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VIRGINIA RACING COMMISSION

February 18th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:40 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

I N D E X

1		
2	1. Approval of Minutes of December 17, 2008 meeting	3
3	2. Approval of Minutes of January 21, 2009 meeting	4
4	3. Commissioners Comments	4
5	4. Committee Reports	
6	a. Marketing & Promotion Committee	5
7	5. Executive Secretary's Report	
8	a. Legislative Update	5
9	b. TwinSpires license	9
10	c. Rules request	18
11	d. Laboratory Considerations for 2009- Dr. Harden	37
12	6. Stakeholders	
13	a. Request from Colonial Downs for 2009	
14	Thoroughbred Race Days	
15	i. Response from VAHBPA	49
16	ii. Response from Colonial Downs	50
17	7. Public Participation	61
18	8. Set next meeting -- March 18, 2009	61
19	9. Adjournment	62
20		
21		
22		
23		
24		
25		

1 FEBRUARY 18, 2009

2 MR. BURNETT: We're a little late this
3 morning, but we'll call the meeting to order after a
4 slight weather delay. I'm glad everybody could make
5 it down the road.

6 Commissioner Ferguson is worried about
7 everybody being well fed and brought doughnuts and
8 water for anybody that would like to have it,
9 members of the public and others. Commissioner
10 Miller is going right for it. It's a long drive
11 from over there in the valley.

12 The first order of business is the approval of
13 the December 17th, 2008, meeting. That's at Tab 1.
14 Gentlemen, have you had an opportunity to look at
15 this?

16 My only comment for these drafts would be that
17 I think that as soon as we come out of any closed
18 session that the notes should reflect the role call
19 vote before there's any substantive motion or other
20 information. Just a bracket with a motion to put us
21 into the session, and then the role call vote coming
22 out of it certifying it.

23 MR. HARRISON: All right.

24 MR. BURNETT: I think probably the record
25 itself will reflect that.

1 All right. Do we have a motion?

2 MR. BROWN: I make a motion to approve.

3 MR. FERGUSON: Second.

4 MR. BURNETT: It's been moved and seconded.

5 All in favor indicate by saying aye.

6 NOTE: The motion is made by Commissioner
7 Brown and seconded by Commissioner Ferguson. All
8 were in favor. The motion carries.

9 MR. BURNETT: All right. We'll next take up
10 the meeting minutes of January 21st, our last
11 meeting. Have you had a chance to look at those?

12 MR. MILLER: Make a motion to approve.

13 MR. BURNETT: Is there a second?

14 MR. FERGUSON: Second.

15 MR. BURNETT: It's been moved and seconded
16 that they be approved. All in favor indicate by
17 saying aye.

18 NOTE: The motion is made by Commissioner
19 Miller and seconded by Commissioner Ferguson. All
20 were in favor. The motion carries.

21 MR. BURNETT: We'll move to commissioners
22 comments. Any comments from fellow commissioners
23 about our previous month?

24 All right. I will -- I've been busy with some
25 other things. I'll move onto committee reports.

1 Market and promotion, Commissioner Reynolds?

2 Nothing today?

3 MR. REYNOLDS: No.

4 MR. BURNETT: All right. The executive
5 secretary's report is next. Mr. Harrison?

6 MR. HARRISON: Okay. The first item on the
7 agenda is the legislative update. I can say that
8 House Bill 2604, known commonly as the ADW bill,
9 that passed the Senate -- the House, I think, by a
10 vote of 89 to 9, and the Senate, 40 to nothing. It
11 goes to the governor for his signature.

12 The three main points, one, it mandates the
13 ten percent of the wagers made here through
14 out-of-state ADW providers goes to the unlimited
15 licensee here in the form of source market fees. It
16 also mandates that one percent finally goes to the
17 Breeders' Fund, any ADW wager, and it repeals
18 Section 376, the temporary licensing provision of
19 the code.

20 Jim, if I left anything out, if you want to
21 update us on where we stand or any other issues that
22 we have, I'd be happy to hear about it.

23 MR. WEINBERG: No. I think that's accurate.

24 I would point out that it's all ADW providers.

25 There's no distinction between in or out of state.

1 If you want a ADW license, it's ten percent to the
2 track and the horsemen.

3 MR. MILLER: Could I ask a question --

4 MR. BURNETT: Yes, please.

5 MR. MILLER: -- on the proponents of the
6 legislation?

7 Was it your intent -- I mean, if it was your
8 intent, why did you repeal the temporary licensing
9 process?

10 MR. WEINBERG: The temporary licensing process
11 was to be provided by the Commission in the event an
12 ADW applicant couldn't reach an agreement with the
13 track and the horsemen, so the contract requirement
14 has come out of the statute altogether. There is no
15 requirement that there be a contract; hence, the
16 mechanism for solving an impasse in contract
17 negotiations didn't seem to make sense anymore.

18 MR. MILLER: That is the only -- that was the
19 only circumstance that would trigger the Commission
20 initiating a temporary license procedure --

21 MR. WEINBERG: Correct.

22 MR. MILLER: -- was based on that particular
23 contract?

24 MR. WEINBERG: That's correct.

25 MR. HARRISON: But won't there, in effect, in

1 reality be a contract with those providers, those
2 ADW providers?

3 MR. WEINBERG: They need not. They need never
4 talk to us or the horsemen under the revised
5 statute. They file their application with the
6 Commission, and the Commission chooses to license
7 them or not.

8 MR. BURNETT: But it would also be so that
9 they wouldn't be prohibited from making a contract
10 that might address other features.

11 MR. WEINBERG: Absolutely. Absolutely. But
12 there's no statutory requirement of a contract as
13 there currently exists in the statute, and the
14 temporary license was only to deal with situations
15 where there was an impasse in reaching that
16 contract.

17 MR. BURNETT: Were there a contract, would
18 that not come before us for approval? I guess it
19 would have to involve \$15,000 or more.

20 MR. WEINBERG: Correct.

21 MR. BURNETT: Okay.

22 MR. HARRISON: \$15,000 or more?

23 MR. BURNETT: Doesn't our statute or our regs
24 require that we approve any contract that the
25 licensee enters into that has a value of \$15,000 or

1 greater -- consideration of \$15,000 or greater?

2 So were there a contract between Colonial
3 Downs and any ADW provider that involved \$15,000 or
4 more in consideration, they would bring it to us to
5 be approved.

6 MR. HARRISON: But wouldn't that be a reason
7 for maintaining 376 on the books?

8 MR. BURNETT: No, because I think the purpose
9 of 376 was only to make sure that someone -- the
10 amount of the source market fee was maintained while
11 negotiations were ongoing, similar to what we had
12 with the situation that we're going to hear about a
13 little bit later. To me, there was no other purpose
14 than that.

15 MR. WEINBERG: Right. So there is no
16 alternative motive for deleting the temporary
17 license other than it no longer made sense because
18 you were deleting the contract.

19 MR. BURNETT: And I take it that we're
20 going -- at least I'm going to get an education on
21 how we transition from a temporary license
22 circumstance to a fixed amount mid-year, first of
23 July, when this law would take effect, that will
24 require some discussion, I take it, among the
25 parties and the Commission.

1 MR. WEINBERG: I believe so.

2 MR. HARRISON: We'd like to get an opinion on
3 that.

4 MR. MILLER: Could I ask another question?

5 MR. BURNETT: Please.

6 MR. MILLER: Does the legislation have an
7 emergency provision?

8 MR. WEINBERG: Does not.

9 MR. MILLER: So it won't go into effect until
10 July 1?

11 MR. WEINBERG: Correct.

12 MR. HARRISON: Okay.

13 MR. BURNETT: Anything else on the legislative
14 update, Mr. Harrison?

15 MR. HARRISON: No. We ran some numbers on
16 what we believe it means in terms of real dollars to
17 the Breeders' Fund and to the horsemen from the ADW
18 companies, but to generalize it, it looks very good
19 for the Virginia licensees and the horsemen and the
20 breeders. I'm glad to see that the breeders are
21 getting their one percent.

