VIRGINIA RACING COMMISSION

MARCH 27, 2014

10700 Horsemen's Road

New Kent, VA  23124

Commencing at 9:58 a.m.

COMMISSION MEMBERS:

J. Sargeant Reynolds, Jr., Chairman
D. G. VanClief, Jr., Vice Chairman (via speaker phone)
Carol G. Dawson
Stran Trout

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE

Joshua Laws, Assistant Attorney General

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NOTE: The meeting of the Commission convenes at 9:58 a.m. as follows:

MR. REYNOLDS: Good morning.

Let the record show that I started the meeting two minutes early. Thank you-all for coming today.

Let's see. I guess we'll go through the agenda. The first item for business is to approve three sets of minutes. The first one is our regular meeting of December 11th, which you can find on Tab 1. Has everybody read them? Does anybody have any additions or corrections?

NOTE: There was no response.

MR. REYNOLDS: If not, I would entertain a motion to approve the minutes of December 11, 2013.

MS. DAWSON: I so move.

MR. REYNOLDS: Do I hear a second?

MR. TROUT: Second.

MR. REYNOLDS: Any discussion?

All in favor?

NOTE: All indicated by voting aye.

MR. REYNOLDS: All right. That was easy.

The next one, behind Tab 2 are the minutes of January 21st, 2014. Does anybody have any additions or corrections?

NOTE: There was no response.

MR. TROUT: Mr. Chairman, I would move that they
be approved.

MR. REYNOLDS: Do I hear a second?

MS. DAWSON: Second.

MR. REYNOLDS: Any discussion?

NOTE: There was no response.

MR. REYNOLDS: All in favor say aye.

NOTE: All indicated by voting aye.

MR. REYNOLDS: And behind Tab 3, we have the minutes of the regular meeting of March 17th, 2014. Any additions or corrections to that?

If not, I would entertain a motion to approve the minutes.

MS. DAWSON: So moved.

MR. REYNOLDS: Do I hear a second?

MR. TROUT: Second.

MR. REYNOLDS: Do I hear any discussion?

NOTE: There was no response.

MR. REYNOLDS: All those in favor, say aye.

NOTE: All indicated by voting aye.

MR. REYNOLDS: The minutes, all three sets of minutes are approved.

And next on the agenda are Commissioner's Comments. Do any of the Commissioners have any comments?

MR. TROUT: One real quick one, Mr. Chairman. I would like to introduce Ron Stiers who is in the audience.
who is one of the members of our Board of Supervisors and actually represents this area, so he'll get the blame as we will for anything that goes wrong.

MR. STIERS: Thank you for allowing me to be here.

MS. DAWSON: Yes, I do too, Mr. Chairman.

MR. REYNOLDS: Yes, ma'am.

MS. DAWSON: If you can give me a couple of minutes here.

I would like to take a few moments to recognize a number of persons who have recently passed away who were leading members of our horse industry in Virginia. I want to recognize the significance of their legacy and offer the condolence of the Commission to their family and friends.

First, Mrs. Ann Via, of Free Union, passed away on March 7th. Mrs. Via was the wife of Harold A. "Sonny" Via and was known for her love of foxhunting and steeple-chasing. With her husband, Sonny, she was the proud owner of Good Night Shirt, twice winner of the Eclipse award.

Next, Dr. Joe Rogers of Hamilton passed away on March 8th. Dr. Rogers was a founder of Oatlands Point to Point of the Loudon Hunt, and of the Morven Park Steeple-chase (the first race meet in Virginia to offer pari-mutuel wagering). His horse, King of Spades, won the 1972 Virginia Gold Cup.

We also mourn the loss of Jack Ludwig, Jr., of CAPITOL REPORTING, INC.
Ashland, who passed away February 11th. Ludwig trained Reef Searcher, a multiple stakes winner who placed in four graded stakes.

Gary Baker passed away on January 27th in Middleburg. Baker was a member of the Virginia Steeplechase Hall of Fame, the Maryland Horse Shows Hall of Fame, and the Virginia Horse Shows Hall of Fame.

We also lost the legendary Bay Cockburn, the British born foxhunter, steeplechase rider and trainer, who passed away December 25th, 2013. Cockburn was a talented rider who raced 433 times in Virginia and Maryland, winning 85 races. He trained 68 winners and was the leading rider in the Virginia Steeple Chase Point to Point Year End Awards for the years 1990 through 1994.

Another important Virginia horseman, Robert "Bob" Powell of Middleburg, passed away January 11th. Mr. Powell was a lifelong horseman who worked for several leading breeders such as Mrs. A. C. Randolph, Arthur Godfrey, and more recently, he worked for Herman and Monica Greenberg at Rutledge Farm. He was inducted into the National Horse-show Association's Hall of Fame.

Robert Pillion of Millwood passed away January 12th. Pillion was a member of the Blue Ridge Hunt, a ringmaster with Upperville Colt and Horse Show for 40 years. Pillion was in the Virginia Horseman's Association Hall of Fame.
And just recently, on March 17th, Mrs. Bunny Mellon, who with her husband, Paul Mellon, was a breeder of premier Thoroughbreds in Virginia, passed away as well. Finally, I'm including a non-Virginian here too because he was so widely known in Virginia horsemen circles. The Steeplechase and flat trainer, Tom Voss, passed away on January 21st. He had won five National Steeplechase championships as leading trainer and campaigned steeplechase champion, Slip Away. Voss died at his home in Monkton, Maryland.

I want to salute these recently deceased members of the horse community. Their passion for the sport helped create the history of horse racing in Virginia. Please join me in praising their dedication and in offering our condolence to their families.

Thank you, Mr. Chairman.

MR. REYNOLDS: Thank you.

D. G., do you have any comments?

MR. VAN CLIEF: No, Mr. Chairman, I do not. Thank you.

MR. REYNOLDS: I have some brief comments.

