VIRGINIA RACING COMMISSION

January 21st, 2009

10700 Horsemen’s Road

New Kent, VA 23124

Commencing at 9:42 a.m.

COMMISSION MEMBERS:

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

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth
INDEX

1. Election of Chairman for 2009 3
2. Election of Vice Chairman for 2009 3
3. Approval of Minutes of December 17, 2008 meeting 4
4. Commissioners Comments 4
5. Committee Reports
   a. Marketing & Promotion Committee 5
6. Executive Secretary's Report
   a. Rule Change: 11 VAC 10-70-20 7
7. Stakeholders
   a. Request from Colonial Downs for 2009 Thoroughbred Race Days
      i. Presentation from Colonial Downs 16
      ii. Response from VAHBPA 28
      iii. Response from VTA 39
      iv. Response from General Public 42
8. Closed Session 68
9. Legislative Issues 98
10. Public Participation 104
11. Set next meeting -- February 18, 2009 106
12. Adjournment 106
JANUARY 21, 2009

MR. BURNETT: Good morning. We'll bring this first meeting of 2009 together a tad late. We apologize for a slightly late start.

As usual, the first order of business for our first meeting of each year is the election of a chair and a vice chair.

Gentlemen, any druthers?

MR. BROWN: Mr. Chairman?

MR. BURNETT: Yes, sir.

MR. BROWN: Yes, sir. I would like to nominate yourself to be chair again and also, if I might, I'd like to nominate Commissioner Miller as the vice chair.

MR. BURNETT: All right.

MR. MILLER: Second.

MR. BURNETT: It's been moved and seconded. Does anybody have any objection to taking the two motions together or taking the two elections together?

All right. It's been moved and seconded. All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Brown and seconded by Commissioner Miller. All were in favor. The motion carries.
MR. BURNETT: I understand that Mr. Miller has an Obamaesque speech to give us. Just kidding.

MR. MILLER: All I can say is that's the way to hold an election.

MR. BURNETT: We next come to the approval of our December 17th meeting minutes, and in reviewing them, I had some question about whether we held a roll call vote immediately after coming out of our executive session. I thought we had. I thought rather than spending a lot of time going through the transcript this morning, maybe we could defer approval of last month's meetings -- meeting minutes until our next meeting. Anybody have any objection to that? We'll hold that off.

Commissioners comments? Fellow commissioners, any comments? My only comment is we should not feel too lonely with down numbers in Virginia. From what I've been reading in the trade papers, we're seeing down numbers across the board. In some respects, you could make the argument that Virginia has been holding its own in a sense given what's been going on nationally. I hope we all can find a way to pull together in the spirit that we're seeing nationally, particularly yesterday. And I think that we have seen in the last couple of years better cooperation
among that tripartite group of regulator, track owner, and horsemen, more so in the last couple of years than we've seen in my involvement with horse racing in Virginia. I hope we can make that -- get that process to continue.

Let's turn to committee reports unless there are other comments. Mr. Reynolds?

MR. REYNOLDS: Well, this is kind of an eventful thing. We've been in discussions with the governor's office and the management people and so forth, and we've been cutback dramatically on the marketing and promotion of the -- our efforts that have been going on for the last two and a half years. We've got $30,000 left to spend for the rest of this fiscal year, which is June 30th, and nothing beyond that. Is that correct?

MR. HARRISON: That's right.

MR. MILLER: So we have very little to report from that other than that. We've got the Ambassador's project, which we'll keep underway, and we've got the school booklets that we can distribute for some period of time. Other than that, there won't be anymore marketing and promotions in the foreseeable future.

MR. BURNETT: May I ask if the $30,000 is free
of commitment to any projects at this point?

MR. LERMOND: Well, no. We committed the remainder to CRT.

MR. BURNETT: So it's committed to that vendor, but not designated as to how it's spent.

Are there fees that are being held by any vendor for services yet to be performed? I'm trying to figure out whether $30,000 is it from here on out for this racing season or whether there are other monies that are going to be spent that already have been paid for.

MR. LERMOND: They amended the budget acts and they limited the amount that we could spend in this fiscal year to 284,000. The last time the marketing committee met, we thought we had about 60 to go before we would reach that 284,000 that we cannot go over this fiscal year. In the meantime, I had -- we had forgotten we had granted money to the steeplechase dominion turf series. Frank submitted that proposal for payment. So once that's gone, we really only have about 30,000 that's left until we hit our threshold of 284 for the year.

MR. BURNETT: Okay.

MR. HARRISON: Again, basically, we've zeroed out the marketing account.
MR. BURNETT: Are there any reserves being held by vendors for work that is yet to be performed? In other words, are there any obligations on the part of CRT between now and the race meet, for example, that was already in their account? No?

MR. HARRISON: No. There's nothing --

MR. BURNETT: The Ambassador program is it?

MR. HARRISON: Right.

MR. BURNETT: Okay. Thank you. Anything else on marketing and promotion? Do you have a happy note for us here?

MR. REYNOLDS: That's enough.

MR. BURNETT: That's enough. Thank you.

Executive secretary's report. Mr. Harrison?

MR. HARRISON: I have two things. One, I would like the Commission to consider a rule change, and I'm not necessarily asking you to do so at this meeting. It could be next month, that would be fine, but what it is, it relates to the appointments of stewards and their qualifications, and the language that I -- that we've come up with could be edited. It says that the Commission may waive the above requirements for good cause shown and if in the judgment of the Commission an appointment -- an
appointee is otherwise qualified.

All this will do is this will give me the freedom, if necessary, under budget restraints over the coming months to go within for a steward rather than going outside and paying the additional -- I think it comes to about $20,000 for a third steward. If we have someone on staff that can actually perform that function, I'd like to have the freedom to do that, if necessary. This is VAC 10-70-20, appointment.

MR. BURNETT: Any questions, gentlemen?

MR. BROWN: I don't see a problem with it.

MR. BURNETT: I agree with Commissioner Brown. I think giving us the flexibility is a good idea. What we do with it is a separate question.

MR. HARRISON: Right.

MR. BURNETT: From a process standpoint, my question is whether these rules are exempt or not, and to me a pretty strong hint would be how this particular rule was put in place because I think it is relatively recent. We didn't have these requirements of judges and stewards when we started, I don't think, and maybe Dave can give me the answer.

MR. LERMOND: I can give you a little brief
MR. BURNETT: Great. Thank you.

MR. LERMOND: As you'll recall, Mr. Bowker wanted to make some changes to the stewards chapter and also the appeal to the Commission chapter, the de novo issue and several others. He wanted them to be in place for a race meet that was coming up, and there was no exemption for these. So we were going to have to go through the regular process and it was going to take a full year, but there is an exemption in there that says we can change rules if it's for a specific race meet. Terry Griggs walked us through all that.

So we actually -- I looked at the history. We did that and the first -- it was effective through September 4th. And then in November of 2006, these rules became effective, but it was through the regular process. There was no exemption, but our counsel, Ms. Dilworth, actually in an e-mail that we got yesterday pointed out one that I actually didn't know about. And it says, "Agency action relating to the following subjects shall be exempted from the provisions of this chapter and the exemption is the selection, tenure, dismissal, direction, or control of any officer or employee of an agency of the
Commonwealth." So I think it relates to the selection of this employee.

MR. HARRISON: If necessary.

MR. BURNETT: Right. I wonder if it would be acceptable to my fellow commissioners if we had Amy have a look at this and shoot us a short opinion letter authorizing us or telling us whether we're authorized to do this. It seems to me we don't want to be into something that every year we're coming back with the same motion. Perhaps we could -- and I would ask you to address this -- make this change specific to the coming race meet, but at the same time promulgate a rule that would go through the normal rule-making process such that by the following year, it would have been passed -- it will have been passed, and we won't have to fool with it again.

And then whether or not we exercise our discretion to waive would be the subject of -- I think a little bit of a fact-finding hearing would be appropriate for us. It doesn't have to be official. I think that as part of our meeting we should offer the opportunity, one, for you, Vic, to tell us what changes you want to make and why, what the good cause is for us to waive any part of these
rules with respect to hiring stewards or judges, and then give the public the opportunity to comment. I think that to the extent that other judges or stewards wanted to weigh in, we've had that happen on the harness side, that should be -- that possibility or that opportunity should be made available.

So unless there's some objection to that, perhaps we could defer this whole subject until our next meeting, at which time we would have both legal opinion from our counsel and you will have had an opportunity, Vic, to present us with what your basis is for wanting any change.

MR. HARRISON: Sure. I'm fine with that.

Yeah.

MR. MILLER: Can I ask a question? If the issue is the qualifications of a steward and one of those being experience, would somebody check to see what kind of experience is necessary to be accredited by the racing officials or accreditation program administered by the University of Arizona and Louisville as set forth in there, because it -- sometimes when you run into these things it would be impossible to appoint a steward if the experience factor is that they have had to serve as a steward.
MR. HARRISON: Right.

MR. MILLER: So just check on that.

MR. HARRISON: We have, but we can lay all that out for you. We'll have all the information for you by the time our next meeting rolls around. Yeah. Sometimes that body will make specific requirements for a specific individual. It makes it a little more complicated and a little less structured. I'll get that to you.

MR. MILLER: Okay. Thank you.

MR. BURNETT: All right. We've sufficiently beaten that one to death. We'll move to the next one. Twin Spires mediation?

MR. HARRISON: Twin Spires mediation is going to happen on Monday the 2nd of February and it was quite a chore getting everybody to agree to a date, but everyone did. We'll see what comes out of that. I just wanted to inform everybody that, yeah, we -- there is a date scheduled. We're going to have arbitration -- mediation and that it is not arbitration. It is mediation. And I'm hopeful that something good will come from it.

I noticed that just today there is the news of a similar event taking place in California between the thoroughbred horsemen and the racetracks and
TrackNet and Twin Spires, and the difference there is that they go right into arbitration. They don't take the mediation step. So I just wanted to give everybody an update on where we stand with that.

MR. BURNETT: I'd like to share with the fellow commissioners and with the public what our choices have been with respect to appointing a mediator. As you'll recall in December, we said that if the parties had not reached an agreement by the end of 2008 that the Commission would appoint a mediator. Easier said than done.

We're left with two choices typically and that is someone with a lot of experience in mediation that in all likelihood does not have any experience with the racing industry, which in my view poses a significant handicap for the mediator to even understand the language that's going back and forth among the parties. I think it in some cases can handicap the effort.

The other choice is to get someone who may be very knowledgeable of the racing industry and, again, in that circumstance you want someone who is neutral in terms of having any favoritism with respect to any particular set of stakeholders, but may not have a lot of mediation experience.
We started out going down the first road that I described with a mediator that's in Virginia that's getting some good reports. By the time we got a date, that individual was unavailable. The choice was other Virginia mediators who are well known to most of us that involve ourselves in mediation, but I was unable to identify anyone that had any experience with the racing business.

I turned to an individual I know who's an attorney in Florida who has had some experience with mediation, but more importantly has had significant experience with the racing industry, both through his employment as an attorney working with Hialeah and having some understanding of the track side of the equation and having been involved some with horse ownership and advising some people with horse ownership, having some understanding of the horsemen side of life. And then having been a candidate for Dave Roberts' position in Florida, which is kind of a one person racing commission in Florida is the way they work it. He's the director of pari-mutual racing that answers directly to the governor. He was a candidate for that position. I thought his qualifications in all three of those areas came together sufficiently, along with him being bright.
and honest and industrious would make him a good
candidate and I called him and he agreed to do this.

So he is going to come in, I assume, the night
before, spend some time with Vic and myself and Dave
just to try and give him as much information as we
can about this overall dispute, as much factual
basis as we can. We're happy to share anything that
we share with him with any of the parties. There's
no secrets here. And then we are not -- the
Commission is not involved in the mediation. I
believe it starts at two o'clock at Jim Weinberg's
office, and they'll go until they're done. That's
the plan now and if anybody has any suggestions on
how we might do it better, now is the time to raise
them.

All right. Anything further from our
executive secretary?

MR. HARRISON: No. That's it.