22 The issue of the TwinSpires license. On
23 February 2nd, there was a mediation held between the
24 parties, and it did not result in any movement
25 towards settlement. I wasn't a party to the

1 process. So if there's anybody that participated,
2 if they want to give a brief update, I would
3 appreciate that.

4 MR. WEINBERG: I think that's a little awkward
5 in the sense that I believe we agreed it would be
6 confidential, and we would abide by whatever the
7 mediator reported to the Commission, which I know
8 you've seen it, Vic. I don't know if the rest of
9 the Commission has seen it.

10 MR. MILLER: When does the mediator report to
11 the Commission?

12 MR. HARRISON: We received in the mail a
13 package this week.

14 MR. MILLER: When do we get it?

15 MR. HARRISON: You should get it today.

16 MR. WEINBERG: If you think it's helpful, it's
17 three paragraphs, I'm happy to read it. It's in the
18 form of a report if that's helpful to the
19 Commission.

20 MR. HARRISON: It's short and sweet.

21 MR. BURNETT: Is there any point in our taking
22 the time to fool with it today? I don't see
23 Mr. Blackwell here, and I don't know whether -- we
24 might be better off to maintain the confidentiality
25 that we agreed to and let the commissioners look at

1 the report on their own time. If we need to
2 readdress it, we can.

3 We still have the -- I think we continued the
4 TwinSpires license through today on a temporary
5 basis for our consideration, and I don't know when
6 you wanted to take that up. We can do that as part
7 of this item now or we can do it later in the
8 meeting, but we do have to address that issue.

9 Any pleasure as to when?

10 MR. WEINBERG: I'm happy to present Colonial
11 Downs' view.

12 MR. BURNETT: Gentlemen, do you want to hear
13 it now or do you want to set that aside as a
14 separate issue?

15 All right. Let's hear from Mr. Weinberg first
16 and from anybody else that wants to talk to us.

17 MR. WEINBERG: You will see that the
18 mediator's report, as we met, we were unable to
19 reach an agreement.

20 In looking at the temporary license provision,
21 376.1, the language reads, "If during the term of
22 the temporary license, the parties are unable to
23 reach an agreement through mediation, the Commission
24 shall specify the percentage of total gross handle
25 of wagers placed with the advance deposit account

1 wagering applicant from within the Commonwealth."

2 So we've -- there is an opportunity for the
3 Commission to move to a different part of the
4 procedure and that is this baseball-type style
5 arbitration where the statute goes on to provide the
6 percentage specified by the Commission shall be the
7 best offer made by either the advance deposit
8 account wagering applicant or the unlimited licensee
9 and the representatives of the recognized majority
10 horsemen's group. So it could be an appropriate
11 point in time for the Commission to ask for what
12 those best offers are be submitted to it so it could
13 make that decision.

14 There is some confusion because the next
15 sentence reads, "The percentage specified by the
16 Commission shall be effective for one year from the
17 one-year term of the applicant's temporary license."
18 I don't believe you granted a one-year term to the
19 applicant's temporary license, so I think there is
20 some latitude for you to specify that now if you so
21 desire.

22 So I would suggest to the Commission that the
23 next procedural step would be to ask for each
24 party's best offer and make the adjustment on that
25 basis.

1 MR. MILLER: Mr. Chairman?

2 MR. BURNETT: Yes.

3 MR. MILLER: If we ask for the best offer, I
4 wouldn't be prepared to take any action today. What
5 is the -- what's the status of the licensee whose
6 temporary license expires today, according to our
7 previous action, what's their -- what position does
8 that leave them in between now and say our next
9 meeting when we might act?

10 MR. WEINBERG: There are a number of
11 alternatives available to the Commission, I would
12 believe. One, you could extend their license to the
13 next meeting.

14 MR. MILLER: I mean, but if we don't -- if we
15 don't do anything, they're not licensed. They can't
16 operate.

17 MR. WEINBERG: That's correct.

18 MR. MILLER: So we have to do something today.

19 MR. WEINBERG: Correct.

20 MR. MILLER: I was going to suggest that since
21 we have to do something today, since we don't have
22 the information to do anything on a separate track
23 today, I was going to suggest and make a motion that
24 we extend their temporary license until the next
25 meeting at least at a minimum.

1 MR. BURNETT: What I would add to that
2 discussion is a couple more questions. One is do we
3 have jurisdiction and authority to be granting a
4 temporary license past July 1, because this new
5 statute is going to go into place and associated or
6 related to that is do we have the authority to
7 impose a greater or a lesser percentage rate after
8 July 1 and given the fact that we are probably
9 talking about a time frame between now and July 1,
10 at which it -- barring our either not having
11 jurisdiction or not having done anything else, their
12 rate would go to ten percent, if I'm not mistaken,
13 plus the Breeders' Fund, plus the licensee fee.

14 I wonder whether letting the status quo
15 continue at the average of the others on a temporary
16 license basis until July 1 is a simple solution that
17 doesn't require the parties to expend a lot more
18 time and money negotiating a rate that is going to
19 be in effect for about three months. You're welcome
20 to comment on that, Jim.

21 MR. WEINBERG: In response to your first
22 question, I do think you do lose jurisdiction after
23 July 1 for a temporary license.

24 MR. BURNETT: How about the second question?

25 MR. WEINBERG: The second is a substantive

1 one, but I would just like to make sure that
2 Mr. Stewart understands and he's in agreement that
3 8.3 percent would stay in effect until July 1.

4 MR. STEWART: We have don't have a big problem
5 with that. I can't speak for the HBPA or the VHA.

6 MR. MILLER: Can we extend their temporary
7 license until July 1 --

8 MR. BURNETT: I think we have --

9 MR. MILLER: -- under the present --

10 MR. BURNETT: That would be the thought. I
11 mean, if we simply --

12 MR. MILLER: So I'll amend -- that would be my
13 motion.

14 MR. BURNETT: The chair will second that
15 motion. Do you want to restate it for the benefit
16 of all of us?

17 MR. MILLER: You don't have a problem --

18 MR. BURNETT: I'm sorry.

19 MR. CANAAN: No. The harness horsemen don't
20 have a problem with that concept.

21 MR. BURNETT: Do the thoroughbred horsemen
22 have any problem with it?

23 MS. RICHARDS: I wouldn't think so.

24 MR. CANAAN: I wouldn't think -- I can't speak
25 for Frank, but I wouldn't think so.

1 MR. WEINBERG: And I don't want to be remiss
2 and maybe I'm overstepping my bounds, my impression
3 from the mediation is that TwinSpires will not be
4 happy with that resolution and may petition the
5 Commission for a reduction. I just --

6 MR. BROWN: Well, let them do that then.

7 MR. WEINBERG: Okay.

8 MR. BURNETT: They're not here today.

9 MR. WEINBERG: I understand.

10 MR. BURNETT: We're continuing the status quo,
11 and I would be curious to know what the basis would
12 be for them petitioning for a reduction unless
13 they've done a recalculation of the averages of some
14 sort. We can hear that if we're wrong on the
15 numbers, but my little mind can't figure out what
16 the basis is for them coming in and petitioning for
17 a reduction given that we're bound by the statute,
18 if I'm not mistaken.

19 MR. WEINBERG: I'm not here to make their
20 argument.

21 MR. BURNETT: Imagine that.

22 MR. WEINBERG: But I did not want them to feel
23 the process had somehow snuck by them.

24 MR. BURNETT: Commission Miller, would you
25 accept a friendly amendment that would allow them to

1 come back?

2 MR. MILLER: You can make the motion,
3 actually. I would comment that they knew their
4 temporary license was up today, didn't they?