You know, I believe the Richmond Times Dispatch is here with us today to I guess look into and perhaps write about what's going on with Virginia horseracing right now,

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so certainly my hope -- I feel like we should be getting pretty close. D. G. and I went down to Florida to meet Jeff Jacobs on Tuesday. I thought it was a very productive meeting. I think they have some ideas, and hopefully we're getting closer. I sure would like for us to quickly resolve our issues, so hopefully what comes out in the Richmond Times Dispatch is that we came to an agreement. I don't know if it's going to happen today or tomorrow, but that is certainly my -- I have high hopes for that.

Other than that, I guess those are my comments. I think I had one other thing, but I've already forgot.

Anyway, with that, let's move on to our Committee Reports. Do we have any Committee Reports today? I don't believe we do.

MR. HETTEL: I don't believe so.

MR. REYNOLDS: Behind Tab -- we're going to move on to the VHHA contract behind Tab 4.

This is the 2014 proposed budget for the administration of the Virginia Breeders Fund. I believe it's the same budget that we have approved each and every year. So does anybody have any questions on this budget before I ask for a motion for approval?

MR. TROUT: Mr. Chairman, you indicated that there are no changes from previous years?

MR. HETTEL: That's correct. It's identical to
last year's.

MR. REYNOLDS: So I'll entertain a motion for the approval of the 2014 proposed budget.

MR. TROUT: Mr. Chairman, I move for its approval.

MS. DAWSON: I second.

MR. REYNOLDS: Any discussion?

If not, all of those in favor say eye.

NOTE: All indicated by voting aye.

MR. REYNOLDS: Thank you. That motion carries.

Now, we move on to Item 7 on the Agenda, Chapter 130 Administrative Regulation Amendments behind Tab 5. Do you want to --

MR. HETTEL: Debbie Easter spoke to this last week at our unofficial meeting. Debbie, would you give us just a thumbnail sketch of what's entailed in these Administrative Regs that were passed?

MS. EASTER: I think that as I spoke at the last meeting, Dave and Bernie had asked me just to go through the regs, and I took over and just took a peek and make sure we were working -- the regs said how we were working registering horses, and that's what we did, and most of it is just clean-up language that we think makes registering horses for Virginians easier than what was there, and there was some language in a couple of spots that should have you been taken out on previous updates.
Other than that, you know, that's it.

MR. REYNOLDS: Okay. Do any of the Commissioners have any questions? If not, I'll entertain a motion to approve.

MS. DAWSON: I think Debbie covered this quite well the last time, and I am comfortable with it, so I would move to approve it.

MR. REYNOLDS: Do I hear a second?

MR. TROUT: Second.

MR. REYNOLDS: All those in favor?

NOTE: All indicated by voting aye.

MR. REYNOLDS: Great. Okay, that motion carries. I'm going to slip in the Agenda, Mr. Laws has a motion that he would like to present.

MR. LAWS: Thank you, Mr. Chairman.

The Commission's aware we had a -- we've had a hearing scheduled for Mr. Eckley concerning the Stewards' decision. We haven't been able to have the hearing the last couple of meetings because of a quorum and the weather. His counsel wasn't here today or wasn't available to conduct a hearing today, so his counsel and I agreed that I would make a joint notion to continue that hearing to the next regularly scheduled meeting of the Commission, whether that's in April, which will hopefully occur, or later, and it's also a joint motion to continue the stay of the Stewards' ruling
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until the Commission can hear the appeal and rule on it, so I'd like to make that motion in front of the Commission today.

MR. REYNOLDS: Okay. Do you have to have that motion seconded?

MR. LAWS: Yes.

MS. DAWSON: I second it.

MR. REYNOLDS: All those in favor?

NOTE: All indicated by voting aye.

MR. REYNOLDS: As a point of protocol, I guess as our attorney, you're allowed to make a motion, or does it need to come from a Commission member?

MR. LAWS: It's okay for me to make a motion.

MR. REYNOLDS: Great. Thank you.

Now we'll move on to the Stakeholders part of the agenda. Behind Tab 6 is the Gold Cup request. I believe the Gold Cup asked us at the last meeting, but we did not have a quorum because of the weather, and so that we would like to vote on that today.

MR. HETTEL: Mike Pierce is here to explain the request.

MR. PIERCE: In conjunction with the VTA, the Gold Cup is going to have an event out on the race course tomorrow evening. We would like to open a few machines and test our mobile betting at that time.
MR. VAN CLIEF: Mr. Chairman?

MR. REYNOLDS: Yes, sir.

MR. VAN CLIEF: Could you ask the speaker to kind of get closer to the telephone?

MR. PIERCE: Sorry.

MR. VAN CLIEF: Thank you. I'm just having a little trouble hearing.

MR. PIERCE: I understand that quite well.

In conjunction with the VTA, Gold Cup is having an event at the race house Friday evening. We would like to open a few machines and test the mobile betting as well at that time, just sort of a dry run and a promotional thing -- a cross-promotion for VTA and Gold Cup. So the only betting that would be available would be on the following day's Gold Cup card, no bringing in or sending out of signals.

MR. REYNOLDS: Okay.

MR. PIERCE: Any questions?

MR. REYNOLDS: Does the Commission --

MS. DAWSION: Yes, sir. Is there some precedent for this? I mean is there some precedent to have the betting the day before.

MR. PIERCE: It would be a big step for us to be sure that everything was plausible for the next day, and it would offer those folks that come out a chance to get their bets in and keep them out of the lines.
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MR. REYNOLDS: And this is for the races the next day, not anything else but what they're going to see the next day.

MR. PIERCE: Sort of like when we have pre-Derby betting at Colonial Downs.

MR. HETTEL: Or Churchill Downs.

MR. PETRAMALO: But there are actual bets.

MR. PIERCE: Yes, they will actually be able to bet.

MR. TROUT: Is there a significant number of people who are there the night before and then it runs for several days?

MR. PIERCE: This is the first time we've done this.

MR. TROUT: Okay.

MR. PETRAMALO: I'll be there.

