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

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

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

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

MR. HARRISON: All right.

MR. BURNETT: I think probably the record itself will reflect that.
All right. Do we have a motion?

MR. BROWN: I make a motion to approve.

MR. FERGUSON: Second.

MR. BURNETT: 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 Ferguson. All were in favor. The motion carries.

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

MR. MILLER: Make a motion to approve.

MR. BURNETT: Is there a second?

MR. FERGUSON: Second.

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

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

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

All right. I will -- I've been busy with some other things. I'll move onto committee reports.
Market and promotion, Commissioner Reynolds?

Nothing today?

MR. REYNOLDS: No.

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

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

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

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

MR. WEINBERG: No. I think that's accurate. I would point out that it's all ADW providers. There's no distinction between in or out of state.
If you want an ADW license, it's ten percent to the track and the horsemen.

MR. MILLER: Could I ask a question —

MR. BURNETT: Yes, please.

MR. MILLER: — on the proponents of the legislation?

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

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

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

MR. WEINBERG: Correct.

MR. MILLER: — was based on that particular contract?

MR. WEINBERG: That's correct.

MR. HARRISON: But won't there, in effect, in
reality be a contract with those providers, those ADW providers?

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

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

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

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

MR. WEINBERG: Correct.

MR. BURNETT: Okay.

MR. HARRISON: $15,000 or more?

MR. BURNETT: Doesn't our statute or our regs require that we approve any contract that the licensee enters into that has a value of $15,000 or
So were there a contract between Colonial Downs and any ADW provider that involved $15,000 or more in consideration, they would bring it to us to be approved.

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

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

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

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

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

MR. MILLER: Could I ask another question?

MR. BURNETT: Please.

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

MR. WEINBERG: Does not.

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

MR. WEINBERG: Correct.

MR. HARRISON: Okay.

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

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

The issue of the TwinSpires license. On February 2nd, there was a mediation held between the parties, and it did not result in any movement towards settlement. I wasn't a party to the
process. So if there's anybody that participated,
if they want to give a brief update, I would
appreciate that.

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

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

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

MR. MILLER: When do we get it?

MR. HARRISON: You should get it today.

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

MR. HARRISON: It's short and sweet.

MR. BURNETT: Is there any point in our taking
the time to fool with it today? I don't see
Mr. Blackwell here, and I don't know whether -- we
might be better off to maintain the confidentiality
that we agreed to and let the commissioners look at
the report on their own time. If we need to
readdress it, we can.

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

Any pleasure as to when?

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

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

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

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

In looking at the temporary license provision,
376.1, the language reads, "If during the term of
the temporary license, the parties are unable to
reach an agreement through mediation, the Commission
shall specify the percentage of total gross handle
of wagers placed with the advance deposit account
wagering applicant from within the Commonwealth."
So we've -- there is an opportunity for the
Commission to move to a different part of the
procedure and that is this baseball-type style
arbitration where the statute goes on to provide the
percentage specified by the Commission shall be the
best offer made by either the advance deposit
account wagering applicant or the unlimited licensee
and the representatives of the recognized majority
horsemen's group. So it could be an appropriate
point in time for the Commission to ask for what
those best offers are be submitted to it so it could
make that decision.

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

So I would suggest to the Commission that the
next procedural step would be to ask for each
party's best offer and make the adjustment on that
basis.
MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

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

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

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

MR. WEINBERG: That's correct.

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

MR. WEINBERG: Correct.

MR. MILLER: I was going to suggest that since we have to do something today, since we don't have the information to do anything on a separate track today, I was going to suggest and make a motion that we extend their temporary license until the next meeting at least at a minimum.
MR. BURNETT: What I would add to that discussion is a couple more questions. One is do we have jurisdiction and authority to be granting a temporary license past July 1, because this new statute is going to go into place and associated or related to that is do we have the authority to impose a greater or a lesser percentage rate after July 1 and given the fact that we are probably talking about a time frame between now and July 1, at which it -- barring our either not having jurisdiction or not having done anything else, their rate would go to ten percent, if I'm not mistaken, plus the Breeders' Fund, plus the licensee fee.