MR. BURNETT: We move on to a single item
under the stakeholders section of our agenda and
that is the request from Colonial Downs for 2009
race days. Absent direction from fellow
commissioners, I am inclined that we -- for us to
handle this the way it is in the outline, that
Colonial Downs make its presentation, get responses
from the parties listed there, and I would only add that I think it's our practice to permit everybody to rebut to their hearts content until we got the full discussion of all this on the table. I don't know whether the Commission will feel the need for any legal advice prior to coming out and deliberating on the days request, but that is a possibility.

So with that, absent any questions, let's start with Colonial Downs' presentation.

MR. WEINBERG: Thank you very much.

Just to be clear, there are two race day requests pending, both thoroughbred and standardbred. I believe the standardbred is not controversial. Colonial Downs and the VHHA have agreed to a race day request of 36 days from September 11th to November 7th with an average target purse of $60,000, and I would ask that the Commission formally approve that race day request unless there are particular issues that the Commission has, and I am prepared to move on to the thoroughbred request.

MR. BURNETT: Why don't we just take up the vote on these altogether, but go ahead and move into the thoroughbred side.
Does anybody have any questions on the standardbred side? I see Jerry is not here, which I assume means he's okay with everything.

All right. Let's move on to the thoroughbred request.

MR. WEINBERG: Do you want to proceed with an absent commissioner?

MR. BURNETT: Yes.

MR. WEINBERG: In our -- in Colonial Downs' thoroughbred race day request, there is a request for 25 days for thoroughbred racing. Colonial Downs continues to believe that a 25-day meet in 2009 represents the best opportunity for the promotion, sustenance, and growth of the industry in the face of the economic conditions that we face in 2009.

First, in 2009, there will be limited funds available for purses. I can explain this in more detail, but there is, as the chairman alluded to, a decline nationally in the business, a decline in Virginia in the business, and as we explained in December, historical sources of gap funding will not be available. I don't think it will be available on conditions acceptable to Colonial Downs since the horsemen have volunteered to provide gap funding, but only in the context of a 45-day meet.
In 2008, the Commission elected to exceed to the desires of the horsemen and the breeders to experiment with a longer 45-day meet. We think that a short meet in 2009 would provide the opportunity to increase average purse size and reverse some of the adverse trends that were set with a longer meet with that experiment.

A 25-day meet also provides an opportunity to fix an issue that has plagued Virginia thoroughbred racing since the meet was moved from the fall to a summer meet, and that is the gap funding I alluded to. Since that time, the period during which purse funds are accumulated in an eight and a half month period has been different from the 12-month racing period. A shorter meet in 2009 provides the opportunity to do away with gap funding once and for all and to put racing and purse accumulation in the same 12-month schedule.

The 25-day request also reflects that the owner and operator of the track is one of the stakeholders in a multiple stakeholder industry. The economic conditions facing Colonial Downs in 2009 deserves serious consideration this year. Twenty-five days of racing recognizes the economic reality that we will face in 2009.
As we discussed at the December meeting, we think a 25-day race request emphasizes the quality of racing and that is not more race days, purely for more race days, but to look at how we structure a meet that has competitive purses. Colonial Downs continues to believe in the formula for setting race days of dividing the purse amounts available by an average daily purse amount that is competitive to get horses at the racetrack.

If we look around, we see a high at Delaware Park that's racing during the summer of $263,000 a day. At 25 days, with the purse funds likely to be available, Colonial Downs would be at 238,000. It's still a gap, but it is an average purse size that speaks well to position Colonial Downs now for what it will have to do when slot machines come to Maryland and that is to position itself as a quality turf racing track that offers somewhat competitive purses with competing racetracks at that time. To get there, we'll have to reduce days. Other tracks are reducing days. Delaware Park just announced that it's reducing its schedule by 17 days.

Let me turn to a vital component of that forenote, and that is what purse funds are likely to be available for 2009. When Colonial Downs sets the
purse amount, it is making a serious estimate that it must abide by. It takes all the risks in setting what is likely to be purse funds available. If it's wrong, then it has a condition book that it cannot fulfill, which either creates credibility issues going forward or requires Colonial Downs to borrow funds to meet the condition book. As we explained in some depth in December, Colonial Downs doesn't have the ability to borrow funds this year so we need to get that amount right. It's critically important.

When Colonial Downs filed its race day request in early December, it forecasted purse funds through August 15th of $6.7 million. I think you will see that in December there was a decline of 20 percent in handle in the SWFs. As Ian will explain in more detail, January isn't looking much better. Looking at those results, the likely forecast is now $5.9 million of purse funds available through August 15th.

There are a number of reasons for that. I just alluded to the downturn in the business at the simulcast facilities. The contribution from account wagering is likely to be less for the matters we talked about in connection with Twin Spires and
TrackNet. Yes, that matter is being mediated, but
the likelihood of recovering all the dollars that
will be lost as a result of an increase in host
fees, which have a direct bearing on our source
market fees. As host fees go up, our source market
fees go down. We're going to collect less.

And then I have alluded to the gap funding
issue. The gap funds simply are not going to be
there. So we're relying upon what we generate
ourselves between January 1st and August 15th.

The 25-day meet does provide some
opportunities for improvement. I think as we
reviewed throughout August, September, and October,
the 45-day meet resulted in average daily attendance
going down by about 16 percent, live handle per day
down by over 23 percent, simulcast/on-track handle
down by over 30 percent, and the horse per race down
to 7.9 from 9.1 in 2007.

In our race day request, we identified these
metrics as those metrics we wanted to improve, and
we think we can do it with a 25-day meet. Indeed,
when Colonial Downs ran 25 days in the past, the
horse per race was at 8.9. When it ran 26 days, it
was 9.3 horses per race. And with 30 days, it was
9.8 horses per race. So you have heard that no
horses will come to a 25-day meet. Historically
that has not been the case at Colonial Downs.

There's also an argument that a 25-day meet
limits racing opportunities. Well, that certainly
is true as it limits racing opportunities in
Virginia. There can be no argument that 25 days has
fewer racing opportunities in Virginia than 45 days,
but it's a very Virginia centric argument and the
Mid-Atlantic area is one of the most dense areas for
racetracks. From the period from May to August,
there is racing, live racing occurring in Delaware,
West Virginia, Pennsylvania, New Jersey, and
Maryland. So there are other opportunities for
racing, albeit not in Virginia.

A 25-day meet would also allow us to continue
to perpetuate our marquee events. Over the last	hree to four years, the Turf Cup and the Derby have
been the most popular days at the racetrack. These
events attract the largest crowd. They've raised
awareness of horse racing in Virginia with the
casual and new horse fan. They offer the best
opportunity to bring new fans out to the track and
that has been the case in attendance each and every
year, and the opportunity to draw those patrons to
come back on less marquee days.
Although there is some controversy about the amount of purse money spent on these days, the purse money devoted to these days has declined each and every year over the last three years. We've gone from -- we've reduced it by over $650,000 that have gone to the overnights, but at some point we need to draw the line and preserve the purse structure for these marquee events.

We think in a 25-day meet, we would have no adverse affect on these marquee events and would help perpetuate them, but there are real serious economic factors facing a 2009 meet, and Ian can expand upon those in some detail.

MR. STEWART: I have spoken in the past on several occasions of how the short, high-end meet that we're proposing is really the only practical successful model to grow thoroughbred racing in Virginia, so I really see no need to reiterate that this morning.

What I would like to do this morning is spend a couple of minutes trying to put this into perspective. As I noted, last year it cost Colonial Downs $23,000 a day for each additional day of live thoroughbred racing. What I want to do is I want to try to answer a question that was posed by one of
the commissioners last year in reference to the race
day discussion, and that question was essentially
this. Why are we spending all this time discussing
relatively small amounts of money if each day is
only $23,000?

To start with, I'd like to review our balance
sheet as of September 30th, 2008, and compare it to
our balance sheet at September 30th, 1997, eleven
years ago. That's what Jim passed out. At first
glance, it has some remarkable, remarkable
similarities. Total assets are virtually the same,
a little over $74 million. However, there's some
very significant differences in the details.

On the asset side, property and equipment has
increased over $20 million as we have continued to
try to grow this business and grow this industry.
On the liability side of the balance sheet, there's
been some other very significant changes. Where
once there was almost $38 million in equity, there's
now a deficit of over $2 million. We also have a
new item due to Jacobs Entertainment of over
$66 million. You might ask, well, what does that
represent.

The initial public offering that raised
38 million was used to pay for most of the track.
The 66 million represents the money it took to finish paying for the track, expanding the OTBs, and fund the 11 years of operating losses.

Someone might also ask, why would you do that? Why would you keep pouring money into a venture that shows no prospect of ultimate success? Frankly, I do not have a good answer. The best I've determined over the years is that Mr. Jacobs did it simply because he really likes horse racing at Colonial Downs. I've said to him before that Colonial Downs is kind of his hobby. Unfortunately, the problem with hobbies is people can lose interest, especially over time and especially when it appears that no one is listening.

The problems here are not new. We haven't spoken about them for years. However, time and time again when the choice has to be made, the choice has been to benefit some other group to the financial detriment of Colonial Downs. At times the numbers have been larger than others, but the result has been a continuous erosion.

Here's some of the things we're faced with today. Twin Spires and TrackNet Media, the continuing rise in the cost of the signal in the OTBs and a desire to expend live racing in the face
of a poor economy, not to mention a growing sense in
the industry, excuse me, that the pari-mutual model
unfairly enriches the imported states that
distribute the signal, of which Virginia is one, at
the expense of the track to produce the product, the
exporters. This industry trend is extremely serious
and has immediate implications for Virginia with the
TrackNet situation we discussed last month being
only the tip of the iceberg.

Overall the pari-mutual wagering business is
doing very poorly, both nationally and in Virginia.
This trend continued in December. The December
handle in our OTBs was down 20.9 percent from
December 2007 and 23 and a half percent from
December 2006. So far in January there's been not
much relief. Handle through Monday was down
15.4 percent for the same period in '08. It was
down 22.1 percent versus the same period in 2007.
On Monday, this past Monday, a holiday, we handled
$260,000. In 2008, we handled $380,000. In 2007,
we handled $394,000 over 50 percent more on the same
holiday. I can go on and on.

Now, throughout this Colonial Downs has not
sat idle. We've eliminated positions, consolidated
operations, asked for help from our venders and
implemented salary reductions. However, in spite of this, we still face serious problems. The truth is for this industry to be successful in Virginia, it has to be based on more than finding someone who is for whatever reason willing to pay for it out of their own pocket because when they lose interest, the only option is to find someone else and there's not a lot of those people around.

The easier course of action is to make the industry attractive to investors, because then it is much less likely that we'll find ourselves in the situation we find ourselves in now.

Colonial Downs has to stand on its own two feet. This is not impossible. It can be done, but it can only be done if the other members of the industry recognize that its financial help is fundamental to the health of the industry, and more importantly, act accordingly.

So to return to the question asked, why are we always arguing about relatively small amounts of money? The answer is because we are literally fighting for our very survival. Our source of capital is gone. Our investor has lost interest. He no longer sees a light at the end of the tunnel and is no longer willing to personally fund to right
this industry.

So once again, the Racing Commission is faced with a choice. On the surface, the choice seems to be what is more important. Some additional racing opportunities for horsemen within the state versus the further deterioration on the financial help for the track.

The real question, though, is how much longer are we going to be able to go on like this. I honestly don't know. However, I think it is imperative that we show some progress for making this business profitable if we want it to continue and taking a realistic approach to the thoroughbred race dates this year is critical.

MR. BURNETT: Thank you, Ian. Any questions of Jim or Ian at this point?

All right. We'll move to the response from the VAHBPA and reserve questions for everybody when we get to the end of this presentation. Frank?

MR. PETRAMALO: I have a few things to say.

I'm going to start out by titling my presentation back to the future. The last time we ran 25 days was seven years ago, 2001. Shortly thereafter, we embarked on an expansion program, which was carefully negotiated between the racetrack
and the horsemen and was sold to the Racing
Commission with a great deal of difficulty.