5 MR. BURNETT: We made that clear at our last
6 meeting.

7 MR. MILLER: So I'm not -- I don't feel bad
8 acting in their absence. I mean, I don't.

9 MR. BURNETT: If I understand the motion, we
10 will continue the status quo through July 1, at
11 which time we anticipate that the new statute either
12 as it currently stands or as amended by the governor
13 and the legislature will go into effect, and that we
14 specifically in this ruling provide the opportunity
15 for TwinSpires to come back to us and petition for
16 any change they deem appropriate as a result of this
17 ruling.

18 MR. MILLER: Second.

19 MR. BURNETT: It's been moved and seconded --
20 excuse me.

21 MR. CANAAN: Just one point, a small detail.
22 I think it might have to be through June 30th. The
23 new statute takes effect July 1, just a point of
24 clarification.

25 MR. BURNETT: Thank you. I'll make my motion,

1 until the new statute takes effect.

2 MR. CANAAN: Fine.

3 MR. BURNETT: All right. So it's been moved
4 and seconded. All in favor indicate by saying aye.

5 NOTE: The motion is made by Commissioner
6 Burnett and seconded by Commissioner Miller. All
7 were in favor. The motion carries.

8 MR. BURNETT: We disposed of that one.
9 Anything further on the TwinSpires licensing,
10 Mr. Harrison?

11 MR. HARRISON: No.

12 MR. MILLER: Before we leave the legislation,
13 does the legislation once it goes into effect
14 July 1, does it affect any funds that the Commission
15 receives?

16 MR. WEINBERG: Under the current statute, the
17 Commission receives a half percent and under the new
18 one, it receives a half percent.

19 MR. MILLER: Okay. Thank you.

20 MR. BURNETT: Item C is the rules requests.

21 MR. HARRISON: Yes. I would ask that the
22 Commission adopt -- I need one of you to make a
23 motion -- to adopt as final four regulations here
24 that we made changes to and adopt as proposed one of
25 them. I'll go through them.

1 The first is the racing official regulation,
2 that's 11 VAC 10-50-3 -- I'm sorry -- 30, section
3 three -- paragraph three, rather. And this relates
4 to the time lines with respect to publishing a
5 condition book. I've circulated this memo and its
6 proposals to you, and I think it allows the
7 racetrack a little more leeway, and it will actually
8 bring a little more reason to the printing of a
9 condition book due to the short nature of the racing
10 meets.

11 MR. MILLER: Do you want to do these
12 separately?

13 MR. HARRISON: You can do that one separately,
14 yes.

15 MR. MILLER: Do you want to do all these
16 separately or at one time, or how do you want to do
17 it?

18 MR. HARRISON: What's your preference?

19 MR. BURNETT: If I'm interpreting Mr. Miller's
20 suggestion to do them one at time, and I think it's
21 probably a good idea.

22 MR. HARRISON: Okay.

23 MR. BURNETT: All right. So let's take up the
24 first one. Y'all have the memo. Do we have a
25 motion to make the suggested amendment to 11 VAC

1 10-50-30 (3), Racing Secretary?

2 MR. BROWN: Make a motion to approve.

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

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

8 MR. CANAAN: Do you have a spare copy of
9 those, by chance?

10 MR. MILLER: Have you all not had the chance
11 to review them?

12 MR. STEWART: I personally haven't, but I
13 can't speak for some of the people that work for me.

14 MR. WEINBERG: I haven't seen these either.

15 MR. MILLER: Mr. Chairman?

16 MR. BURNETT: Yes, sir.

17 MR. MILLER: Since it appears that some of the
18 principals here involved are not familiar with these
19 proposed changes, I suggest they have a chance to
20 look at them before we vote.

21 MR. BURNETT: Right.

22 MR. STEWART: I believe Mr. Kelleher -- you
23 guys were talking about some rule changes at one
24 point.

25 MR. KELLEHER: Just -- not that affects this,

1 no. It had to do with the condition book, but it
2 had to do with things that you were privy to.

3 MR. STEWART: Tyler?

4 MR. PICKLESIMER: We're good.

5 MR. HARRISON: This came at the request of
6 Tyler.

7 MR. PICKLESIMER: Yeah, we're good.

8 MR. STEWART: I don't profess to know every
9 detail on everything that goes on every day.

10 MR. MILLER: That's good in this new
11 environment. You should never know everything.

12 MR. BURNETT: I think we should -- probably
13 the Commission would agree that if there is a
14 controversial amendment here, we're happy to wait a
15 month to address it again, give everybody a chance
16 to digest it. I don't know whether Roman Numeral
17 II, 11 VAC 10-60-15 is one of those.

18 MR. HARRISON: Well, yeah. That's the one
19 that we're not asking for final approval on. We're
20 just -- we want to adopt this as proposed and start
21 moving this through the standard regulatory adoption
22 process. This one would not go into effect now. It
23 won't impact the licensees until 2010. It'll be
24 subject to public participation guidelines. We're
25 just proposing it here. We're not asking for final

1 adoption.

2 MR. BURNETT: Any comment or discussion on
3 this rule, gentlemen?

4 MR. HARRISON: What this rule does is it
5 raises our fees to the individual participants.
6 It's been \$10 for the license here in Virginia for a
7 long time for almost all of the licenses, and it
8 raises it to \$25 for racetrack employees and \$50 for
9 others.

10 Our analysis, which we had to do for the
11 Commonwealth, of our cost to issue a license brought
12 it in just shy of \$60 per license. So this -- the
13 current rate is a \$10 fee. It has never been raised
14 since racing began here, and we're just trying to
15 bring it into line to cover our costs.

16 MR. BURNETT: Given the cumbersome nature of
17 changing one of these non-exempt regulations and the
18 fluid nature of our economy, is there some way that
19 we could have either -- that we could have a rule
20 that would permit us to publish a schedule of fees
21 each year so it could be reviewed, and we can just
22 publish that list perhaps with a cap or not to
23 exceed so we don't have to lag behind every so often
24 when we review these things? It'll allow us to stay
25 current with our costs, and then if the budget comes

1 in or planning and budget comes in and looks at it,
2 we can make that adjustment on an annual or biannual
3 basis.

4 MR. LERMOND: In the regs where it talks about
5 licenses, it says you're supposed to refer to a fee
6 schedule, which is a separate section of the
7 regulations.

8 MR. BURNETT: So that, too, would have to
9 be --

10 MR. LERMOND: It would take almost as long to
11 change that as it would --

12 MR. BURNETT: Question answered. Thank you.

13 MR. LERMOND: May I add, Mr. Chairman, that
14 the \$50 really falls in line with all of the
15 neighboring states as far as what it costs to issue
16 a license. In some cases, it's higher, but most of
17 them -- I think 50 is a fair price. Certainly, it
18 will help us cover our costs that we incur to issue
19 the license.

20 MR. FERGUSON: What do you get for \$50 or your
21 \$60? Does this include a security background check
22 or just a card, just a photograph or --

23 MR. LERMOND: The security background check is
24 required every five years when we require
25 fingerprints and we run a FBI check, as well as

1 state police. On the years when you don't have to
2 have that, it's just the license fee.

3 MR. FERGUSON: So this is for every employee
4 of Colonial Downs?

5 MR. LERMOND: Correct.

6 MR. FERGUSON: Bartender, a waiter, or the --

7 MR. LERMOND: Right.

8 MR. FERGUSON: Do you have to do that same
9 security clearance for each employee, the full boat?

10 MR. LERMOND: Right. I think the exception
11 would be seasonal employees.

12 MR. RONEY: Correct. Correct.

13 MR. LERMOND: What it comes to is it costs a
14 lot more to regulate the live racing than it does an
15 OTB or something like that. So the people that are
16 paying 50 are directly involved with the racing and,
17 therefore, it's -- we're expending more money
18 because of the activities they're involved in as
19 opposed to the guy working at valet parking or
20 somebody working admissions at the OTB.

21 MR. FERGUSON: What benefit do we get by
22 screening every restaurant employee, every busboy,
23 every waiter, waitresses? Is this really necessary?