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

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

MR. BURNETT: How about the second question?

MR. WEINBERG: The second is a substantive
one, but I would just like to make sure that Mr. Stewart understands and he's in agreement that 8.3 percent would stay in effect until July 1.

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

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

MR. BURNETT: I think we have --

MR. MILLER: -- under the present --

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

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

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

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

MR. BURNETT: I'm sorry.

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

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

MS. RICHARDS: I wouldn't think so.

MR. CANAAN: I wouldn't think -- I can't speak for Frank, but I wouldn't think so.
MR. WEINBERG: And I don't want to be remiss and maybe I'm overstepping my bounds, my impression from the mediation is that TwinSpires will not be happy with that resolution and may petition the Commission for a reduction. I just --

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

MR. WEINBERG: Okay.

MR. BURNETT: They're not here today.

MR. WEINBERG: I understand.

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

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

MR. BURNETT: Imagine that.

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

MR. BURNETT: Commission Miller, would you accept a friendly amendment that would allow them to
come back?

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

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

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

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

   MR. MILLER: Second.

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

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

   MR. BURNETT: Thank you. I'll make my motion,
until the new statute takes effect.

MR. CANAAN: Fine.

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

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

MR. BURNETT: We disposed of that one.

Anything further on the TwinSpires licensing, Mr. Harrison?

MR. HARRISON: No.

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

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

MR. MILLER: Okay. Thank you.

MR. BURNETT: Item C is the rules requests.

MR. HARRISON: Yes. I would ask that the Commission adopt -- I need one of you to make a motion -- to adopt as final four regulations here that we made changes to and adopt as proposed one of them. I'll go through them.
The first is the racing official regulation, that's 11 VAC 10-50-3 -- I'm sorry -- 30, section three -- paragraph three, rather. And this relates to the time lines with respect to publishing a condition book. I've circulated this memo and its proposals to you, and I think it allows the racetrack a little more leeway, and it will actually bring a little more reason to the printing of a condition book due to the short nature of the racing meets.

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

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

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

MR. HARRISON: What's your preference?

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

MR. HARRISON: Okay.

MR. BURNETT: All right. So let's take up the first one. Y'all have the memo. Do we have a motion to make the suggested amendment to 11 VAC
10-50-30 (3), Racing Secretary?

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

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

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

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

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes, sir.

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

MR. BURNETT: Right.

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

MR. KELLEHER: Just -- not that affects this,
no. It had to do with the condition book, but it had to do with things that you were privy to.

MR. STEWART: Tyler?

MR. PICKLESIMER: We're good.

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

MR. PICKLESIMER: Yeah, we're good.

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

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

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

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

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

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

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

MR. BURNETT: Given the cumbersome nature of changing one of these non-exempt regulations and the fluid nature of our economy, is there some way that we could have either -- that we could have a rule that would permit us to publish a schedule of fees each year so it could be reviewed, and we can just publish that list perhaps with a cap or not to exceed so we don't have to lag behind every so often when we review these things? It'll allow us to stay current with our costs, and then if the budget comes
in or planning and budget comes in and looks at it, we can make that adjustment on an annual or biannual basis.

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

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

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

MR. BURNETT: Question answered. Thank you.

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

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

MR. LERMOND: The security background check is required every five years when we require fingerprints and we run a FBI check, as well as
state police. On the years when you don't have to have that, it's just the license fee.

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

MR. LERMOND: Correct.

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

MR. LERMOND: Right.

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

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

MR. RONEY: Correct. Correct.

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

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

MR. LERMOND: I'm afraid that goes back to when the code was originally enacted on pari-mutuel
wagering. Jim, if you want to correct me --

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

MR. FERGUSON: Knowing the turnover in that business.

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

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

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

And so -- but it's tough because they won't get a whole lot more than minimum wage, and there's high turnover, the whole issue of documentation, all
these things play into it. It's pretty tough all the way around. It's part of the integrity of the game.