MR. PIERCE: We're confident of that.

MR. REYNOLDS: Okay. Are there any other comments or questions from the Commissioners? If not --

MR. WEINBERG: Mr. Chairman, could I ask a question? I think the action this Commission is about to take to approve pari-mutuel wagering on a date, that's the same request that Colonial Downs is making in the next item on the agenda. I understand there may be some procedural objections to Colonial Downs' request. I would request that
the Commission just defer action and consider them both
together so that there's some uniformity in the Commission's
position on the two items.

MR. HETTEL: Mr. Chairman, may I interject? I've
got a signed contract with the HBPA to allow it.

MR. WEINBERG: Understood. I still think -- I
understand there's going to be some objection under Section
392, which involves the unlimited licensee.

MR. HETTEL: It's a contractual agreement.

MR. TROUT: Mr. Chairman, it seems to me these
are separate issues because they are dealing with different
races, different types of things, and this is adding onto
something that we already have approved in the past. So I
don't have any objection to doing them separately. I think
doing them together, we need to look at consistency, but we
need to look at that in each of our actions rather than
doing everything at one time.

MR. WEINBERG: I'd be happy to explain further why
I think the same issue will arise in both instances.

MR. REYNOLDS: Okay.

MR. WEINBERG: I am anticipating that VHBPA will
object to the setting of the take-out percentages for wagers
on the Dogwood Classic, and under 392 of the Act, paragraph
B, there is a requirement that VHBPA will assert that they
join in the request for setting those take-out percentages.

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If the Commission is to read that statute literally, it has
to be a joint request of the majority horseman's group and
the unlimited licensee.

To be clear, Colonial Downs has no objection as
the unlimited licensee to the pari-mutuel wagering proposed
for Gold Cup. It does object, however, if it is going to be
treated differently and not be allowed to conduct pari-mut-
uel wagering on the Dogwood Classic and be asked to consent
under this to the Gold Cup as well.

To put it more bluntly, if the HBPA has no
objection to pari-mutuel wagering on the Dogwood Classic,
Colonial Downs has no objection under the same statute under
which the HBPA will object to wagering on this early night,
which has not been previously approved by the Commission.

MR. REYNOLDS: I have a question. Have we already
approved the pari-mutuel for you on Saturday?

MR. PIERCE: Yes.

MR. REYNOLDS: We've already approved that?

So why wouldn't we approve it Friday night if we've al-
ready approved it, there's already a contract in place, and
now we're just talking about Friday night?

MR. WEINBERG: As I said, substantively, we have
no problem with Friday night, but we do object to being
treated differently.

MR. PETRAMALO: I think we can solve that very
quickly.

I would orally join the Gold Cup in making a joint proposal under 392 that that retainage be as stated in the statute without any change -- that is 18 percent being the win, place, and show, and I think it's 20 percent or 21 percent, 22 percent for the exotics. I'm not even sure whether the Gold Cup is going to have the exotics, but to the extent that a joint request is necessary, and I agree with Jim that it is necessary under 392, we make an oral request that you approve that.

MR. WEINBERG: My point is the statute says the unlimited licensee, which is Colonial Downs. So if Mr. Petramalo would be so kind as to make the same oral motion for the Dogwood Classic, we would be done.

MR. PETRAMALO: I don't read the statute the same way. I think the licensee referred to in 392 is the licensee who is conducting the pari-mutuel wagering, which in this case is the Gold Cup, not Colonial Downs.

MR. WEINBERG: But it does not say that.

MR. PETRAMALO: Of course, I understand that. But when reading a statute, you don't throw out common sense.

MR. REYNOLDS: Right. Okay. Well --

MR. STEWART: We've never done that before.

MR. REYNOLDS: I personally don't understand. We've already approved something for Saturday and we're not
going to do it for Friday night? I understand where you're coming from, you just want to be treated fairly, and you cite the Act as, you know, your basis for making that argument.

My question is -- when is the Gold Cup? Derby Day, May 1st? We will have a meeting before then. When do you have to know that you can do it Friday night? Can you wait until -- we're probably going to meet very, very early in April.

MR. PIERCE: We operate at the Commission's pleasure.

MR. REYNOLDS: Well, that's fine, but we want to be a Commission that is functional and you-all are functional as well. Can it wait until the next date?

MR. PIERCE: It's not ideal, but if those are the circumstances we're faced with --

MR. REYNOLDS: I just feel like I'm not educated enough on the Act and all of this, and this was kind of a surprise to us. If it can wait one more meeting --

I'm in favor of approving it, but I want to make sure we have all our ducks in a row.

MR. VAN CLIEF: Mr. Chairman, can I pose a question?

MR. REYNOLDS: Please.

MR. VAN CLIEF: I think I heard you say something
similar a few minutes ago. I'm wondering -- and I would
like to ask Mr. Laws as our counsel and AG's rep here today,
given the fact that there is a contract in existence between
Gold Cup and HBPA, and as you point out, we have already ap-
proved wagering during the Saturday, the main body of the
event, is there anything to prevent us from going ahead and
approving the evening session that they're requesting?
Given the timeline, I think it would be beneficial to Gold
Cup if they could begin to publicize this and get the word
out. I think the longer we wait, the less benefit for them
there will be.

MR. LAWS: No, D. G. The Commission has the
authority to give them the right to conduct pari-mutuel
wagering on Friday, the day before the Saturday races.
Does that answer your question, D. G.?

MR. VAN CLIEF: I think it does. That would be
irregardless of the arguments being posed with regards to
the interpretation of the statute, am I correct?

MR. LAWS: I'm not entirely sure how to answer
that.

If we treat Colonial Downs different than Virgin-
ia Gold Cup, then that would leave us open to a claim that
we're acting arbitrarily and capriciously and with an irrat-
ional basis that could lead to a claim against the Commis-
sion to challenge the ruling that the Commission makes.
MR. VAN CLIEF: Okay. Follow-up question.

