VIRGINIA RACING COMMISSION

April 15th, 2009

10700 Horsemen’s Road

New Kent, VA 23124

Commencing at 9:35 a.m.

COMMISSION MEMBERS:
Peter C. Burnett, Chairman
I. Clinton Miller, Vice Chair
William H. (Trip) Ferguson

COMMISSION STAFF:
Victor I. Harrison, Executive Secretary
David S. Lermond, Jr., Deputy Executive Secretary

ATTORNEY GENERAL'S OFFICE:
Amy K. Dilworth
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MR. BURNETT: All right. We'll open our meeting. I apologize to everyone for the late start.

We have three commissioners here today and our preliminary review of the code is that any action taken today at this meeting would have to be by unanimous vote for it to be valid. I'm just saying that for the benefit of the folks here and my fellow commissioners.

We'll start with the approval of the minutes of our regular meeting on March 25th. Are there any changes or amendments upon review of those?

MR. WEINBERG: Chairman Burnett?

MR. BURNETT: Please.

MR. WEINBERG: Just a note. On page 4, as I was reviewing it, just so we're consistent with what I say later in this meeting, in the second -- first full paragraph, the last line, it talks about moving live racing from Fridays instead of Sundays. It's the reverse. The change will be to move live racing to Sundays instead of Fridays.

MR. BURNETT: Thank you.

Any other changes, observations, mistakes, whether from the Commission or any other good
readers that are with us?

    MR. MILLER: I recall we approved a second set of minutes or something at our last meeting, didn't we? It seems we had not approved some minutes previously. I don't know.

    MR. BURNETT: What's that?

    MR. FERGUSON: We had a correction.

    MR. HARRISON: But that's mentioned in here.

    MR. BURNETT: We did mention the correction. Was it the meeting prior that we approved two sets of minutes, or was it last month?

    MR. MILLER: Time runs together for me.

    MR. BURNETT: It does for me, too.

    MR. MILLER: Just forget it. Never mind.

    MR. BURNETT: All right. With the amendment referenced by Mr. Weinberg on page 4, the first full paragraph, do we have a motion to approve?

    MR. FERGUSON: I'll make that motion.

    MR. BURNETT: Chair seconds. Minutes are -- oh, 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.

    MR. BURNETT: Any comments from commissioners? I have none today.
Let's move onto committee reports.

Mr. Ferguson, do you have a report from the Thoroughbred Breeders Fund Committee?

MR. FERGUSON: I didn't attend the meeting. I'm going to knock this over to Glenn.

MR. PETTY: Would you like that now or would you like that in this deferred spot?

MR. BURNETT: Excuse me. I'm sorry. Deferred to Glenn Petty 5(d).

MR. PETTY: It should be 5(e), but that's fine.

MR. BURNETT: 5(e) says Glenn Petty on it. All right. Any problem with deferring that until then, gentlemen?

MR. MILLER: No.

MR. BURNETT: We'll let Glenn finish preparing his speech.

Executive secretary's report. Mr. Harrison?

MR. HARRISON: The first item is the approval of the racing officials for the 2009 Thoroughbred Meet. I would ask that you make a motion, one of you, accepting the list as presented by the racetrack, in particular Tyler Picklesimer.

MR. MILLER: So move.

MR. FERGUSON: Second.
MR. BURNETT: 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. HARRISON: Stewards. Similarly, I would ask that you approve the thoroughbred stewards as -- for the 2009 Thoroughbred Meet, Jean Chalk, Phil Grove, and Dave Lermond with Adam Campola as the alternate.

MR. BURNETT: Mr. Harrison, we amended the rule for the appointment of stewards earlier this year or late last year, I forget exactly when, and if I recall correctly, that rule requires that all of our stewards be compliant with the Ropes accreditation requirements and gives us the ability to waive any of those requirements for good cause shown.

It strikes me that either you should represent to us that all three of these stewards meet the current Ropes accreditation requirements or one or more of them do not, and we nonetheless recommend that individual or those individuals, and the cause
why you believe that we should waive that
requirement such that the record reflects our
compliance with our regulatory duty. Does that make
sense?

MR. HARRISON: I'd be happy to.

MR. BURNETT: Okay. Thank you.

MR. HARRISON: Jean Chalk and Phil Grove, of
course, are compliant with the Ropes requirement.

Dave Lermond has served in the capacity of a
steward. He has passed successfully the Ropes
course. The one piece of the Ropes requirements
that he has yet to fulfill is the hourly
requirement. I think there's a certain number. I'm
not sure what it is. Do you know what it is?

MR. LERMOND: Fifty days.

MR. HARRISON: Fifty days sitting in the
stewards stand.

MR. LERMOND: Or already in the capacity of a
racing official.

MR. BURNETT: I take it that were we to
approve your recommendation, that the days
Mr. Lermond spends in our stewards stand would count
towards that 50?

MR. HARRISON: It would. So sometime I
believe in the month of July, he will meet -- have
met that requirement as well. And one of the reasons that we would like Dave to act in the capacity of a steward this year is that in the past, Stan Bowker, who sat in my chair, he fulfilled the dual role as steward and executive secretary and we had budgeted as such for this year as well, the cost of a steward when you factor in the daily per diem -- that's redundant -- the per diem, and the daily fee comes to about $20,000 a year, and it would benefit us as well.

So with someone like Dave, who I believe has experience as a steward and has interest in being a steward and is a member of the VRC staff, all those things color my recommendation of Dave as one of the three stewards here. He also has a good relationship with the two senior stewards, and I think they would make a good trio up there in the stewards' stand.

MR. BURNETT: Any problem?

MR. MILLER: I move we approve the three standards as recommended.

MR. FERGUSON: I'll second that.

MR. BURNETT: While we have the opportunity for discussion on this motion, may I ask if there's any members of the -- here with us today that want
to comment on this particular issue? In the past, it's been -- there's been some sense that the horsemen have been left out of some of these decisions. If anybody wants to speak to this, I would ask them to do so now.

MR. PETRAMALO: Just one inquiry. Are one of the stewards being appointed as a presiding steward?

MR. BURNETT: Yes. Jean Chalk would be the chief steward.

Gentlemen, I would prefer that we -- well, perhaps it could be part of the motion. If you would agree, Mr. Miller, that part of the motion be that we have found good cause from departing from the Ropes requirements.

MR. MILLER: As stated on the record by the executive secretary.

MR. BURNETT: Thank you.

MR. MILLER: I don't want to go through them all.

MR. BURNETT: That's wonderful.

MR. MILLER: One of the main ones is the fact that he apparently has the experience or the knowledge necessary to perform this task and will apparently fulfill the rest of the requirements during the meet.
MR. BURNETT: My sense is that -- putting a little bit of form over substance, if he's going to meet his requirement during the middle of the meet, I'm not sure that those exciting first half days of the meet are going to make him that much better of a steward than the second half. I think we're going to get his good, quality judgment throughout and that this is an appropriate circumstance under which we should waive this rule.

So I call the question. 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: Thank you, Mr. Harrison.

Gray slot machines.

MR. HARRISON: Gray slot machines. I just wanted to comment. We visited a truck stop down at the North Carolina border and inside the truck stop, there were over 20 of these -- what they call prepaid phone card machines. Really, they're -- to me, having been in this business for a while, a couple decades, there's slot machines under the guise of prepaid phone card machines.

And to give you an example of how meaningless
the prepaid phone card aspect of the machines are, I went up to the machine and I put $20 in a cash acceptor. I got my 200 credits up on top and way down at the bottom of the machine, there's a little slide area where these cards empty out. And so for my $20, I got four of them, and there must have been 20 or 30 in there already. People don't care about those. They go there to bet on the machines.

MR. BURNETT: What are they? What's the little thing that comes out?

MR. HARRISON: It says you can make $5 worth of phone calls on the card, but we tried using the card for that purpose and that didn't work either. So they have a non-smoking area that have machines in it; they have a smoking area that have these machines in it. It was pretty well populated when we visited it.

I just want to put it on the record that when we talk about never having slot machines here in the Commonwealth or not allowing instant racing even at the racetrack or OTBs, that, in fact, we do have them here. This is just one example. It's my understanding that there's some other truck stops that also have these gray slot machines in them.

The company is Travel Center Entertainment and
they have a website, and I'd just like to explore this a little further. I just want to put on the record that we've experienced these type of slot machines in the Commonwealth, and I'll just -- I'll write up a memo and get it on to our general counsel and to just run it up the flag pole.

MR. PETRAMALO: How does it work? I mean, you get 200 points, then what happens?

MR. HARRISON: Then you bet a number of credits that you like and the reels spin and the lines come up, squiggly lines come up that show you that you've won or not and you get credited. If you leave with credits, you pick up a phone that's next to the slot machine and you call in and say, "Okay. I want to cash out." A man comes over just as if you had won a jackpot at a slot machine. He comes over. He opens up the slot machine. He puts your winnings on his chit. You take the chit to a desk, they call it the fuel desk, and they cash you out, and they ask you to sign a chit, C-H-I-T. They don't ask for ID or anything. I could have put John Smith down or Shemp Howard or whatever.

MR. PETRAMALO: So I put in the $20, I get 200 points, and at the end of an hour, I've got 350 --

MR. HARRISON: You can cash out. You get
MR. PETRAMALO: I get $35.

MR. BURNETT: And don't forget those four phone cards you got.

MR. PETRAMALO: And plus the four phone cards.

MR. BURNETT: I'd call home and say how much you won.

MR. PETRAMALO: Interesting.

MR. PETTY: There's one in Ashland. You didn't have to go all the way to North Carolina. There's one in Ashland. They're all over Virginia.

MR. HARRISON: It's in Virginia.

MR. MILLER: This one here is when you get down below Petersburg and you go down towards Durham?

MR. HARRISON: Bracey's Truck Stop.

MR. MILLER: I know who runs that.

MR. BURNETT: Carrying your point a little further, you know, I think it's good that we're discussing that, but I wonder if we're all forgetting our statutory obligation to promote, sustain, and grow racing includes an obligation to make it known to the appropriate authorities that this kind of conduct is going on, because I think we would agree it's probably not helping racing.
MR. HARRISON: That's right. It's my understanding that a couple years ago the prior executive secretary took a run at this, and he went directly to the governor's office, and he was told by the county prosecutor in that -- is it Mecklenburg County? That it's an ongoing investigation. Of course, that was two years ago. It's continuing to go on. So I just want to take baby steps here. I'll write up a memo. I'll get it to our attorney general, and they'll take it from there.

MR. BURNETT: I'd just like it -- our look at this not to be similar to the county attorney or the Commonwealth attorney in Mecklenburg County. I think if we're going to look at this, we shouldn't just talk about it. I think I agree with you to take baby steps initially, but I'd like it to come back to us, hopefully at the next meeting, as to what progress has been made and whether or not we want to make -- take further steps or whether we're just stymied. Whatever the outcome is, I think we should come to some resolution about how we're going to deal with it.

MR. HARRISON: I will do that.

MS. DILWORTH: Chairman, I'd be glad to help
Mr. Harrison craft that letter, but I will also
assure you that the appropriate authorities are
aware of this situation and are looking into it.
I'm not privy to those investigations.

MR. FERGUSON: We've got to be for or against
these machines?

MR. BURNETT: I think we -- given the way
we're treated, and we're treated with -- what was
the name of the restaurant that --

VOICE IN THE AUDIENCE: Chevy's.

MR. BURNETT: Chevy's, you know, it strikes me
as quite the double standard. Racing is not getting
anything out of it. It's siphoning dollars away
from us. It might sort of open up the notion that
this kind of wagering is okay and, therefore, let
more --

MR. FERGUSON: But would we want to oppose it,
and then turn around and want it for our
franchisees?

MR. BURNETT: I would be fine with that
because ours is regulated. Theirs isn't. Theirs is
a fraud. I mean, it's -- I mean, the phone cards
don't work.

MR. HARRISON: Right. There are --

MR. FERGUSON: There's a fine line between
fraud and untaxed.

MR. BURNETT: There you go.

MR. HARRISON: It's a highly regulated industry. The slot machine manufacturers, IGT, Bally's, Aristocrat, Williams, whoever they are, those are thoroughly betted out and tested by GLI constantly, every chit in that machine. So you want those machines to be audited on a regular basis and you want it to be tested by the testing laboratory.

This is just like the wild, wild west. So, you know, the folks that are playing on them, I'm not sure if they're getting a fair shake or not. That's another aspect of this.

MR. MILLER: Actually, they also have a game -- did you see the gaming machine that you put the money in and it has doll babies and furry animals and money in these, and you can put money in and you can directly win money. In other words, if you put 50 cents in, you might win a $20 bill. This little thing shuffles forward, and they fall down. Highly illegal in Virginia.

MR. PETTY: Those are everywhere.

MS. RICHARDS: Yeah.

MR. PETTY: I came across the machines in the Travel Americas. It was last day of the 2006
Colonial meet. So I don't want to cast any aspersions on anybody's investigation, but that was three years ago. I brought it up to the Commission then because we walked in and I said, "Tell me this isn't a slot machine." I had a couple of attorneys with me who in their judgment agreed, it sure looks like one. They're also gamblers, so it was both sides of the coin, and that was in August of '06.

MR. PETRAMALO: Let me give you a different spin on it. I say we put 500 of them on the fourth floor, and we split the take between the track and horsemen.

MR. BURNETT: And the Breeders' Fund.

MR. PETTY: And the Breeders' Fund.

MR. BURNETT: Y'all want to put it in Chevy's?

MR. PETTY: Our phone cards will even work.

MR. BURNETT: All right. We'll move on from gray machines to stakeholders.

The first item is the approval of the request from the VHBPA of their Benevolence Fund Budget. If y'all would help me on this a little bit. Are not the horsemen's agreement and the Benevolence Fund Budget inextricably intertwined?

MR. PETRAMALO: They are related, and I can explain that as I go through the -- quickly go
through the budget. I don't want to belabor the
obvious points.

Commissioners, as you may not know, I'm not
sure we've ever gone through this in detail with
Commissioners Ferguson and Miller, but here's how
the financing works. By statute, 30 percent of the
breakage is dedicated to benevolent expenses on the
backside during the meet. The breakage is the odd
cents between one and nine cents. So when a bet is
paid and the actual calculation based on the pool
comes out to be $4.82, the bettor gets $4.80, two
cents goes into the breakage fund.

Thirty percent of that each year comes into
the backstretch benevolence account, which we
administer jointly with the VHHA, the Harness Horse
Association, and it usually runs between 150 and
$175,000 a year.

Each year, what we do is put together a budget
and the budget goes to the Benevolence Committee.
There is a VRC Benevolence Committee that's
currently chaired by John Hanna, who is on our
board, and includes Dr. Dunavant from the harness
association, and over the years has included various
other individuals. They approve the budget, and
then we come and present it to the Commission for
final approval.

What you have before you today is missing final consideration by the VRC committee. John Hanna has not yet had any detailed discussion with Dr. Dunavant. Dr. Dunavant does have a copy of the budget. So what I would like to propose is I will go through the budget with you and ask for your tentative approval subject to a positive recommendation forthcoming from the VRC Benevolence Committee.

MR. BURNETT: It would be helpful to go through that budget.

MR. PETRAMALO: I just wanted to outline the parameters.

MR. BURNETT: The question I was asking, though, and I think I confirmed it by looking at the horsemen's contract is if we move one penny out of that Benevolence Fund, there's no contract between the horsemen and the track; is that right?

MR. PETRAMALO: That's possible, yes.

MR. BURNETT: Well, contracts usually try to do a little bit better then possible with all due respect, and the language that I read, it appears to have been amended, says that if we don't approve this contract in its current form and all the
expenditures set forth in paragraph 15, which includes things like the Benevolence Fund paying for fertilizer on the turf surface, that there is no contract between the horsemen and the track. I just want to make sure that we understand that if there is no contract between the horsemen and the racetrack, that June 5th will be the start of three day a week racing, Friday, Saturday and Sunday, for the summer. Just make sure everybody is clear about that. Is that our understanding? You know that's our rule if there's no contract. So if we don't approve every single item in this, we're going to race three days a week for the summer.

MR. PETRAMALO: I'm not sure I understand where the three days a week came from.

MR. BURNETT: We previously ruled that in the absence of a contract between the horsemen by a date certain that there would be three day a week racing for the summer. We would not approve 40 days.

MR. PETRAMALO: I missed that meeting.

MR. BURNETT: You did, but I'm sure you got the memo. So we are -- I shouldn't say we. I fully intend to abide by that earlier decree of this commission and if there's an agreement, great.
We'll run 40 days, but I'm troubled by some of the
items I see in the Benevolence Fund and I'm troubled by some of the non -- some of the cap excess managers as well, but it appears that there's sort of a poison pill provision in this contract that ties the Commission's hands to do what they're statutorily required to do. So I'm troubled by it, but maybe we can just go through it and see where we end up.