To make a long story short, we agreed with the
track to help it expand the handle and thereby
expand money available for purses and days over
roughly a five-year period, and we were going to
double the handle
expand from 25 days to 50 days, from 100 million to 200 million. We embarked on
that process and until right now, with this request
for 25 days, it proceeded along almost on schedule.

Each year we increased the days beginning in
2002 when we had 26; 2003, 30; 2004, 34; 2005, 40;
2006, 42; 2007, 40, and last year 45. And each
year, with the exception of 2008, the average purses
per day increased. I might also add the most
success we had in attracting horses, Jim didn't
mention this. He stopped short of this, was our
40-day meet where we had 9.1 horses per race. Now,
this expansion was financially supported by the
horsemen, and it still is supported by the horsemen
and it will for the foreseeable future be. Let me
explain that.

In order to entice Colonial Downs to open up
five more OTBs, we agreed to take a less than
statutory rate for our horsemen's share. By
statute, we were entitled to six percent. We took four and a half percent. What this means is every month we, the horsemen, write a check between 65 and $70,000 and send it to Colonial to help them pay for that expansion and that contribute -- and that continues into the future as long as they're running those five. So that's our share and that's how we pay for the expansion.

Now, when we came here last month, we suggested to the -- we requested of the Commission that we run 45 days, the same as 2008, not increase it. We recognize the economic reality. To this extent, I certainly agree with the tenor of Jim and Ian's presentation that this year looks like a not good year nationwide as well as here in Virginia, but that said, we proposed 45 days. The Commission basically told us we're not going to decide it. You folks go see if you can work it out.

So we, the horsemen, proposed a compromise. We said, okay, we will run 40 days and we, the horsemen, will provide the gap funding. Our board authorized that, so we'll provide the gap funding for 40 days. At the same time, we had an ongoing horsemen's contract that expired -- was to expire as of December 31st. We sent the racetrack a
comprehensive proposal, written proposal. We met
and basically got nowhere.

So where we are today is the track saying
let's go back to the Future. We want to run 25
days, and the horsemen saying we want to have the
track live up to its contractual commitments and to
support expanded racing at 40 days.

Now, at 40 days, we will have purses that will
average -- depending on what we expect to be in the
purse account, will average more than they did last
year with 45 days. Now, when we constructed our
compromised proposal, we premised it on $9.4 million
being in the purse account. In late November,
Colonial was projecting 9.7. We wanted to use a
lower number because we wanted to transfer some
money to the Breeders' Fund in recognition of the
Breeders' Fund paying the 100 percent owners bonus,
so we used a lower number.

Now, Colonial comes in here today and says,
well, guess what? That number was too high. They
say the number was -- the number should be reduced
by about 12 percent. I'm just doing the arithmetic.
They said as of August, we originally thought it
would be 6.7 million available. Now we say it's
5.9. That's a 12 percent deduction.
For purposes of discussion today, I'd be willing to say, okay, take the 9.7, reduce it by 12 percent. That gets us, I don't know, 8.5 or 8.6 million. That's the number that we would think would be reasonable to look at. And if you use that number and take our 40 days, we're still making available purses at the highest level that they've ever been made available in Virginia.

Now, I don't want to vehemently disagree with Colonial's numbers, because as I said I think the economy is not going to turn around and it's not going to help the horse industry, but that said, bear in mind that while through calendar 2008, the thoroughbred handle at the SWFs was down about 11 percent or I think it was -- in terms of dollars, it's about $15 million down. The handle at the ADWs was up about 11 and a half million dollars. And that's principally because ADW or account line wagering grew, but more importantly, YouBet came on-line for a full year. So the numbers aren't good, but they're probably not as bad as Colonial would lead you to believe.

But the point here is that your charge as a Racing Commission is to do everything within your regulatory authority for the promotion, sustenance,
and growth of the native Virginia horse industry,
not the Colonial Downs interests of Jeff Jacobs and
his gaming enterprise.

Every time we get into these discussions, we
get new numbers. Now, these are the first time I've
ever seen these numbers. The numbers that I always
like to look at are the ones that they send to the
SCC, and I'll be more than happy to share these with
you.

If you'll look at the most recent SCC filing,
the 10-Q for the third quarter, Colonial Downs, one
small part of the four-part Jacobs gaming
enterprise, had a net loss of about $750,000. All
of that was accounted for by a non-cash item, a
depreciation expense of a million and a half
dollars. If you look at what I call their cash
flow, because I'm simple. I'm not an accountant,
but I say this is cash flow. Money coming in.
Their cash flow was a positive 1.2 or 1.4 million
for those three-quarters.

We always get these numbers thrown around
here, but nobody ever comes in here and says, okay,
here are the numbers for the race meet. We started
out on June 12th, ended on August 8th. Here's the
money that came in the door. Here's the money that
went out the door. This is what it looks like. I've never seen numbers like that, but in any event, we can argue about this, but my point is you're not here to make money for Jeff Jacobs and Colonial Downs. You're here to do what's best for the Virginia horse industry.

Point number two, cutting back from 45 days to 25 days is absolutely detrimental to the horse racing industry. You will not provide opportunities for horsemen to race here, and you will not find horsemen coming here to stable for 25 days with the opportunity of maybe racing a horse once or twice during that period.

Now, you'll notice all these folks here. None of whom were invited by me by the way. They all showed up on their own. They are Virginia owners and trainers. Some of whom stable a large number of horses here during the summer. Carlos Garcia is here, 20 horses. Bird Allen is here, his son Ferris, the leading trainer has 50 to 60 horses. These people will tell you they're not going to come back to Colonial Downs for 25 days. It's not worth the expense to ship all those horses and a work staff to take care of them to run for 25 days.

A 25-day meet will not be a happy meet. It
will not be in the interest of Virginia racing. It will, however, be in the hobby interests of Jeff Jacobs, the marquee events, right? Sure. They'll have the two big races, the Derby and the -- and the Turf Cup, but that's about it. Look at the numbers of what's being proposed here. This is really breath taking, breath taking.

If you take their proposal, we're going to run 25 days for $5.9 million and we're going to run those stakes races. Guess what? The money being devoted to stakes races is 47 percent of the total purse money. That is absolute craziness, but what it does is serve the purpose of a hobby owner who likes to say, well, gee, we have these two big races. We put them on CBS, $300,000. Isn't this wonderful? That's not wonderful for Virginia racing. Not in the least bit.

So what I'm suggesting to you is that you do what's reasonable for Virginia racing; that is, recognize as we do that a compromise may be in line, particularly because of the sagging economy as our new president refers to it and proceed cautiously. We would be willing to say, okay, the 9.4 that the horsemen project is too high. The number should be 12 percent less. We'll work with eight and a half
million. That will still give us purse levels higher than they were last year, and it will still give Virginia horsemen and horsemen in the Mid-Atlantic the opportunity to bring their horses down here and race.

Now, a key portion of our compromise proposal -- I don't want to sell short on this. A key portion of our proposal is that these marquee races be cut as well as all of the other stakes races. If you have the compromise proposal in your book, it's dated December 22nd. We propose cutting the Derby from 750,000 to 600, and the Turf Cup from 600 to 500,000. Both of those by the way are grade two events, and both of those are far in excess of the minimum required for grade two races by the Graded Stakes Committee. The Graded Stakes Committee says for grade two, you've got to have a purse of 200,000. We're at least three times that for the Cup and more for the Derby.

We're also proposing cutting all the other stakes races, the little stakes races that the Mid-Atlantic horsemen and Virginia horsemen run for. We propose cutting them from 60,000 to 55,000. All total that saves us 310,000 that would have gone to stakes that we could put into overnight races, the
races that really fuel the industry and support the owners and trainers who come here to race. The folks who race in the Derby and in the Turf Cup, they don't come from Virginia. They don't come from the Mid-Atlantic. They come from California. They come from New York. They come from Florida. Come in, race their fine horse, pick up a check, and they're gone. They don't support Virginia racing. They're the marquee events.

So what we're proposing then is a compromise. Now, we discussed this with Colonial and Colonial was flat out, we're not moving off of the 25 days. So what my -- in conclusion, on the race day issue, I say to you do what's right for Virginia racing, require 40 days in 2009.

The second point that you ought to be aware of is that we don't have a horsemen's contract in place. It expired as of December 31st. There are a number of extant issues there, some large, some small, but perhaps the largest issue is Colonial would have to agree in the contract to cut the purses for those big races because that's where the purses are set forth in the contract. That's point one.

Another point we're arguing over is signal
sales. That's probably solvable and there are some other minor problems that are solvable. The point is we don't have a contract. We reached an impasse, and there are two things that may flow from that fact. One is that the statutory requirement for Colonial to continue operating its OTBs and its racetrack is that it have in place a contract with the horsemen. That's right in the statute. Section 59.1-369 -- 369(14) says, the Commission shall require the existence of a contract between the licensee, that's Colonial, and the recognized majority horsemen's group, that's us, providing for purses and prizes. We don't have that. Not in the least bit. That's why we're here today.

Now, what you -- you know, what you choose to do in furtherance of your regulatory authority, of course, is up to you and I'm sure you'll act on the advice of counsel there, but practically speaking, the other thing that might likely happen is not a happy thing and that is even if Colonial continues to operate its OTBs, the likelihood is that its simulcast content is going to dry up.

I would not be surprised if other horsemen's groups, say Florida, Kentucky, Ohio, West Virginia, decide that they won't send their signals here
because there is no existing contract between
Colonial Downs and the Virginia HBPA. This, of
course, is what happened in reverse last summer
here. We would not agree to send our signal to
Calder because Calder didn't have contract with the
Florida HBPA. So I just mention these for purposes
of information so that you get the full picture of
what's going on with Virginia racing.

If you have any questions, I'd be more than
happy to answer them.

MR. BURNETT: Any questions at this time,
gentlemen, of Mr. Petramalo?

All right. We'll hold our questions until the
end. I assume the VTA is going to be represented by
Mr. Petty.

MR. PETTY: Yes, sir.

MR. BURNETT: Could we hear from you, sir, on
this subject?

MR. PETTY: You can hear from me very briefly.
I think all of you have been here through this
process before where we give our standard speech,
that this isn't our battle, but it does impact what
happens to us and when we talk about promoting,
sustaining, and growing the industry, we'd like to
raise our hands and say that's us.
I think what's being talked about today creates a perception problem for my industry, and I would suggest also for the general public. If you move from 45 days to 25 days, you don't send the right message to anybody that's considering investing. You don't send the right message to anybody who's considering sponsoring. You don't send the right message to anybody in the General Assembly. You don't send the right message to the people who are coming to the races, the people that support your OTBs, et cetera.

Unfortunately for Colonial Downs, unfortunately for you, and unfortunately for the people in this room, a lot of people that I just described don't understand what's going on here and what the issues are for the various parties, but when you're a horse breeder, you have to look at what you're going to do in sort of a five-year window because it takes you almost five years to produce -- by the time you breed your mare until the time you get that three year old in Carlos' hands, that's a five-year project.

So as I've said before, there needs to be consistency. We need to get off the roller coaster. We need to figure out how to accommodate the parties
and have a sensible plan in place, which is
supposing a lengthy echo for Frank's, we need a
compromise. We need to fix it. We need to move on.
I would only add to that that I think there's an
interesting math problem here. If your handle is
down 20 percent and you look at the racing day
request, going from 45 days to 25 days isn't a
20 percent reduction in days. A 20 percent
reduction in days would be nine days. If the handle
is down 20 percent, you want to reduce your calendar
20 percent as a result. You're getting a lot closer
to the HBPA's numbers than Colonial's.

So if you look at it in terms of pure
mathematics, I think what's being offered by way of
compromise makes more sense. It's pretty clear
based on the comments of Commissioner Reynolds,
everybody is going to have to tighten their belts
this year. If you don't get that by now, you've
been on a long, wonderful vacation, but if you've
been living here with the rest of us, then you're
aware of that.

So I think it's a difficult decision for
everybody, but I think there's a sensible compromise
in there. You know, we look at the -- I've
discussed the big picture with you all. Virginia
breeding is at such a financial compromise compared
to other states that every single thing that happens
like this is another thing we have to try and
overcome beyond the fact that our fund has shrunk
20 percent and when you're the smallest guy in the
Mid-Atlantic and your funds shrinks another
20 percent, the hill gets taller and steeper. So
everything that happens days in and day out
unfortunately makes the job of getting people to
breed horses and be involved in agriculture, all the
things we're trying to do as an industry, that much
more difficult. So that is all part of this entire
equation.