If we approve Colonial Downs' request for the day, is that not contingent on achievement of a contract with the HBPA operationally anyway?

MR. LAWS: The Colonial Downs' request for Dogwood, is that what you're referring to D. G.?

MR. VAN CLIEF: Yes, it is. I'm sorry, the Dogwood day. If we were to approve that today, the Commission's approval would obviously be in place, and then their ability to operate is going to be dependent on a contract with HBPA anyway, isn't it?

I guess what I'm asking is: Can we -- if we wanted to, could the Commission provide consent for Dogwood day contingent on the necessary contractual agreements being reached?

MR. LAWS: The Commission I think has the authority to do that, but the Commission can also give Colonial Downs permission to run the Dogwood Classic without a contract with HBPA, but there would be consequences to that.

The contract -- the permission that the Commission hypothetically gives to Colonial Downs in the absence of a contract with the HBPA would most likely be different than the permission the Commission gives if there were a contract with HBPA.

MR. PETRAMALO: Let me be clear. We don't
believe the Commission has the authority to do that. The statute clearly says a contract is necessary which provides for purses, et cetera. I don't think the Commission has the authority to grant permission to Dogwood to run a pari-mutuel day on April 5th.

MR. LAWS: I didn't mention pari-mutuel wagering. I'm trying to be as neutral between --

Where I'm actually heading, D. G. and Frank, is if the Commission gives Colonial Downs the authority to run Dogwood in the absence of a contract with the HBPA, that authority would be different than the authority it could grant Colonial Downs if there were a contract with HBPA.

MR. PETRAMALO: Well, let me be clear. Last year, Colonial Downs ran the Dogwood races without pari-mutuel wagering and not under the auspices of the Virginia Racing Commission. It was run pursuant to National Steeplechase Association.

We don't have any objection if Colonial Downs wants to do that this year. It doesn't require any action by this Commission if Colonial chooses to do that.

MR. LAWS: I understand.

D. G., I have some questions for Jim based on the argument that he just raised or initially raised, so when you're ready, I'd like to ask him a couple of questions about that and then ask Frank a couple of questions.
MR. VAN CLIEF: Okay. That's fine. Thank you, I'll just stand by and listen.

MR. LAWS: Jim, under 392, the various sections, B, C, D and E, is it your position today that Colonial Downs as the unlimited licensee has standing and authority under that statute to intervene in this because Virginia Gold Cup as a limited licensee, they're dependent on your position?

MR. WEINBERG: Correct. I mean that is the words -- to be clear, the Act specifies very specifically between limited licensees and unlimited licensees, and the literal words in the sections you cited refer only exclusively to unlimited licenses. So --

MR. LAWS: That's correct.
And I understand your argument is that has consequences.

MR. WEINBERG: It does, and I think all I'm arguing is for basic equity. The two meets are not really different. They are steeplechase meets, both licensees have asked for pari-mutuel wagering. It is -- we spend a lot of time here talking about how do we expand the patron base? How do we get new people interested in betting? On Saturday April 5th, between five and 10,000 people are going to be here. I would bet 80 percent of them have never placed a wager in their life. It is a prime opportunity to introduce them to pari-mutuel wagering, and we're getting caught up,
with all due respect, in posturing over a contract. All we're asking for is to be treated equally.

I can go into the legalese arguments of why I don't think the HBPA has standing to object -- I would disagree with Frank. Yes, the statute says you need a contract for purses and prizes. HBPA is not awarding any purses or prizes on April 5th, Colonial Downs is. It's not coming out of the million dollars that the HBPA is holding and refusing to release; it's coming out of Colonial Downs' pocket.

So to argue that because the statute says there has to be a contract over purses and prizes, he gets to block pari-mutuel wagering at the Dogwood classic makes no sense.

MR. PETRAMALO: This is interesting. Do you have the million dollars, because I sure don't?

MR. WEINBERG: It is in the partnership. You don't think there's a million dollars in the partnership account?

MR. PETRAMALO: Oh, there is. But that's our money, not yours.

MR. WEINBERG: It's a joint account, is it not?

MR. PETRAMALO: Hello.

MR. WEINBERG: For purses and prizes. How do you spend that money?

MR. PETRAMALO: That comes directly to the HBPA
by statute. You get your statutory share, we get ours. That's not your money.

MR. WEINBERG: I'm not saying it is.

MR. PETRAMALO: Well, you just did.

MR. WEINBERG: I said it was your money and you told me -- you said you didn't have it.

MR. REYNOLDS: Let me rein it back in, please. Y'all will have another chance, because right now we're talking about the Gold Cup, and now all of a sudden we're on the other page. But I hear you loud and clear; your point's well-taken. You should be treated equally, and that is the Commission's intent is to treat everybody equally.

Right now we're talking about the Gold Cup. I believe -- and I want to hear from the rest of the Commissioners, but I believe that we have a contract, that it is a reasonable request to have pari-mutuel betting on the Friday night. Basically all we're doing is just making the hours earlier. It's the same thing in my mind that's already been approved.

I'd like to hear from the other Commissioners, and then after that I'd like to hear a motion to approve.

MS. DAWSON: I have a question pertaining to what Jim said about there's a disagreement between the two attorneys on the interpretation of the statute, and I believe it revolves around the question of the licensee. What
is your interpretation?

    MR. LAWS:  Under the statute, Virginia Gold Cup is a limited licensee. Under 392, there has to be a joint request between the recognized majority horseman's group and the unlimited licensee -- that would be Colonial Downs. So the request has to be -- the request for Virginia Gold Cup has to jointly come from these two groups. That's what --

    Jim, is that correct? Is that what your argument is?

    MR. WEINBERG:  (Nodding head indicating in the affirmative).

    MR. LAWS:  I happen to agree with him. I think under the statute, it specifically says unlimited licensee, and my understanding is the only unlimited licensee in Virginia is Colonial Downs.

    MR. PETRAMALO:  Let me ask you this then --

    MR. LAWS:  Sure.