MR. PETRAMALO: Yeah. I think that would be helpful because what -- I understand what you're saying, and I'm sure Jim and Ian do also, but it may well turn out to be not as great a concern after we discuss this.

MR. BURNETT: Okay. Good.

MR. PETRAMALO: Getting back to where I started, that's where the money comes from and what you see before you is usually what we do with it with a few exceptions, and I'll get to that.

The first line item, food vouchers. What we do there is provide food service for the -- particularly for the grooms who work back there, and we do that in a number of ways. We subsidize the kitchen so that they can keep the price of food down. We also print up these little meal tickets that the kitchen agrees to honor for a meal. Last
year it was pegged at I think $4.50, but we
negotiate the meal with the -- Miguel Paz, who runs
the kitchen. He honors these, they bring them back
to us at the end of the meet, and then I write a
check for the total number of tickets. And also as
part of that food program, we provide water. We
also run -- we run a picnic. Last year we had two
of them. One on the 4th of July, and I forget when
the other one was, but that's what the food is all
about.

Chaplain, for the last at least four or five
years, we've had Reverend Marjorie Bevins as our
chaplain. She's a former jockey. Just a wonderful
chaplain and everybody really appreciates her
services, but we pay her for her time. This year
she will be back, and she will have an assistant
chaplain with her, who I believe speaks Spanish,
which is of great help on the backside. That's the
chaplain.

The intern program, every year -- again, at
least for the last four or five years, we've had a
summer program where we bring in young folks not
only from Virginia, but from as far away as Texas
who are interested in the horse industry, and we get
them on the backside. They learn what it's like to
work in a stable and we also rotate them through the racing secretary's office, and I think even occasionally we've had one or two work as temporary judges, patrol judges. So we'll go forward with that.

The other things like mattresses, air conditioners, et cetera, that really goes to the furnishing of the dorms. We have 110 dorm rooms with 240 beds and we replace the mattresses, air conditioners, et cetera. We also provide an incentive program for the grooms who work here by in each race we award a $20 prize to the best groomed horse in the paddock, and we also award prizes for the best kept barn on a weekly basis.

And then, again, because we run such a short program here, we don't have in place any type of permanent medical insurance. So what we do, we've made arrangements with a clinic in Williamsburg and a dental office down in Providence Forge where people on the backside have acute medical or dental problems, we take care of their expenses.

And the alcohol and drug counseling program is fairly self-explanatory. We occasionally run into problems there, and we take care of the cost of counseling.
There are two new items on there. Well, let me skip to the last one, landscaping. Traditionally, what we've done is try to improve the state of landscaping on the backside to give it a more friendlier or wholesome atmosphere, and we planted trees all over the place. If you're interested, you can take a ride down and see our most recent planting that was done a week ago. We put trees and bushes around the dormitories. That's landscaping.

The two new items that I want to draw your attention to are the $50,000 entry for jockey insurance and the $21,600 entry for the training ambulance.

Let me take a minute on the jockey insurance. Up until probably three or four years ago, the Jockey Guild, the organization that represents jockeys nationwide, covered the insurance cost for jockeys who were injured during a race or riding in the morning exercising horses, and it covered their medical expenses and lost income. Well, the Jockey Guild was preyed upon by an unsavory character, and this insurance program went bankrupt.

So in order to continue to have jockeys come to race here at Colonial -- and by the way, this is
not limited to Colonial, along with the track management, we agreed to purchase a $1 million policy to cover the jockeys. The cost of that is roughly $75,000 and over the years, we split that with Colonial. Colonial paid 50,000; we paid 25,000.

As part of our negotiations this year, because the Commission directed us to pay Colonial Downs $115,000 if we wanted to run 40 days, we agreed to pick up the full cost of the insurance policy, provided Colonial credited that $50,000 against the 115,000. So that's that item.

The other similar item is for the training ambulance. By training ambulance, I'm referring to the ambulance and the crew that's here every morning when the horses are training between six and ten. That cost is $300 a day. Total cost is twenty-one six. Again, that's traditionally been paid for by Colonial. We agreed as part of our horse contract -- horsemen's contract to pay that twenty-one six provided it, too, was credited against the 115,000.

So those are the only two items in the budget that are out of the ordinary, and I would hope and expect that those are suey generous and hopefully
would not be repeated in the future, but who knows.
As I said, other than that, what you see there is
basically what we've done for the last four or five
years.

THE REPORTER: Hold on one second, please.

MR. PETRAMALO: The total 189,600 is in excess
of the number that I told you for the following
reason. We have approximately 40,000 in carryover
from last year. Last year's budget I believe was
156,000. We didn't spend all of 156,000. The
person administering the budget was very careful not
to spend too much money, and as a result, there was
$40,000 leftover. I tried my hardest, but I
couldn't spend it all.

One other thing that you should bear in mind
is the breakage -- the breakage money also is
breakage on harness wagering, and usually the
breakdown between harness wagering and thoroughbred
is anywhere from 80 to 90 percent thoroughbred
versus 10 to 20 percent harness, and we don't
overlook the harness folks. I mean, to the extent
we take care of mattresses, air conditioners,
television sets, et cetera, that's used by the
harness folks also. As I said, what is unique to us
is the jockey insurance and the training ambulance.
Now, to further go through the process, John Hanna will be talking to Dr. Dunavant to make sure that Dr. Dunavant approves of the budget and that any questions he has are answered. What I suggested at the outset was that -- assuming the Commission agreed -- that they tentatively approve this budget subject to a positive recommendation that it be accepted from the committee.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Please.

MR. MILLER: Is there a time constraint on approving this, or could we wait until they review it and give us their recommendations to act on it?

MR. PETRAMALO: I would expect that John and Charlie would probably get together within the next three days or so and get back to you.

MR. MILLER: Yeah. But is there a time constraint? Is there some reason why we should approve this budget in the next two, three, or four days including today?

MR. PETRAMALO: Well, to the extent that -- as Chairman Burnett referred to in his opening, the approval of the horsemen's contract is or implementation of the horsemen's contract is contingent on approving this budget. In particular,
you can see what we're talking about.

MR. MILLER: Okay.

MR. PETRAMALO: The credits that we're taking against the 115,000.

MR. MILLER: I see. Okay.

MR. BURNETT: Do I understand you to say that this would be sort of conditioned -- not sort of, but conditionally approve this budget, subject to a later nod from the harness horsemen? Is that --

MR. PETRAMALO: Yes. Well, basically --

MR. BURNETT: Which in turn would mean the horsemen's contract is conditionally approved?

MR. PETRAMALO: I suppose you could look at it that way.

MR. BURNETT: It strikes me that if -- despite your best intentions, if this committee hasn't met yet or its principals meet and they come to loggerheads unexpectedly, and we don't have an agreement as to this budget and, therefore, we don't have an agreement, a horsemen's agreement, which is troubling.

MR. PETRAMALO: Well, we have a horsemen's agreement, but it's subject to being declared null and void. Now, let me -- not for nothing did I practice law.
If in a worse case scenario, we couldn't reach an agreement through the committee with the harness folks, which is highly unlikely, but in that event, that would make the contract subject to being null and void, but my belief is that if that were to happen, there would be further discussions between the horsemen and Colonial Downs to fix the problem so that the contract didn't become null and void.

MR. FERGUSON: I have a question. If there is a disagreement on a portion of this, can you take that portion and set it aside and escrow it?

MR. PETRAMALO: I wouldn't think that we would -- at the committee level that we would get into any dispute that would require us to escrow money. In other words, we meet and either agree or not.

MR. FERGUSON: You could do that if you wanted to? I'm trying to --

MR. PETRAMALO: Yeah, I guess.

MR. FERGUSON: I'm trying to look at it -- get it out of the box.

MR. PETRAMALO: I suppose it's possible, but I don't mean to be too dismissive of this, but we've been doing this with our friends with the sulkies for the last five or six years, and we've always
managed to work out any problems between us. Our major problem has been with the guys on that side of the table. That would be you, Jim.

MR. WEINBERG: I recognize that.

MR. BURNETT: I thought you said plural.

MR. PETRAMALO: No. Ian is under a grace period.

MR. STEWART: For another few minutes.

MR. BURNETT: I guess -- I'm pleased to hear from my fellow commissioners, but what troubles me is I think that the Commission has bent over backwards, provided time for y'all to come to an agreement, and we thought -- it was represented that we were going to have an agreement. Here we are today, it's not an agreement. It's subject to unwinding and other people approving this and approving that. I don't like that. I don't think the public likes it. We're going to do something about it in coming years and make it painful for the parties to procrastinate, and I know that's the lawyers favorite thing on earth to do, but it's not beneficial to our program.

So what we need to do is deal with this problem this year, I agree. Let's deal with what we have in front of us right now. I'm not sure I know
how to.

MR. PETRAMALO: I will assume responsibility for this. It was my failure to get the committee together and approve this in a timely fashion. Colonial was for the first time not blameworthy in any respect.

MR. WEINBERG: Let the record reflect.

MR. BURNETT: We'll consider the source.

Gentlemen, any questions about the specifics of the racing benevolence budget? I don't want to call it the committee's budget because the committee hasn't put it together as far as I know.

MR. FERGUSON: I have a question. Are these not capital expenditures, or are they just operational expenses that may vary from our regulations?

MR. BURNETT: The ones I see on this committee, correct me if I'm wrong -- on this budget, correct me if I'm wrong, come from the 30% side --

MR. PETRAMALO: Yes.

MR. BURNETT: -- of the benevolence budget and are -- it does not matter whether they are capital or repairs. That money needs only meet our standard of being benevolent -- for a benevolent purpose.
MR. PETRAMALO: Well, to further complicate this, there is a requirement under the horsemen's contract that Colonial spend $100,000 in capital expenditures on the backside. It's quite likely that that will be spent given the new sprinkler system that's being put in as we speak in the receiving barn, but if they don't get that $100,000 mark, whatever is left -- whatever the difference between what they spend and $100,000, that, too, would be credited against the $115,000.

But as long as we're talking about credits, I think I can probably make the following representation; that is, if for some reason the $71,600 isn't credited to Colonial, we, the horsemen, will find some other way to get the 71,600 to Colonial and that may entice Colonial to waive the null and void provision in the contract.

MR. BURNETT: To the extent that the parties are intent on making these expenditures, are we put in a position of essentially choosing whether they come out of the benevolence budget or they come out of purse funds? Is that a fair way of looking at it from the horsemen's side?

MR. PETRAMALO: Probably.

MR. WEINBERG: I mean, you can kick me, but to
the extent that the horsemen don't receive a credit against the 115 --

MR. BURNETT: Right.

MR. WEINBERG: -- right?

They're going to have to pay Colonial, that money otherwise would have ended up in purses.

MR. BURNETT: Right.

MR. WEINBERG: So these -- not to pile on, but some of these are truly benevolent things that allow us to evoke more money to purses at the end of the day.

MR. HARRISON: Peter, one question. So then an item like the ambulance, that's -- the cost of the ambulance, that's required in our rules. It made it into this budget under the same principle?

MR. PETRAMALO: Yes.

MR. BURNETT: What would that principle be?

MR. HARRISON: That the purse money and/or the Benevolence Fund would be impacted -- would be otherwise impacted. All I'm saying is the ambulance is required by our rules. So the fact that you're paying for it now, that's something new, right, from last year?

MR. PETRAMALO: Yes. That's correct.

MR. HARRISON: So what was the thinking?
MR. PETRAMALO: Well, again, it was our paying for a benevolent cost that in the past Colonial has paid for. And by doing that, they were crediting us with 21,000, that, as Jim points out, would otherwise likely come out of the purse account.

MR. BURNETT: This is just moving that $115,000 around?

MR. PETRAMALO: That's correct.

MR. BURNETT: Our choice here is whether or not we want those to be determined winners of purse funds to underwrite the cost of the 21,000 or whether we want that to be that much less money available for employees and others on the backside.

Before we get to any ultimate decision on this, can I have a little bit more detail on the landscaping budget of 40,000? I take it when you say dormitories, you mean landscaping around the dormitory, bushes and trees, et cetera, as you just referenced?

MR. PETRAMALO: Yes.

MR. BURNETT: How much did that cost?

MR. PETRAMALO: So far it's $18,000 and I haven't received the bill from the landscape architects, so I'd say -- I'm ballparking it at 20,000. There is another $5,000 worth of planting
that has to be done. So we're looking at roughly 25,000 in landscaping.

MR. BURNETT: I take it there's a provision for the non-meet time maintenance of it so that it's -- those trees make it. There's always been a discussion about adequate water and --

MR. PETRAMALO: You're looking at the maintenance.

MR. BURNETT: Are you the guy that does that?

MR. PETRAMALO: Yeah.

MR. BURNETT: Bring your boots to every meeting and your hoes.

MR. PETRAMALO: There is one item there that's listed, you'll see track base inspection. And at our request and with Colonial's consent, we're having the original architect of the dirt track come down and take core samples of the base while the cushion is off.

The base is probably -- well, certainly more important to the safety of the surface than the cushion, and we agreed that we would pay to have that person come down. In fact, he was supposed to be here today, but because of the bad weather and the inability to get the track cleaned off after Strawberry Hill, he's not here today, but he will be
drilling core samples, et cetera. That's probably going to cost us about $3,000.

MR. BURNETT: Is this in your mind something that the track would ordinarily do, but you're shifting that off of the -- moving it towards the $115,000 credit?

MR. PETRAMALO: I'm not certain of that. I wouldn't necessarily agree to that. I mean, we -- not to downplay the track's role here, but as you know, the horsemen, particularly the trainers who are here every morning, always have concerns about the -- quote, the dirt track and the turf course. So we pursued various programs over the years to ensure that the surface was safe and met the concerns of the trainers.

Last year, as you may recall, together with Virginia Tech, we undertook an experimental fertilizer program for the turf course. To us, what we're proposing here is of the same ilk; that is, looking at the dirt course to make sure that it provides a safe surface for not only jockeys, but of course, the horses.

MR. BURNETT: It strikes me that that's at the heart of what the owner of the racetrack should be doing, is making sure that this racetrack meets an
acceptable industry standard of safety. If the jockeys and the trainers are somehow concerned with the analysis, believe that the standard is not high enough, want to make it a better standard than the industry would otherwise expect, I can so understand them going to those lengths, but I would want to see first that the track has met its core responsibility of providing a safe racetrack.

If you have some reason to believe that the racetrack does not meet industry standard safety requirements to the extent that they're out there to be determined, that should be made known to us and that's something we should know on a regular basis for the protection of all participants in racing.

I'm unclear whether we're having a benevolence fund drift over into management obligations or whether we're trying to add some frosting to an already good cake.

MR. PETRAMALO: I think it's probably the latter. I'm not suggesting in any way that the racetrack surfaces are unsafe, I don't think they are, but we have trainers and owners who are often concerned when their horses breakdown or their trainers come back and say, gee, you know, I work my horse over the dirt track and he's coming back sore.
What we want to do is go the extra mile to ensure for the safety of both the animals and the jockeys that the best possible is being done. We're going the extra mile to satisfy the owners and trainers. Now, as you know, we're not going to satisfy everybody, but if, for example, the person who designed the track comes down and blesses off and says this base is fine, there's no problem with it, we can then assure our members that we've inspected it. It's fine. You don't have to take the track's word for it.

MR. MILLER: Mr. Chairman?

MS. RICHARDS: This is a ten year thing.

MR. MILLER: Frank, you mentioned the word ensure. Who does actually ensure that the track meets the standards acceptable in the trade in the event there's a catastrophic occurrence on the track?

MR. PETRAMALO: Well, not wanting to speak for the track, I assume they have some type of liability coverage, but the coverage for the jockeys is the insurance policy that we've talked about. If, for example, there's a hole in the course and the horse steps in it and goes down.

MR. MILLER: Well, I'm thinking of a $2
MR. PETRAMALO: That usually is up to the owner to insure the animal.

MR. MILLER: Well, but owners then get lawyers, and they claim that there's something --

MR. PETRAMALO: Yes. Sure.

MR. MILLER: -- wrong on the track.

MR. STEWART: We carry liability insurance, you know, if they determine that we were negligent.

MR. MILLER: We're probably getting into this deeper than we need to get into it. I'm just suggesting that as -- if I'm the insurance company and I'm insuring your track, and then all of a sudden, another third person, the horsemen have done something to change the condition of the track based upon the survey by the person who put in the track, they come up with something, and being the agency that's beyond -- beyond what you all dictated the track -- the condition of the track should be in, then all of a sudden, there's a question about whether or not that insurance policy is going to cover that situation. That's getting in too deep, but I'm just --

MR. FERGUSON: Well, what I'd do as a horse owner, I'd just pick up the phone and call Sue Bob,
M.O., and she'll fight it out with -- her attorneys
I guess will fight it out with the other folks; is
that right? It's like car insurance. You call your
insurer.