So I will leave you with that and I'm happy to
answer any questions.

MR. BURNETT: Thank you. Any questions of
Mr. Petty?

All right. The fourth and equally important
presenter today is the general public. I see we've
got a number of people, as Mr. Petramalo alluded to,
several trainers and owners being here. Are there
any members of that group or any other group that
are here that would like to address the Commission
on this issue of race days? Mr. Garcia?

MR. GARCIA: I come from Mid-Atlantic. I'm
going to represent some of my colleagues in here that come to this meet, Ferris Allen, Merryman, and others. We've been coming for the last 10, 11 years supporting racing in Virginia. Some of the other horsemen in the Mid-Atlantic, they don't want to do that. So for ten years I've been coming over here, and I can see from the first year to last year how much improved -- the perception of racing, it's improving. We have more fun. We can see more people in the stands. We bring better horses. No horse is breaking down. We got good racing. Now they want to cut down to 25 days. For us, it's not worth it.

It's expensive. If we have to bring our horses over here, it is not worth to do it. To ship one horse or two for a meet is fine. I'd rather go to Delaware Park. We have Philadelphia Park. We have Penn National. They'll have turf courses, but you're talking to come to Virginia for 25 days.

Now, what are we going to do in Virginia? Are we going to reduce it for nine days a week -- nine days a meet? Make it a little fair. I don't think it's possible to do that. It'd be nice for racing. Not good for Virginia racing. Let's put it that way. We have to maintain the days, keep improving
what we started. We planted a seed. Now we terminated it. Are we going to cut it down? Are we going to have a drought? It doesn't make sense to me. We all are losing right now. I'm losing because it costs me about $40,000 for each horse from the time -- from conception to bring him over, I'm losing money. So is mister -- whatever his name is, the owner of racetrack, but the purpose is to produce for the future. We have to build. We are in the process of building right now.

The economy in Virginia is bad. The economy in the nation is bad. People don't bet like they used to be, but we are losing right now. We have to keep looking forward to make it better. If we're going to back off, where are we going to go? Nowhere. We work very hard to race in Virginia. Are we going to stop? What is the problem we have over here? That's what I'd like to know.

MR. BURNETT: Thank you, sir.

Any questions of Mr. Garcia? I have one question. Can you tell me approximately how much an owner is charged to have his horse or her horse come with you to Colonial Downs versus stay at a home stable? In other words, if you get 70 bucks a day or 80 bucks a day, whatever it is that your rate is
in Maryland, you bring a horse down to Colonial. You charge a day rate. And then are there additional shipping and other types of expenses that the owner absorbs coming down here? And if so, how much?

MR. GARCIA: Of course. It is a lot more expensive. We've got to charge -- we have to pay more for accommodations to come here. Colonial don't produce that. We have to get a foreman. We have to find accommodations. We have -- the owners have to pay a little more because I cannot absorb all that.

MR. BURNETT: That's my -- how much does that owner pay more per day or however --

MR. GARCIA: Well, another $5, I charge. I don't want to put so much burden on them. I take the beating myself, too. Besides that, they call it the Saratoga of the South. Around here for the meet, they treat it that way. They think we have so much money, we're coming over here. They charge everything more. We pay 7, $8, for each thing. I mean, it's ridiculous. If we need it, we've got to buy it. Nobody wants to come over there. Then they have the gas expenses and everything. Last year was very hard. We still come every day. We have to got
so many different bills. We are contributing for
Virginia racing to go forward. It would be ashamed
to take a step back.

MR. BURNETT: Thank you, sir.

Anybody else wish to address the Commission on
this issue?

All right. Seeing none. Gentlemen, our
counsel provided us with a copy of 59.1-369, and the
underlying assignment of racing days, regulation 11
VAC 10-20-220, and it sets forth the criteria that
we need to consider for racing. It lists
approximately 24 specific items and a catchall
labeled 25. I think there's some value in our
looking at those criteria, particularly when there's
conflict among the parties.

As a preliminary matter, is there any desire
for legal advice before we engage in public
discussion on this particular item?

MR. MILLER: I'm looking for that.

MR. BURNETT: I will say that I have a notion
or two that I'm not sure whether it's legally proper
or permissible. I would like to share that with our
counsel. Unless there's some objection, I would
move that we go into closed session --

MR. MILLER: Before we do that --
MR. WEINBERG: Chairman?

MR. MILLER: I'm sorry.

MR. WEINBERG: I'm sorry. I didn't mean to interrupt.

MR. MILLER: Before you get into that, I know no one else other than Mr. Garcia spoke from the general public, but could I just ask if there is anyone out there who agrees with Mr. Garcia's comments and do you support those comments? Just raise your hands.

MS. QUERY: Absolutely.

MR. MILLER: Thank you. Some people just don't want to talk.

MS. QUERY: I'll speak to something.

MR. MILLER: No. I mean --

MR. PETRAMALO: This is Mary Query. She's a trainer here in Virginia.

MR. MILLER: I just wanted to get a sense of who all of you are and what your position is, and I can imagine what your position is and you agree with Mr. Garcia and Frank's comments basically, right?

MS. QUERY: Definitely.

MR. MILLER: Now, I would say this. We don't want to keep anyone from addressing us. If there's anything in addition that you think would benefit
the Commission to hear, certainly I would encourage you to speak up. So do you have -- Mr. Chairman, I don't want to --

MR. BURNETT: Oh, no. If you can drag it out of them, have at it.

MR. MILLER: I mean, we need as much help as we can get.

THE REPORTER: I need you to state your name for the record, please.

MS. QUERY: Okay. Mary Sue Query. This is like Frank was saying and Carlos. I've been born and raised here. I came out years ago to set -- for the voting and they came and asked me like what are you doing? Who are you with? I'm like I'm with no one. I'm sitting here, you know, handing out things to get this passed by myself.

And now I sit here and I'm like y'all want to cut days, and just like Carlos said, they've got to bring riders in. I gallop horses in the field because I don't have a track, then I go to Maryland to work the horses so I can have Virginia bred here. They just started this, you know, a hundred percent payback, and then they want to take more days from us. I have a horse that I can run, but I can only run him every ten days or every seven days. Then
the vet says, no, he needs a little bit more time,
so then y'all cut us more days.

I'm like it just cuts our throat, and then the
blacksmiths don't want to come up here. We have
vets from Maryland come. And then Tyler, he's
saying, "Come on. We've got to fill these races.
We need more horses." If the people are not stabled
here, you know, where are they going to come from?
They're not going to drive all the way down here.
It's expensive. It's expensive. It costs like $700
just to bring a horse here. I mean, I'm sure it's
probably more, I'm not sure, but you cutting days is
cutting our throats. You know, it's just -- we work
so hard, you know, to get -- I know this year it's
terrible, but if we can just get through the rough
waters, you know, there's nothing next year that --
hopefully we can get this thing going.

I sure hate to cut our days and everybody
don't come, then Tyler and everybody is looking for
horses to fill races, and then y'all can say, well,
I told you so, Jacobs and them. We need those days.
We need to look forward. We need to look to the
future. I don't know what else -- I get so -- I'm
not -- but I just want to say something. I just
want to say something.
MR. BURNETT: Thank you.
Yes, ma'am?
MS. RICHARDS: I would just like to raise a concern to educate the members of the Commission. At the beginning of the year, horsemen submit a stall application, which is a commitment saying that you will come and stable at that racetrack. And I'm just concerned that with 25 days, horsemen will not be able to make that commitment because when it ends, they will have no place to go. Delaware will be running. Monmouth will be running. The stalls will be full. They will be kind of out there in left field.
MR. BURNETT: Thank you.
Yes, ma'am?
MS. HESTER: I would just like to comment --
MR. BURNETT: Would you state your name for the record, please.
MS. HESTER: Leanne. Leanne Hester. I'm an owner, a trainer, and a breeder, so I can kind of see all the aspects and great points from every one of you, but number one, for Virginia it's so hard as a trainer to be a Virginia trainer. You have to go to outside states no matter what you do to get your gate cards, to get all your licensing. It's much
harder on an owner in Virginia than in any other state because of this program. I think if we have less days -- it's a trickle down effect, like Glen was saying. It takes several years to get these fowls to the races.

So if we have less days, people are going to get disillusioned. If it goes backwards, we're going to have less breeders. So the whole program is going to be damaged, the breeders, the stallions, everything is affected by this decision today because of this trickle down effect of why breed. We might not even have a program, and we're showing this instability really bad right now. So I really think that not taking a step back is important to not just racing, but to the whole picture, the breeding in Virginia, the whole race industry in Virginia.

MR. BURNETT: Thank you.

Anyone else? Yes, sir. Your name, please?

MR. GARDINER: My name is Tom Gardiner, G-A-R-D-I-N-E-R. I manage some starter stables here in Virginia. I'm based out of Richmond. We have three of them right now. I have about 80 owners altogether, a lot of them one, two, and three percent, but most of them have never owned a horse
before. Probably 95 percent of those people are Virginia people. I'm trying to get them involved with Virginia racing.

We've bought most of our -- we had up to six horses. We only have three right now, but we've had up to six horses. My trainer, Pasquale Pane, he's stabled in Bowie, Maryland, right now. I've tried very hard to support Virginia and Colonial Downs. I'm a former employee actually of Colonial Downs as a teller, worked in the audio visual back in the early days of Colonial Downs.

When we go down to the horse sales, we try to buy and we look for Virginia bred horses. We try to support the Virginia bred, the Virginia industry as owners, and I try to get my owners involved. And two or three of them have split off and got their own horses now, and they're bred.

So, again, as Leanne said, we're looking for the future, you know. It is two or three or four years out there. If I'm going to a sale and buying Virginia bred, I'm not going to run for a 25-day meet, you know, it just cuts down my opportunity. Why do that when the other -- the rest of the year, minus 25 days, I'm racing somewhere else. Maybe I'll be looking for Maryland breds or wherever --
Pennsylvania breds or wherever we will be racing.

I'm trying to support the Virginia bred. We didn't buy anything at this past sale because I wasn't sure where Virginia was going to go, but it definitely affects what I want to do with my business and how much I want to expand. That's why I'm here today is to make my decision. Where's Virginia going? Where do I need to be going with my future? Granted I'm a very small fish in a great big pond, but it does have an impact. I'm trying to pay the bills. I understand where Colonial Downs is coming from. If you can't pay the bills, you can't pay the bills, but I'm very concerned about a 25-day meet.

I've talked to my trainer at length. If we go to a 25-day meet here, I'm nearly certain we'll stay in Bowie and run out of Bowie, and that gives us options to then go to West Virginia, Pennsylvania, Delaware, or wherever -- and Colonial Downs. We'll just pick our best spot for our horses.

He loves to come here. He's been here six years in a row. We bring about 20 head, but it just doesn't make sense to uproot yourself so much for five days or five weeks. You give up your stalls back there. Sometimes you have trouble getting back
in. So that's our issue. We'll probably -- I can't say for sure, but we'll probably stay in Bowie if we go to a 25-day meet and race out of there and race a lot of horses elsewhere.

MR. BURNETT: Thank you, Mr. Gardiner.

Anyone else wish to speak on this issue? Yes, ma'am?

MS. COX: I'm Nelly Mae Cox. I'm an owner and breeder and I have had horses run at the Colonial Downs meet from its inception, and I know how important it is to all of us in this room. There are many others that have supported it from the very beginning, and we want to run our horses here. And I think that the aspects of breeding horses in Virginia, having the green spaces and all of the other things that help the agricultural economy of this state are very important, and we need some help. Thank you.

MR. BURNETT: Thank you.

Anyone else wish to speak? Yes, ma'am.