24 MR. LERMOND: I'm afraid that goes back to
25 when the code was originally enacted on pari-mutuel

1 wagering. Jim, if you want to correct me --

2 MR. WEINBERG: I mean, if you'd like some
3 historical perspective --

4 MR. FERGUSON: Knowing the turnover in that
5 business.

6 MR. WEINBERG: Right. When the racetrack and
7 the OTBs first opened, it was an extreme hardship,
8 not to be flippant about it, but you also needed to
9 pass a drug test and to find a dishwasher who didn't
10 have a marijuana conviction was sometimes a
11 challenge.

12 So I think that had been relaxed over the
13 years, that if you're not -- don't have access to
14 the money or in the backstretch, a misdemeanor
15 conviction wouldn't disqualify you, but that has
16 been the environment in Virginia since day one.

17 MR. BURNETT: And elsewhere. I would say for
18 what it's worth that it's also a hardship on the
19 backside. When you're going to hire a groom, that
20 individual has access to the animal that's running
21 in the circle and that guy you definitely don't want
22 to have convictions for drugs and the like.

23 And so -- but it's tough because they won't
24 get a whole lot more than minimum wage, and there's
25 high turnover, the whole issue of documentation, all

1 these things play into it. It's pretty tough all
2 the way around. It's part of the integrity of the
3 game.

4 MR. FERGUSON: But you'll have some input on
5 this as it goes through?

6 MR. HARRISON: Right. This is -- we're not
7 asking for final adoption. This is to start the
8 process.

9 MR. BURNETT: Okay. Any more comment on that?
10 We'll just move on.

11 MR. LERMOND: We need you to adopt it as
12 proposed changes to the regulations. That starts
13 the process.

14 MR. BURNETT: All right.

15 MR. LERMOND: So there will be plenty of
16 opportunities for public participation throughout
17 the process. It's going to go through the normal
18 APA regulatory process. It's not exempt in any way.

19 MR. BURNETT: Right. But just so that we're
20 all clear here, when is the next time the Commission
21 will see this for any further discussion? If the
22 track or the horsemen, if anybody had any objection
23 to them, when do they make their objection to us?

24 MR. LERMOND: Well, if all things go well, you
25 won't adopt this as final for maybe six to eight

1 months. At each stage of the process, there's a
2 public comment period. There's different branches
3 that the administration has to sign off on.
4 Economic impact statement, things like that, so it
5 will be thoroughly flushed through the system.

6 MR. BURNETT: So the evaluation of our fee
7 schedule will cost more than the fees being raised.

8 MR. LERMOND: We hope not.

9 MR. HARRISON: Boost it up another \$5.

10 MR. BURNETT: All right. Are we okay with
11 moving on to the next one, which is stewards --

12 MR. HARRISON: Has a motion been made?

13 MR. BURNETT: I'm sorry. We do need to make a
14 formal --

15 MR. STEWART: Can I just ask a question?

16 MR. BURNETT: Yes, please.

17 MR. STEWART: 2-A, it says, "Any business such
18 as a vendor." Does that mean every vendor of
19 Colonial Downs has to pay \$50? For instance, in the
20 city of Richmond when we buy our water for the OTB
21 in Richmond, do we have to pay \$50 to VEPCO?

22 MR. HARRISON: Joe?

23 MR. RONEY: That's for anybody working on the
24 backside, your vendors that come back for hay and
25 feed and that sort of thing. That's the vendors

1 that will pay a vendor's fee.

2 MR. BROWN: They should make that a little bit
3 more specific.

4 MR. MILLER: On site.

5 MR. HARRISON: On site. This is what we want
6 to hear when we have our rules making meeting as it
7 goes through the process. This is just our first
8 shot at it, this drafting of it.

9 MR. LERMOND: The only other example would be
10 like a cleaning crew who has access to the OTB after
11 hours or something -- what we've been doing.

12 MS. BOUZEK: Right. That's what the wording
13 needs to say because sometimes when new people come
14 into the Commission, it's like -- well, your beer
15 vendor needs to be -- well, as long as we have a
16 licensed person in the building, we always fight
17 that they don't have to it. Well, if it's closed
18 and we don't have a licensed person in the --
19 anybody that has access needs to be licensed. So
20 that's the wording that needs to be put in so we
21 don't have to fight that every time somebody comes
22 through here.

23 MR. HARRISON: That's correct.

24 MR. BURNETT: This language could be helped a
25 little bit.

1 MR. PICKLESIMER: Just add it to your
2 definitions -- vendor to your definitions.

3 MR. FERGUSON: There's quite a few words in
4 here that I don't understand, like each person
5 connected with the racetrack. If a guy shows up
6 with a \$2 bet, he's connected to the racetrack. I
7 mean, it needs some work.

8 MR. BURNETT: It does --

9 MR. FERGUSON: And I'm not a lawyer.

10 MR. BURNETT: And I wonder whether we ought to
11 try and have some discretion within the Commission
12 so if there's some question about it, you know, the
13 track just comes to us and says, "Do we really have
14 to do the laundry guy?" And we'll say, "No, you
15 don't." End of discussion.

16 So there could be an ongoing tweaking and
17 adjustment without having to go through a one-year
18 process here or have our attorney say, "You're
19 acting outside the scope of your authority because
20 your regulations say you have to do this." Maybe we
21 have some language such as we're going to talk about
22 in the next item where we can, upon a proper
23 showing, waive the requirement for certain vendors
24 and people connected to, I think that's an excellent
25 point, Mr. Ferguson.

1 MR. MILLER: Mr. Chairman, before we vote to
2 approve this as a proposed rule, I do believe that
3 it would require deferring this to the next meeting
4 to adopt this proposed rule.

5 MR. LERMOND: We've waited nine years. We can
6 wait one more month.

7 MR. MILLER: Even the proposed rule, I would
8 like for counsel to take a look at it.

9 MR. BURNETT: I think that's good.

10 MR. HARRISON: Counsel has taken a look at it,
11 and this -- again, it's just a draft proposal to
12 increase the prices. We just wanted to get the
13 process moving and it's going to be edited and it's
14 going to be changed and you're going to make
15 comments and everyone is going to be happy with it
16 in the end.

17 MR. MILLER: But the only thing I have is in
18 the process you're going to have somebody somewhere
19 along the line come back and say about this
20 Commission, do you realize what these people down
21 there proposed initially? What does that mean?
22 It's just been pointed out each person connected
23 with the racetrack, I don't think that should be in
24 there at all, I mean, not that broad content.

25 MR. BURNETT: I think the sentiment of the

1 Commission without me taking a formal vote on it
2 would be to defer it to a cleaned up version. We'll
3 vote --

4 MR. FERGUSON: Don't vote.

5 MR. BURNETT: We'll move on to the next one.
6 We'll defer on that item.

7 The next item is Roman Numeral III, Stewards,
8 11 VAC 10-70-20. We discussed this earlier. This
9 would apply to the coming meet. It simply allows us
10 to waive any requirement -- accreditation
11 requirements of the steward for good cause shown.
12 Any discussion of that particular item?

13 MR. FERGUSON: Do we like that one?

14 MR. BURNETT: I'm okay with the language in
15 this circumstance because --

16 MR. FERGUSON: Good cause shown.

17 MR. BURNETT: Yeah. The accreditation, I
18 don't want to get too -- I wouldn't want to be too
19 specific about it because the accreditation
20 requirement may be a number of days in the stewards'
21 box, it may be horses that have been taken, the
22 accreditation people could change their
23 requirements, and I think as long as it comes to us
24 and we have a chance to look at it and we're
25 comfortable -- we've got to be careful with what we

1 get. But I would rather have the discretion with us
2 rather than change this rule every time a different
3 circumstance comes at us.