MR. PETRAMALO: Well, if I have a $2 million
horse, you can rest assured that horse is going to
be insured and if something happens to the thing, I
report it to my insurance company. And as you point
out, my insurance company talks to their insurance
company.

MR. STEWART: I'd like to point out that --

MR. BURNETT: Please.

MR. STEWART: -- historically we've had what
is considered to be one of the finest racetracks in
the country out there. We have never skimped on
maintaining it and maintaining that reputation, with
the one exception that I can think of when we had
some orange dirt out there. I think we've always
had -- and we'll always continue to have as good a
racetrack as we can possible be. If the horsemen
would like to, you know, bring somebody else down,
you know, analyze --

MR. FERGUSON: What is orange dirt? Is that
in Georgia?

MR. STEWART: -- I'm happy to do that.
MR. MILLER: All I'm suggesting is that if the horsemen in their responsibilities under landscaping, this track and the track base inspection or maintenance, anything on the track, you're going to have to finally sign off on whatever --

MR. PETRAMALO: Oh, yeah.

MS. RICHARDS: Absolutely.

MR. MILLER: You're going to be ultimately responsible. You're going to have to approve whatever they do.

MR. STEWART: Absolutely. If Mr. King makes a recommendation, that's a recommendation. It's up to us to determine what to do with it.

MR. MILLER: So you may or may not go along with it?

MR. STEWART: As I said, our objective is to maintain our representation, et cetera.

MR. MILLER: I just wanted to --

MR. WEINBERG: But to be clear, Peter, back to your question. I mean, this came up in -- this was frosting on the cake. No one has raised concerns about the soundness of the track.

MR. PETRAMALO: That's my --

MR. BURNETT: We're mixing here some different
issues.

MR. WEINBERG: Right. This was clearly an instance where was it possible to address what we anticipate to be standard questions coming up during the meet, not that there are any questions about the soundness of the surfaces. So this was just a way to put some icing on the cake.

MR. BURNETT: Okay. That's what I anticipated this was, and I just wanted to make sure I understood what it was so that I can form an opinion as to whether or not this is appropriately a benevolence item, whether it belongs in a Benevolence Budget for the backstretch or whether it belongs someplace else. That's the purpose of my question.

And then likewise turf maintenance is noted on the comments under the landscaping, 40,000 budget, and I also notice that page 21 in the contract, paragraph 15, that it provides that they'll -- you'll have to help me with where the money comes from, but I think it's from this fund --

MR. PETRAMALO: Yes.

MR. BURNETT: -- any fertilizer necessary thereto for the track's turf surface.

MR. PETRAMALO: That's part of the Virginia
Tech program if we choose to go forward with that this year.

MR. BURNETT: Maybe I was asleep at the switch last year. If this program was approved under the benevolence program, but I'm having a hard time figuring out how we're spending benevolence funds for the poorest amongst us who would otherwise benefit from it, instead we're fertilizing the racetrack.

MR. PETRAMALO: Well, it's --

MR. BURNETT: Help me with that one, please.

MR. PETRAMALO: Okay. We did go through this last year. There was concern about the hardness of the turf surface and its durability given that we run 80% of the races on the grass. There was a fertilizer out there that's used in the National Football League that does wonders for turf in the sense that it promotes deeper root growth, more compaction, more durability.

So we went to this company, which was working with Virginia Tech, where I believe some of the formula for this fertilizer was developed. We put together a little program, and last year I think we spent 12 or $15,000, with the track's agreement, buying the fertilizer. It was not used on the
entire track. It was just used on the 10 path just
to make sure it didn't kill everything, and the
interim reports that I read from Virginia Tech said,
yes, this is doing what it's supposed to do.
There's deeper root growth. You look at this sample
on path 10 versus a control sample, and it's good
stuff. Makes the track safer.

We are awaiting a proposal from the same
company for additional -- we're expanding it from
just a test on path 10 to doing the whole track.
Again, subject to Colonial's approval. So there's
some money thrown in there just on the off chance
that we go ahead and do this.

Now, in talking -- I'm giving you more detail
than you'll ever want to know, but Saturday, Robin
and I talked with the new track superintendent and
he has an interesting plan that he's going to work
on the turf course that he plans to implement. It
may well be that his plan doesn't at this time
require us to -- or suggest that we go forward with
the fertilizer program. So it's still up in the
air, but it's in there just in case.

MR. STEWART: I think the reality is there's
several drums of this left. I told Mr. Petramalo
that if we could use it --
MR. PETRAMALO: Yes.

MR. STEWART: -- we would reimburse him for it.

MR. PETRAMALO: Right.

MR. STEWART: The problem with the fertilizer, as I understand, it's a little difficult to use in our equipment because it's very thick and it causes problems, but it's our intention to use what's left. There's three or four drums left.

MR. PETRAMALO: Right. There are three 55-gallon drums left. We had a total of eight last year, five were used.

MR. FERGUSON: This is liquid, not granule?

MR. PETRAMALO: It's liquid, but it has to be mixed, I believe.

MS. RICHARDS: It's very concentrated.

MR. STEWART: I guess it's like molasses.

MR. PETRAMALO: It comes from North Carolina, I believe.

MR. BURNETT: Any other questions?

MR. HARRISON: The shuttle van --

MR. PETRAMALO: I'm sorry. I passed that over.

Each year we rent a 10 or 12 person van for the entire meet and we hire a driver, who also works
in the kitchen and speaks Spanish, to during off hours transport grooms to Wal-Mart, to the Spanish store, to the beach on Thursdays, et cetera. It's absolutely invaluable. We'd be lost without it.

We also use it for -- when you have -- we have some big races here, the Derby, and I forget that other race. When the folks come in from out of town --

MR. WEINBERG: Because the purse keeps going down.

MR. BURNETT: The one with the little purse.

MR. PETRAMALO: When those folks come in and out of town, we use the van and we help Colonial and we shuttle in the big shots and all that kind of stuff. It's only a very, very small percentage of the van's use.

MR. BURNETT: It appears, gentlemen, that all of this cascades, that if we don't get past this item, we don't have a contract. And I've got, you know, a hard time taking $21,600 away from grooms and hot walkers and their needs to pay for something the track already has an obligation to pay and that the horsemen have negotiated from their purse account. That's my problem with it.

I don't -- hey, we need an ambulance. No
question about that. If the track negotiates with
the horsemen to have somewhat lighter purses so that
they can run more days as they did, that's fine,
too. I just don't think they ought to be going in
and saying, well, we want to keep those purses all
sweet for us. We'll just take it out of our grooms
and our hot walkers' pockets. That ain't right to
me. That's not what was intended by this
Benevolence Fund.

And I'll tell you -- I'll confess. I spent a
lot of time when I was in Frank's position pushing
this Commission to spend benevolence money and to
stretch the definition of benevolence money. We
started when they thought beds and air conditioners
weren't benevolence, and food was not benevolence.
It was a hard push to get the Commission to spend
150, or whatever it was, the first few years on all
these various programs. They've taken hold.
They've been recognized nationally and all that, but
I do think we need to draw some lines.

I think items like taking care of the turf
course and what was characterized as something about
horsemen's questions, I call backstretch whining,
when it comes to complaining about surfaces and
courses. We do have one of the safest courses
around and if the horsemen want further assurances of what's there, I am all for it, and I think they should go for it, work out whatever they want to, but not at the expense of the grooms and the hot walkers' benevolence.

MR. FERGUSON: I have a question.

MR. PETRAMALO: May I respond to that?

MR. BURNETT: In a moment.

MR. FERGUSON: May I ask a question?

MR. PETRAMALO: Yeah.

MR. FERGUSON: It might affect your response. Is it the VRC's -- this is an honest question, believe it or not. Is it the VRC's duty to provide for this Benevolence Fund, or is it part of your ongoing negotiations between your two parties, which is just normal horse trading? Are we supposed to get involved in this -- with this item --

MR. PETRAMALO: I think the answer to that is yes.

MR. FERGUSON: -- other than approving it?

Well, if you guys have worked it out, should -- really, should I have some sort of red flag to go up about whether -- how you divvy up your Benevolence Fund?

MR. PETRAMALO: The statute requires 30% going
into a Benevolence Fund, and I believe the expenditures from that fund are subject to your approval. So that's why you get involved. Whether or not you need to or should go on a line item basis, I don't know, but the response that I wanted to make to Commissioner Burnett's comments are as follows.

I object most strenuously to the -- I was going to say unstated assumption, but I think it was a stated assumption that somehow or other the grooms and the exercise riders and the people here who work on the backside are being shortchanged. This is the best run backside in the entire country bar none. Trainers who come here say that; owners who come here say that; and your own year-end reports say that.

So I object most strenuously to the notion that somehow or other because we're going to spend $21,600 for an ambulance, that we're shortchanging the grooms.

MR. BURNETT: Let me respond to that, Frank.

I agree with you that it is the best run backstretch, with my limited exposure to backstretches, and certainly the one I have the most opportunity to compare would be Charles Town, which
is not too hard to have Colonial Downs be a big winner there for those of you that have been on the backside of Charles Town, but just because you're on top, doesn't mean you can't get better.

What I'm saying is that money that you want to spend on something else that I -- like training ambulance, might well be spent on some poor guy that's got a terrible alcohol problem or might be spent on some other chaplaincy program or it might be spent on clothes that this year comes along. I just -- I think that our statutory obligation is to see that this money is spent for benevolent purposes, and I can't get there with the training ambulances that is required already of the racetrack. If you want to horse trade for it, that's fine, but not with benevolence money is my point.

MR. PETRAMALO: But the point is over the past five years, we've taken care of every one of those concerns that you've just voiced and never, ever have we had to say, well, pal, you got an alcohol problem, but we don't have the money to help you. That hasn't happened.

MR. BURNETT: Well, let me point out. I noticed that you reduced groom cash awards by $2,000
in the hardest economy we've seen in most of their
lifetimes. Gee, I think those poor people could use
at least the same amount of money as they got last
year, but we're down 2,000 on that one. Air
conditioners, down 1,000; mattresses, down 2,000;
intern program, down 2,000. To me -- scholarships,
down 3,000.

Now, look, numbers don't lie. I think you --
are you telling me that somehow these grooms are
saying, really, I don't need that money. Just give
it back.

MR. PETRAMALO: All right. Let's -- numbers
don't lie. Remember at the outset I said our budget
last year was 156,000, and we only spent 110. We
had -- 106. We had 40,000 leftover. Well, that's
what you're comparing for the most part. You're
comparing say $2,000 -- I forget what the mattress
budget was last year.

MS. RICHARDS: You don't buy them every year.

MR. PETRAMALO: We got 4,000 last year. Well,
we didn't spend 4,000 for mattresses. So this year,
we got 2,000. Maybe we spend it; maybe we don't.
It's a budget. Those are the numbers.

MR. BURNETT: Usually a budget is a budget,
and then when the expenditures are made, an
accounting is provided, which I've always understood to be the case that we in the past have received. I think we've bought mattresses just about every year because as you well know, many of them don't survive and have various problems, but again, let's just use the groom cash awards. Why are they being shorted that? Why don't you double the groom cash awards? It's not like they couldn't use the money? It's not like they're overpaid.

MR. PETRAMALO: We could do it. There's no doubt about it. We could do it. You know, if you want to double the cash awards to 16,000, we just shift 8,000 from the perspective fertilizer program. I mean, there's plenty of room within this budget to do good things. The question is which ones do we do.

MR. BURNETT: That's right.

MR. PETRAMALO: The bottom line is the experience over the past five years has suggested that what we're doing is fine, and everybody is happy with it.

MR. FERGUSON: I agree with Frank on that because I'm a pedestrian member of the VRC. So I have to rely on folks like you to make those judgment calls because I can't tell you how many
mattresses to buy every year or how many air
conditioners to buy. I can help you buy mattresses
and air conditioners being in the hotel business.

MR. PETRAMALO: I found a good on-line supply
source last year. Good mattresses and cheap.

MR. FERGUSON: I mean, it seems we would be
micromanaging somebody that's competent in handling
this, but I agree with you that you have concerns
about the welfare and well-being of these folks in
the back, but again, I think they're doing a good
job. I haven't seen any -- there's no panhandlers
out here in the morning when I come down to the VRC.

MR. CANAAN: If I could just make one comment.
I want like -- and I know Dr. Dunavant just got
this, but I would like him to have a review of this
to make sure -- and every year they do work it out,
but to make sure that, you know, candidly, the
harness industry is getting their fair share of this
as well.

I said to Frank this looks, you know, a little
thoroughbred heavy, and that's fine. I mean,
they're the majority of the handle, the majority of
the breakage, but he's served on this committee, I
haven't, and I don't know to what extent his input
in the past has been on this. Maybe he's fine with
all this, but he may want -- he may have something
for the backstretch that he really is interested in.
He just hadn't voiced yet. I don't know. I do want
to point out that I think it's important that his
input be considered.

MR. HARRISON: The 72 days at $300 a day, does
that cover both meets or is that just the
thoroughbred meet?

MR. PETRAMALO: Just the thoroughbred.

MR. HARRISON: So for the harness meet, you'll
be providing that as per the rules, but you won't be
reimbursed for that?

MR. WEINBERG: I mean, with all due respect,
we're paying for it one way or another, right? The
track is bearing the cost of the ambulance, whether
you take it in the form of a credit against the 115
or the horsemen pay us the 115 and we turn around
and use twenty-one five of it for the ambulance. At
the end of the day, the track is bearing that cost.
Short answer, yes.

MR. BURNETT: Under the deal they made for the
115, the question is does it come out of the
Benevolence Fund, or does it come out of the purse
fund for these items.

MR. STEWART: Right. That's the heart of the
MR. BURNETT: We're beyond the 115 piece, that's behind us, and what you're crediting around here is just which horseman's pocket does it come out of so to speak.

MR. MILLER: Mr. Chairman, could I ask Frank --

MR. BURNETT: Please.

MR. MILLER: -- about something that's omitted, not in this proposed budget that was in last year's? What's the Groom Elite Program?

THE REPORTER: The what?

MR. PETRAMALO: Groom Elite Program.

That's a training program sponsored by our national organization, and it's an excellent program, and over the years we have run various of the courses here. There's what we call a basic hot walkers program, which is usually three to five days long, and it takes somebody who is unfamiliar with the horse industry to teach them how to lead a horse around. We also run intensive six to eight week training courses for grooms to upgrade their skills, and we've even run an advanced course for that.

This year we're -- and we don't repeat the same one every year because we've got a relatively
small population here. We don't want classes with three people in them. My intent this year was to not run one of those full-blown, expensive classes because we don't need it. I was thinking -- we were thinking more along the lines of running a program for owners to -- not in the economics, of course, ownership. There are plenty of those programs, but educating owners about -- more about horses, the horse's anatomy and what it means when it has a bowed tendon and how to understand these humongous vet bills when you get them every month.

We haven't yet figured out how best to do that or where best to do that, whether it's -- whether we get the most bang for the buck here at Colonial or whether we should do it someplace in Northern Virginia. The bottom line is because of our relationship with the Groom Elite program, we can probably do that at our own expense and not have to take benevolence money.

MR. MILLER: Thank you.

MR. BURNETT: Along similar lines, I'm just looking at what's not there this year that was there last year to get an explanation for it. Contract labor was 10,000 last year, am I right that it's zero this year?
MR. PETRAMALO: Yes. Well, we shift the money around, but it's zero. Contract labor we used to hire people to hang the mesh --

MR. BURNETT: Yeah.

MR. PETRAMALO: -- to do various odd jobs.

Now that's done by others at no cost.

MR. BURNETT: Okay.


MR. PETRAMALO: Well, we've -- we have a public operation here in Providence Forge. It's a county organization. We use their services. We use the AA services, and we have a private consultant on the east side of Richmond that we've used.

MR. FERGUSON: Back it up with the court system?

MR. PETRAMALO: We don't usually get involved with the court system. There's only one occasion that comes to mind when we've been involved with the court system, but for the most part, our main problem is two-fold. We get grooms who come up dirty on a drug test, which means their license gets revoked and what we do is work out an arrangement, usually with the stewards, that will permit them to be reinstated provided they sign up for a course,
and then they come back and test clean. We provide
the test service. We pay for the testing, et
cetera.

The other portion has to do with alcohol
problems and, again, it's a similar program that we
worked out. We get them into an AA program and if
it has any cost attended to it, like paying to get
them to and back -- back to the track from going to
the courses, et cetera, we take care of that.
Occasionally, we've actually had to pay professional
counselors, but that's on average what we spend for
drug and alcohol counseling.