MS. NIXON: My name is Stephanie Nixon, and I have a farm here in Ashland. I've been coming here like most of these guys since the track has started and, you know, I get up at four o'clock every morning, come down here, take care of my business
here, then go back to my farm, take care of my
business at the farm, then come back in the
afternoon to saddle my horses, look after the horses
here. I've been doing it for 11 years, but there is
no way I'm going to come back and ship all my
horses, all my help, split up my operation for 25
days. It's just -- you know, it's not worth it to
me to do that.

The reason why I do this is because I love
Virginia racing. I'm like Mary Sue. I've had to go
to Maryland to get a gate card. I've had to go to
Maryland to do this. I've had to do -- you know, go
all over to run my horses, and it's sad that we
can't keep promoting Virginia racing like we have,
and I just don't understand. I don't think -- I
don't see myself coming down here, and it hurts me
to have to say that as much as I love Virginia
racing.

MR. BURNETT: Thank you.

MS. HESTER: Can I ask a question?

MR. BURNETT: Certainly.

MS. HESTER: Why is only -- why are only the
thoroughbred days at stake? If they're trying to do
a general cutback, why aren't the standardbreds not
being asked for some days, too? Isn't it the same
pot of money?

MR. BURNETT: I said you could ask a question. I didn't say we'd answer it, number one. It is a matter of contract between horsemen and the track, and I don't want to go into all the arguments about it, but there is an agreement between the harness horsemen and the racetrack as to that meet.

There are differing expenses and different factors being considered and for whatever reason, they have reached an agreement on that number. I have not heard anybody say that the two issues are intertwined in any significant way, but I'd be certainly open to hearing about that as I'm sure the rest of us would if that's the case. I don't think I can really embellish on that anymore.

I did say that everybody would have an opportunity to offer any rebuttal if they would like, and this would be a good opportunity to do that.

MR. WEINBERG: If I may, I would like to return to a few points that Frank made. I think when we look -- there is a suggestion that Colonial Downs had not lived up to the bargain struck in 2001 when we arrived at this five-year plan. I have to take serious issue with that. Frank explained how
each and every year since then there have been growth in race days.

You may recall when we sat in this room in December of 2007, we looked at charts, and those charts showed that each and every year of that contract there had been increases in race days, give or take a few years where we dropped back a couple, but consistently year in and year out the earnings of Colonial Downs had declined.

So Colonial Downs sacrificed its earnings to make sure that race days expanded. To suggest that we somehow didn't live up to our agreement, we built those OTBs. The deal with the horsemen was, look, we are not going to build OTBs in small metropolitan areas, which we cannot make a profit in under the statutory scheme of purse contributions.

If we build an OTB in Martinsville and have to pay six percent into the purse fund, that OTB will never been be profitable, but we will do this. If you'll reduce the purse contribution to four and a half percent, we'll take the risk that there will be sufficient handle in Martinsville that we can make a profit and that the horsemen get more handle, and hence, more purse funds. Colonial Downs took that risk. It turned out to be bad bet for Colonial
There are more race days, but there's less earnings, but that's --

MR. STEWART: I'm sorry.

MR. WEINBERG: Go ahead.

MR. STEWART: I was just going to point out two things. If you look at the financial results in Scott County, Martinsville, and Vinton, the horsemen made more money than we did. And the truth of the matter, as Jim pointed out, the horsemen recognized that four and a half percent of something is better than six percent of nothing. They weren't going to be any OTBs unless the cost structure changed. So while I appreciate he wants to characterize it as a sacrifice, the truth of the matter is it was a benefit.

MR. WEINBERG: I'd just like to point out a few math characterizations I would disagree with.

I think Frank suggested when we ran 40 days, we had the highest concentration of horses per race at 9.1. I believe when we ran 30 days, there were 9.8 horses per race. There was a suggestion that if the total purse funds available for racing in 2009 were 8.6 that that would be the highest average daily purses that we raced for, that would be $215,000 a day roughly. That would not be the
highest we have raced for. Would it be an
improvement over last year? Yes. Would it be less
than what we raced for in 2007? Yes. In 2006, it
would be a decline.

Yes, there might be more gross dollars wagered
through the ADW this year, but our margins on those
dollars is going down, and as the ADW providers
including YouBet, pay higher source fee -- I'm
sorry, pay higher host fees to TrackNet Media, our
source market fees are going down.

On the math that Glen did, yes, handle on the
OTBs is down 20 percent, but what also is not
factored into the 5.9 available is the absence of
the gap funding. Gap funding represents four and a
half months of purse generation in the SWFs. So
just adding, that's about roughly a third of a year.
So if you add those two numbers together, 20 percent
and 33 percent. That's 53 percent. So 25 days is
more than 47 percent of 45 days.

I'm not suggesting that is the proper math,
but you need to take into account in 2009, we're
looking to fix a systemic problem and that is the
gap funding. We don't have it to provide. The
horsemen have said if you race 45 days, we'll give
it to you, but anything short of that, we're not
going to provide it to you. We are looking at five million dollars for purses.

MR. PETRAMALO: Surrebuttal, two points.

MR. WEINBERG: I can --

MR. PETRAMALO: I'm sorry, Jim.

MR. WEINBERG: That's all right.

The last point is, what is our industry? I appreciate and respect the views of the owners, trainers, and breeders that have expressed their view, but if the track isn't considered a Virginian and part of that industry, then we're going to sit around and we can all make idle threats. The horsemen are going to withhold signal. The breeders and trainers aren't going to bring their horses. That's not how we're going to move this industry forward. We need to find a solution. 2009 is going to be a year of cutbacks. There is no way with the dollars we have before us that we are going to have traditional growth in race days.

The growth is going to come in my view from perpetuating our niche as a turf track mecca. Part of that is preserving these marquee races. We can negotiate on all the other stakes races. I think there are plenty of them, but it's time to stop picking on the big two. We've been picking on them
for years and that was part of a lengthy contractural negotiation as well. Those purse amounts were set as quid pro quos over a long history of contract negotiation, and the growth is going to become in sort of preparing for the future because three years hence, we're going to be dealing with slots in Maryland and jacked up purses, and we need to figure out how we're going to compete, whether it's a shorter meet or some other way. We're not going to be able to preserve the status quo, continuing to grow three or four days a year and expect that we're going to compete on the same terms as we are today.

One legal point not directly affecting race days, but obviously for the reasons set out in my letter to Mr. Harrison, we disagree whether -- that we do have a contract that addresses purses and prizes in place. I'm not sure that is directly related to the issue of race days before you. I would suggest to you once race days are behind us, the obstacles we face in negotiating a contract that addresses a host of other issues would probably be easier than it has been in the past few weeks.

MR. STEWART: I guess I've got one brief comment. I hear the owners and the trainers and I
understand the personal issues involved there and
their hopes and desires for Virginia racing.

Colonial Downs has several hundred employees,
and they share many of those same hopes and desires.
They're making sacrifices. They want to preserve
their jobs. All you have to do is listen to the
radio any morning. This morning it was Clear
Channel. Who's it going to be tomorrow?

We need to put this industry on a
fundamentally sound financial foundation, or we'll
all have trouble, very serious trouble.

MR. BURNETT: Anything further?

Mr. Petramalo, surrebuttal.

MR. PETRAMALO: Two quick points. Just as a
matter of arithmetic, the handle at the OTBs is not
down 20 percent. I don't know where that number
comes from, that it was down 20 percent in December.
Per the calendar of 2008 in your own report, it
shows it's down 11 percent. Just a minor point.

With regard to the point that Jim made on the
number of days, we're not seeking growth here in a
time of economic downturn. Our compromise kind of
recognizes that and we're saying, okay, we won't
race 45 days the way we did in 2008. We'll cutback
to 40 days. So I think we're being responsible
there. We're not seeking an expansion at an
inopportune time.

And secondly, Jim represented that the
horsemen said they would fund the gap only if it was
45 days. That's not correct. What I said to you
was our compromise proposal was 40 days, and we will
fund the gap at 40 days. End of surrebuttal.

Let me add one final thing because you folks
know that I always get animated here, but I want to
make clear that there's no personal animosity
between horsemen's representatives and the
racetrack. We have spirited exchanges, but believe
me, it doesn't go beyond what you see.

MR. BURNETT: I think the spirited exchanges
are helpful, and they keep the Commission awake. So
that's good.

Mr. Petty, we ought to give you a chance at
surrebuttal as well. Anything to add?

MR. PETTY: I think the folks that spoke here,
especially Mr. Gardiner, he really sums up our
situation. He's says he's a little fish in a big
sea. As far as I'm concerned, he's the biggest damn
fish in our, you know, big ole swallowing ocean.
Guys like that, I mean, for us that want to buy
Virginia bred and want to support the industry, I
mean combine that with everything everybody else
said, I think it sums it up very nicely.
Unfortunately, your job is to adjudicate their
interests and their interests and their interests
and figure out how to make everybody's interest
work. That's the trick here, because everybody has
very different interests, but that's always been the
definition of the stakeholders in this industry. So
I don't have anything other to add than sort of
ditto what everybody has really already said.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes, sir. Mr. Miller?

MR. MILLER: Could I ask a question --

MR. BURNETT: Please.

MR. MILLER: -- of Frank? On the gap funding
proposal --

MR. PETRAMALO: Yes, sir.

MR. MILLER: -- will you agree to provide the
gap funding should the number of days be less than
40, would you still be willing to work out the gap
funding?

MR. PETRAMALO: No. Absolutely not. And
that's not coming from me. That's coming from our
board yesterday afternoon.

MS. RICHARDS: It's also spirited.
MR. PETRAMALO: Yes, very spirited.

MR. MILLER: I have a question of --

MR. BURNETT: Please.

MR. MILLER: -- Jim.

On your presentation of this sheet that you gave regarding debt, assets and debt, you indicate that the 66 million plus due to Jacobs Entertainment is to cover the cost of finishing the track, additional money debt -- in addition to the 38 million, the cost of setting up the SWFs, and you said covering 10 years of losses.

From a bookkeeping standpoint, does Colonial Downs carry that on its books as a -- is that a loan from Jacobs, or has Jacobs claimed those losses on their taxes for their entire operation? And if they're reimbursed, do they go back and show that as a reimbursement for a previously claimed tax loss?

MR. STEWART: Colonial Downs and Jacobs Entertainment -- Jacobs Entertainment is a subchapter S corporation. The losses flow through to Mr. Jacobs personal tax return. This is carried as an intercompany account on the Colonial Downs balance sheet. There's no credit posted back for any tax benefits.

MR. DALE: But there's no provision for taxes
MR. STEWART: There's no provision for taxes.

MR. BURNETT: I think I understand that. I'm dense when it comes to taxes, but anyway, Colonial Downs is treating that as if it were an obligation back to Jacobs -- to Mr. Jacobs. In other words, you're trying to make him whole.

MR. STEWART: Well, in order to balance the books, you know, when the money comes in, we have to add another side to the entry due to Jacobs Entertainment. Now, you know, the -- when the initial consolidation of Colonial Downs into Jacobs Entertainment in 2001 or 2002, it slips my mind, there was originally $12 million left on the books. He wrote off 10 or 15 million. He left 12 million on the books. That accrues interest, but the rest of it doesn't.

MR. BURNETT: Ian, may I ask one question in follow-up just so I -- I view this document you gave us as essentially an illustration of where this enterprise as a whole is. Would it be fair to say that if in 2008 somebody wrote Mr. Jacobs a check for $74,212,000 and he deeded over everything he owned that had to do with Colonial Downs racing, he would walk away saying I broke even? I put a lot of
time and energy and blood, sweat, and tears, but
basically I'm breaking even at that point. Is that
a fair way to look at that?

MR. STEWART: Well, actually you really don't
need 74 million. You could get by with 66, and then
he'd be even.

MR. BURNETT: Gotcha. Right there. So what
he's put into it, he breaks even there. All right.

And a question for Duke, are we still at the
incremental cost of about $23,000 a day? Has that
changed in any way? For additional racing, if we
were to go -- if you pick 30 days or 35 days,
whatever the number of days is, for every day you
add after that, we had this discussion last year, I
think last -- late last year it was about $23,000 in
the incremental additional costs, is that number
still right?

MR. STEWART: That's still good.