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

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

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

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

MR. BURNETT: All right.

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

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

MR. LERMOND: Well, if all things go well, you won't adopt this as final for maybe six to eight
months. At each stage of the process, there's a
public comment period. There's different branches
that the administration has to sign off on.
Economic impact statement, things like that, so it
will be thoroughly flushed through the system.

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

MR. LERMOND: We hope not.

MR. HARRISON: Boost it up another $5.

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

MR. HARRISON: Has a motion been made?

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

MR. STEWART: Can I just ask a question?

MR. BURNETT: Yes, please.

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

MR. HARRISON: Joe?

MR. RONEY: That's for anybody working on the
backside, your vendors that come back for hay and
feed and that sort of thing. That's the vendors
that will pay a vendor's fee.

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

    MR. MILLER: On site.

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

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

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

    MR. HARRISON: That's correct.

    MR. BURNETT: This language could be helped a little bit.
MR. PICKLESIMER: Just add it to your definitions -- vendor to your definitions.

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

MR. BURNETT: It does --

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

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

So there could be an ongoing tweaking and adjustment without having to go through a one-year process here or have our attorney say, "You're acting outside the scope of your authority because your regulations say you have to do this." Maybe we have some language such as we're going to talk about in the next item where we can, upon a proper showing, waive the requirement for certain vendors and people connected to, I think that's an excellent point, Mr. Ferguson.
MR. MILLER: Mr. Chairman, before we vote to approve this as a proposed rule, I do believe that it would require deferring this to the next meeting to adopt this proposed rule.

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

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

MR. BURNETT: I think that's good.

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

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

MR. BURNETT: I think the sentiment of the
Commission without me taking a formal vote on it would be to defer it to a cleaned up version. We'll vote --

MR. FERGUSON: Don't vote.

MR. BURNETT: We'll move on to the next one.

We'll defer on that item.

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

MR. FERGUSON: Do we like that one?

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

MR. FERGUSON: Good cause shown.

MR. BURNETT: Yeah. The accreditation, I don't want to get too -- I wouldn't want to be too specific about it because the accreditation requirement may be a number of days in the stewards' box, it may be horses that have been taken, the accreditation people could change their requirements, and I think as long as it comes to us and we have a chance to look at it and we're comfortable -- we've got to be careful with what we
get. But I would rather have the discretion with us rather than change this rule every time a different circumstance comes at us.

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

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

MR. FERGUSON: Are you comfortable with it?

MR. BURNETT: I am.

MR. BROWN: I make a motion --

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

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

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

MR. FERGUSON: And I'll second that.

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

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

MR. BURNETT: The next item is 11 VAC 10-70-90, appointment of a substitute. As I
understand this, correct me if I'm wrong, Vic, in the event somebody is out sick or in a car accident or can't make it, the other stewards pick a third. What you've done is added the executive secretary as someone that participates in the choice of the third person.

MR. HARRISON: That's exactly right.

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

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

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

MR. BROWN: No, sir.

MR. BURNETT: All right.

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

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

MR. CANAAN: Yeah.

MR. HARRISON: So I wanted to insert myself,
the executive secretary, into the mix on some of these decision-making processes that the stewards have complete control over now in our regulations. I just wanted to have some say as the executive secretary as to what goes on.

   MR. CANAAN: The previous executive secretary wore two hats.
   MR. HARRISON: That's right.
   MR. BURNETT: He can just ask himself or he can invite the other person.
   MR. CANAAN: He can ask himself -- I hear you. Thank you.

   MR. BURNETT: All in favor of the suggested amendment to 11 VAC 10-70-90, indicate by saying aye.
   NOTE: All were in favor.
   MR. FERGUSON: Does this take effect now, or does it have to go through another process?
   MR. BURNETT: This one is exempt and would take effect immediately, if I'm not mistaken.
   MR. HARRISON: That's right.
   MR. FERGUSON: Thank you.
   MR. BURNETT: All right. The last item we have in front of us is 11 VAC 10-120-80 (4), Restrictions on Claimed Horse. My outline goes
blank on the last page, so I don't see yellow
language changing it.