MR. FERGUSON: For the entire budget?

MR. PETRAMALO: Yeah. You know, Commissioner,
we're only here for a limited period of time.
Tracks that run year-around, they've got much more
extensive programs and it costs more, but we're here
from -- this year we'll be here from mid-May until
the end of July. That's not a long period of time.

MS. RICHARDS: Plus people are encouraged if
they belong to more than one HBPA, that their home
base is sponsoring the program.

MR. FERGUSON: Helping you.

MR. PETRAMALO: Oh, yeah. That's an excellent
point. A lot of the people from Maryland are
covered by the year-round Maryland program, and we help -- we help sometimes with the cost of what the Maryland people have to pay.

MR. BURNETT: Sometimes you'll get folks that when they were in Maryland this time of year get in a little trouble, the Court says you shall go to ASAP or whatever for a period of time. They want to come down here. They get permission from the court in Maryland to come down provided that they go to regular, blah, blah, blah, and these folks help them -- they make sure they find a program to go to and get their credits and stay current.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Go ahead.

MR. MILLER: Since we have a required percentage under the statute or regulations to apply the 30% to this Benevolence Fund, do we have a generic definition of what fits within the word benevolence as far as expenditures are concerned? I mean, is there some broad definition or do we go through this every time this issue comes up every year to see whether or not something fits within an appropriate expenditure from the Benevolence Fund?

MR. PETRAMALO: I think the answer is benevolence for the most part is not defined in the
statute. It talks about benevolence alcohol
counseling and things of that sort, but there's
nothing in the statute that says employing a
chaplain is for benevolent purposes or providing
meal tickets.

MR. MILLER: So we determine --

MR. PETRAMALO: Yes.

MR. MILLER: -- what is an benevolent
expenditure?

MR. PETRAMALO: That's correct.

MR. MILLER: Whether it's an appropriate
benevolence fund expenditure. So in approving this
budget, we have to make that determination in our
mind --

MR. PETRAMALO: Yes.

MR. MILLER: -- whether this fits that
appropriate definition framework or whether it's an
appropriate benevolence expenditure.

MR. BURNETT: I think the last question on
missing item was clothing. Last year you spent
about $4,000 on t-shirts and caps. This year zero.

MR. PETRAMALO: There will be at least caps
distributed this year. Again, we're probably going
to find that money someplace else. We always give
away caps. We give away little -- I have one,
little key chains and things of that sort. We will continue to do that hopefully in connection with a Virginia horse that does well in the Triple Crown series.

MR. BURNETT: Like a quality sort of horse that's from up the road, is that the kind of horse?

MR. PETRAMALO: Exactly. A $2 million horse.

MR. PETTY: Plus a zero.

MR. BURNETT: One observation I would make is it would be good if that someplace else that is coming up with a lot of this other money paid for these things that don't appear to fit the benevolence definition, and let the benevolence money take care of benevolence items. This is the way I look at it, but -- has everybody hashed this out well enough? Are there any more questions about this? Do we want to bring this to a head?

MR. FERGUSON: I personally don't see anything on here that's not benevolent. You have an ambulance. Landscaping, I think, is very important for the appearance of your place, your workplace. Do you see anything that's clearly not in the benevolence?

MR. BURNETT: Yeah. The ambulance, I can barely get there on the jockey injury insurance, but
I'm lean on that. Inspecting track base and turf maintenance doesn't get there for me.

MR. FERGUSON: That's a stretch, but --

MR. MILLER: Will we have a -- Mr. Chairman?

MR. BURNETT: Yes.

MR. MILLER: Some of them are a mighty fine line. The problem we have today is unless all three of us agree today, we can't take any action, I mean, that's meaningful because the majority has to --

MR. BURNETT: They're really asking us to take conditional action because then the harness horsemen are going to ultimately hold the card of where it goes from there.

MR. MILLER: What would you like to see changed, Mr. Chairman?

MR. BURNETT: I would like to see the training ambulance paid for by the horsemen, not by backstretch employees.

MR. MILLER: You're saying out of the purse money?

MR. BURNETT: Yeah. I think that's a better place for it to come from than the Benevolence Fund.

MR. FERGUSON: All right. So let's pick that apart. Ultimately, who pays that? And that was an item negotiated between those two parties, right?
MR. PETRAMALO: Well, we start out with the problem that the Commission said if you guys want to run 40 days, it's going to cost you $115,000. That starts the problem right there. Wasn't our idea. It was your idea.

MR. MILLER: Mr. Chairman, I was going to make that observation maybe in the form of a question, but I don't need to. The observation is that if it wasn't for that $115,000 item, we wouldn't be --

MR. PETRAMALO: That's exactly right.

MR. MILLER: -- discussing this at all anyway.

MR. WEINBERG: I might slightly recast that. You know, with due all respect, I hear the word procrastination, but that to me suggests that you're putting off something that you can do, and we weren't --

MR. BURNETT: Good point.

MR. WEINBERG: -- but we were at an impasse about how much purse funds are available and how they get split up. So we looked in every single nook, cranny, crevice, and tried to find it, and that 115 became a point of contention.

MR. FERGUSON: But you agreed on it; is that correct?

MR. PETRAMALO: Yes. We agreed on how it
would be paid.

MR. BURNETT: And now I'm hearing, gee, I
don't like the deal I made from both sides at some
level.

MR. PETRAMALO: That's not at all true.

MR. BURNETT: Well, you got five days for the
115,000, and you said okay. So, you know, now it
was -- it's a problem that we have to spend this
115,000.

MR. PETRAMALO: Well, we solved the problem.
The problem is being created here.

MR. BURNETT: It sure is. Correct.

MR. PETRAMALO: We solved the problem. It's
consistent with the way we've done things for the
last five years with this Commission's approval.

MR. BURNETT: Well, I would have to
respectfully disagree because the $50,000 jockey's
insurance amount was not included in benevolence in
the past. I'm looking at your sheets here.

MR. PETRAMALO: That's correct. It wasn't.

MR. BURNETT: So let's not represent that this
is the same as it's always been. This is a marked
deptarture to the tune of at least 30% when you put
the training ambulance and the jockey's insurance in
there, between them there's 71,000, almost $72,000
being spent different than last year.

MR. PETRAMALO: Okay. Let me ask you --

MR. BURNETT: All I'm saying is it's not the
same as last year.

MR. PETRAMALO: Let me ask you this then.
Where do you think in your mind there's more of a
straying from a benevolent purpose, paying for
jockey insurance and an ambulance or paying to have
the track kitchen extended or a bathhouse built or
new ventilators put on the receiving barn, all of
which have been approved by this Commission as
benevolent expenditures.

MR. BURNETT: I can get there on those. I
can't get there on these.

MR. PETRAMALO: You can get there on expanding
the kitchen, but not for an ambulance?

MR. BURNETT: Yes, I can.

MR. PETRAMALO: Wow. I guess that's why
there's a lawyer on each side of the case.

MR. BURNETT: Well, the track doesn't have a
statutory obligation to provide an expanded kitchen.

MR. PETRAMALO: I don't see what the track's
statutory obligation has got to do with anything in
terms of what's a benevolent purpose.

MR. BURNETT: That's true. Okay. I'll give
you that. I can't get there.

Do you want to vote?

MR. PETRAMALO: Well, it seems to me that the -- picking up from what Jerry said about Dr. Dunavant's interest in looking at this. For the purposes of your vote, you ought to assume that everything is fine with Dr. Dunavant and the rest of the Commission -- the rest of the committee because if it isn't, you don't have to go through all of this. You should only assume that Dr. Dunavant says this is fine, then you have to address the question that's being raised by the chair, is this appropriate.

MR. BURNETT: Right. That's fair.

MR. PETTY: Mr. Chairman, are you interested in a comment from the peanut gallery?

MR. BURNETT: Sure. I'll hear one more comment if my fellow commissioners will indulge it.

MR. PETTY: I think you've -- everybody has got to a point where it's a 115,000 problem, and there's only two pots of money to resolve it from, the purse account, and the benevolence, and the cap ex account.

I think if they had chosen the purse account, which is tremendously important to a large group of
people and I'm not reducing the importance of the
benevolence portion, I don't think you'd be debating
which races it came from. I think you would say
this is a one-time thing that we're doing to make a
deal and move forward, and everybody would swallow
it hard and move on. We wouldn't argue whether it
was maiden races or allowance races or crowning
races.

So while there are some philosophical
differences in what is and isn't benevolence, if
there was a ten-year contract, you might have reason
to sit here and debate longer, but in this
particular case, trying to solve a problem to get us
from point A to point B, a group that meets monthly,
it may be that -- it may be that let's do this for
today, and let's make this better next year.

MR. BURNETT: But I don't understand, Glenn,
with all due respect, why the other side of that
argument isn't equally as valid. Why don't just
take the 115 out of the purse account as it was
originally intended and not be taking it from the
Benevolence Fund. Let's give some more money to the
grooms. Let's give some money to the poorest.

MR. PETTY: I think the argument would be that
the Benevolence Fund is a Mercedes and the purse
account is a SUV. And if everybody in the Mercedes is being adequately cared for, which is for you guys to argue about the budget, but if they're being adequately cared for, and we all agree it's the best program in the country. In fact, I'd go out on a limb and say we spend more per day than anybody else. So good for us. It just seems like you have to make some choice of who compromises, and that group seems to be in a pretty good place, they're very well taken care of, and last year they couldn't even spend all the money they had. The purse account can always spend all the money it has and more. Ask both parties.

MR. BURNETT: We can go on like -- forever with this, but the purse account has $9 million. The Benevolence Fund is under 200. Which one can tolerate $70,000 better? How are you to spread the load in the broadest fashion?

Anyway, you're not going to convince me. So, you know, we tried -- I tried to keep an open mind. I'm not convinced, but if y'all want to vote, I'm ready to vote.

MR. MILLER: Well, there's -- a vote really -- under the circumstances, a vote would be useless.

MR. PETRAMALO: Correct.
MR. MILLER: I would suggest that to get a meaningful vote, we would have to wait until all five commissioners are here and the other two commissioners that are absent today would have to be, you know, brought up to speed on all issues that are being raised here today in order to get a meaningful vote because even -- as long as one of the three here, you can't get a majority vote.

MR. PETRAMALO: Well, let me --

MR. MILLER: I have vacillating thoughts. I jump from one side to the other. I think what Glenn stated is an appropriate observation, but I also agree with the chairman when you look at who can best bear the cost of this 115,000 and, of course, we have no -- and we never will have anyone here, I don't think, from the beneficiaries of the Benevolence Fund.

MR. PETRAMALO: May I have a moment to consult with counsel?

MR. BURNETT: Yeah.

MR. MILLER: I'll tell you -- I move we take a five-minute recess.

MR. BURNETT: Would you take a friendly amendment to ten?

MR. MILLER: Ten minutes.
Note: A short recess is taken, following which the hearing resumes as follows:

MR. BURNETT: Ready to resume?

MR. WEINBERG: I'm happy to resume.

MR. BURNETT: Mr. Weinberg?

MR. WEINBERG: What I'd like to do is I'm happy to go through the contract changes. I think it would be helpful if there are other issues relating to the contract, we try to address those, as well as this clause dealing with the Benevolence Fund. And so I'm happy to review with you the changes in the '09 contract from the '08 contract if that would be a helpful exercise to the Commission.

MR. BURNETT: I think it would. We have your letter to Vic dated April 8th and we have the staff memo to us, which tracks along with it. Is there any preference which document we might track to make it easier for all of us? Do they cover the same issues?

MR. HARRISON: They do, yeah. Basically, I took the black line changes and commented on those. So it's a synopsis of the change. It's not of the entire contract. Just the changes from the prior year.

MR. BURNETT: Right. Why don't you go ahead,
Mr. Weinberg.

MR. WEINBERG: I would begin with signal sales. The '09 agreement returns to 21% of signal sales from 15% in the '08 contract, but the 21% was in the '02 and '05 thoroughbred agreement.

The next change relates to the stake purses. As you know, that was a significant point of negotiation and really resulted in some protracted negotiations, and in an effort to address the concerns about the proportion of funds devoted to stake races versus overnights, Colonial Downs agreed to a temporary reduction in the Turf Cup from 600 to 500. In addition, reductions were made of 50,000 each in the All Along and the Oaks. That freed up 200,000 from the graded stake races. It's also a reduction in the 13 lesser stakes from 60,000 to 50,000. So that was a movement of, if I'm doing the math right, 330,000 from stakes to overnights.

MR. BURNETT: I don't want to flyspeck this obsessively, but I'm interested in the comment that it's a temporary reduction in light of your having a merger clause in the contract. The merger clause doesn't say there aren't any other agreements.

MR. WEINBERG: Well, I say that only in precedential value of, well, you agreed to 500 last
year. Why can't you do 500 this year. I am certain we will hear that argument. I'm just preserving --

MR. BURNETT: But there is no agreement as to what it's going to be next year?

MR. WEINBERG: No. This is a one-year agreement.

MR. BURNETT: Okay. Thank you.

MR. WEINBERG: The next change is in Section 5-A and it affects the condition book, and it provides an opportunity for the VHBPA to have greater input in instances where extra races are added, and it sets up some guidelines, affirmative guidelines on when extra races are permitted.

It also notes that we are implementing a new scratch from form rule that will run on an experimental basis for the first couple weeks of the meet, and if there are problems, we'll make some adjustments, but that is the new language in the agreement.

MR. BURNETT: Let me stop you there for a moment. First, I think I understand that rule is that if you want to scratch before it goes out to publication, you can without penalty.

MR. WEINBERG: I'll defer to Tyler to answer that.
MR. PICKLESIMER: The scratch time will basically be the day of. Horse scratching by nine o'clock and you can scratch down to eight without a penalty. Once you get to eight, then you'll have to use a vet excuse or something that's acceptable.

MR. BURNETT: When you say day of --

MR. PICKLESIMER: Day of race.

MR. PETRAMALO: Race day.

MR. BURNETT: You can scratch right up to the day of --

MR. PICKLESIMER: Day of race, right, but no scratches before race day.

MR. BURNETT: Without penalty.

MR. PICKLESIMER: Right. Without penalty down to eight.

MR. BURNETT: First in time; first in right.

MR. PICKLESIMER: No, no, no.

MR. BURNETT: I mean, the guy that shows up with the scratch, he calls first?

MR. PICKLESIMER: Well, it would be nine o'clock. Basically the horses with physical reasons will be let out first.

MR. BURNETT: Sure.

MR. PICKLESIMER: If you have no reason, too tough, whatever, you know, scratches, you know,
you're going to make seven. You're stuck. You're going to have to come up with a physical reason --

MR. BURNETT: Okay.

MR. PICKLESIMER: -- to get out.

MR. BURNETT: Does this conflict with any rules we currently have? Do we have to make any rules changes to -- rules of racing changes of any sort?

MR. LERMOND: No.

MR. BURNETT: And this is on an experimental basis?

MR. PICKLESIMER: Basically, it allows us to get a final program, riders, we'll final up the draw. Everything is basically done at the draw. You can get it out to your forum quicker. You can get it out to the person entered, whoever, you know.

MR. BURNETT: Can we get a report back on this experiment, just how it works?

MR. PICKLESIMER: Sure.

MR. BURNETT: Obviously, if it's really successful, you're probably going to be asking that it be expanded, but I think it would just be helpful for us to know what impact you thought it had.

MR. PICKLESIMER: Sure.

MR. BURNETT: Thanks.
MR. WEINBERG: The next change is Section 5-B relating to the gap funding. As we discussed, the HBPA is arranging for gap funding this year. This provision just sets out the mechanics, sets out a May 1 deadline for having all these arrangements finalized. So if there were an issue we needed the Commission's input on, we have the opportunity at the May meeting to get it, but that is the rationale for the change in that section.

MR. BURNETT: What section are you on?

MR. WEINBERG: I'm in Section 5 --


MR. WEINBERG: -- B and C.

MR. BURNETT: Can I understand and just for my own purposes that the repayment -- the priority of payment in the event of overpayment?

MR. WEINBERG: The contract originally said -- it had two provisions. If you overpay, you get repaid dollar for dollar, and the gap funding if it's not paid within the same calendar year gets repaid dollar for dollar. So that begs the question which one comes first.

MR. BURNETT: Who comes first, right.

MR. WEINBERG: In the past, it didn't matter because the same entity was funding both
obligations. Now that it does matter, we needed to set some priorities. So we made it clear that gap funding gets repaid first before the purse overpayment funding gets repaid.

MR. BURNETT: Okay. Thank you.

MR. WEINBERG: Sure.