MR. BURNETT: Gentlemen, I think this is going
to take some creativity on our part which might
involve some notions that our lawyer might wince at
if she didn't have the chance to hear them ahead of
time. I suggest we go into closed session. I'm
going to make a motion to that affect.

Now, in accordance with the provisions of
Section 2.2-3711 (A) of the Code of Virginia, I move that the Commission go into closed meeting for the purpose of consultation of legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. All in favor indicate by saying -- well, do I have a second?

MR. FERGUSON: Second.

MR. BURNETT: It's been第二ed. All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Burnett and seconded by Commissioner Ferguson. All were in favor. The motion carries.

NOTE: The Commission went into closed session, following which the hearing resumes as follows:

MR. BURNETT: All right. Gentlemen, the first order of business is a certification.

I move the adoption of the following resolution: Whereas, the Virginia Racing Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of the Virginia Freedom of Information Act, and whereas, Section 2.2-3712 of the Code of Virginia requires a certification by
this Commission that such closed meeting was
conducted in conformity with Virginia law.

Now, therefore, be it resolved, that the
Virginia Racing Commission certifies that, to the
best of each member’s knowledge, (i) only public
business matters lawfully exempted from open meeting
requirements under the Virginia Freedom of
Information Act and (ii) only such public business
matters as were identified in the motion convening
the closed meeting were heard, discussed or
considered by the Commission in the closed meeting.

Roll call vote.  Mr. Miller?

MR. MILLER: Aye.

MR. BURNETT: Mr. Reynolds?

MR. REYNOLDS: Aye.

MR. BURNETT: Mr. Brown is absent.

Mr. Ferguson?

MR. FERGUSON: Yes.

MR. BURNETT: The chair votes aye, and
Mr. Brown as soon as he opens that door is going to
vote.  Mr. Brown, are you voting aye or nay if the
meeting --

MR. BROWN: Aye.

MR. BURNETT: Thank you, sir. He knew what
that motion was.
Folks, we spent a lot of time trying to find our way through this thicket and we discussed an alternative about which we are not certain of the legality after spending some time with our counsel. We are not satisfied that we can come up with a legal analysis with which we are comfortable today.

With that said, we think that by sharing with you the commissioners' idea, recessing for 30 minutes to allow the parties to talk about it, and come back to us. If there is voluntary agreement, we can have race days today. So I want to share with you what our thinking is. I will invite my fellow commissioners to correct me if I wonder off what I think I understand the proposal to be.

We are cognizant that everybody is suffering and that everybody is acting in good faith to find a way to keep their own particular stake in the business alive and keep the industry in Virginia as a whole alive as best we can. We are mindful of the impacts of making race day assignments that are extreme in any way, either high or low, and our instinct would be to assign 35 days of racing with Colonial Downs being responsible for the gap funding. We are not satisfied that we can order Colonial Downs to provide gap funding. We have some
significant doubt about that, and we are also
mindful that the horsemen have expressed an interest
in providing gap funding if they can run 40 days.
We think imposing that 40 days of racing on the
racetrack at the expense that it is, even with gap
funding taken care of by the horsemen, is perhaps an
onerous burden.

The middle ground that we want the parties to
discuss is the assignment of 40 racing days with the
horsemen being responsible for the gap funding and
the horsemen being responsible for an additional
$115,000 worth of incremental increases in costs
payable to the racetrack. We're not sure we can
order that either, but we think if the horsemen and
the racetrack were to come to us with either one of
those proposals that we can award race days.

So it is our intention to first ask the
horsemen, the racetrack, the breeders if they're
willing to take half an hour and talk about it right
now. And if the answer is yes, then we would recess
for half an hour, hear what you have to say. If
race days come out of it, fine. If they don't,
we'll go back to the drawing board and do what we
can. I would also say that Mr. Ferguson suggested,
I'm willing to go back and forth if that's any help
to the parties.

Any questions about any of that?

MS. STEWART: Well, the problem is I'm not sure that I can do that. I mean, I can't -- Colonial Downs/Jacobs Entertainment is not going to fund the gap.

MR. BURNETT: Understood.

MS. STEWART: I've got nowhere to go.

MR. FERGUSON: Can we get these parties to discuss this in separate rooms with some shuttle diplomacy instead of in front of a crowd?

MR. BURNETT: If they're willing.

MR. PETRAMALO: We're always willing.

MR. BURNETT: Patty?

MR. STAPLES: What's wrong with a crowd -- as a crowd? We're all horse people here. Excuse me for butting in, but I don't see a crowd here. I just see horse people here. Why can't we discuss this right here?

MR. FERGUSON: For the very reason that we're doing it. It interjects -- it interjects --

MR. STAPLES: I could never get a response from y'all anyway. That's why I bolted today and I didn't know, but -- and I've been an owner. I've spent my money in Maryland. I've got Maryland
people -- Virginia people in Maryland that wanted me here today. We finally made it, and I think we should have this as open as we can and transparent, you know, that's all.

MR. BURNETT: No. I agree with you, sir. That's part of what we're attempting to do is be just as open as we can. What we're trying to do is -- and it will all be public. We're trying to let these two parties maybe insult each other in private for lack of a better term until they find a deal, and then they're going to have to tell us all about it and you're going to know all about it.

MR. STAPLES: Wonderful. Sounds like a winner to me. Let's get with it.

MR. BURNETT: Anybody need a horse trainer?

MR. STAPLES: A what?

MR. BURNETT: I said anybody need a horse trainer. It sounds like you're right on it.

MR. STAPLES: We're promoters, though, too, and we're from the Commonwealth.

MR. BURNETT: That's good.

MR. STAPLES: I was born here.

MR. BURNETT: Congratulations.

MR. STAPLES: Thank you, and you're quite welcome.
MR. BURNETT: We're all on the same page, I hope.

MR. STAPLES: Thank you. I hope so, too.

MR. BURNETT: Any further comment from anybody? Are we making any progress? I mean, if we're wasting our time, we're wasting our time. We're all struggling over this trying to find some way that we can make the best possible decision in very difficult circumstances.

MR. HARRISON: Do you want to use the conference room? You can use my offices. I just to make it -- I want to facilitate the means.

MR. PETRAMALO: Let me see if I understand where we are. You put two alternatives on the table and asked the parties whether they were willing to discuss them. As I understand it, Colonial Downs has said forget one. We won't discuss it.

MR. BURNETT: Part of one, I heard. He's trying to be upfront and say -- we're not sure we can impose -- we fully recognize that if we can't impose gap funding, it is possible that we would be running 35 days divided into 5.9, 5.7, five point whatever it is. That's going to be the daily purses, and there's still a discussion to be had about stakes and all the rest. That's one scenario.
Another would be that if the horsemen were willing to pay the incremental costs between 35 days and 40 days at $115,000, and the gap funding, this Commission would be inclined to impose those days.

MR. PETRAMALO: Maybe I misunderstood. You put two proposals on the table for our consideration. The first one was 35 days with Colonial Downs providing the gap funding, number one.

MR. BURNETT: If legal.

MR. PETRAMALO: Number two was 40 days with the horsemen providing gap funding plus $115,000.

MR. BURNETT: Correct.

MR. PETRAMALO: So what I was trying to summarize before we recessed was where I thought we were, and I thought I heard Ian say we're not going to talk about number one because it's off the table. Colonial will not provide any gap funding, which I accept.

So that means if we recess to retire or retire to talk about this what we're talking about is the horsemen providing gap funding for 40 days, plus $115,000; is that correct?

MR. BURNETT: And such other issues as you might find germane during the course of your
negotiations on the track and everything else.

MR. PETRAMALO: Goes without saying.

MR. BURNETT: Yes. Yes. Correct.

MR. FERGUSON: I would like to make a motion

to recess.

MR. BURNETT: We have a motion.

MR. MILLER: This negotiation based on what
Frank has described is what they're going to be
talking about, will that be something -- is that
something you all want to do, Jim?

MR. WEINBERG: I think we're happy to talk
about it. I can't, again, promise you where we'll
go.

MR. MILLER: Well, and Frank can't either.

MR. PETRAMALO: No. I mean, let's --

MR. BURNETT: Let's go 30 minutes and see
where we are.

MR. PETRAMALO: Let's cut to the chase unless
I'm missing something. What you're basically saying
to the horsemen is are you willing to come up with
$115,000, because we've already told you that we'll
do 40 days and gap funding. The question is will
$115,000 convince Colonial Downs to say yea. Isn't
that where we are?

MR. BURNETT: I don't know that it'll convince
Colonial Downs to say yea. It would convince the Commission to impose 40 days.

MR. PETRAMALO: All right.

MR. BURNETT: Colonial Downs might not like it at all. Maybe their objective is to run 28 days, period, end of discussion. I don't know. But that's where it is.

MR. PETRAMALO: Okay. We're happy to talk as -- join Jim with that -- in that notion. We're happy to talk.

MR. BURNETT: Okay. We'll come back at ten past one. Stand adjourned for half an hour.

Note: A recess was taken, after which the following proceedings were had:

MR. BURNETT: All right. We'll go back into our meeting. I think where we left off was having shared with the parties our view of some potential avenues and left you to discuss those and ask if both parties can tell us where they are.

MR. STEWART: Well, you proposed two alternatives. We discussed them amongst ourselves and amongst our principal. Neither one of them is going to work for us. We came here through this process. We didn't ask for a bailout. We asked for what we thought was reasonable given the economic
conditions that the track faces and the whole country faces. So, unfortunately, we can't really be supportive of either one of those alternatives.

MR. BURNETT: All right. From the horsemen side, can you be supportive of either one of those alternatives the way it's phrased?

MR. PETRAMALO: Yes, the second one.

MR. BURNETT: So were this Commission to award 40 days of thoroughbred racing in 2009, the representation of the horsemen is they would pay to Colonial Downs $115,000 and would satisfactorily provide gap funding?

MR. PETRAMALO: Correct. But, remember, part of our compromise proposal was cutting those stakes purses.

MR. BURNETT: That has not been part of this proposal. We recognize that there are several issues that need to be addressed in the horsemen's contract and part of our objective in handling this the way we have today was to give both parties some sense of where the Commission is at least on the days issue in hopes that that might help y'all along on putting some kind of contract in front of us.

MR. PETRAMALO: Well, just limited to the days, 40 days with us providing the gap funding and
finding 115,000, that's acceptable.

MR. BURNETT: Gentlemen, any questions of either party? Any discussion on where we are?

MR. BROWN: Mr. Chairman?

MR. BURNETT: Mr. Brown?

MR. BROWN: Ian, was there any kind of counterproposal that even remotely looks like it could work from your side?

MR. STEWART: Well, I think we put our best offer on the table. I mean, we've kind of been talking about this for a long time. The situation -- if I could see that the situation was improving, then I could make a case for something better, but I don't see the situation improving. I hate to be the bearer of doom and gloom all the time. I find that depressing.

MR. BURNETT: Any other questions or observations, gentlemen? It seems we have a -- excuse me, sir. We'll take you at public participation. We're happy to hear from you. I don't want to leave you out.

MR. STAPLES: Thank you. That's all I ask.

Thank you very much.

MR. BURNETT: You bet.

We can make a decision today on the days issue
knowing what we have in front of us. We know we
don't have a horsemen's contract. There are
multiple issues that need to come from that, or we
can defer a decision. Both of them having their
benefits and detriments.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

MR. MILLER: How soon would a proposed
horsemen's contract be back with us? Is it
something you all can go off and agree on if we
determine the days today?

MR. PETRAMALO: We had planned on meeting on
Friday to take that up, finish the contract.

MR. MILLER: And when you say finish the
contract, that would include whatever number of
days -- if we were to designate the number of race
days today and when you get together on Friday, you
all will be negotiating back and forth regarding
your position on the stakes races --

MR. PETRAMALO: Correct.

MR. MILLER: -- and so forth?

MR. PETRAMALO: And payment to Colonial of
115,000, where it would come from.

MR. MILLER: May I continue, Mr. Chairman?

Then the original position that you had today when
we first -- before we asked you all to get together,
you had agreed that you would concede another five
days. You would go from your 45-day request down to
40 days of racing, and you would provide the gap
funding?

MR. PETRAMALO: That's correct.