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

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

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

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

    MR. BURNETT: The difference between --

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

    MS. RICHARDS: Yeah, he has.

    MR. CANAAN: Is he okay with it?

    MR. KELLEHER: Yeah, he is.

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

    MR. CANAAN: Gotcha.

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

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

    MS. RICHARDS: I don't believe so.
MS. NIXON: It's such a short meet.

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

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

MS. RICHARDS: That's true.

MR. PICKLESIMER: I'm happy as is.

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

MR. BROWN: I make a motion to approve.

MR. BURNETT: It's been moved by Commissioner Brown that we approve the suggested change. 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: Anything further, Mr. Harrison?

MR. HARRISON: Just I have some comments -- actually Dr. Harden has some comments he wants to share with you. We had rules -- I think there were an additional four rules that we proposed changing that were related to medication, but we're going to
convene a meeting of the Medication & Safety Committee during the next couple weeks here. So we may have something for you at the March meeting with respect to medication, but Doc, I would ask that you speak to these issues.

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

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

There's several of them that he runs on every test, that includes ethergen, EPO, and Darbypoiotin. So we test every sample for those, and I think we're also using ELISAs for the anabolic steroids, but
beyond that, they're rotating a number of the other samples around them. So you can conceivably race a horse on a non-authorized substance and get away with it if we're not running ELISA tests on that substance that day. He's proposing that we go to a LC/MS screening, which would expand the sensitivity of our screening tests where we would basically be screening for several thousand different substances, possibility of that.

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

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

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

DR. HARDEN: Mass spec, yes.
MR. BURNETT: Whatever that means. So if you could just help us with what those terms mean and why they're significant to the testing process, it would be good.

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

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

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

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

MR. BURNETT: Commissioner Reynolds?

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

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

Also, in a conversation I had to him, Walt wants to raise his fees slightly, but that's irrespective of this change. He's talking about going up $10 per sample, which is -- right now our
samples our costing us about $165, so he'll be going up roughly $10 above that. At least that's what he wants, if we squeak too loudly, he may not do that, but this particular change going to LC/MS screening is not going to increase the cost a great deal.

MR. BURNETT: Any other questions on that issue?

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

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

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

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

    MR. FERGUSON:  It's called gazillion.

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

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

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

    Three days later that horse will test at one
    nanogram of Bute approximately and that would be
    that third number down, and that's about the level
    of detection for an ordinary lab sample that's
    submitted to a lab. However, you go 12 days down
    and you get down to that four billion, that's how
    many molecules of Bute are still in that horse's
    system and with sophisticated measures, if the lab
    was looking for it, they could detect Bute in that
horse's blood 12 days later. You go down 21 days after administration and you have the number four. Of course, that's four molecules in his system 21 days later.

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

I mean, we had a nicotine positive where a horse ate a trainer's plug of tobacco that he spit out in the stall. These things when you find them and report them and the laboratory has to confirm or whatever, it eats up laboratory resources over things that are not significant to racing. So I basically wanted us to consider having an
understanding with the laboratory that there are
certain drugs, certain substances that we would not
look for below a certain level. I don't want to
write that in the rule book because if you do, it
looks like we're permitting drugs to be used in the
horses.

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

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

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

DR. HARDEN: We have a contract that is
renewable annually by mutual consent, and there's a
clause in there that will allow for price
adjustments or whatever. This is the first price
adjustment that he's talked about with us in three
MR. BURNETT: It just strikes me that if there is some sort of annual review of that contract, that creates the opportunity for us to review this list of substances and tolerable levels, if you will, and have that remain in effect for that year and new substances will come, adjustments in levels will come, and those can all be considered so that we're trying to stay current.

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

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

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

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

DR. HARDEN: Correct.

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

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

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

DR. HARDEN: Right.

MR. BURNETT: So you just want to
institutionalize, if you will, or commit to paper what those -- that list is and what those levels are that we're not interested in looking at.