And the next item is in Section 5-F and that memorializes the arrangement for the payment of the extra five days of racing where $115,000 is due from the HBPA to Colonial Downs. There is a side letter that then sets out a series of credits against that 115. Many of them arise in the Benevolent Fund discussion that we just had, but in addition, there is a $25,000 rebate from Colonial Downs to the HBPA, which really arose to help bridge the gap on the proportion of stake race purses. Overnight purses, we were about 50,000 apart, and we split the difference with that rebate.

MR. BURNETT: Is that side letter part of this contract?

MR. PETRAMALO: It's attached to it.

MR. BURNETT: Is it?

MR. WEINBERG: It was submitted with the contract. I can provide you a copy.

MR. BURNETT: I think I saw it. I just want
to make sure it's the same one. Okay. Thank you.

MR. WEINBERG: The next substantive change deals with the opening of the backstretch. There is an interest in attracting as many horses leaving Florida as possible. So we'll open the backstretch on May 17th with the idea that it will provide a place for horses leaving Florida to come to before they head further north.

MR. BURNETT: Do I understand from the provision -- the changes in that provision that if the track decides to close the track the day after the meet closes, that's within its right under this contract?

MR. WEINBERG: That is correct.

MR. BURNETT: So it's meant to say not more than five days as opposed to not less than five days?

MR. WEINBERG: That is true. We are opening significantly earlier than we have historically. The idea being that it's -- the backstretch antidotally empties out very quickly at the end of the meet.

MR. BURNETT: Sure.

MR. WEINBERG: So if everyone is gone after three days, there's no need to keep it open.
MR. BURNETT: Okay.

MR. WEINBERG: You'll also see a reference to harrowing of the track during the training period, morning training period.

The next item relates to the provision of a suite to the HBPA. I think as we discussed, there are revenue opportunities for Colonial Downs with respect to that suite on the weekends. As an accommodation, the suite is available during the week, and then during the weekends, a table for ten in the Turf Club, which is also on the fourth floor.

The next item is the Racing Committee referred to in Section 9. We had a Racing Committee in the past. This just adds a little more formality to the regularity of its meeting. You'll also see reference to the fireworks for the 4th of July and some mechanics of doing demonstrations to make sure everyone understands what will happen on the fourth.

MR. BURNETT: Could you help me with what quiet fireworks are?

MR. STEWART: Well, we're going to demo them on Thursday, April 30th at four o'clock. They're pretty.

MR. BURNETT: This isn't the light show that we tried once with limited success. This is
something different?

MR. STEWART: This is something different. We had them out here in January, and it's quiet is all I can tell you. Everybody is welcome. It's scheduled for Thursday, April 30th at four o'clock.

MR. WEINBERG: The next item is the Benevolence Fund items, which we have discussed and, again, that's also addressed in the side letter between the parties.

The next item deals with the arbitration provision in the agreement. As you may recall, last year there was some discussion about the Interstate Horse Racing Act, which is required for the Florida tracks, for Calder in particular. Given the mechanics of our arbitration clause, whether the horsemen's denial of that consent was reasonable or not, would not have been resolved during the course of the meet. So we made an effort to speed that up a little bit. Still at 45 days, it's a stretch. So we're -- that's an item -- a work still in progress, but we made some progress on that.

And then the last change, we specified in the agreement the backstretch improvement, the significant backstretch improvement that Colonial Downs plans to make, which is the replacement of the
sprinkler system in the receiving barn. There are a
host of others, but will put us over the $100,000
payment that will be made during the course of the
year.

MR. BURNETT: This is probably an accountant's
question best addressed to Ian, but when I first
heard about this barn sprinkler, I thought of it as
a repair. Doing some of this stuff myself and
knowing the difference between a repair and a
capitalized item in terms of tax implications, it's
actually going to be capitalized or --

MR. STEWART: Yes, because it extends the life
of the asset. The asset basically at this point
needs to be replaced. So it's been out there 12
years --

MR. BURNETT: The sprinkler is seen as an
asset in and of itself, the system?

MR. STEWART: Right.

MR. BURNETT: It's not part of the building as
a whole.

MR. STEWART: Well, we'll separately delineate
what we spend on the sprinkler.

MR. BURNETT: Okay. Thank you.

MR. WEINBERG: Those are really the
substantive changes. The language that is noted at
the end of the agreement tying the contract approval
to the Benevolence Fund is language that was not in
the '08 agreement. It has been in the prior '02 and
'05 agreements. I apologize for not highlighting
that in the letter, but it had been fairly typical
language in prior agreements.

MR. BURNETT: My copy of the contract does not
have that side letter. Might I look at somebody's
copy? For some reason I feel like I've seen it, but
I don't have it in front of me. Thank you.

MR. FERGUSON: This memorializes what we're
talking about?

MR. BURNETT: In part. Can you or Frank help
me with the -- I just want to understand how it
works. If you spend -- now I think I understand.
If you spend ninety-one three on the sprinkler
system, then $8,700 gets credited against the
115,000?

MR. WEINBERG: If we did not make any other
capital improvements.

MR. BURNETT: Right.

MR. WEINBERG: That's correct.

MR. BURNETT: But if you spend 100 on the
sprinkler system, it's a wash. End of discussion.

MR. WEINBERG: Correct.
MR. BURNETT: Okay. Any questions? I'm sorry. Is that all you wanted to tell us about that?

MR. WEINBERG: That is.

MR. BURNETT: Fellow commissioners, any questions about the contract?

I have none. Any further comment from anybody on the contract? Harness horsemen affected in any way and want to comment?

MR. CANAAN: No, sir.

MR. BURNETT: All right.

MR. WEINBERG: Assuming that there are no issues with the contract, in the interest of getting the contract approved today, I think the parties would be amendable to waiving Section 28 -- let me make sure I get the section.

MR. PETRAMALO: 28-A.

MR. WEINBERG: 28-A.

MR. PETRAMALO: Page 30.

MR. WEINBERG: Page 30 of the contract, which conditions the approval on the approval of the Benevolence Fund. We would put this agreement into place and really live by the terms of our side letter as to where the Benevolence Fund ultimately --
MR. MILLER: Page 30 what?

MR. PETRAMALO: I got page 30 on mine. It's 28-A.

MR. MILLER: Do we have the same contract? Are you looking at the same contract?

MR. WEINBERG: Is yours blacklined or clean?

MR. MILLER: Black line.

MR. WEINBERG: Black line, it's 31. On the clean copy, it's 30.

MR. MILLER: So we're to eliminate paragraph 28?

MR. WEINBERG: That's right.

MR. FERGUSON: 28-A or 29 all together?

MR. WEINBERG: 28-A. We want to make it clear, though, we had a contract in place as of January 1.

MR. BURNETT: It's still unclear to me -- help me out, because I'm just looking at this side letter, and the side letter references in multiple places these funds being paid out of the Benevolence Fund.

MR. PETRAMALO: I think if you look at the paragraph that precedes the itemization, you'll see that the credit applies only to the extent that those funds are paid out of the Benevolence Fund.
If they're not, there's no credit, which means we owe them money.

MR. MILLER: That's in the letter?

MR. PETRAMALO: Yes. To me, it's quite clear that if those funds aren't paid by benevolence -- out of the Benevolence Fund and Colonial Downs, in fact, pays them, we owe Colonial Downs.

MR. MILLER: I'm trying to --

MR. PETRAMALO: For example, the last sentence in the first paragraph says, the 115,000 amount shall be reduced by the following: One, premiums for jockey insurance that Colonial does not directly pay as a result of payment of such premium from the Racing Benevolent Fund. To me, that means if the Racing Benevolent Fund doesn't pay it, Colonial pays it, and we don't get a credit.

MR. MILLER: I follow that.

MR. PETRAMALO: I think the same -- the same construction follows for paragraph number two. Three and four don't involve the Benevolence Fund necessarily.

MR. MILLER: We don't have the same qualifying language for two and three and four.

MR. PETRAMALO: The only way to read two is we get a credit for the amount paid out of the Racing
Benevolence Fund for the ambulance. If no money is paid out of the Benevolence Fund -- from the Benevolence Fund for the ambulance, we don't get a credit.

MR. MILLER: Well, okay. It says the $115,000 amount shall be reduced by the following.

MR. PETRAMALO: Right.

MR. MILLER: Then if you go down to number two, the amount paid out of --

MR. PETRAMALO: The Benevolence Fund, but if the amount paid out is zero, our credit is zero.

MR. MILLER: Well, I don't know if I could be a lawyer in a courtroom in a case where this contract is put to the test. I mean, you could -- there's so many ways to interpret it because it says it shall be paid, and you even put down what you expect that amount to be that you're going to pay.

MR. PETRAMALO: No. It says the amount paid. It doesn't say the amount shall be paid. It says the amount paid out of the Benevolence Fund.

MR. MILLER: It shall be reduced.

MR. PETRAMALO: Yeah, but if the amount paid is zero, the shall be reduced is zero.

MR. MILLER: That's true. That would be somebody's argument.
MR. WEINBERG: Tell me what would be your argument. I mean, what would be the contrary interpretation?

MR. MILLER: The contrary interpretation would be that the 115,000 amount shall be reduced by the following. Whatever amount is paid out of -- the amount paid, it would read like there was expected to be some amount paid there.

MR. PETRAMALO: We're expecting it, but if he doesn't come, we don't get a credit for it.

MR. MILLER: Well, okay. I mean, if you're -- it's not my problem anyway. It would be your own.

MR. PETRAMALO: We signed off on that, and I'm making that representation that that's what we intended when we agreed to it.

MR. BURNETT: And the parties would agree that for the moment leaving aside the Benevolence Fund, that nothing came from the Benevolence Fund. It's either come out of your hide or your hide, one or the other, right? This money, either it's paid by the horsemen one way or the other, or it's paid by Colonial Downs one way or the other.

MR. WEINBERG: Correct.

MR. BURNETT: But to the extent there's -- I guess one of the things that might concern
Commissioner Miller and myself, any commissioner would be that this happens and we don't get an ambulance or the jockey insurance isn't purchased because you were supposed to purchase it. No, you were supposed to purchase it.

MR. WEINBERG: Let's be clear.
MR. BURNETT: Okay. Thank you.
MR. WEINBERG: This contract says, I think it's June 1, $115,000 is due from the HBPA to Colonial Downs, right? Approved by the Commission. Enforceable contract. June 1, we come to collect. Frank says, whoa, whoa.
MR. BURNETT: I paid this. I paid this.
MR. WEINBERG: Right. But if it hadn't been paid, Colonial Downs is still on the hook to buy the jockey insurance, pay for the ambulance, you know, to do everything there.

MR. BURNETT: That's what our protected selves want to hear is that it's going to get purchased.
MR. PETRAMALO: Duke can confirm this, but I believe the first portion of the premium for the insurance has already been paid.
MR. DALE: Actually, the full amount has been paid.
MR. PETRAMALO: The full amount. So we got
the insurance.

MR. BURNETT: We're feeling better now.

MR. STEWART: It doesn't change our
obligation.

MR. PETRAMALO: Let them try and collect from
me now, now that they've paid it.

MR. WEINBERG: With all due respect, this
discussion has confused obligation versus payment
source. This is purely a payment source.

MR. PETRAMALO: The ambulance will be there on
May 17th.

MR. BURNETT: All right.

MR. MILLER: So you fully understand that if
we don't approve the benevolence budget --

MR. PETRAMALO: Yes.

MR. MILLER: -- as presented one way or
another, you're going to have to come up with
$115,000.

MR. PETRAMALO: No. We'd have to come up with
90,000.

MR. MILLER: Well, whatever.

MR. WEINBERG: Right.

MR. MILLER: Okay.

MR. BURNETT: We have heard from you on the
contract. We have reviewed and asked questions
about the side letter. Are there any more
components of the contract that we need to see now
that paragraph 28-A has been deleted by the parties?

MR. WEINBERG: No.

MR. BURNETT: Anything further?

MR. PETRAMALO: No, sir.

MR. MILLER: Well, Mr. Chairman, in light of
that, I guess you're ready for a motion?

MR. BURNETT: I think we are.

MR. MILLER: In light of that and in
accordance with the recommendation of the staff, I
would move that we approve this contract --

MR. FERGUSON: I'll second that.

MR. MILLER: -- effective as of January 1 of
2009.

MR. BURNETT: The approval of the Thoroughbred
Horsemen's Agreement as amended in our discussion
has been moved and seconded. 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: All right. We have approval of
2009 race days, and we have an amendment request for
2009 Standardbred race days. Let's take up the
thoroughbred race days first.

MR. PETRAMALO: What's the issue?

MR. BURNETT: I think we are -- at this point, we've already approved them in the contract, but I think we're here to formally set the race days so there is no question about start and stop. There's an independent item of the race days.

So do we have a motion to approve the 2009 thoroughbred race days as set forth in the contract between the thoroughbred horsemen and Colonial Downs that we just approved?

MR. PETRAMALO: I'm not sure it's in the contract.

MR. BURNETT: It's not? I'm sorry.

MR. PETRAMALO: The dates are June 5th through July 28th.

MR. MILLER: And --

MR. PETRAMALO: Forty days of racing starting on Friday, June 5th and ending on Tuesday, July 28th.

MR. MILLER: I make that motion.

MR. FERGUSON: I'll second it.

MR. BURNETT: It's been moved and seconded to approve race days starting June 5th and ending Tuesday, July 28th. 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. WEINBERG: Just for clarity, it is in the contract in Section 5-F, so I think we're entirely consistent.

MR. BURNETT: Okay. Good.

Amendment to the request for 2009 standardbred race days, is that the --

MR. HARRISON: It's just the refiguring of some Sundays, some Fridays.

MR. WEINBERG: When we originally applied for race days, we were looking to have the opening day coincide with the opening of the New Kent County Fair at Colonial Downs. The fair is not going to be at Colonial Downs this year. So as a consequence, we had initially planned for three Friday race days. We'd like only one of those Friday race days, that being the last Friday of the meet before the Breeders' Fund. We move those other Fridays to Sundays, and we'd like to open the meet on Tuesday, September 8th, rather than September 12th.

MR. CANAAN: And that's supported by the harness association and Dr. Dunavant.
MR. MILLER: I move that we approve the harness racing days from Tuesday, September 8th, 2009, through Saturday, November the 7th, 2009.

MR. FERGUSON: I'll second that.

MR. BURNETT: It's been moved and seconded that the amendment -- that the standardbred race days request be amended as set forth. 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: That takes us to --

MR. PETRAMALO: Excuse me.

MR. BURNETT: I'm sorry.

MR. PETRAMALO: Commissioner or Chairman rather, I assume then that we will come back at the next meeting with the benevolence budget?

MR. BURNETT: I was going to reach that, but yeah.

MR. PETRAMALO: Oh, I'm sorry.

MR. BURNETT: But that was the notion was unless there was further discussion on it, is there any reason -- let's just take it up now. Is there any reason that the discussion with Dr. Dunavant and the standardbred folks new executive director can't
take place between now and our next meeting, and we can approve the Benevolence Fund then?

MR. PETRAMALO: There's no reason why that can't happen.

MR. BURNETT: So we'll expect to see it then.

MR. MILLER: That's fine.

MR. BURNETT: All right. Good.

MR. WEINBERG: Chairman Burnett?

MR. BURNETT: Yes.

MR. WEINBERG: Colonial Downs had a few other things to apprise the Commission of. I don't know if you want to take us now or continue to move through your items under the stakeholders agenda.

MR. BURNETT: Your choice.

MR. WEINBERG: There are a couple things that would be consistent with it as long as we're talking about the live meet. There is a new promotion that Colonial Downs will institute with the thoroughbred meet that Darrell Wood can describe to you called the Inside Track.

MR. WOOD: We met -- a group of us have met for pretty much over the last two months and tried to brainstorm and tweak a way that we could create a hands-on experience, kind of a behind-the-scenes look for fans, kind of like NASCAR does with the pit
infield and with harness, getting people in a sulky, getting them in the starting car to give them an experience that kind of creates a wow factor.

We've come up with a concept. It lasts between four and five races that give a group of 15 people an opportunity to visit a barn area, meet with a trainer for 10 to 15 minutes before and during the first race. They would witness the second race here on the patio of the racing office to get a view of the race back here. They would then go for the next race to go see a horse -- go to the gate itself, the starting gate, see the horses get loaded, and then break off. And they would finish it up with a trip to the paddock infield and have a Ferris Allen, a trainer come up and give them kind of a chalk talk on racing right there called the Inside Track.

It will be limited to a group of 15 people once a day to start this thing conservatively. Santa Anita did a similar program this year. We've kind of taken that a step farther to get the -- again, to create kind of a wow factor and, you know, kind of see how it goes from that point.

If we make it available on Saturdays and Sundays, it'll cost $300. We would have a tour
guide with the group of 15 people, someone who is
experienced in the equine industry, has been a
seasonal staff member of ours for years, and there
will be a van driver as well, and security as well.
A security person would be the van driver.