MR. MILLER: And you did that based upon --
you were still going to try to get together with
Colonial Downs to try to get them to reduce those
stake -- those two big stakes races?

MR. PETRAMALO: Well, our proposal was to cut
all of the stakes -- virtually all of the stakes
races except three. Not just the two big races, but
12 others.

MR. MILLER: Well, what I'm trying to get to
is whether your offer to -- your submittal to the
Commission that you would agree to the 40 days and
provide the gap funding, was that contingent upon
you all getting together this Friday and you working
out an agreement to reduce those --

MR. PETRAMALO: Yes.

MR. MILLER: -- stakes races?

And if you failed to do that this Friday, then
you would not go with 40 days and the gap funding?

MR. PETRAMALO: That's correct.
MR. MILLER: I just wanted to be clear about that.

MR. WEINBERG: And I would like to speak to that point, if I may.

MR. BURNETT: Please.

MR. WEINBERG: We set that meeting prior to our discussion with Mr. Jacobs. I don't want to lead this Commission to the impression that if it reached a race day decision today, that Colonial Downs would sit down on Friday and negotiate out a contract. We need to regroup and figure out exactly what it would like to do.

MR. MILLER: If I could ask a question, Mr. Chair?

MR. BURNETT: Please.

MR. MILLER: Well, if you didn't work it out Friday, you would eventually -- somewhere along the line, the contract would have to be negotiated, would it not? If you didn't get together this Friday and determine how you're going to -- what contract you're going to wind up with, you would keep negotiating until you could reach a contract, I assume?

MR. WEINBERG: I believe so. I think that's a reasonable assumption.
MR. MILLER: So what we're talking about is just the time element. It might be a little more extended than this Friday?

MR. WEINBERG: Correct.

MR. MILLER: And one other question. I've asked this -- I've discussed this individually with several of the commissioners. I may have discussed it with you. I don't know. What is -- what's the drop dead date that we can get the book out to -- what's the drop dead date that you need these race days established so you can go out and book your races for the season?

MR. PICKLESIMER: There's really no -- I mean, I would like to have the book out 45 days, 60 days -- 45 days minimum, I guess, before the meet starts, you know, stall apps, a little bit earlier than that.

MR. MILLER: April the 1st?

MR. PICKLESIMER: Yeah. I mean, you know, truthfully if dates are set -- you know, the sooner they're set, you know, we can get the ball rolling, but you know, we got -- there's time. It's just how much.

MR. MILLER: All right. That's all I have, Mr. Chair.
MR. BURNETT: Any other questions or comments?
I guess, gentlemen, one of the things we could do is set days today and reserve the right to adjust those days based on what's worked out in the horsemen's contract with the track. I don't know if that's helpful or hurtful frankly, but if there were provisions in that contract that they came back to us with that caused us to then change those days in some fashion, it might make some sense to be able to do that. It may just invite more problems than it solves, but we have on the one hand a party that says that was our best offer. We made that offer. It doesn't sound to me as I hear something that -- I don't know what would happen between now and 30 days from now that would necessarily change that position. It's based on a review of the market and a review of where we are in our economy and where racing is in that economy. I just find it hard to imagine that very much would change in that period of time on that particular issue and analysis.

So I'm not sure what the benefit is in waiting to set days. If we agree on that point, then we've got a tough decision to make right now.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Mr. Miller?
MR. MILLER: Maybe if I could just walk through something here so that I understand it, and hopefully will impart maybe some information so everyone might understand. Maybe I don't understand so I can be corrected.

But if we were to set the days at 40 -- race days at 40, and we know that we have the gap funding in place except if we set those days at 40 today, and then Frank is unable to work out an arrangement for a reduction in stakes, the purses for those two big stakes, then I'm assuming that the gap funding would not be provided.

MR. PETRAMALO: That's correct.

MR. MILLER: Okay. Which means that the purses, the daily purses based upon a 40-day meet and based upon the amount of funds available for purses as we prospectively anticipate -- as we anticipate, the daily purses would be very -- would be less than 200,000 a day?

MR. LERMOND: 150.

MR. BURNETT: No. Take 2.4 million out of the 5.9. Now you're 40 into four. Yeah, 85, 90,000 would be your overnights.

MR. MILLER: Okay. So we know that's what it would be. That's where we are if we put 40 days in
place today, and then if they're unable to work out
the stakes race reduction. So that's what
Virginia's racing meet would be looking at, purses
less than a hundred, it would be safe to say.

MR. BURNETT: Overnight.

MR. MILLER: Overnight purses.

Now, to me I'm wondering how many -- I'm
wondering about the crop of race horses, you can
tell I'm not in the business, what quality we might
get. I don't know. Maybe it would be all right.

Now, on the other hand, if we go for 35 days
today, no gap funding, and we made the determination
that makes no difference to the Commission
whether there's gap funding or not. If there's no
gap funding, that's tough. It's a tough year. It's
a tough economy. It's a down year. This is the
year to do it. Folks are going to suffer anyway, we
might as well suffer magnificently. Then if we have
35 days, no gap funding, and let's take -- the two
big stakes races remain as they are at 600,000 and
750,000, then the overnights would be?

MR. BURNETT: A little better than a hundred.

MR. MILLER: Just a little bit better.

MR. BURNETT: We're using a number of
$2.4 million for the total stakes program. Now,
that certainly could change, but if you kept that
number, you subtract the 5.9, that takes you down to
the four million, and makes the 35 days a little
better.

MR. MILLER: So that's where we are. So all
the horsemen understand where we're going to be with
the overnight purses if we adopt the 35 days and/or
if we adopt the 40 days, right? Everyone
understand? And is my understanding correct? Am I
understanding it, Mr. Chairman?

MR. BURNETT: The math you've done makes
perfect sense to me. I had -- I thought I
understood the horsemen to say that they would take
their chances on how the stakes schedule worked out
and would do the 40 days with the gap funding and
the 115, and then just see where it fell and come to
the Commission with a contract. And if I've got
that wrong, I've got that wrong, but those are two
different situations, I think.

MR. PETRAMALO: Well, we're not going to come
to a contract unless those stakes purses are cut
with 40 days and gap funding.

So we're not going to come back here and say,
okay, we'll run the same stakes program we did last
year, which was $2,520,000. We're not going to do
that. And if you take that -- if you take that and look at a purse -- a purse account which is scaled back to take into the 12 percent -- the 12 percent drop, you're looking at purses of $8.5 million, which means the stakes portion of that would be 30 percent, which is higher than it was last year, which was 27 percent.

MS. RICHARDS: Which is higher than anywhere --

MR. PETRAMALO: Which is higher than anywhere in the world. That's not going to happen. We are not going to have horsemen coming here racing for $11,000 a race. If you follow Commissioner Miller's arithmetic, and I'm not real good at it, but I think it's about $11,000 a race. It's not going to happen.

MR. BURNETT: The overnights --

MR. PETRAMALO: Yeah. Yeah.

MR. BURNETT: -- is what you're talking about?

MR. PETRAMALO: Yeah. Overnight.

THE REPORTER: Hold on one second my battery is dying.

MR. BURNETT: Any strokes of genius before we start flooding motions to see what flies?

MR. MILLER: Mr. Chairman, I just think --
it's almost an impossible situation. You know, nobody -- as Frank said, nobody -- I'm not going to say nobody, but you know, they're not going to race for $1,000 or $11,000 or whatever it is on the days that it comes out to exactly 100,000 a day.

MR. LERMOND: With thirty-five days.

MR. HARRISON: If you go a year without gap funding, does that then preclude the need for future years of gap funding? I think it does if you bite the bullet, but that would make for a very lean year purse-wise, wouldn't it?

MS. RICHARDS: If you had any horsemen left.

MR. BURNETT: The question is what damage does it do the following year when you try to attract people back.

MR. MILLER: Well, in the interim, I'm just concerned about what -- it's easy for me to sit here and talk about a tough year, you know, and as I say suffer magnificently, that's a term I shouldn't have used. It's easy for me to say. I'm just -- you know, if you have purses that small, I don't know who would show up, what would happen to racing -- how would it impact -- how does that -- maybe I can ask a question to someone that's in the business.

If you have a track that has a very, very low
caliber of horses, how long does it take to get
around the industry that that track runs a bunch of
horses that are not -- not bet worthy, let's put it
that way, wager worthy.

MR. BURNETT: I think what happens is, it's
not so much about the horses. They just look at the
condition book and look what the purses are and say,
"I'm not going there."

MR. STAPLES: What they need to know is how
much it costs to get one to that track. If you get
in there with no injuries or anything, just the vet
bills, the vet and getting there, that's close to
four grand in Maryland anyway. And that's at a good
deal. Are you going to run for 11?

MR. BURNETT: Sir --

MR. STAPLES: He asked for the public here.
I'm sorry.

MR. MILLER: I'm concerned about -- I'm
concerned -- you know, we've got all these concerns.
I'm just trying to specifically address a few of
them at a time and one of them is -- I mean, what
does that do to your -- you know, someone is
carrying your racing on their satellite, you know,
they're carrying the racing -- I mean, the racing
public sitting out there and Colonial Downs comes
up, are people going to wager on this satellite network? Are they going to bet on these horses that are running for such small purses and --

MR. PETRAMALO: My opinion?

MR. MILLER: Yeah.

MR. PETRAMALO: The key to wagering handle is field size. If you had 12 horses running in the race and they were, quote, cheap horses, you would probably get decent handle, but if you're running a race down here for $11,000, the likelihood that you're going to get 12 horses to run is not great. You run up with a six, seven horse field at best, and those are low wagering races. Nobody is going to bet on them. Somebody will bet on them, but it's nowhere near the wagering handle you'll get and if the wagering handle is down, the income that comes to the track and the horsemen for selling the signal, of course, is down.

MR. HARRISON: That's 11,000 in purses. What if the purse was 15,000 or 17,000?

MR. PETRAMALO: Last year, I think -- last year, if I'm not mistaken, the average overnight was like about 17,000. Under our original compromise proposal, the 40 days, cutting the big -- the stakes races, that's bumped up to 20,000. That will bring
horses. If you run overnights for 20,000 a day on average -- I mean 20,000 a race, then you're doing something.

MR. HARRISON: But the same could be said for a 25-day race meet, right?

MR. PETRAMALO: No. What are you talking about? If you take a 25-day race meet and back out the high purses for the stakes, you're down to nothing. Do the arithmetic. Take 5.9 -- take $6 million or whatever the last number is and subtract two and a half million dollars, that gives you what?

MR. HARRISON: Three and a half.

MR. PETRAMALO: Three and a half million dollars. That's 100,000 a day.

MR. STEWART: For what it's worth, we did the math. It's $14,476 is our average overnight and that includes running ten races a day. If you only ran nine races a day, that number goes to 16,000.

MR. MILLER: Based on how many races a day?

MR. STEWART: Based on ten races a day, 11 races on Saturday, and 12 on Virginia Derby and Turf Cup Day. A 25-day meet that we proposed, the average overnight is 17 -- is, I'm sorry, 14,476. If you only wanted to run nine races a day, the
average overnight would go to 16,151.

Obviously, if you run fewer races, it drives
the number up.

MR. PETRAMALO: Well, it's interesting because
I take $100,000 a day and divide it by nine races,
that's $11,000. Now, how he gets 14,000 is beyond
me, but our numbers -- well, our numbers always are
a little off. You swore up and down last time that
the carryover into 2009 would be $270,000. You
called me -- you suggested I didn't know what I was
talking about when I said it would be 400,000-plus.
Well, guess what? As of yesterday, the carryover is
$670,000. So who's bad at math?

MR. PETTY: Both of you.

MR. STEWART: You're using the number that's
big, Frank, because you're not paying your bills.

MR. PETRAMALO: That is absolute balderdash.
You're owed 68,000, which we got a bill for
yesterday, which by the way, remember, I keep
telling you how we pay these guys every month?
Well, that's the 68,000 for December. We got the
bill yesterday. When we pay that, there will be
$612,000 in the purse account. Far more than the
270,000.

