
20 pretty much have to stick with what we approved in
21 the motion?

22 MR. LAWS: Yeah. I think that the plain
23 language and unambiguous language of the motion is
24 what's crucial, and that's what the Commission
25 passed, and that's what the Commission has the

1 authority to enforce.

2 MR. REYNOLDS: Okay. All right. Are there any
3 other questions or comments?

4 NOTE: There is no response.

5 MR. REYNOLDS: The next meeting will be --

6 MR. HETTEL: Mr. Chairman, before you adjourn,
7 Debbie would like to address the EZ Horseplay
8 question you posed to me last night.

9 MS. EASTER: We'll take it up at another time.

10 MR. HETTEL: Okay. Good. Go ahead,
11 Mr. Chairman.

12 MR. REYNOLDS: All right. Again, the next
13 meeting will be May 19th at ten o'clock, and do I
14 hear a motion to adjourn?

15 MR. VAN CLIEF: So moved.

16 MR. TROUT: So moved.

17 MR. REYNOLDS: Do I hear a second?

18 MS. DAWSON: Second.

19 MR. TROUT: Second.

20 MR. REYNOLDS: All those in favor?

21 MS. DAWSON: Aye.

22 MR. TROUT: Aye.

23 MR. REYNOLDS: We are adjourned.

24 NOTE: This meeting is adjourned at
25 11:57 a.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 5th day of June, 2014.

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SANDRA G. SPINNER

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