    MR. PETRAMALO:  You read the rest of the statute. Do you think that the retainage --

    MR. LAWS:  B, C, D or E?

    MR. PETRAMALO:  Doesn't make any difference. -- do you think that where it otherwise refers to unlimited licensee in that statute with regard to how much the unlimited licensee can retain for itself that that means Colonial Downs and not the Gold Cup? I don't think so. It
doesn't make any sense to read the statute that way.

MR. LAWS: Give me one the second.

Do you have the statute in front of you?

MR. PETRAMALO: Yes, I do.

MR. LAWS: When you say that there's other areas where it mentions unlimited licensee and it wouldn't make sense to interpret it that way, can you point me to where you're talking about?

MR. PETRAMALO: Sure. Take a look at 392 B.

MR. LAWS: Okay. I'm with you.

MR. PETRAMALO: Talking win, place, and show, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and an unlimited licensee. And let's see -- it also picks that up in D.

MR. LAWS: And C and E.

MR. PETRAMALO: Yeah, well, wherever the retainage is. It just makes no sense to think that a licensee who is out there licensed to conduct pari-mutuel wagering some place far away from Colonial Downs needs the permission of Colonial Downs, plus Colonial Downs gets to keep the retain-age. That doesn't make any sense.

MR. WEINBERG: To be clear, we're not asking to keep retainage.

MR. LAWS: Well, in the statute, where would it
say that Colonial Downs gets to keep the --

    MR. PETRAMALO: Well, it says the licensee.

    MR. LAWS: Well, I think what it's saying is in a licensee, it's actually Virginia Gold Cup because it's the licensee, but the unlimited licensee, and that's --

    MR. PETRAMALO: Ask yourself this: What sense does it make to require Colonial Downs' approval for pari-mutuel wagering some place 150 miles to the north at a different facility?

    MR. LAWS: Well, I think the statute refers to the unlimited licensee.

    MR. PETRAMALO: Yes.

    MR. LAWS: Which Colonial Downs happens to be.

    MR. PETRAMALO: Yes.

    MR. LAWS: So I don't think the General Assembly is saying Colonial Downs has the -- it's says unlimited licensee.

    MR. PETRAMALO: Well, there's only been one unlimited licensee in the last 17 years.

    MR. LAWS: And whether it makes sense to you or me isn't the question, it's what the General Assembly says. And in that statute, it says licensee in one place, unlimited licensee, and the common rule of statutory construction is that when the General Assembly uses two different phrases or two different words, it intends to do that, you have to
give the effect to both words.

MR. PETRAMALO: Well, I think also the statutory
maxim also requires you to use common sense. All --

MR. LAWS: I'm not aware of that in statutory
construction. I'm just kidding.

MR. STEWART: Well, with all due respect, to
use common sense, why don't you just agree to ours and we'll
agree to theirs and we'll go on down the road?

MR. PETRAMALO: Well, we're leaving out some-
thing very important here. There is another argument under
the section 369-14 that is the requirement of a contract
between the Virginia HBPA and the licensee. We have such a
contract with regard to the Gold Cup. We do not have a
contract with Colonial Downs. Big difference.

So, even if you were to treat, quote, Colon-
ial Downs and the Gold Cup equally with regard to 392, you
certainly have to treat them equally with regard to the con-
tract requirement, and there's the difference: They do not
have a contract.

MR. WEINBERG: If I may, I would like to say
that's irrelevant. That is absolutely unrelated to what
we're talking about.

MR. LAWS: I would like to make sure that we
answer Ms. Dawson's question, and I understand each side is
going to have more to say, and I thank you for your expla-
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ation, Jim, and Frank, your explanation as well. I under-
stand -- I think I understand both sides' positions.

In this case, Ms. Dawson, my legal advice that I
give in open session is that under Section 392, the General
Assembly used the word licensee and then it used the phrase
unlimited licensee. The General Assembly intended in the
plain meaning of the words to create a licensee, Virginia
Gold Cup, and an unlimited licensee, in this case Colonial
Downs, and the -- Colonial Downs consent and agreement with
the HBPA is contingent and is necessary for the Virginia
Gold Cup as a licensee to get what it wants.

I hope that colloquy is understandable.

MR. REYNOLDS: Right now we have two licensees,
one is limited and one is unlimited.

MR. LAWS: Correct.

MR. REYNOLDS: The limited licensee has the
contract which is required -- they have a contract with the
HBPA.

MR. WEINBERG: I would just like to note that I
disagree that a contract is required for a lot of reasons.
It is for simulcast wagering, but is not for live racing.

MR. REYNOLDS: We will get to that. Let's get
back and try to resolve this.

The way I see it is we already have approved
pari-mutuel racing for the Gold Cup. What you're asking us
to do is just open it up on Friday night for the same races
the next day that we've already approved, is that correct?

    MR. PIERCE: There will be no additional races
wagered on that have not been approved.

    MR. REYNOLDS: Okay.

    You know, I'm inclined to approve it, but I'd like
to hear from the other Commissioners, and if they agree, I'd
like to hear a motion.

    MR. TROUT: Mr. Chairman, my concern is basically
what counsel has been stating, and that is that we want to
make sure that what we do is not going to be immediately
assailable in any kind of legal action. I have to admit I
went to law school a long time ago, and I don't remember the
word common sense coming up in any of my courses, but the
law certainly did, and the distinction between the licensees
-- and there are basically two licensees, but there's only
one unlimited licensee, and where that is used by the Gen-
eral Assembly, that's what the law says.

    So the concern I have is to make sure that the --
I don't have any objection certainly to the taking in events
the previous evening, and I think that's a good idea and I
think it adds to the event that has already been approved by
this Board, but I do want to make sure we're doing something
that's going to be within Virginia Code and the interpre-
tation of the Virginia Code when we do that. So I'm glad to
make that motion, but I also want to make sure we're doing something --

MR. REYNOLDS: Are you leaning towards deferring it until we can find out?