MR. BURNETT: How are your 15 people selected?

MR. WOOD: Right now we're going to sell it
like I do a group party. So you can bring a group
of 25 to a suite; you can bring a group of 100 to a
trackside picnic area; you can bring a group of 15
to this Inside Track experience. The day would
finish in the hands of a fan education person that
would teach them betting, how to read a race
program, and other nuances like that, too. And
we're going to put them in the winner's circle, too.

MR. STEWART: We just think it's really a
unique experience. I mean, people come to the
racetrack for years, but you get a whole new view of
what's going on.

MR. BURNETT: Absolutely.

Do they pay for it? Do they pay for the
experience?

MR. WOOD: $300.

MR. BURNETT: You charge $300 for it?

MR. WOOD: Yes.
MR. BURNETT: I thought that was your cost.

MR. MILLER: A piece?

MR. WOOD: No, for the group.

MR. MILLER: We're not going to get many.

MR. WOOD: But it also presents a good media opportunity, too, and I think it's a good hype engine, you know, who knows where this could go if it takes off.

MR. BURNETT: I'm thinking out loud now because I'm just hearing it. Do we have any licensing issues in terms of getting people on the backside? Do we have any insurance notification to make sure our liability carriers are all cool with that? Do you need any particular consents from any owners, trainers, et cetera?

MR. STEWART: We've spoken with Vic and his folks, and I think they're comfortable that as long as the people are escorted on the backside, that's fine. We talked to our insurance carriers about those issues, and we're all right there. Obviously, you know, if some trainers and stuff could help us out, that would be great. I think it would be good for everybody.

MR. BURNETT: It sounds like a great way to get people more involved.
MR. STEWART: Well, it's just a different experience. I mean, if you go to a ball game -- as a baseball fan, it's one thing to watch the game in the bleachers. It's another thing to watch the game front row box seat opposite the on deck circle. It's just a whole different experience.

MR. BURNETT: Okay.

MR. WEINBERG: One housekeeping matter, it relates to Colonial Downs' license for EZ Horseplay. In an effort to alleviate a log jam in getting access to MEC content, XpressBet and Colonial Downs agreed to an amendment to their existing account wagering service agreement in the termination provision.

Currently, the agreement can be terminated if the party breaches and fails to cure the breach or if there were a change in the law that alleviated the need for a contract with the -- between the licensee and the horsemen under Virginia law.

In light of that new legislative change, we also agreed to an additional sentence. This has been shared with the Commission staff, but it in essence allows either party to terminate the agreement if a court or another tribunal in a final judgment determine that the law that goes into
effect July 1 would supersede the provisions of the existing agreement relating to the calculation of the source market fee. That is cross defaulted to the TrackNet content license agreement for the MEC content, but if the XpressBet agreement is terminated under this provision, the content license agreement is automatically terminated as well. And that was the rationale for this amendment.

We are under an obligation to apprise the Commission of any changes in our license application. This is a change. I don't think it's a significant one, but nonetheless, we wanted to call it to the Commission's attention.

MR. BURNETT: Let me see if I can regurgitate that in different words. Do I understand that the parties are trying to protect themselves against the circumstance whereby the new law would essentially impose a rate on XpressBet, but somehow otherwise leave the remaining contract provisions in place and, thus, it would be a different deal?

MR. WEINBERG: Right.

MR. BURNETT: So in the event that a court says, guess what, your contract at least as to rates, if it were severing that piece out of it you raise now, 11 and a half or whatever it is, either
party has a right to terminate that agreement at that time.

     MR. WEINBERG: Correct.
     MR. BURNETT: After a court makes that determination.
     MR. WEINBERG: Correct.
     MR. BURNETT: Which could be a long time.
     MR. WEINBERG: Or it could be another tribunal.
     MR. BURNETT: Okay. Tribunal including arbitrators, et cetera.
     MR. WEINBERG: Virginia Racing Commission, yes.
     MR. BURNETT: Any questions about that provision?
     MR. MILLER: No. I think I understand it.
     MR. BURNETT: I sort of think I do, but -- all right. That doesn't require any vote. Just a notice from you that you're doing it, correct?
     MR. WEINBERG: Correct.
     MR. BURNETT: Thank you.
     Anything else? I see a hand going up in the back. It's somebody attached to XpressBet. Maybe we should let him comment.
     MR. SCOGGINS: Greg Scoggins for XpressBet.
My only comment is to the extent or for the sake of the record and clarity that we would be submitting the same notice as it relates to XpressBet's license, because this change to the contract directly affects XpressBet and the condition with their relationship with Colonial Downs.

MR. BURNETT: Okay. Thank you.

MR. SCOGGINS: We are in agreement with the change.

MR. BURNETT: Thank you.

MR. WEINBERG: I am -- there was -- there is one matter I would like to comment on, and this is -- I think you alluded to it earlier about how we avoid having these protracted contract negotiations, and I'm happy to comment on that now or save it for public participation.

MR. BURNETT: We started down that path. Go right ahead.

MR. WEINBERG: Well, I understand the Commission's frustration and the duration it took for us to arrive at an acceptable contract, but candidly, that is just a symptom of a larger problem and that is the lack of a common vision for racing in Virginia and a common vision among all the stakeholders, whether it be the Commission, the
thoroughbred horsemen, the VTA, the ability to sit
down at the table and try to identify what we agree
on and what we disagree on and try to arrive at what
currently are conflicting visions, but some may be
coalessent around a common vision.

I know that the Commission has talked about a
Summit in the past and as economic conditions
worsen, the ability to pay for what might be viewed
as a grand Summit have evaporated, I would
nonetheless encourage the Commission to consider a
scaled down Summit even if it is just many of the
people who are in this room, but I would also
encourage many of the people who are not in this
room to participate. And rather than looking to fly
in a half dozen or a dozen luminaries in the field,
one or two who could help be a resource and guide
the discussion, I would just suggest to the
Commission is something to consider and something
that may be affordable given the current budgetary
status.

But I think until we have a common vision,
imposing penalties and deadlines, I personally don't
think it's going to remedy the situation. What
would remedy the situation is the ability to really
come to some common vision of what we want racing to
be, and then fill in details behind it.

MR. HARRISON: Mr. Chairman?

MR. BURNETT: Please.

MR. HARRISON: It's come to our attention recently that -- from DOA that there is some marketing money that could be spent this year. It's not just a total cutoff down to zero marketing funds expended. So we may be able to get creative and start pursuing some kind of Summit, again, at least explore talks, exploratory talks.

MR. MILLER: I would just like to supplement what you just said. Even though these are hard economic times, I think because of the hard economic times, because of the downturn in the economy, and especially in horse racing and the gaming industry universally, it's really more important that we have a Summit now than it would be if we were in more flush times. It just adds another problem, another layer of difficulty to what we face as we look at the future of racing in Virginia in a downsized economy.

MR. WEINBERG: Right.

MR. MILLER: So I would second what you said, and I think if we can -- whatever funds we can find, I would certainly urge that it be worked out, and I
still believe that there may be some people that
might contribute something toward a Summit. I don't
know. I know that -- all companies are suffering,
but it would be in the interest of people connected
with the racing industry, the gaming industry to try
to assist us in having a meaningful Summit.

MR. FERGUSON: Is there a way to change the
contractual arrangement between the horses and the
track that doesn't require legislation from the
state? In other words, instead of working off of
the gross, getting a percentage off of the top or
something like that, is there some way we could
merge these two forces so that the horsemen get a
portion below the NOI instead of above the NOI line,
so that you're working for a common purpose instead
of arguing about the gross?

What is glaring to me is the stakes races
versus the overnight purses, those things, things
like that. I mean, you need the stakes money to
attract what you perceive as a higher caliber horse
and better race, like the Virginia Derby or Colonial
Turf, yet the horsemen need -- obviously need more
money for their side. Is there some way to work it
differently so that you get your income at a
different portion, say a stock swap or something
like that? Can you do that without legislation from the senate or from the legislature?

MR. WEINBERG: I think all things are possible. Sometimes it takes a little creativity as we have done in the central southside region with those new SWFs.

MR. FERGUSON: Well, I think there's enough talent in this room to sit down and hash something like that out so that we're not sitting here nitpicking about mattresses and air conditioners and things like this. We as a board set policy and hire and fire the head. I mean, that's -- to me, that's my version of what a Commission or a board should do, those two things, so that you guys are now working with minor disagreements here and there on a different model instead of the headbanging that's going on now. You become not only a stakeholder; you become a stockholder. Does that make sense?

MR. WEINBERG: Uh-huh.

MR. BURNETT: It seems to me whether or not that notion in and of itself makes sense, what certainly makes sense is doing that kind of thinking, trying to look at this animal in a different way. The horsemen are famous for, you know, not wanting to change anything so they can
continue to complain about it. So I really welcome
the idea of our looking at some new avenues, new
approaches.

I would say this. I think that particularly
if you've got that kind of thinking going on, a one
or even a two-day Summit is probably doomed from the
perspective of coming to any real solid conclusions,
that you've got all this -- that you have a lot of
brainstorming and a lot of ideas and a lot of
avenues that can't really be fully fleshed out.

So to lead it with all these creative ideas,
but no real solid plan and I wonder to attempt to
have the best of both worlds whether -- it might
make sense for essentially the talent in this room
with a few local additions to have one or two or
more pre-Summit gatherings that would allow us to
really narrow the issues, and perhaps we would come
up with more than one approach. They being very
different from each other, that we would want to
more fully explore with some outside export types.
That's just an idea, but I think if we go into it
cold with an agenda on day one, at the end of the
day, one, we'll have had a nice discussion, a lot of
great ideas, but not a whole lot of conclusions.

MR. FERGUSON: I think the parameters that
have been -- not forced upon you, but the parameters
that have been set about through the legislature,
you're more like two pit bulls being thrown into a
ring. The way the process works now is you're
forced to fight in a ring. I don't think that's the
right way to run a business, quite frankly. You're
the poor pit bull, you're the poor pit bull. I
mean, it's your job to fight, but at the end of the
day, there's a lot of blood all over the floor, and
only the guy that gets rich is Michael Vick. Excuse
me.

MR. BURNETT: He's bankrupt, right?

MR. FERGUSON: So if we can eliminate that
arena or not eliminate, but alter that arena so that
there's more of a unity instead of a dog fight, I
think it would help the industry dramatically.

MR. PETTY: Peter, what you are describing is
the old Virginia Racing Task Force model. There
were really two versions of it. There was the
Racing Commission's version, and then there was
the -- the formal version, then there was the Racing
Commission's informal version and those groups met
at different times in the history of the project,
but they both do the same thing. We met monthly and
they brought together stakeholders, plus people from
outside the stakeholder groups, and they met once a
month and they spent a couple of hours brainstorming
whatever the issues were. I think we met at Jim's
office and met every month for six or seven months,
and we hatched the plan for summer racing, for
example.

So just going back to something as simplistic
as that in a less formal setting with a bunch of
people in the room, and there was always somebody in
the room that had a crazy idea, but sometimes the
crazy idea is exactly what you're looking for.

MR. FERGUSON: Well, the key to that, Glenn,
is you have to have decision makers.

MR. PETTY: We did eventually. We did.

MR. FERGUSON: You have to have decision
makers there.

MR. PETTY: Everybody participated, and it
worked.

MR. BURNETT: We kind of take it as a given
right now, but you know, Anne Poulson's work with
that task force really got a lot done, and it
included Maryland in a very big pay and we moved
from fall racing to summer racing, and a lot of
major changes. I mean, we changed from even
seriously considering 150 days going right back to
26 days. It was a completely different approach.

    MR. PETTY: Well, think about it. You had at least two meetings I want to say at Laurel. Robin, you were probably there.

    MS. RICHARDS: At least.

    MR. PETTY: Where you had 25 people in the room and 12 of them from Maryland and 12 of them are from Virginia. They were horsemen, they were breeders, and they were regulators. And you want to know what? It's never happened since. It probably never happened before, and it's never happened since. It's the most logical thing in the world. If you're trying to have a racing circuit between two states, what would you do? Put the people in a room together and have a conversation. It didn't happen.

    What Trip is describing is the way this industry has always resolved its issues. Here's the pot of money. Let's fight about it. It's historic from day one. I'm sure when they were out in colonial times, somebody was arguing about how far away the church steeple was and what the pot for the race was. It never has changed.

    MR. BURNETT: But the other thing that I think is very refreshing to hear from Trip is -- and I
think our task force looked at racing and there were 
a whole lot more givens than there were changes.
The relationship between the track and the horsemen 
and all that were untouchable essentially. It was 
just how are we going to move deck chairs around, 
and we did, racing days and the purse amounts and 
all that.

Trip is going a step further if I'm hearing 
him and saying let's imagine structurally a 
different relationship, whatever that is, I don't 
know, but I think we ought to maybe -- to make some 
progress on this -- think about when would be the 
best time to have this Summit, the ultimate Summit, 
and assume in setting up a time that it's a pretty 
high likelihood that we would want to come away with 
some kind of a legislative recommendation or that it 
would result in a need for some legislative change. 
If we wanted it to happen, we'd want to be getting 
into that cycle.

If we assume that and work backwards, say we 
would have two or three meetings leading up to it, 
then we probably ought to start tomorrow.

MR. PETTY: You could start tomorrow and you 
could perhaps invite a national figure to each of 
those meetings and maybe you'd kill two birds with
one stone. You'd get that input from the national
guy each month as you went along, and then have some
new six hump camel when you were done.

MR. BURNETT: Any suggestions on how we move
this ball forward? We need somebody to kind of
carry procedurally, getting the ideas collected,
getting them circulated among people, starting to
put some structure on what we're trying to
accomplish, and it strikes me that your office is
probably the best one to lead that charge, Vic.

MR. HARRISON: We can do that. We already
have some preliminary work done from a few months
ago.

MR. BURNETT: Okay.

MR. HARRISON: We can pick that up again.

MR. BURNETT: Maybe we can start by
circulating that work and you giving some thought
suggesting an initial meeting, perhaps -- you know,
we're only six or seven weeks from the meet opening.
So there will be some opportunities hopefully during
the meet, maybe we could even think about having a
Saturday morning meeting of some sort before the
race since people are coming here, catch some folks
that way and those who want to stay for the races
can, something along those lines.
MR. PETRAMALO: One suggestion I would add.

To the extent we're talking about the Virginia racing industry, we should make it clear that we're talking about the breeding aspect as well as the racing aspect.

MR. BURNETT: I think we start with what our statutory charge is, and I think we'd all agree that it includes breeding.

MR. PETRAMALO: Because one of the problems in discussions that have been coming out in the breeders' committee meetings is we need a long-term plan about where we're going with breeding or what we'd like to do.

MR. BURNETT: Along some of the thinking that -- or the new idea -- I mean, I made the comment to somebody that maybe we ought to be thinking about merging breeding funds with purse funds. It sounds crazy, but we need some crazy ideas out there just to stimulate thinking, you know.

As Trip says, it's a pot of money -- or Glenn says, it's a pot of money, and everybody is fighting over it. And as Ian always reminds us, we need to make the pie bigger, you know, having a Summit that ends up trying to figure out how to redistribute an
already too small pie probably is not a productive effort.

All right. Anything further on that notion?

MR. WEINBERG: No. Thank you.

MR. BURNETT: Frank?

MR. PETRAMALO: No.

MR. CANAAN: No.

MR. BURNETT: The next item is the change to the coupling.

MR. HARRISON: Peter, before you get to that, there's food here and there's drink there. So if you want to eat while we continue to talk, feel free to do that.

MR. BURNETT: I've had the wise suggestion of taking a short break. Can we reconvene at no later than 20 of one? Fifteen minutes. How fast can you eat a piece of pizza?

Note: A short recess is taken, following which the hearing resumes as follows:

MR. BURNETT: Let's reconvene, if we may. Glenn, I went right by you, and I'm sorry. Why don't we go back to picking up with the distribution of funds for the 2009 100% Bonus Rule, however you want to call it. Where are you all at?

MR. PETTY: I think Jim's comments were sort
of the perfect segway in that this patchwork quilt is time-consuming and rather inefficient. I think the whole Breeders' Fund is kind of the microcosm of this whole project. You have a bunch of different stakeholders with a bunch of different views of how it should be done and trying to find our way forward with limited resources. It's pretty much the same story. And it -- if I may digress, it reminds me of early Russian democratic elections. You would have --

MR. FERGUSON: There's no such thing.

MR. PETTY: There is and -- there are. Here in America, we have three people on the ballet, and in Russia, there's 15 people on the ballet. And one guy, Vladimir, will get seven votes and Anatoli would get five votes, and the other thirteen guys would get two votes or one vote, and then there would be 8,613 write-in votes that got one vote each.