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

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

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

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

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

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

MR. BURNETT: Okay.

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

MR. BURNETT: Gentlemen, any questions of
Dr. Harden? Anybody here with us among the public have questions about any of this?

   All right. Thank you.

   DR. HARDEN: Thank you.

   MR. BURNETT: Vic, anything further?

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

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

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

   MR. BURNETT: He has.

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

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

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

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

With that said, I'm happy to turn to the logistics of the gap funding for 2009. As the
Commission notes, the gap funding is a variable amount. If we decide upon what the total purse dollars we are racing for are going to be, we're going to have a certain amount generated by the time racing commences, and the balance has to be funded through the gap. So you need some assurances and understanding of the providers of the gap funding. Is there a limit? Are they going to say, yes, we will fund the gap, but it is only up to $2.7 million. I use that number as an example.

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

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

MR. WEINBERG: I'm sorry. You're right.
MR. STEWART: And to do that you need roughly $2.7 million of gap funding, but as Jim points out, it's a crystal ball. Nobody knows.

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

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

So I think -- just affirming with the HBPA and talking to their funders, just so we know what the parameters are, how much that check -- they're willing to write that check for I think is important, so we can begin to build on what are the actual purse funds available.
MR. BURNETT: If I might make one comment on that issue, one is I think it would be the Commission's desire that this go along as much as possible as it has in the past; that is, change in the provider of the gap funding doesn't create any stricter or more loose requirement for the money to be put up. I understand the need for horsemen and others to know that the money is going to be there.

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

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

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

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

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

MR. BURNETT: Is there any issue with that?

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

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

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

MR. WEINBERG: Yes.

MR. BURNETT: Is there any problem with that
with the horsemen?
MS. RICHARDS: I don't think so. I mean, we're already working on -- the luxury we have now is a five-year paper trial that we can take to the bank, and hopefully get a letter sooner rather than later.

MR. BURNETT: Right. Right. Okay.

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

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

I don't think it will come as any surprise, I hope not to the Commission, that Colonial Downs has been telling the Commission for the last couple years that the current economic paradigm doesn't really work for Colonial Downs, that it is death by
a thousand cuts, and so the issues in the contract
are all little knicks at those thousands cuts.

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

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

There have been discussions about opening the
backstretch earlier, which with the number of days
that it is open and that stays the same, that might
make sense, but if it's staying open longer,

obviously that costs more money. So we need to
figure out a way to accommodate that.

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

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

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

MR. BURNETT: I guess the -- I think it's fair
to say that the Commission is frustrated that there
is no contract. Having been engaged in the
negotiations myself in the past, I understand that
it's to difficult reach these agreements and I don't think you should be shy about characterizing these things as all as legitimate issues. I don't think that -- you know, we might be more worried if you were not looking at $100,000 items than we are that you are looking at them. I mean, this is a time when people are counting their pennies and looking at every corner and folks need to dig deep and do the best they can.

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

Here's my suggestion, and I'll give you a common enemy here, but it isn't an enemy to some of my fellow commissioners, but my suggestion is this, that we give you 30 more days to come to a contract
and that is until our next meeting and that today we award the 40 days that you apparently have agreed to on these certain conditions relating directly to those days, the gap funding, and the $115,000, but that in the event that the parties have not reached a contract by a month from now at our next meeting that the race days will remain the same, but they'll be run three days a week starting on Memorial Day. Hence, you will have a three-day a week meet from now until -- from the 31st of May until roughly Labor Day. I see that as inflicting enormous pain on both sides. It would be a way of finding out whether Richmond wants to have racing on Fridays, Saturdays, and Saturdays, whether horsemen want to race three days and sit around for four dark days. I don't think they do. I don't think that the track wants those expenses.

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

MR. BROWN: Not at this point.

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

MR. HARRISON: No.

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

MR. BROWN: I'll second that.

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

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

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

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

MR. WEINBERG: June 12th.

MS. HUGHES: June 12th.

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

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

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

MR. FERGUSON: So move.

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

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