MR. TROUT: I'd rather not defer it, but if that's going to be the best way to handle it -- and I think we will be having probably a meeting in the very near future -- that might be the thing to do, and it's hard to tell. I'm really just not clear with it. I'd like to go ahead with it, but at the same time I want to make sure we're doing it within the Virginia Code and not just within common sense.

MR. REYNOLDS: Okay.

MS. DAWSON: Mr. Chairman, I tend to agree with Commissioner Trout, and I would favor deferring to this to the next meeting.

MR. REYNOLDS: Okay. Mr. Laws, if we voted on it, do you think we're in conformance with the Act, or do you think deferring it so we could dot our i's and cross our t's --

MR. LAWS: I think -- and the statute says on pari-mutuel pools generated by wagering, so even though the Commission has already approved the Saturday races, if we -- if the Commission wants to approve Friday, it's voting on pari-mutuel wagering pools, so that's why Colonial --
MR. PIERCE: Are they not the same pools?

MR. LAWS: No, they'd be different because the income from Friday is additional because it wouldn't -- in other words, to me it is. I mean even chronologically and temporally, if it's something that happens on Friday, it doesn't happen on Saturday, so if we're trying to include Friday, that creates an additional pool.

MR. PETRAMALO: No, that's not true.

MR. VAN CLIEF: Just a follow-up to that last question. My understanding was that the betting on Friday evening would be pooled with Saturday, not as Mr. Laws just suggested, that this would be considered advance wagering and go into the following day's pool. Can we get clarification on that?

MR. PIERCE: That's correct, Commissioner. Your thought is correct.

MR. REYNOLDS: Okay.

MR. PETRAMALO: Right. If you wagered $10,000 on Friday night and 90,000 on Saturday, there's 100,000 in the pool.

MR. REYNOLDS: D. G., do you have any comments based on the Commissioner's comments of just not being so sure and perhaps we should defer this?

MR. VAN CLIEF: Well, I would rather vote today if we can. I'd certainly defer to counsel's recommendation,
but I just think that if we're not able to vote today and
give Gold Cup the advantage of more time to publicize the
additional wagering, it's just more collateral damage eman-
ating from this impasse that we're dealing with, and I'd
rather vote today if we can, but I would certainly defer to
the advice to make sure we stay within our legal parameters.

MR. LAWS: And Commissioner, may I?

MR. REYNOLDS: Yes, please.

MR. LAWS: Jim, is Colonial Downs jointly
requesting with the HBPA, making the request for Virginia
Gold Cup?

MR. WEINBERG: To be clear, Colonial Downs would
be happy to join with the HBPA if the HBPA will join with us
for the Dogwood Classic. That's as simple as I can make it.

We have two more days of pari-mutuel wagering
to negotiate. Our other contractual differences aside, can-
didly, it's not a lot of money we're talking about, but it
would be very nice to have two more days of pari-mutuel
wagering in the State. All we're asking for is VHBPA, don't
be obstructionists for the Dogwood Classic; we don't want to
be obstructionists here. We'd much rather see pari-mutuel
wagering being conducted. But it's just back to the basic
equity. It's very similar days. Let's just get on with it.

MR. PETRAMALO: Let me ask you this, Jim:
Assuming the HBPA were to agree with regard to the retain-
age --

MR. WEINBERG: Uh-huh.

MR. PETRAMALO: -- and pari-mutuel wagering were
to otherwise go forward on Dogwood, where would the purse
money come from for Dogwood?

MR. WEINBERG: Colonial Downs.

MR. PETRAMALO: Really?

MR. WEINBERG: Yes.

MR. STEWART: We've met all our financial
obligations in the past, unlike some others.

MR. PETRAMALO: Well, last year the horsemen put
up the $70,000.

MR. WEINBERG: And I think the horsemen made clear
they're not prepared to do that, and Colonial Downs is.

MR. STEWART: Without an agreement.

MR. WEINBERG: Without an agreement.

MR. STEWART: Right.

MR. PETRAMALO: And where does the horsemen's
share of Dogwood racing, the statutory share for example is
eight percent -- I believe it's eight percent on win, place,
and show betting -- where does that money go?

MR. WEINBERG: Into the checking account, the
purse account.

MR. PETRAMALO: The joint account?

MR. WEINBERG: No, the checking account.
MR. PETRAMALO: Oh, I see. So you're going to use that wagering to finance the $70,000 in purses?

MR. STEWART: Well, to be clear, if it generates a $1,000 in that account, I'd be stunned.

MR. PETRAMALO: I understand that. You'd have to generate 875,000 in handle to raise $70,000.

MR. WEINBERG: Frank, let's be clear. It will go into the same account that wagering on live racing at Colonial Downs goes.

MR. PETRAMALO: I don't think that's accurate, Jim.

MR. WEINBERG: Yeah, it is. Well, that's the account it will go to. It will be treated no different than what has been going on for 17 years.

MR. PETRAMALO: No, I think -- I think -- the live wagering during your regular meet goes into the joint partnership account because then we turn-around and write checks on that to the --

MR. WEINBERG: Okay. I think in practice you're right. If you read the statute literally, it should be going into the other account, but I'm telling you we're not looking to treat it any differently than the way it's been treated for the last 17 years.

MR. PETRAMALO: And that would have meant going into the partnership account.
MR. WEINBERG: Fine. Into the partnership account.

MR. REYNOLDS: Okay. Are you-all comfortable having a vote or are you-all adamant about -- obviously, if you vote no, then it doesn't pass, and I think I'd like to vote on it, and I think D. G. would like to vote on it, but if you two don't want to do it --

MR. TROUT: Mr. Chairman, I think we can. If we do a deferral, I think we may not under the circumstances and under our agenda, we may wind up being able to consider it later on in this same meeting or even deferring it to the next meeting. That may be the thing to do, or go ahead and vote on it now. I'd vote for it now, and I'd probably vote for it then, but I just want to make sure we're doing the right thing, and it sounds like to me some agreement may be being made on Dogwood right here.