4 MR. BROWN: I agree. It's something we have
5 done.

6 MR. BURNETT: Any further discussion of this
7 item? Do we have a motion?

8 MR. FERGUSON: Are you comfortable with it?

9 MR. BURNETT: I am.

10 MR. BROWN: I make a motion --

11 THE REPORTER: I'm sorry. I can't hear you,
12 sir.

13 MR. FERGUSON: There's a reason for that.

14 MR. BROWN: I make a motion that we approve 11
15 VAC 10-70-20, the amendments to that rule.

16 MR. FERGUSON: And I'll second that.

17 MR. BURNETT: It's been moved and seconded
18 that the language be added as suggested to that
19 particular provision. All in favor indicate by
20 saying aye.

21 NOTE: The motion is made by Commissioner
22 Brown and seconded by Commissioner Ferguson. All
23 were in favor. The motion carries.

24 MR. BURNETT: The next item is 11 VAC
25 10-70-90, appointment of a substitute. As I

1 understand this, correct me if I'm wrong, Vic, in
2 the event somebody is out sick or in a car accident
3 or can't make it, the other stewards pick a third.
4 What you've done is added the executive secretary as
5 someone that participates in the choice of the third
6 person.

7 MR. HARRISON: That's exactly right.

8 MR. BURNETT: Are we using executive secretary
9 because we haven't got you as executive director
10 yet?

11 MR. HARRISON: No. Maybe next year on that.

12 MR. BURNETT: All right. Okay. Any questions
13 about that particular provision?

14 MR. BROWN: No, sir.

15 MR. BURNETT: All right.

16 MR. CANAAN: What's the thought behind the
17 need for this?

18 MR. HARRISON: The thought is that I think
19 that some of these regulations, this one included,
20 the stewards at the racetrack have a lot of power,
21 and the way the Commission staff has been set up for
22 many years is that it involved an individual sitting
23 in my position that was also the chief steward.

24 MR. CANAAN: Yeah.

25 MR. HARRISON: So I wanted to insert myself,

1 the executive secretary, into the mix on some of
2 these decision-making processes that the stewards
3 have complete control over now in our regulations.
4 I just wanted to have some say as the executive
5 secretary as to what goes on.

6 MR. CANAAN: The previous executive secretary
7 wore two hats.

8 MR. HARRISON: That's right.

9 MR. BURNETT: He can just ask himself or he
10 can invite the other person.

11 MR. CANAAN: He can ask himself -- I hear you.
12 Thank you.

13 MR. BURNETT: All in favor of the suggested
14 amendment to 11 VAC 10-70-90, indicate by saying
15 aye.

16 NOTE: All were in favor.

17 MR. FERGUSON: Does this take effect now, or
18 does it have to go through another process?

19 MR. BURNETT: This one is exempt and would
20 take effect immediately, if I'm not mistaken.

21 MR. HARRISON: That's right.

22 MR. FERGUSON: Thank you.

23 MR. BURNETT: All right. The last item we
24 have in front of us is 11 VAC 10-120-80 (4),
25 Restrictions on Claimed Horse. My outline goes

1 blank on the last page, so I don't see yellow
2 language changing it.

3 MR. BROWN: There's nothing on this one
4 either.

5 MR. HARRISON: Yeah. The highlighter didn't
6 work there.

7 MR. BURNETT: I'm looking down below, though.

8 MR. BROWN: The last sentence is what we're --

9 MR. BURNETT: The difference between --

10 MR. CANAAN: Do you know if Frank has seen
11 this?

12 MS. RICHARDS: Yeah, he has.

13 MR. CANAAN: Is he okay with it?

14 MR. KELLEHER: Yeah, he is.

15 MR. HARRISON: It's another one of Tyler's
16 recommendations.

17 MR. CANAAN: Gotcha.

18 MR. HARRISON: It's an effort to keep horses
19 here after --

20 MR. BURNETT: Tyler wants to keep his gate
21 filled. It's hard to argue with that one. But from
22 the horsemen's perspective, I guess you already
23 answered this. It's not going to create any issues
24 that you're aware of?

25 MS. RICHARDS: I don't believe so.

1 MS. NIXON: It's such a short meet.

2 MR. BURNETT: Given the length of the meet
3 now.

4 MR. PICKLESIMER: The only real change -- I
5 mean, if you want to change it to the close of
6 entries of the meet instead close of the meet, that
7 will give them a three-day window maybe to -- you
8 know.

9 MS. RICHARDS: That's true.

10 MR. PICKLESIMER: I'm happy as is.

11 MR. BURNETT: Gentlemen, any further
12 discussion? Do we have a motion?

13 MR. BROWN: I make a motion to approve.

14 MR. BURNETT: It's been moved by Commissioner
15 Brown that we approve the suggested change. The
16 chair seconds. All in favor indicate by saying aye.

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

20 MR. BURNETT: Anything further, Mr. Harrison?

21 MR. HARRISON: Just I have some comments --
22 actually Dr. Harden has some comments he wants to
23 share with you. We had rules -- I think there were
24 an additional four rules that we proposed changing
25 that were related to medication, but we're going to

1 convene a meeting of the Medication & Safety
2 Committee during the next couple weeks here. So we
3 may have something for you at the March meeting with
4 respect to medication, but Doc, I would ask that you
5 speak to these issues.

6 DR. HARDEN: The biggest thing is I want to
7 get arrangements for the lab setup for this coming
8 year, and our lab director and I have been talking.
9 He's got some subtle changes or maybe not so subtle
10 changes, and I just wanted to make the commissioners
11 aware of what we were talking about. I talked to
12 Walt yesterday and he said basically we probably
13 should have an addendum to our contract, and so I
14 just wanted to make y'all aware that that might be
15 coming down the road to look at.

16 But presently we're screening our samples that
17 we send to the lab, we're doing 50 ELISA screens.
18 There's slightly more than 150 different ELISA
19 tests, so they rotate -- they change the 50
20 periodically and the lab director determines which
21 ones that he wants to change as we go through.

22 There's several of them that he runs on every
23 test, that includes ethergen, EPO, and Darbypoinetin.
24 So we test every sample for those, and I think we're
25 also using ELISAs for the anabolic steroids, but

1 beyond that, they're rotating a number of the other
2 samples around them. So you can conceivably race a
3 horse on a non-authorized substance and get away
4 with it if we're not running ELISA tests on that
5 substance that day. He's proposing that we go to a
6 LC/MS screening, which would expand the sensitivity
7 of our screening tests where we would basically be
8 screening for several thousand different substances,
9 possibility of that.

10 There are still several substances which we
11 would have to stay with the ELISA screening on, that
12 would be about 25 that we would remain testing for
13 ELISA, but we basically feel like we would be
14 expanding the coverage of our lab testing by doing
15 that.

16 So that's the primary thing that I just wanted
17 to make the commissioners aware of and see if you
18 had any issues.

19 MR. BURNETT: My issue is I'm so ignorant
20 about how this testing all works, it would be
21 helpful if perhaps you could tell us just briefly
22 the difference between an ELISA screen, and I take
23 it L-C stands for liquid chromatograph and M-S
24 stands for mass spectrometry.

25 DR. HARDEN: Mass spec, yes.

1 MR. BURNETT: Whatever that means. So if you
2 could just help us with what those terms mean and
3 why they're significant to the testing process, it
4 would be good.

5 DR. HARDEN: ELISA is an immunological test.
6 They take laboratory animals. They will inject a
7 chemical or component in them. The animal produces
8 an antibody. I'm simplifying it greatly. And then
9 they use this antibody produced by some other
10 animal, and they'll test -- put that with the test
11 samples that we submit with a coloring agent in
12 there. If it's positive, it'll change colors. It's
13 a very sensitive and sophisticated testing protocol,
14 but it's modestly expensive when you're doing 50.

15 The LC/MS is a -- they use a liquid
16 chromatograph, mass spec, and they're using
17 laboratory instrumentation, basically. It's very
18 sensitive and they can use that to screen a large
19 number of compounds. Basically, they'll get a chart
20 off of the sample and they know where the spikes and
21 the valleys are, and they correspond with different
22 drugs. They know what a normal chromatograph would
23 look like. If they get something abnormal, then
24 they can pursue that particular wavelength and say,
25 oh, gee, this is Naprosyn, for example. So that's

1 very sensitive.