The explanation of it was that as bad as he was, Vladimir put together the best consensus and he rounded up seven of his friends and family to vote for him and Anatoli got five and the other guys got two or three, and then 8,613 people each voted for themselves because they believed that they were the
best qualified to do the job.

When you go in with this particular issue and you talk to all the different people that participate in the Breeders' Fund, some people want restricted races, some people want stakes races, because they breed for the market. Some people want 100% Bonus because they breed for the market. Some people are owners that want this, some people are -- they're all over the map. And their decisions are driven by, frankly, what horses they have, what's in front of them. So you get an opinion of what they want based on what their horses can or can't do.

So reaching a consensus on it, I apologize for the lengthy preface, but at least you've eaten. Reaching a consensus on it has been difficult. It's certainly been entertaining and been educational, but it has been difficult. We had a very long meeting in our offices, I think it was last week. We don't have minutes to read, but I can give you sort of the Reader's Digest version without the Reader's Digest. The meeting was lengthy. We had a large group. We had -- I think -- we did not reach anything unanimously. We managed to reach some decisions.

The first thing I think we -- and Frank and
Robin were there, and Leeann, she was there, and anybody who wants to supplement my not always great memory, feel free. The first thing we did reach consensus on, though, was that the 100% Bonus was the only thing we'd ever done that made anybody pay attention to Virginia horses, short of the Secretariat or, you know, Sea Hero, or Quality Road, and that the success of that program was borne out by results of going from 240,000 and 50% awards to 1.1 million and 100% awards, and we spent a lot of time debating how or why that happened nor admonishing the folks that missed the call.

What we did do is -- and we have done since as well, and I've got it written down, is look at the numbers of what happened. Virginia-bred horses and Virginia-bred Sired horses that competed over there across the road in 2006 was 121. In 2007, there was 127. In 2008, there was 201. So that's a substantial increase in Virginia-bred horses showing up at this meet to run.

So we also know that in the years of the 50% Bonus, which was '06 and '07, we paid 230 awards and 210 awards in '07, and in 2008, we paid 410 awards. So the number of awards almost doubled. The number of horses that competed increased 70%, so we all see
the end result of the 100% Bonus. So we tried to
then move forward, embracing the concept that the
100% Bonus was a good idea and how do we make it
work as best we can, and so from there we work
backwards. How much money do we have, how much is
available for stakes, how much is available for back
end awards, how much is available for the bonus
program. Long story short, what we concluded after,
I guess, a lengthy debate was we really came up with
three recommendations, one of which now I'm going to
tiptoe around.

The first was that we pay 100% Bonus to the
winners and the winners only. I realize that's
completely contrary to what we discussed at the last
Racing Commission meeting, but I got a lot of
feedback from a lot of people in the industry that
have essentially said horse racing is about winning,
and we need to compensate the winners. They weren't
saying they didn't want to compensate the other
guys, you know, they wanted to compensate everybody,
but if you only have enough money to compensate one
group, they would start with the winners.

So we looked at the math of that, and the math
didn't work as well as we would have liked it to.
So we decided we needed to cap that not once, but
twice. There would be a $10,000 cap per award and
that there would be an overall cap of $500,000 for
the whole program.

The reasoning was simple. The -- I think 28
of 76 of first place awards last year were more than
10,000. So it was -- and they were 17, 16, 15.
They weren't very many times that we went over the
10,000 threshold, so that wouldn't -- that would
only penalize a minority of folks that won races.
And the $500,000 hard cap on the whole program,
because that's all the money there is. That one was
fairly simple. So based on the projections that
we've done that we discussed in the past meeting, we
think that number will get us if not to the end of
the meet, but very near the end of the meet.

The second thing we wanted to bring forward,
and Tyler was also there to defend his dog in the
fight, was we wanted to have some additional races
in the condition book for open Virginia-bred races.
Again, highly debated. If you have those horses,
you want them. If you don't, we don't care. And
there was a conversation about can we film, can we
not, but I think it was one of those things we
thought we'd tackle as an experiment and see what
happens.
The third thing we discussed was truncating the stakes schedule, and I'm not convinced now that we truncated it properly. We chose a race to eliminate to save $25,000, and that's -- I think that's demonstrative of how hard this group worked. I mean, we were trying to save amounts as small as $25,000 to make it work. We hit upon eliminating the Jamestown because it was the youngest of the races, and the Jamestown is a two-year-old Virginia-bred stake. As you know, there's been some debate in front of this Commission about the validity of that and the quality of the race. And so I think we made a -- you know, I don't know that it was an unsound judgment, but in retrospect, I'm questioning it because, again, for the feedback I've gotten.

For the group of people that breed horses for the marketplace and for the group of people that buy horses in the marketplace, whether it's good for the industry and whether it's the right thing or not, people like to have two-year-old stakes to point for, and they like to have their mares get black typed or two-year-old stakes and they like to think that that's the easiest place to win a big race is with a two-year-old. That's why GR racing is
So I have since heard, and I think Frank got a big dose of it yesterday and I'm sure he'll supplement me, that if we're going to cut a race, that's not the race to cut. And at $25,000, I think we can probably solve that puzzle some other way, if necessary. If nothing else, maybe some benevolence money. So those were the big three --

MR. BURNETT: Cut the grooms --

MR. PETTY: I'm glad everybody can still laugh. That's a good sign. Everybody is still laughing.

Those were the three major issues. Now, there's one other one we're gonna -- we'll slide in here later, but we want to expand -- it's not relevant to the 100% Bonus, but at some point the Commission will have to take action.

If you recall last year, we paid -- theoretically, since we haven't actually paid them -- breeders' awards and stallion awards for races in the United States, and we amended that to include the NSA sanction races in Virginia. So if a horse won at Strawberry Hill or the Gold Cup, the breeder of that horse would be eligible for a year-end breeders' award. It was motivated because
of the year prior, in '07, the horse that won the Gold Cup was a Virginia-bred, and the breeder got nothing for that big win.

So all we would advocate -- and in this year's pool of winners, that represented one horse. One Virginia-bred horse won a race at -- I don't know if it was Middleburg or Strawberry Hill or Foxfield or the Gold Cup, but it was one of the steeplechasers. We would simply expand that menu to all the NSA steeplechase races, so those folks that breed steeplechase horses might also get a return in their investment. Again, low impact in terms of dollars, but it makes the program a little more inclusive.

So that was the non-100% percent bonus issue that was also on the table. And that's the -- as short as I can tell that story. I'm sure everyone has questions.

MR. FERGUSON: I have a question. Where does the money come from on the steeplechase point to point races?

MR. PETTY: Those guys -- you mean, for their purposes?

MR. FERGUSON: Yeah.

MR. PETTY: They raise those purses themselves, typically through sponsorship dollars.
MR. FERGUSON: Sponsorship.

MR. PETRAMALO: Well, if you're talking strictly point to point, the vast majority do not have any purses. They race for team cups, except on occasion there are some purses. We run flat races -- we, the VHBPA, run flat races at those point to points, and we put up $2,000 for those, but --

MR. FERGUSON: Do they get the bonus based on that?

MR. PETRAMALO: No. What we're talking about is NSA sanctioned races, like Strawberry Hill. That's a sanctioned race by the NSA, and they race for money in those races.

MR. PETTY: What it means is just that those -- their purse dollars would go into the whole pool that we use to compare to determine what you get. So, in other words, $3,000 you won at Strawberry Hill would count as the same as the $3,000 you won at Laurel or you won at Charles Town or won here for that matter.

MR. BURNETT: The sum total of purses in steeplechase racing in the United State is about five million bucks?

MR. PETRAMALO: Approximately, yes.
MR. BURNETT: And is raised principally by sponsorship?

MR. PETRAMALO: Yeah.

MR. BURNETT: They're running over fences. Point to points are kind of the amateur level, and the sanctions are the fancy horse, but that's really the only difference.

MR. PETTY: A few more rules.

MR. BURNETT: Yeah.

Glenn, you've given us three, if not four, different areas that were of concern and interest. No unanimous view. Was there any consensus of what -- I mean, is the committee making a recommendation to the Commission?

MR. PETTY: Yes. The first three items are what the committee would recommend.

MR. BURNETT: We pay winners only with the two caps --

MR. PETTY: Right.

MR. BURNETT: -- that we have some more open Virginia-bred races --

MR. PETTY: Yes.

MR. BURNETT: -- and the Jamestown be canceled. Any others?

MR. PETTY: Those three. And I would offer in
some way or form that we can find a way for the
committee and/or the Commission to let us talk a
little longer about the Jamestown. It's $25,000 in
the whole picture, and there's just been enough
feedback since that --

    MR. BURNETT: Help me with how it's -- I
thought it was a $100,000 race.

    MR. PETTY: It's a $50,000 race.

    MR. PETRAMALO: No, no. 50,000 comes from the
purse account, 50,000 -- excuse me. Twenty-five
comes from the purse account, 25 from the Breeders'
Fund.

    MR. BURNETT: Was it ever a hundred? Am I --

    MR. PETRAMALO: Never.

    MR. PETTY: It was 60.

    MR. PETRAMALO: It was 60.

    MR. PETTY: It'd be a better race if it were a
hundred. I mean, people would bring their horses,
but you just don't have the cash, but the breeder --
the breeders' group, the group that breed horses,
especially the commercial breeders, which is about
35% of that crop, that's the carrot on the end of
the stick that brings people to the barn to look at
their horse, and 100% Bonus and being able to run in
the stakes races.
MR. PETRAMALO: And it's, quote, black type.

MR. PETTY: So it's -- whether you're trying to move up your mare or you're trying to sell your yearling. There's a bunch of people that call me every year, which I'm repeating myself because we had this when it was first brought up that said, I bought this yearling. He looks really good. Are you going to have a two-year-old stake? So that's what you want people thinking and saying.

MR. FERGUSON: So what happened to the argument about against racing two year olds? Remember we had that when I first came on the Commission because they're too young to race.

MR. PETTY: It's still around.

MR. PETRAMALO: There is sentiment that -- against racing two year olds, but I saw some recent study that suggested it was probably in the interest of the horse to race at the two-year-old level.

MR. FERGUSON: So the data says it's okay to race them?

MR. BURNETT: I think the middle ground is that or the explanation is that the weight-bearing and stressful activities increases bone density -- we have a vet or two here with us -- and the answer tends to be light racing of two year olds late in
the year tend to produce a pretty good three year old, and I think -- you know, there hadn't been a Derby winner that hasn't run a two year old ever, I don't think, something like that.

But the thought was that the Jamestown was occurring in the summer and being a stakes race, either it was going to be a bunch of horses that were barely maidens and it would include some maidens or you're going to have some horses that were hot housed pretty good to get them there, and you're just inviting people to push horses too hard to get to that level of the race in the middle of the summer. That was sort of what the argument was.

MR. PETTY: What we found when we did our search was historically, and this surprised me, obviously I'm a horrible researcher and I have trouble figuring out the trend line as a result, I thought when you looked at the starts for Virginia-bred two year olds that they would happen predominantly in September, October, November, and December. When, in fact, they happen predominantly July and August. That surprised me. I just thought well conventional wisdom says they'll be out later in the year.

But I think to answer your question the best
way, Trip, if we raced in Virginia 365 days a year, and we gave away a million dollars a day in purses, then we'd be in a position to move the trends and to move -- and to make policy and to get the industry to change. Racing 45 days a year for $250,000 a day, we don't have any choice but to play with the status quo. We can't -- it'll be hard for us to fundamentally change the view of the racing world with our small window. We could try, but it's going to be tough.

MR. BURNETT: Glenn, make your best argument -- and it may be this carries the day -- why this particular format is in -- will grow, sustain, and promote Virginia racing and breeding. What does this do to advance the cause of Virginia racing versus the other alternatives that must have come up in this meeting?

MR. PETTY: The biggest single argument is that it promotes the brand that we're trying to -- we're trying to establish, which is the 100% Bonus. I'm hoping that this is a one-year situation, and next year we can go back to running this thing the way it was designed and expanding it the way we talked about with, you know, the other components of it, an auction bonus. I think it allows us to move
the brand forward and to move the one thing that we have that has captured people's attention, which is the 100% Bonus, to do it.

I'll give you an example. Spring Hill Farm is in the process right now of making eight dozen Quality Road baseball caps. Maybe you've seen it at horsehats.com. It has Quality Road here. It has their silks here, has Spring Hill Farms, Casanova, Virginia. That's the one you can buy on-line, but the one they're having made says 100% Virginia-bred over here on this fourth panel. And that's that branding stamp -- I'm not a genius, but I stayed in a Holiday Inn Express. We're trying to grab on to the one thing that people have noticed and keep it in the mix.

So then it comes down to how do we do it, and the best argument I have was the majority of the people that I -- that responded to me said this is a winner's game, and we need to fund the winners first. Like I said, again, we're not opposed to funding second, third, fourth, and fifth, but if you don't have that, don't compromise, you know, what the winner gets. That's really my best argument.

The other two components, people want races in the book because there are some folks that believe
those races are going to fill. I don't happen to be
one of them, but we'll put them in the book and
let's see what Tyler can do with them. It's worth a
shot. There's no harm in it. It doesn't
inconvenience him. And I think the stakes race, I
think I've argued as articulately as I can. It just
has appeal for a group of people that fundamentally
do what we want them to do, which is breed horses.

MR. PETRAMALO: There was another aspect to
writing Virginia restricted races for the book, and
that is it to a certain extent compensates for those
folks who are getting the bonus under the old
program.

MR. BURNETT: Oh.

MR. PETRAMALO: Okay. You're not getting a
bonus, but yeah --

MR. BURNETT: Here's your shot.

MR. PETRAMALO: -- here's your shot.

MR. PETTY: And the purse account was kind
enough to say, we'll fund those races because, you
know, if we're funding ten races on a card, we're
funding ten races on a card. It doesn't really
matter what the condition is or how it's written.

MR. BURNETT: Was there consensus that there's
$500,000 to spend on the 100% Bonus, that's kind of
where you want to be on that, and then to leave you
with other money for year-end awards and all that
kind of thing and stakes and the races, et cetera.
So with respect to the 100% Bonus, is it fair to say
you all are agreeing we got about 500,000 to spend?

MR. PETTY: If anything was unanimous, that
was probably it. That was a logical number and I'm
sure Dave is squirming because he's probably worried
about getting there, which is a fair comment. But
that was -- and everybody was okay with the cap.
You could -- the way the conversation went over the
period of two hours and change, and people would go
back to the idea of paying first through sixth, but
then you would run out of money. When would we run
out of money? We'd run out of money 4th of July
weekend.

Everybody -- as Jim Weinberg once very
eloquently recently said to me, everybody wants what
everybody wants, and everybody wanted it to be
perfect. They wanted to do it the right way, but
then they'd say, well, what if we do this and this,
and then you crunch the numbers and go, we run out
of money on Tuesday, July the 16th. And we'd go
okay. We can't do that.

So this was a classic compromise where
everybody got up and ugh. It's not exactly what I want.

    MR. FERGUSON: But you got to keep the 100% brand, which I think is important.

    MR. PETTY: And that's the only way we can keep it, and we had to cheat a little bit on it as it was. I mean, unfortunately, there's an asterisk, but in this current economy, a lot of things have an asterisk.

    MR. MILLER: Glenn, how far along in the meet do you think you'll go before you reach the 500,000 cap?

    MR. PETTY: I think we'll make it.

    MR. MILLER: All the way through?

    MR. PETTY: I think there's about a 15% -- there's 15% fewer registered Virginia-bred three year olds in the 2009 -- for the 2009 meet, you have the '06 foals, then there were last year. Those three year olds hit you pretty hard for money because they're sound and they're fresh, and they're pointing for this.

    So I think the fact that we're running 11% fewer days and 15% fewer three year olds, I think we might be okay and I also think that somebody -- unfortunately, there is a downside. A few horses
won't come because they're thinking, if I'm running for second, I'm running for 3,000 bucks, where last year I was running for 6,000. So that may -- you know, you may feel that at the entry box. You may. I don't know. I can't judge it.

MR. MILLER: Is that $500,000 cap known upfront? Is it in the book?

MR. PETTY: We're going to put it in.

MR. MILLER: So it could happen --

MR. PETTY: Tyler is waiting for me to give him an ad for the book, and I think we're going to make it very plain that one, two, three. This is what it is. This is where it stops. This is where it stops for good.

MR. MILLER: One other question.

MR. PETTY: Enter today, not tomorrow.

MR. MILLER: It's Virginia races. Those are just for Virginia-bred. And how many of those would you participate --

MR. PETRAMALO: In the first book, there are -- I think Tyler wrote seven of them.

MR. PICKLESIMER: Two a week, basically.

MR. MILLER: Two a week.