MR. PETRAMALO: Mr. Chairman, can we have about two minutes and confer here?

MR. REYNOLDS: Yes.

NOTE: The meeting observes a recess at 10:41 a.m. and is reconvened at 10:51 a.m. as follows:

MR. REYNOLDS: Now, we're back.

MR. HETTEL: Mr. Petramalo, you had the floor last. You're up.

MR. PETRAMALO: Yes, come, let us reason together.

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MR. REYNOLDS: Let me get the wax out of my ears for that.

MR. PETRAMALO: We're amenable to doing the following: Number one, if Colonial will not oppose the Virginia Gold Cup by giving permission to do what it wants to do Friday night or Saturday -- that's number one -- number two, we, the HBPA, will agree to Colonial Downs' request before the Commission to conduct pari-mutuel wagering at the Dogwood races provided that the horsemen's share of wagering under the statute be deposited in the joint partnership trust account. And two, that the $70,000 in purse money comes from Colonial's funds; and three, that this agreement is without prejudice or precedent to positions that we have taken with regard to the necessity of a contract for Colonial to conduct live racing or to conduct pari-mutuel wagering, et cetera.

And if that's agreeable to Colonial, I think we can go forward.

MR. STEWART: That's fine with us.

MR. WEINBERG: Can I be the utter lawyer for one moment? Frank, you said $70,000, wasn't it seventy-five?

MR. PETRAMALO: Trust me. Five thousand comes from the NSA.

MR. REYNOLDS: Jim, we're on a roll here.

MR. WEINBERG: No, I'm agreeing, I just want to
I would suggest respectfully to the Commission that the resolution be the Commission is approving a joint request from all the interested parties for a take-out of 18 percent for straight wagers and 22 percent for exotics for both the Gold Cup and the Dogwood Classic. If you want to do them in separate resolutions, that's fine. I do think it's important that the numbers be cited in the resolutions; that's what the statute requires.

MR. PETRAMALO: I agree. You might want to think about some better numbers though.

MR. WEINBERG: As we said, we're on a roll.

MR. REYNOLDS: Is that a resolution we need to draw up right now?

MR. WEINBERG: I think as long as both sides are taking that it is without prejudice to their views on the need or no need for a contract --

MR. REYNOLDS: Does one of us have to make that motion and recite all that? Or is it on the record?

MR. PETRAMALO: Subject to Josh's comments, I think the motion you make is a motion to adopt the representations of counsel for the HBPA and counsel for Colonial Downs.

MR. LAWS: A motion to pass what he said?

MR. PETRAMALO: Whatever he said, let that be my
MR. REYNOLDS: Josh, put that together in a quick motion, and let's get it approved.

I guess the first order of business is to approve the Gold Cup right now. Right?

MR. PETRAMALO: Yes.

MR. REYNOLDS: We're going to do that right now. Do I hear a motion to approve the Gold Cup to extend their license to Friday night?

MS. DAWSON: So moved.

MR. TROUT: Second.

MR. REYNOLDS: All in favor?

NOTE: All indicated by voting aye.

MR. HETTEL: Mr. Chairman, while Josh is working that up, can I seek approval of the racing officials for the 2014 Gold Cup meet?

MR. PETRAMALO: You also should, I believe, formally approve the contract that's been executed by Gold Cup.

MR. HETTEL: One item at a time.

MR. PETRAMALO: I just didn't want you to think I was just a potted plant sitting here doing nothing.

MR. HETTEL: We haven't poured any water on you yet.

Second is approval of the horsemen's contract
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submitted, signed and approved by David Ross and Will Robinson of Gold Cup. I seek that separate approval.

MR. TROUT: Mr. Chairman, so moved.

MS. DAWSON: Second.

MR. REYNOLDS: Any discussion? All in favor say aye.

NOTE: All indicated by voting aye.

MR. REYNOLDS: Now, point of protocol.

(To Mr. Hettel) You made the motion. Does one of us need to make the motion?

MR. HETTEL: To seek a motion is what I was doing.

MR. TROUT: I did that.

MR. REYNOLDS: Thank you.

MR. PIERCE: Thank you.

MR. REYNOLDS: Dot a couple i's.

We're done with Gold Cup, so now we're going to go down to Colonial Downs' request which we talked a lot about and we're writing up the resolution, but I'm going to turn it over to Colonial Downs to formally request.

MR. WEINBERG: The request is to permit pari-mutuel wagering on the races to be run on April 5th at the Dogwood Classic with a straight wager take-out of 18 percent and an exotic wager take-out of 22 percent.

MR. LAWS: Provided that HBPA percentage is deposited to a joint account, purses come from Colonial
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Downs, and it's not precedent setting?

   MR. PETRAMALO: Correct.

   MR. LAWS: Somebody has to make the motion.

   MS. DAWSON: I so move.

   MR. TROUT: Second.

   MR. REYNOLDS: All in favor?

   NOTE: All indicated by voting aye.

   MR. REYNOLDS: There wasn't any discussion, right?

The motion passes.

   MR. WEINBERG: Thank you.

   MR. REYNOLDS: Now to the big stuff. Now we will go to the Executive Secretary's Report.

   MR. HETTEL: Mr. Chairman, we continue to struggle with the 2014 Thoroughbred date assignment and we've had some productive discussions, I think. Hopefully, some progress in moving the ball forward.

   I'd call on now -- Frank, would you care to talk first about 2014, or would you prefer to defer that and let Colonial make some presentation and then you comment?

   MR. PETRAMALO: Well, let me just recap the bidding from our meeting on St. Patrick's day. At that time, the Commission proposed a compromise of seven weeks with 21 days.

   We discussed that with our Board of Directors, and the following day, in writing to the Commission, we accepted

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that proposal, seven weeks, 21 days, and further added that we would be agreeable to executing a contract for this year which tracked the expired contract for last year which included our funding from the horsemen's purse account, the Dogwood races. That's where it stood. We haven't had any response from Colonial on that.