2 Now, the gas chromatograph is similar, but
3 they -- but they'll gasify the samples, so to speak,
4 before they do the spectrometry on it. So they're
5 very sophisticated. The laboratory expensive -- the
6 equipment for that is relatively expensive, but all
7 the procedures are well-documented, dependable in
8 court, and so forth.

9 So Dr. Hyde is preparing an addendum for us to
10 come back to and, I don't know that it necessarily
11 takes Commission approval, but I certainly wanted
12 y'all to be aware that we were considering this
13 option for the coming season.

14 MR. BURNETT: Commissioner Reynolds?

15 MR. REYNOLDS: What's the impact of the cost?

16 DR. HARDEN: It's probably a wash, because
17 we'll be reducing the number of ELISA tests that
18 we're doing and that would, in essence, compensate
19 for the increased costs to the mass spec testing.
20 So the cost to us from that change would be of no
21 consequence.

22 Also, in a conversation I had to him, Walt
23 wants to raise his fees slightly, but that's
24 irrespective of this change. He's talking about
25 going up \$10 per sample, which is -- right now our

1 samples our costing us about \$165, so he'll be going
2 up roughly \$10 above that. At least that's what he
3 wants, if we squeak too loudly, he may not do that,
4 but this particular change going to LC/MS screening
5 is not going to increase the cost a great deal.

6 MR. BURNETT: Any other questions on that
7 issue?

8 DR. HARDEN: The other aspect that I wanted to
9 touch base on, and I think these -- this gets down
10 to the levels of detection. The labs have gotten so
11 sophisticated -- pass those around so everyone can
12 look at them. The labs have gotten so sophisticated
13 that we can detect things at the -- in the decimal
14 levels.

15 The water dipped out of the Hudson River would
16 probably not pass our test barn. The drinking water
17 of New York City, they can detect non-steroidal
18 anti-inflammatories in the drinking water of New
19 York City. This is because these things have become
20 so contaminated in their environment, particularly
21 around big cities. So I got a sheet. It's on the
22 back page there, and I'll use as an example, a
23 standard dose of Butazolidin, we give a horse two
24 grams intravenously the day before a race. That top
25 number is four with twenty-one zeros, that's how

1 many molecules of Bute go into the horse the day
2 before he races.

3 MR. HARRISON: That's eight zeros over a
4 trillion.

5 DR. HARDEN: I don't even know what number
6 that is.

7 MR. FERGUSON: It's called gazillion.

8 MR. BURNETT: It looks like what the bailout
9 people all want.

10 DR. HARDEN: This is a smaller version of the
11 bailout.

12 Twenty-four hours later when the horse races,
13 he has that second number of molecules in his
14 system. We draw a blood sample and that tests at
15 two micrograms per milliliter of Bute. That's that
16 second row of long numbers.

17 Three days later that horse will test at one
18 nanogram of Bute approximately and that would be
19 that third number down, and that's about the level
20 of detection for an ordinary lab sample that's
21 submitted to a lab. However, you go 12 days down
22 and you get down to that four billion, that's how
23 many molecules of Bute are still in that horse's
24 system and with sophisticated measures, if the lab
25 was looking for it, they could detect Bute in that

1 horse's blood 12 days later. You go down 21 days
2 after administration and you have the number four.
3 Of course, that's four molecules in his system 21
4 days later.

5 So if we go to a -- if we consider a zero
6 tolerance of drugs in a horse, you can look at how
7 many days you're talking after a horse receives any
8 medication that he can race on. So basically we
9 have to have some number that the laboratory is
10 instructed to use as their level of detection,
11 they're not going to look at something below a
12 certain level. And that's what I just basically
13 wanted to bring to the commissioners' attention. I
14 know we had this conversation before, but there are
15 just -- for instance, we had a caffeine test at
16 14-nanograms, and basically if the horse had a cup
17 of coffee the day before, he would show
18 14-nanograms.

19 I mean, we had a nicotine positive where a
20 horse ate a trainer's plug of tobacco that he spit
21 out in the stall. These things when you find them
22 and report them and the laboratory has to confirm or
23 whatever, it eats up laboratory resources over
24 things that are not significant to racing. So I
25 basically wanted us to consider having an

1 understanding with the laboratory that there are
2 certain drugs, certain substances that we would not
3 look for below a certain level. I don't want to
4 write that in the rule book because if you do, it
5 looks like we're permitting drugs to be used in the
6 horses.

7 But going back to this Bute level, that second
8 row, the horse has all that many molecules of Bute
9 in his system, but there's no pharmacological effect
10 at that point. Twenty-four hours after he's had the
11 Bute, there is no pharmacological effect in the
12 horse that -- at least of a measurable quantity, and
13 yet the horse is still full of Bute.

14 So either we determine what level we're
15 comfortable with or the lab determines that level
16 without our consent, and I would prefer that we be
17 on the front edge instead of the letting the lab
18 determine it.

19 MR. BURNETT: Do we execute our contract
20 annually with Dr. Hyde?

21 DR. HARDEN: We have a contract that is
22 renewable annually by mutual consent, and there's a
23 clause in there that will allow for price
24 adjustments or whatever. This is the first price
25 adjustment that he's talked about with us in three

1 years.

2 MR. BURNETT: It just strikes me that if there
3 is some sort of annual review of that contract, that
4 that creates the opportunity for us to review this
5 list of substances and tolerable levels, if you
6 will, and have that remain in effect for that year
7 and new substances will come, adjustments in levels
8 will come, and those can all be considered so that
9 we're trying to stay current.

10 DR. HARDEN: I think what I'm saying is the
11 gist of that, yes.

12 MR. BURNETT: Yeah. I'm agreeing with your
13 suggestion.

14 DR. HARDEN: Or maybe you're saying the gist,
15 but yes, we have. We have not formally done that in
16 the past. Basically, we just wake up on race day
17 and our contract is still there, and we use it.
18 Like I said, I prefer the option that we are more
19 tuned in to what the lab protocol is on a yearly
20 basis.

21 MR. BURNETT: I think that our history has
22 been one, correct me if I'm wrong, of pretending
23 that we have zero tolerance and covering our ears
24 when we're talking to the laboratory. The stewards
25 say zero tolerance is whatever the laboratory says

1 as opposed to our being --

2 DR. HARDEN: Correct.

3 MR. BURNETT: -- more aware and recognizing
4 the fact that there are environmental contaminants
5 that are picked up and that we do have a tolerance
6 for them at a certain level, like a cup of coffee in
7 a horse from two days earlier.

8 DR. HARDEN: Well, this is precisely the
9 situation, and as you can see, the character of the
10 stewards from year to year would have a vast impact
11 on which of these we have the trainer in there for a
12 hearing for and which of them we kind of, you know,
13 pass over because it depends on the intensity of the
14 stewards as to how they want to pursue it, because
15 they are given the attitude in our rules to
16 determine a positive or a non-positive in those
17 cases.

18 MR. BURNETT: But the identification of
19 reporting really happens at the laboratory level.
20 Again, if we don't like caffeine or we don't want to
21 hear about caffeine, we just -- the stewards aren't
22 implicated because we tell a laboratory don't report
23 caffeine.

24 DR. HARDEN: Right.

25 MR. BURNETT: So you just want to

1 institutionalize, if you will, or commit to paper
2 what those -- that list is and what those levels are
3 that we're not interested in looking at.

4 DR. HARDEN: That's correct. And this would
5 be again at the nanogram levels. We're talking
6 about levels that are insignificant insofar as the
7 influence on racing. It certainly wouldn't have any
8 levels that would be affecting the performance of a
9 horse and substances that should not be in a horse
10 at all, we wouldn't put on that list. I mean, if we
11 get amphetamines or something like that, those
12 shouldn't be in a horse no matter when they were
13 given.