MR. BURNETT: Gentlemen, let's see if I can
make this worse by offering a motion and at least
give us something to discuss, and we can decide what
direction we want to go. I'll make --

MR. REYNOLDS: May I ask question?

MR. BURNETT: Please.

MR. REYNOLDS: Ian, you said you came in with
your best offer. Does that mean that 25 days and no
gap funding is it, unless you get them to agree to
this?

MR. STEWART: Well, I mean, that's what we
think is the most appropriate thing. I mean,
 obviously, you know, you guys have to decide what
you think the most appropriate thing is. If it's a
different number than that, then obviously we're
much more interested in the numbers closer to 25. I
mean, I guess what I'm saying is -- I'm not sure
you're choosing between our number and their number.

MR. REYNOLDS: I'm asking you whether the 25
days and no gap funding is the best offer.

MR. STEWART: I've got no gap funding.

MR. BURNETT: Twenty-five days and we need gap
funding is the point.

MR. REYNOLDS: Twenty-five days is the best
you got.

MR. STEWART: Well, I mean --
MR. FERGUSON: He's not going to bid against himself.

MR. STEWART: I guess at the end of the day, you know, the Racing Commission is going to award what it thinks is the most appropriate number of days. We believe that given the economic environment that, you know, 25 days is the most appropriate. If you said 26, would I go screaming out of the building? No.

MR. REYNOLDS: Okay.

MR. BURNETT: Are we ready? Let's see whether this makes any sense. I've got four points on this motion. One is I move that we assign today 35 racing days with the contingency that if before our next meeting the horsemen agree to put up $115,000 and pay for gap funding, it will increase that number of days to 40 days; that we reserve the right to reconsider that award of days for any reason or no reason as long as it's legal until our next meeting; that we will revisit this issue if we think it appropriate at our next meeting.

Lastly, we are unhappy that there is no horsemen's contract and that we will explore taking some steps to remedy that problem if we don't see a contract by the next meeting. I'm not casting
aspersions on either or both sides, only that we
need a contract in front of us. We think it's
unacceptable that there not be one, and we expect
the parties to make their best efforts between now
and the next meeting to come up with a contract to
present to us. That's my motion. Is there a
second?

MR. FERGUSON: Second.

MR. BURNETT: We have a second. Is there a
discussion?

MR. BROWN: I kind of like the proposal. I
think it gives time to have some things, you know,
take effect, the 115,000. I think it also gives
time to figure out between the two parties the
gap -- you know, as far as Frank's coming up with
gap funding, how they're going to figure this out
and work on the contract. It's incentive to work on
that contract.

Yes, I do understand our economic times are
tough, and we all have to make our changes, but you
know, we also have got to think about all the
parties involved, too.

MR. BURNETT: Gentlemen, anything? Further
discussion?

MR. MILLER: No.
MR. BURNETT: We're prepared to vote.

MR. PETRAMALO: Would you please repeat step two? I kind of missed that.

MR. BURNETT: I'm sorry. That's kind of an important point. Step two was that if within or if prior to our next meeting, which is going to be set shortly on the 18th of February --

MR. PETRAMALO: Right.

MR. BURNETT: -- the horsemen express a willingness and capacity to pay $115,000 to Colonial Downs and be responsible for gap funding, we will increase the award of days from the 35 days to 40 days.

MR. PETRAMALO: Thank you.

MR. BURNETT: Anything else I made unclear? All right. All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Burnett and seconded by Commissioner Ferguson. All were in favor. The motion carries.

MR. BURNETT: All right. We'll move to legislative issues. Excuse me. I'm sorry, Jim.

MR. WEINBERG: Can we approve the standardbred dates?

MR. BURNETT: Yes. Thank you for keeping me honest here.
MR. PETTY: No.

MR. BURNETT: The thoroughbred -- I mean the standardbred horsemen and the racetrack have agreed upon a 36-day meet this fall that needs approval. It's embodied in your contract, I believe.

MR. WEINBERG: It is.

MR. BURNETT: Do we have a motion to approve that 36-day meet this year?

MR. BROWN: I make a motion to approve.

MR. BURNETT: The chair seconds. All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Brown and seconded by Commissioner Burnett. All were in favor. The motion carries.

MR. BURNETT: All right. Thank you.

MR. WEINBERG: Thank you.

MR. BURNETT: Can we have a brief report on legislative issues, where we stand? I'm looking at somebody that might know a little something about that. Whoever wants to make it.

MR. DIAMONSTEIN: Jim, do you want to do it?

MR. WEINBERG: I'll do my best and I'll ask others who are actually on the hill to chime in. There are two bills that are being drafted with the anticipation that they would be submitted before the
legislative deadline of Friday.

One addresses the ADW situation, which would just provide by statute that an ADW licensee would pay a license fee to the Commission, a source market fee to the track and horsemen, and a contribution to the Breeders' Fund.

The second bill is the Omnibus Bill that provides for propositional wagering, net pool wagering, changes the title of the executive secretary to executive director, cleans up references to stewards to include judges, which are the standardbred equivalent, permits the licensee who's held a license for more than five years to make political contributions, allows all towns to participate in the referenda process, and endorses the Commission's authority to work with other agencies inside the state and outside the state on health and welfare issues, such as steroids, whips, and other matters. I think I've got them all.

MR. MILLER: Mr. Chair?

MR. BURNETT: Yes, sir.

MR. MILLER: The percentages on the ADW, I remember seeing it on my computer, but I can't -- it was -- to Colonial Downs it was?

MR. HARRISON: Ten percent to the Commission,
ten percent to the horsemen and track, which gets
divided evenly, so five percent a piece, and one
percent to the Breeders' Fund.

MR. MILLER: One percent to the breeders, five
percent to who?

MR. WEINBERG: The racetrack --

MR. MILLER: Right.

MR. WEINBERG: -- and the horsemen groups,
thoroughbred/standardbred.

MR. MILLER: That's ten percent. And so is
that a total of 11 percent?

MR. WEINBERG: Correct.

MR. PETRAMALO: Eleven and a half percent.

MR. MILLER: Eleven and a half.

MR. PETRAMALO: Yes.

MR. WEINBERG: The half percent being the
Commission's license fee.

MR. MILLER: And all the ADW licensees --

MR. PETRAMALO: Correct.

MR. MILLER: -- would be required to pay that?

MR. BURNETT: What is the one-half percent to
the Virginia Racing Partnership?

MR. WEINBERG: You're looking at some instant
racing legislation that was introduced, not to the
knowledge of Colonial Downs, but I think Senator
Norman and Delegate or Senator Mark Herring.

MR. PETRAMALO: Senator.

MR. WEINBERG: Senator.

MR. PETRAMALO: There are two instant racing bills pending. Senator Norman's bill and Senator Herring's bill, which is being carried by him at the request of the horsemen's organizations. Senator Norman's bill is the one that's been kicking around for a couple legislative sessions. It gives four percent to the horsemen, 43 percent to Colonial Downs. The Herring bill keeps Colonial at 43, but the horsemen get ten percent and the Breeders' Fund gets five and a half percent.

MR. BURNETT: The state gets the balance?

MR. PETRAMALO: Yes. That's the difference between the two bills.

MR. STEWART: For the record, Colonial Downs is opposed to both of those, both of those legislation. We don't think it's appropriate to introduce it this year, and we've spoken -- I've spoken personally with the speaker of the house, and I told him last fall we wouldn't be introducing that legislation. I told him again that we had no knowledge that this legislation was being proposed and that we would not support it.
MR. BURNETT: Okay. Thank you.

Anything further on legislative matters, gentlemen?

MR. DIAMONSTEIN: Mr. Chairman, I would hope the individual members of the Commission who felt strongly about the bills -- issues of the bills would testify -- first of all, would clear it with -- clear it with your secretary because I find you'll have no objections as long as when you come up -- for example, Peter if you came up, that you made clear you're not there on behalf of the governor. You're not there on behalf of the Commission. You're there as an individual. And as an individual, you each have the right to testify.

I would like you to perhaps -- that's the way it was said to me. I'm sure they'll say the same thing to you, but I'd suggest if you do feel strongly, it'll help a great deal on the bills to get them through.

MR. BURNETT: Would you be kind enough to keep -- Vic will probably be the easiest way to go, keep Vic informed as to committee meetings and the like, and we can see what we can do with our secretary to permit that.

MR. DIAMONSTEIN: I'll be happy to.
MR. BURNETT: Just so we know when we might be

called upon.

On one other minor legislative matter,
rule-making matter, Tyler needs or would like to
make two books per meeting, and our rules apparently
provide that it needs to be one every 15 days, which
is a little bit awkward for us, and absent there
being some reason why two condition books for the
entire meeting, regardless of its length, would not
be appropriate, I would simply suggest that we bring
that forward as a rule-making effort for us, Vic,
and we can take it up at our next meeting.

It may be one of those situations where we can
make a rule for this meet, and then have to put it
into the permanent rule-making, but whatever form it
needs to take, I told him that absent any objection
today, I think he can go ahead and plan on doing two
books.

MR. PETRAMALO: You did it once before, by the
way.

MR. BURNETT: I thought we did.

MR. LERMOND: It's at your discretion to do
it.

MR. PETRAMALO: Last year with 45 days, we had
three books, but the year before with 42 days or
whatever, 42 days, we did two books.

MR. WEINBERG: I think you're right that we
did it, but I think someone raised the issue last
year. So we're just trying to clean up --

MR. BURNETT: We now come to public
participation and, sir, if you would like to address
the Commission on any subject, we're ready to hear
you.

MR. STAPLES: Just one thing real quick.

MR. BURNETT: Yes, sir. Go right ahead.

MR. STAPLES: The next meeting on
February 18th, do you have time to still discuss
promoting the Turf Cup, the Colonial Turf Cup, I
know the Derby only draws 10,000 in 11 years, and
our company says it just hadn't been promoted.
We're willing to work with these people. We have
been. We're even willing to work with the state on
some state promotions, but could that be on the
agenda at the next meeting where we could discuss
this, because it's just not -- we're not throwing
any spheres at these people. It's just it hadn't
been promoted right. We need to promote it. We
need to promote the state. We need not to lose this
sport. We lost Secretariat, Doctor Jay, you know
that, but that's over.
We're going to keep this sport here. I think we really will. We just hadn't promoted it. We need the governor and everybody to help us promote it. We can do it. I know we can double it if they'll give us two months ahead of time at least. I know we can double it. They'll let us use the OTBs to promote, too, that we can do it. Better Weather Productions, we're licensed out of Portsmouth right now, Virginia, and we're owners also.

MR. BURNETT: I believe that.

MR. STAPLES: We definitely want to race in Virginia, and we're willing to bury any hatchets we've had with anybody.

MR. BURNETT: That's helpful, too. We like to bury hatchets.

MR. STAPLES: There has been some. We don't need to go outside the state. What happens in the state stays in the state.

MR. BURNETT: We don't have any rust on our shovels. We bury those hatchets all the time. If you would contact Vic after this meeting, our executive director. We have a very active and successful marketing and promotions committee that probably ought to hear what you've got to say and
bring it forward, if that makes sense.

MR. STAPLES: I would like to. Yes, sir.

Absolutely. But we do want to discuss it here with these other people.

MR. BURNETT: Certainly.

MR. STAPLES: These other horse people, the promotions.

MR. BURNETT: You've got a patient audience. You can see that today.

MR. STAPLES: I know. More so than me. I just love them so much, I can't help but forgive them.

MR. BURNETT: All right.

MR. STAPLES: We're going to take care of them, too. Thank you very much.

MR. BURNETT: Thank you, sir.

MR. STAPLES: Thank everybody here.

MR. BURNETT: Is February 18th all right for our next meeting? Any objection to that, gentlemen?

All right. No need for a closed meeting.

Motion to adjourn.

MR. BROWN: Second.

MR. BURNETT: All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner
Burnett and seconded by Commissioner Brown. All were in favor. The motion carries.

Note: The proceeding concluded at 2:32 p.m.
CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on January 21st, 2009, New Kent, Virginia, at the time of the hearing herein.

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

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

______________________________________________
Melissa H. Custis, RPR
Notary Public for the State of Virginia at Large

My Commission expires:
March 31, 2011