MR. REYNOLDS: Okay.

MR. HETTEL: Ian or Jim, would you like to speak?

MR. WEINBERG: I think we plan to discuss a response to that after this meeting privately with the HBPA. I think the themes embodied in the seven week, 21 day request were two; one to reduce the number of days to increase the purses to attract a higher quality of racing, and to extend the meet to provide more opportunities for the horsemen to race.

The proposal we'll discuss this afternoon embodies those two concepts as well in slightly different formulation, so we look forward to those discussions.

MR. REYNOLDS: Okay. Anything else, Ian?

MR. STEWART: No, sir.

MR. REYNOLDS: Okay. Before we go to the public participation, which y'all are welcome to speak, we need to go into closed session to discuss a personnel matter, and with that, do I have to read something?

MR. LAWS: I can do it.
MR. REYNOLDS: We're going to let them do it afterwards. We're not going to take very long.

MR. TROUT: Mr. Chairman, if I could just -- before we do that, we do have two more visitors here from New Kent County, Rod Hathaway -- he was here at the last meeting, is the County Administrator is here; Thomas Evelyn from the Board of Supervisors is here along with Ron Stiers that was introduced earlier, and we've probably started to attract some attention here in New Kent County. I'm not sure it's what we intended to do --

MR. REYNOLDS: I think we're attracting attention from a lot of places.

MR. TROUT: We've got good participation.

MR. REYNOLDS: Great. Thank y'all for coming.

MR. LAWS: In order to go into closed session, if one of the Commissioners would like to make a motion under Virginia Code 2.2-3700, Freedom of Information Act, in order to discuss a personnel issue and to get legal advice.

MS. DAWSON: I so move.

MR. REYNOLDS: Do I hear a second?

MR. TROUT: Second.

MR. HETTEL: Frank, if you don't mind, we'll use your office for two minutes.

MR. PETRAMALO: No, that's fine.

MR. REYNOLDS: All those in favor, say aye.
The Commission goes into closed session at 11:01 a.m. and is reconvened at 11:09 a.m. as follows:

MR. REYNOLDS: Thank y'all for your patience.

MR. LAWS: At this point, would one of the Commissions like to make a motion bringing us back into open session, certifying that all that was discussed in the closed meeting was personnel issues and legal advice from counsel?

MS. DAWSON: I'd like to move that we go back into open session, and I certify that we only spoke about personnel issues.

MR. TROUT: Second.

MR. REYNOLDS: All those in favor, say aye.

NOTE: All indicated by voting aye.

MR. REYNOLDS: We are back in session.

The next part of our agenda is public participation, so if anybody would like to come up and make some comments, please do so, but come to the front so Commissioner Van Clief can hear you, and if you would like to speak, please state your name before you speak.

So with that, I'll turn it over to the public for comments.

NOTE: There was no response.

MR. REYNOLDS: Oh, come on.
Okay. Well, thank you-all very much. We need to set a date for the next meeting.

MR. HETTEL: What I would suggest, Mr. Chairman, we've got the one issue of Dean Eckley's appeal that's been on hold literally all this year. Josh, help me with this. Could we call a meeting with his counsel for an available date in early April? I think that would be conducive to your schedule, and D. G., when will you return to Virginia?

MR. VAN CLIEF: I'm available to be at a meeting -- well, let's say I should be firmly in place Monday, 7 April going forward, I should be at your disposal.

MR. LAWS: So some time between Tuesday, April 8th and Tuesday --

MR. REYNOLDS: The rest of my Commissioners, what's --

MS. DAWSON: I'm sorry, what date?

MR. LAWS: Between Tuesday, April 8th, and Tuesday, April 15th inclusive.

MR. TROUT: I've got all my taxes done, so the 15th is open.

MR. HETTEL: Pick a date then. What's the best date?

MR. REYNOLDS: I'm wide open if I don't get thrown in jail.

MR. HETTEL: Now, in terms of giving notice, Ms.
Brown, proper notice, let's go ahead and figure that.

MR. PETRAMALO: The only purpose of this meeting?

MR. HETTEL: The Eckley appeal hearing. So certainly everybody can come listen to it, but there wouldn't be any other business discussed, unless something great happens later and we have race days, and then I'll put that on the notice.

MR. TROUT: So the contingency is that it could be for that if there's a reason?

MR. REYNOLDS: Yes, good point. If we do get fortunate enough to have race days, I want to make sure it's -- what's the notice period, 12 days?

MR. LAWS: Ten days.

MR. REYNOLDS: So that gives us our ten days to the next meeting, so that's perfect.

MR. HETTEL: We'll certainly know something later today.

MR. LAWS: Friday, April 11th at 9:00 o'clock.

MR. HETTEL: Okay. Read that into the record, Josh.

MR. LAWS: The next scheduled meeting of the Commission will be Friday, April 11th --

MR. REYNOLDS: Can we do the tenth?

MR. LAWS: 11th is the --

MR. REYNOLDS: That's the day? Okay. I'll just
have to cancel this. That's fine.

MR. LAWS: So the next meeting of the Commission will be Friday, April 11, 2014, at 9:00 a.m. for the purpose of hearing the appeal from Mr. Eckley.

MR. REYNOLDS: Very good.

There being no further business before the Commission, I would like make a motion to adjourn, or somebody please make the motion --

I'm going to make the motion to adjourn.

MR. TROUT: We'll both second that.

MR. REYNOLDS: Awesome.

All in favor?

NOTE: All indicated by voting aye.

MR. REYNOLDS: Thank you-all for coming. See you-all next time.

NOTE: The meeting adjourned at 11:13 a.m.

HEARING CONCLUDED
CERTIFICATE OF COURT REPORTER

I, Roy Garrison Wood, hereby certify that 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 29th day of June, 2014.

ROY GARRISON WOOD
REGISTERED PROFESSIONAL REPORTER

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