14 MR. BURNETT: If a horseman has a groom that's
15 using cocaine and that cocaine finds its way into a
16 horse, it seems to me that there should be some
17 burden on that horseman, one, to prove that it did
18 come from that groom and, two, to address what needs
19 to be done about that because the groom shouldn't
20 have it anyway.

21 I would ask you also to take into account what
22 the RMTC is doing with this very issue. I don't
23 think we want to be out on an island someplace among
24 other jurisdictions.

25 DR. HARDEN: I agree. I think we're basically

1 in step with where the RMTC is and I would want
2 their data to go with, you know, to certify ours. I
3 would think that in many cases we may even be more
4 strict than some other jurisdictions on some of the
5 levels we look at. If we find 50-nanograms of a
6 substance, the lab may report it to us and the
7 stewards may still determine that that was an
8 insignificant amount. So I wouldn't set it at a
9 level that every time you see one, you know that
10 race fixing has been going on.

11 MR. BURNETT: The one issue you haven't
12 addressed is the reduction of the Bute tolerance
13 from five micrograms to two. Is that something you
14 want to wait and see what the RMTC does with it?

15 DR. HARDEN: That one I wanted to wait until
16 our medication committee met.

17 MR. BURNETT: Okay.

18 DR. HARDEN: But RMTC is also considering that
19 whole issue. There's even a push in some
20 jurisdictions to back Bute out to a 48-hour limit on
21 racing instead of a 24-hour limit, and I don't want
22 to be the -- I don't want to be the leader in that
23 push. Anyway, I was waiting for the medication
24 committee before we went into that.

25 MR. BURNETT: Gentlemen, any questions of

1 Dr. Harden? Anybody here with us among the public
2 have questions about any of this?

3 All right. Thank you.

4 DR. HARDEN: Thank you.

5 MR. BURNETT: Vic, anything further?

6 MR. HARRISON: No. Thank you for your
7 patience.

8 MR. BURNETT: Next we move to stakeholders,
9 request from Colonial Downs for 2009 race days. You
10 have both the HBPA and Colonial, the way it's
11 written here in the outline, the HBPA goes first,
12 unless you want to do it differently.

13 MS. RICHARDS: I believe Mr. Petramalo has
14 forwarded a letter to Mr. Harrison --

15 MR. BURNETT: He has.

16 MS. RICHARDS: -- stating that we accept the
17 second proposal from the last commission meeting of
18 40 days, and we will be responsible for the gap
19 funding and the \$115,000 in expenses due to the
20 racetrack.

21 MR. BURNETT: Why don't we take this issue by
22 issue and see where the track is on that specific
23 piece. I understand there's some concern about
24 payment and guarantees and that kind of thing.

25 Can you address that for us, Mr. Weinberg?

1 MR. WEINBERG: Let me just make a couple
2 points about the gap. One is just a statement and
3 that is we have been trying to address the gap issue
4 at least for the last seven years. It was part and
5 parcel of the five-year plan to alleviate the gap so
6 that we weaned ourselves away from this constant
7 dependency on how we were going to finance that gap
8 between when we generated the purses and when we
9 paid them. Colonial Downs continues to believe 2009
10 is going to be a difficult year, and we should take
11 our medicine this year, deal with the issue, resolve
12 it, fix it, and never have to worry about it again.

13 I understand that the Commission has reached a
14 different view on that given our last meeting, but
15 just want to reiterate that that continues to be
16 Colonial Downs' position on let's try to just get
17 rid of this as part of Virginia racing because once
18 Maryland slots come on board, it's going to be
19 virtually possible, if not impossible, to rid
20 ourselves of it, and each year it's going to be an
21 issue of who's going to fund it because Jacobs
22 Entertainment is unlikely to have the funds to
23 continue to fund it every year.

24 With that said, I'm happy to turn to the
25 logistics of the gap funding for 2009. As the

1 Commission notes, the gap funding is a variable
2 amount. If we decide upon what the total purse
3 dollars we are racing for are going to be, we're
4 going to have a certain amount generated by the time
5 racing commences, and the balance has to be funded
6 through the gap. So you need some assurances and
7 understanding of the providers of the gap funding.
8 Is there a limit? Are they going to say, yes, we
9 will fund the gap, but it is only up to
10 \$2.7 million. I use that number as an example.

11 If you ask Mr. Stewart to use his crystal ball
12 today to get to about \$8 and a half million of purse
13 funds, it would take \$2.7 million of gap funding to
14 get there if current trends stayed the same. And in
15 this economic environment, who knows. I think every
16 industry has experienced some unexpected event in
17 their industry, and so it's very difficult to
18 project whether that will stay the course or whether
19 it will change.

20 MR. STEWART: I might throw in. I think Jim
21 has spoke a little bit. I'm not even sure we'll get
22 to eight and a half million dollars to tell you the
23 truth. I think the number is going to look more
24 like eight and a quarter million dollars.

25 MR. WEINBERG: I'm sorry. You're right.

1 MR. STEWART: And to do that you need roughly
2 \$2.7 million of gap funning, but as Jim points out,
3 it's a crystal ball. Nobody knows.

4 MR. WEINBERG: And that also builds in an
5 assumption about the Breeders' Fund which may or may
6 not be accurate as we move forward through the
7 process.

8 So we would suggest to the Commission a
9 process, the last meeting before the meet commences
10 is the May meeting of the Commission and that we
11 agree that by May 1 we will have agreed upon what
12 the gap funding should be and that it would be
13 posted in an account, in the horseemen's account. So
14 everyone knows it's available, it's there, it's
15 there with the purse funds, that if there are any
16 issues surrounding whether funds are accurate, what
17 the purses are, we have the May racing commission
18 meeting at which to address them and resolve them
19 before the meet commences.

20 So I think -- just affirming with the HBPA and
21 talking to their funders, just so we know what the
22 parameters are, how much that check -- they're
23 willing to write that check for I think is
24 important, so we can begin to build on what are the
25 actual purse funds available.

1 MR. BURNETT: If I might make one comment on
2 that issue, one is I think it would be the
3 Commission's desire that this go along as much as
4 possible as it has in the past; that is, change in
5 the provider of the gap funding doesn't create any
6 stricter or more loose requirement for the money to
7 be put up. I understand the need for horsemen and
8 others to know that the money is going to be there.

9 It occurs to me, however, that a good business
10 person might go to a bank and have them issue a
11 letter of credit that's satisfactory to everybody,
12 but don't be drawing the money because you don't
13 want to pay interest on it until you need it, but
14 recognize also that the track needs to know for sure
15 the money is going to be there to pay out as do the
16 horsemen. Everybody wants to know it's going to be
17 there.

18 I would just make those comments, that we can
19 look at how -- I think Mr. Jacobs in the past has on
20 some occasions put money right into the purse
21 account early on, and there have been other
22 occasions when perhaps he waited until it started to
23 be depleted some and made a pretty healthy deposit
24 and that took care of it. So I would just -- I
25 think it is wise to have it be part of the contract,

1 which we'll address here in a moment.

2 MR. WEINBERG: I think those are really the
3 comments on the gap.

4 MR. BURNETT: Okay. Any comments on the
5 \$115,000 in expenses for the extra five days?

6 MR. WEINBERG: I'd just like that to be made
7 available at the commencement of the meet, so we
8 have the funds there to pay the expenses for those
9 days.

10 MR. BURNETT: Is there any issue with that?

11 MS. RICHARDS: I don't think so, because I
12 think there's still an issue. I believe there is
13 some money owed us by the track, and anyway we have
14 accounted in our last meeting for the 115,000. So
15 as far as I know, it's available.

16 MR. BURNETT: All right. If the parties are
17 satisfied with that arrangement, I don't think the
18 Commission wants to interfere.

19 Your proposal is that the parties work up a
20 process hopefully as part of a contract between them
21 that's more global than just that issue such that
22 this issue is addressed by May 1st?

23 MR. WEINBERG: Yes.

24 MR. BURNETT: Is there any problem with that
25 with the horsemen?

1 MS. RICHARDS: I don't think so. I mean,
2 we're already working on -- the luxury we have now
3 is a five-year paper trial that we can take to the
4 bank, and hopefully get a letter sooner rather than
5 later.

6 MR. BURNETT: Right. Right. Okay.

7 The other issue is that the horsemen do not
8 and Colonial Downs do not yet have a contract. Our
9 understanding is that the principal stumbling point
10 in that is the purse amounts for the two big races,
11 and there may be others, but --

12 MR. WEINBERG: I would characterize it more as
13 it's been a threshold issue rather than a principal
14 issue because there are a number of other issues at
15 stake in the contract. I think negotiations have
16 not progressed beyond a discussion of what the
17 purses should be for the Derby and the Colonial Turf
18 Cup, but there are a number of other issues, which
19 I'm happy to outline for you, that relate to the
20 contract.

21 I don't think it will come as any surprise, I
22 hope not to the Commission, that Colonial Downs has
23 been telling the Commission for the last couple
24 years that the current economic paradigm doesn't
25 really work for Colonial Downs, that it is death by

1 a thousand cuts, and so the issues in the contract
2 are all little knicks at those thousands cuts.

3 For example, the current or the 2008 contract
4 in an effort to reach an accommodation in 2008,
5 Colonial Downs agreed to pay a higher percentage of
6 the signal fees to the horsemen than it had for the
7 prior five years and to make a lump sum payment.
8 Well, Colonial Downs is not prepared to do that
9 again. As Mr. Petramalo's letter suggests, he would
10 be happy if we did it again, but we want to restore
11 the signal sales to the pre-2008 level and do away
12 with that lump sum payment, which we made clear was
13 a one-time deal.

14 As discussed in the past, host fees are going
15 up nationwide. Well, in the satellite wagering
16 facilities, Colonial Downs bears the full burden of
17 that increase. That comes right out of its pocket.
18 So we'd like some sharing of significant signal fees
19 going forward and how we share the revenue from the
20 SWFs and how they contribute to purse accounts.

21 There have been discussions about opening the
22 backstretch earlier, which with the number of days
23 that it is open and that stays the same, that might
24 make sense, but if it's staying open longer,
25 obviously that costs more money. So we need to

1 figure out a way to accommodate that.

2 There are little things. The three biggest
3 days at the track are Derby, the Turf Cup, and
4 fireworks. Well, the horsemen would prefer we
5 didn't have fireworks. Fireworks is an economic
6 benefit to the track owner. We need to figure out a
7 way to make that work. The HBPA has received a free
8 suite on the fourth floor, which in prior years did
9 not affect Colonial Downs' revenues, but now those
10 suites sell out every weekend. We'd like to get the
11 suite back during the weekend to have the revenues,
12 but happy to give it to the HBPA during the week.

13 In the past, we've committed to do \$100,000 of
14 cap backs on the backstretch. Well, if dollars
15 tighten, there are probably more demanding cap backs
16 off the backstretch, and we'd like some relief from
17 continuing to necessarily put it into the
18 backstretch.

19 So I raise those issues only to say there's a
20 lot more there than just simply disagreeing over how
21 much we should pay for the Derby and the Turf Cup.

22 MR. BURNETT: I guess the -- I think it's fair
23 to say that the Commission is frustrated that there
24 is no contract. Having been engaged in the
25 negotiations myself in the past, I understand that

1 it's to difficult reach these agreements and I don't
2 think you should be shy about characterizing these
3 things as all as legitimate issues. I don't think
4 that -- you know, we might be more worried if you
5 were not looking at \$100,000 items than we are that
6 you are looking at them. I mean, this is a time
7 when people are counting their pennies and looking
8 at every corner and folks need to dig deep and do
9 the best they can.

10 But all that said, we need a contract and as I
11 told my fellow commissioners, I've been thinking for
12 the last 30 days on how we can incent you all to get
13 to a contract and that incentive to me is -- comes
14 in the form of threatening to inflict a level of
15 pain on both parties that they'll want to come to a
16 contract. The trick is that the pain be equal on
17 both sides, so it doesn't benefit one party more
18 than the other. So the party that's not feeling
19 quite so much pain just sits there and let's the
20 other one suffer. And that's been to me the
21 difficult thing to come up with.

22 Here's my suggestion, and I'll give you a
23 common enemy here, but it isn't an enemy to some of
24 my fellow commissioners, but my suggestion is this,
25 that we give you 30 more days to come to a contract

1 and that is until our next meeting and that today we
2 award the 40 days that you apparently have agreed to
3 on these certain conditions relating directly to
4 those days, the gap funding, and the \$115,000, but
5 that in the event that the parties have not reached
6 a contract by a month from now at our next meeting
7 that the race days will remain the same, but they'll
8 be run three days a week starting on Memorial Day.
9 Hence, you will have a three-day a week meet from
10 now until -- from the 31st of May until roughly
11 Labor Day. I see that as inflicting enormous pain
12 on both sides. It would be a way of finding out
13 whether Richmond wants to have racing on Fridays,
14 Saturdays, and Saturdays, whether horsemen want to
15 race three days and sit around for four dark days.
16 I don't think they do. I don't think that the track
17 wants those expenses.

18 It's the best I can come up with for something
19 that penalizes both sides equally and maybe if you
20 still can't agree and we decide to go forward with
21 it, and I'm not saying that we will, but we might,
22 we find out whether weekend racing is the way to go
23 in the summertime in Virginia. I don't know what
24 else the Commission can do to get you guys to a
25 contract, but we need you to get to a contract.

1 Any other suggestions here, folks?

2 MR. BROWN: Not at this point.

3 MR. BURNETT: Anything further we need to do
4 on this, Mr. Harrison, other than award the days?

5 MR. HARRISON: No.

6 MR. BURNETT: All right. Well, I would move
7 that we set the days for the 2009 season at 40 days,
8 commencing on the day requested and racing the usual
9 schedule of five days a week on the condition that
10 the horsemen provide satisfactory evidence of their
11 ability to provide gap funding and an amount to be
12 determined by the parties, the \$115,000 to offset
13 the incremental cost of five additional days, 35 to
14 40 days, and that we hear back from the parties as
15 to their progress on the funding of those two items
16 and the mechanism that they would use at our next
17 meeting and that we reserve the right through our
18 next meeting to modify those race days in the event
19 the horsemen and the track have not reached a
20 contract.

21 MR. BROWN: I'll second that.

22 MR. BURNETT: It's been moved and seconded.
23 All in favor indicate by saying aye.

24 NOTE: The motion is made by Commissioner
25 Burnett and seconded by Commissioner Brown. All

1 were in favor. The motion carries.

2 MR. BURNETT: Do we need to do anything else
3 with the thoroughbred race days today?

4 Okay. We next come to public participation.
5 Is there any member of the public that would like to
6 address the Commission? Seeing none we'll move on
7 to the next item. Excuse me. I'm sorry. Did I
8 miss someone?

9 MS. HUGHES: One quick question. What is your
10 first race day? You said commencing on a particular
11 day, but I don't know what that is.

12 MR. WEINBERG: June 12th.

13 MS. HUGHES: June 12th.

14 MR. WEINBERG: Just playing out the 40 days,
15 it would be June 12th to August 4th.

16 MR. BURNETT: Our next meeting date is
17 March 18, 2009, does any commissioner have a problem
18 with that? Anybody else have a problem with that?

19 Okay. I don't see a need today for a closed
20 meeting. Do we have a motion to adjourn?

21 MR. FERGUSON: So move.

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

24 NOTE: The motion is made by Commissioner
25 Ferguson and seconded by Commissioner Burnett. All

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were in favor. The motion carries.

NOTE: The meeting ended at 10:58 a.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 February 19th, 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 26th day of February, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011