MR. BURNETT: But don't let that necessarily cause you to draw any conclusions, because Tyler may
know or may not have a history, but the filling of open Virginia races, particularly maiden special weights has been really tough, has it not, historically?

MR. PETTY: Non-maiden. Maiden races you can get filled.

MR. PETRAMALO: Yeah. We can fill maiden races.

MR. BURNETT: So only maidens get filled?

MR. PETTY: Right.

MR. BURNETT: I had it backwards.

MR. PETRAMALO: For the most part, right.

MR. PETTY: And they filled extremely well in recent years because we overpaid them. Remember the $40,000 Virginia-bred maiden race. Well, it did very well, but if you run it -- I think they'll be tough to fill. There's not a lot of horses, and there are a lot of conditions.

MR. MILLER: And if you retain the Jamestown race, then that just means that the 25,000 you were counting on will be put somewhere else?

MR. PETRAMALO: Correct. It'll come out of somebody else's hide.

MR. BURNETT: So it might be 475 instead of 500?
MR. PETRAMALO: Well, you wouldn't change the 500.

MR. BURNETT: You just juggle it.

MR. PETTY: It might be something on the back end, and what's happened, unfortunately, historically for us is we had a race not go. We've had a stakes race not fill.

So if John D. Marsh doesn't fill, then the money just moves from the J. D. Marsh to the Jamestown. Unfortunately, every year we've had -- I guess it's the philly race, the three year old philly race has been hard to fill. So maybe that will work itself out. If it doesn't, we've got two hundred grand on the back sitting there, and we have at some point in the future ADW. So we've got some future dollars to look at, but we wanted to spend what we thought we'd have pretty close to in hand when the meet came around.

MR. MILLER: Another last question.

MR. BURNETT: Keep going.

MR. MILLER: Your re-consensus is that the Jamestown should be run?

MR. PETTY: From my core constituency, and I think Frank got an earful over in his meeting, I think so.
MR. PETRAMALO: I got two ears full.

MR. MILLER: So in both your opinions, that would be your recommendation here today?

MR. PETRAMALO: Yes.

MR. PETTY: Yes.

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Yes.

MR. LERMOND: If that is, indeed, the case, we're going to have a funding issue because we're only going to have so much money by the end of July.

MR. BURNETT: If what is, indeed, the case?

MR. LERMOND: If they're going to run this $25,000 race, the purse account is going to want the money.

MR. PETRAMALO: It won't go until August. It's at the end of the meet.

MR. LERMOND: I don't think we'll have enough.

MR. PETRAMALO: Because of the additional 25,000?

MR. LERMOND: Yeah.

MR. BURNETT: Which is cutting it fairly fine, right?

MR. LERMOND: I wanted to cap it at 475, so I don't want to give out anymore --

MR. PETRAMALO: If it's a cash flow problem,
we could probably find some way to advance the money
to the Breeders's Fund.

    MR. BURNETT: That might work.
    MR. LERMOND: That'll work.
    MR. BURNETT: That's been done in the past, has it not?
    MR. MILLER: From where?
    MR. STEWART: From Colonial Downs, quite frankly.
    MS. RICHARDS: No.
    MR. MILLER: You mean, like a loan?
    MR. PETRAMALO: Yes.
    MR. LERMOND: The harness horsemen did it last year, but they did it out of their own money. It wasn't purse money.
    MR. PETTY: Which we're not looking to reproduce.
    MR. FERGUSON: But the race will cash flow itself. The race itself will cash flow?
    MR. BURNETT: What do you mean by cash flow?
    MR. FERGUSON: If you have a $25,000 race, it will make money. It's just a matter of coming up with the money --
    MR. PETRAMALO: Not necessarily.
    MR. PETTY: It will not necessarily pay for
itself by wagering.

MR. BURNETT: Ian?

MR. STEWART: And Mr. Dale can chime in where I may misstep here, but I think historically the money has not flowed from the Breeders' Fund from the stake to Colonial Downs on a timely manner. Colonial Downs has basically fronted money for the Breeders' Fund for these races.

MR. DALE: Historically, we've stretched the purse funding from the partnership account to the point where the horsemen's bookkeepers had to make decisions on who got paid and who didn't. That's something we desperately want to change.

MR. BURNETT: We want to avoid that.

MR. DALE: The regulations call for the money to be in the account within 48 hours after the race is run, and it's just gotten ridiculous. Connie and Carol struggle it out. They're being forced to make decisions that they shouldn't have to make.

MR. BURNETT: Right.

MR. LERMOND: That's why I'm concerned because I did tell them that we could not get in the same situations like that this year, either with the bookkeeper and also borrowing from the harness money. We want to keep it separate.
MR. PETRAMALO: Well, I'm not addressing the larger issue that you're talking about, but if the question is where does the $25,000 come from for the Jamestown that would normally come from the Breeders' Fund and it's not in the Breeders' Fund, we, the VHBPA, from its funds, not the purse account, will loan the $25,000 for that purse.

MR. FERGUSON: If it doesn't cash flow, what happens?

MR. PETRAMALO: I don't understand what you mean by cash flow.

MR. BURNETT: None of the races make any money. It's run on a race by race basis. They all lose money, that's why we have OTBs.

MR. FERGUSON: I thought they would make enough money to pay for the purses.

MR. BURNETT: Huh?

MR. FERGUSON: They don't make enough money to pay for the purse?

MR. BURNETT: No. That's why you have OTBs. That's why we only run 45 days a year or 40 days or less because we cumulate all this money and you get some of it from the betting on the race, and the rest you get for betting the rest of the year to pay the purses.
MR. PETTY: If your average daily handle is $300,000 and you're getting 9% for the purse account, you're getting 27,000 bucks and you're giving away 250.

MR. FERGUSON: So even the purse --

MR. STEWART: Since Mr. Petramalo brought up the concept of the HBPA fronting money to the Breeders' Fund, it was my understanding -- and maybe they can correct me if I'm wrong, that the HBPA is going to give $200,000 out of the purse account as part of this as well.

MR. PETRAMALO: That's correct. That's what Glenn mentioned at the outset.

MR. STEWART: He did? I missed that.

MR. PETTY: Well, I didn't mention it today. That has been part of previous discussions, because it was announced as kind of water under the bridge several meetings ago, and Frank can tell me when, they agreed to supplement the Breeders' Fund $200,000 to compensate us for the 1.1 million we put in in 2007, so that there would be some back end awards for breeders for what happened last year. We usually pay about $500,000 in back end awards to stallion owners and breeders, and this year because of the success of the 100% Bonus, we
had zero dollars, and they agreed to help us sort of
balance that out and make things a little better in
the world and considering the $1.1 million
investment that went into the purse account over
here, it seems like a fair trade. We have -- I
believe we've had this conversation in previous
meetings.

MR. STEWART: I've got a couple thoughts on
that. I'd be happy to share them now or later.

MR. BURNETT: You can go right ahead and share
them now. We're having this discussion.

MR. STEWART: Okay. You know, the stated
objectives of the HBPA in the thoroughbred
negotiations is to find money for overnight purses.
We listened at great lengths in Racing Commission
meetings and in negotiations as to what an important
issue this was for the HBPA. And after much hard
bargaining, we agreed to reduce purses of the Turf
Cup, the All Along, the Virginia Oaks, as well as
give up some of the $115,000 payment we were due in
order to increase overnight purses and come to an
agreement. We were looking to maximize the funds
available for purses, which includes funds carried
over from 2008. From those funds, maximizing the
amount available for overnights, without doing too
much damage to our stakes schedule.

Now, along the way, we had suggested eliminating one or more of the small stakes races in order to fund overnights. This was rejected by the HBPA, along with the request that a certain percentage of the account wagering money that the horsemen receive be restricted to being used strictly for purses.

Now, obviously, it's kind of clear now why that happened. While we thought we were trying to solve one issue, increasing the overnight purses, it turns out that we were being used to solve another issue, which is the depletion of the Breeders' Fund. We find all this out literally the day after we come to an agreement.

Now, I want to add. If you check the record, you'll find that no one asked Colonial Downs last year whether the 100% Bonus was a good idea or whether it was even financially prudent. The program was initiated by the players in the industry. So now we have a problem with the Breeders' Fund. So what's the solution?

Well, in my view, it's Colonial Downs. Did anyone ask? No. It was basically done without consulting us, and now as Mr. Petty has said, it's
basically water under the bridge. I don't really
remember ever discussing $200,000 going into the
Breeders' Fund.

Now, why do I say Colonial Downs is being used
again? The $200,000 that we use to fund the
Breeders award reduces the purses available for 2009
by $200,000. 200,000 in additional overnight purse
money is enough to run approximately 13 additional
races. As I've said many times, the key financially
for Colonial Downs is to run more races a day. Each
race on the average generates approximately $10,000
in live handle and $100,000 in out-of-state handle.
This equates to approximately $2,900 per race in
revenue for Colonial Downs. If you multiply that by
13, you get $37,000.

Once again, is $37,000 life or death for
Colonial Downs? No. However, it's the same old
story. Death by a thousand cuts and, once again, no
one even asked us.

Now, the Breeders' Fund facing certain
challenges, and these challenges need to be faced
and dealt with in a straightforward manner in the
context of the Breeders' Fund. The essential
problem is that the Breeders' Fund spent more money
than was planned and, therefore, can't afford to do
everything that it would like to do. That is the
consequence of their action.

However, racing and Colonial Downs shouldn't
suffer with fewer races and lower purses because of
this issue.

MR. PETTY: If I could add a component to
that, which I think bears consideration.

MR. PETRAMALO: I would like to respond to
that before Mr. Petty does.

MR. BURNETT: Mr. Petty grabbed the floor a
little bit sooner than you did, Frank.

MR. PETTY: It's a technical point, and I
don't think it will tiptoe on what Frank is going to
say, but I would point out just to everybody, but
specifically to Colonial Downs, that since the
racetrack has open, the Breeders' Fund has
contributed more than $7 million to purses for races
that have been run at Colonial Downs and sold in the
simulcast market. The compensation that the
Breeders' Fund has received for those purse dollars
that created those simulcast signal sales is zero.
Not a penny.

The fund has never been compensated for its
role. The racetrack puts on the race, the horsemen
put up the purses, and they split the money. But
when you start doing the math, which I did the other
day, you count overnight purses, stakes purses, 50%
bonuses and 100% bonuses, all of which are part of
the purse structure, the number came up to over
$7 million.

So the suggestion that we're adding to the
thousand cuts, I think is somewhat balanced on the
fact that we've never been compensated through the
only compensation means that there is, which is
simulcast sales on these races for the history of
Colonial Downs. I think if we did the math, it
might all kind of work out square. I think that's
just an issue. I can certainly understand Colonial's
issue, but we have a similar issue in that we've
been funding races and not been compensated for it.

MR. BURNETT: Can you put that on the list for
the Summit?

Frank?

MR. PETRAMALO: Let's start off by looking at
the equities here. In 2007, the Breeders' Fund,
which accumulates a little more than a million
dollars a year, paid out $240,000 or paid into our
purse account, that went to these owners' bonuses,
because at that time we were running a 50% Bonus
program. Approximately half a million was paid out
by the Breeders' Fund to breeders of horses whether they ran in one here or any place in the country.

In 2008, this 100% Bonus program came into play. Everybody thought it was a good idea. They thought we'd spend about a half million. Well, guess what? We went from $240,000 into our purse account to 1.1 million five times, and the result was the Breeders' Fund was, in effect, bankrupted because it could not pay out the breeders' awards that it had in prior years to the tune of half a million dollars.

So we, the horsemen, agreed to take our money, not Colonial's money, our money, take 200,000 of our money and give it to them so that they could pay breeders' awards for 2008 in recognition of the million point -- 1.1 million that they put into our purse account.

Now, in terms of this proposal that the HBPA made, it didn't come the other day. It came last December in response to a request from the Racing Commission as to where we stood on the status of a contract and race days and what was going on. I wrote a memo clearly laying out that 200,000 was going to be contributed by the HBPA from the purse money to the Breeders' Fund. That memo went to the
Racing Commission, and I believe it went to Jim Weinberg and Ian Stewart. So it isn't something that I dreamed up the day after we reached an agreement with Colonial Downs.

But my basic problem with Ian's argument is the money that we're talking about is the horsemen's money. It's not Colonial Downs' money. We sit and negotiate over statutory shares, what's going to happen from the takeout. We negotiate over shares of signal sales. We negotiate over shares of ADW revenue. They get their share. We get our share. That's our money. And what we decide to do with it, in this case spend $200,000 to equitably take care of the Breeders' Fund, is our business and not Colonial's business.

MR. DALE: Excuse me.

MR. BURNETT: Mr. Dale?

MR. DALE: It's money that you count when you say this is what will be available for overnights, you then take it out and give it to them as well. It's only one $200,000, and it's being counted two places.

MR. PETRAMALO: We're not proposing to count it in two places. When we sit down with our gap funding money and agree with Colonial as to how much
it should be and what the necessary money is going
to be to fund the program or what the total is,
it'll be factored in. We're obviously not going to
count $200,000 if we've given it to the Breeders'
Fund.

MR. DALE: I think it's too late for that.

MR. PETRAMALO: Why is it too late?

MR. STEWART: All I can tell you is I was at
numerous meetings, and I never heard about money --
that we needed to find money for the Breeders' Fund.
I heard we needed to find money for the overnights.
So we dug deep, we stripped our stakes races, and
low and behold, two days later, we need $200,000 to
go to the Breeders' Fund. That was just kind of a
revelation, I suppose.

MR. DALE: Regardless of the source of these
funds and whose money it is and whose it isn't, the
timing is very important, and I think the
commissioners would be entertained to see how it was
spent out last year in purses and how it flowed into
the thoroughbred checking account. It left Connie
and Carol in a very serious situation, and it's not
going to be -- you know, we push it to get generated
in time to run for it every year and a lot of people
make a lot of assumptions that sometimes are valid
and sometimes aren't. And when they aren't, we suffer.

MR. BURNETT: It's tough on the track operator. Look, I'm sympathetic to exactly what you're saying, but I think we're talking about two different issues here. One is a cash flow issue of funding and timeliness issue, and the other is where these monies are going.

MR. DALE: Well, when they say this much will be generated by handle for overnights, this much will be generated by ADW for overnights. When we look at that pool, and then they go, oh, but then we'll take 200 of that ADW money and give it to the Breeders' Fund, it's all the same pool.

MR. BURNETT: And that may be true, but let me point something out. I haven't heard you say thank you yet for the extra 15 or $18,000 per day that by my calculation, correct me if I'm wrong, but $1.1 million divided by 40 days is $27,000 a day. And so if we're talking about how much we put out per day, the more of that breeders' money that goes into purses, the more is put out. Now, is there a problem with gap funding and paying them timely, sure. We need to fix that.

MR. DALE: Exactly.
MR. BURNETT: And I don't have a bit of problem -- I have no argument with that. We need to figure out a way that there's money always available as is statutorily required. We just need to get on that and figure out a way to solve that problem.

MR. DALE: And that's my concern.

MR. BURNETT: Here's what sticks in my craw a little bit for the lawyers in the room. This document, the horsemen's agreement that covers all this has a merger clause in it. It says, and you signed it, that this is the entire agreement among the parties.

Now, what bothers me is you signed the agreement, you take forever to get it done. Everybody is at impasses. They're arguing. They're fussing. They're getting it done. The ink is barely dry and it's, hey, they weren't supposed to do that. What I want you to do is point out to me in this agreement where they weren't allowed to spend $200,000 to go towards the Breeders' Fund.

MR. STEWART: Oh, they can certainly spend their $200,000. The account wagering, it is perfectly within their -- within his purview to do that. All I'm pointing out is that at the end of the day, the whole thing was kind of sleight of
hand.

MR. BURNETT: So what you're really saying is there was no illegality. It was just bad faith or I got sneakered is what I'm hearing.

MR. PETTY: I think we confirmed that Ian doesn't read my e-mails. I think that much I've confirmed today because there has been mention of this in more than one, and I realize they're frequently lengthy.

MR. BURNETT: Let's agree that we -- Jim, everybody has had a chance to say something. Go ahead.

MR. WEINBERG: I, having seen all the e-mails, would just make these observations about trying to be pejorated, and there were a lot of proposals pushed back and forth between the parties. Was the $200,000 in a proposal, certainly it was.

The discussions about alleviating one of the $50,000, those were heated and often -- are they in the agreement? No, it's not. This came to light, and I think Vic will confirm, you know, I had told him the agreement is in the process of being signed. This meeting occurred. Candidly, there was a period of time when it was not clear that the signing would proceed, but given the observation you
just made, how close we were, and the length of time it took us to get to the agreement you approved, we thought the more prudent approach was to sign the agreement, but to make it clear, there are some grievances that when we come back in May and someone says, well, gee, that's all the money you can race for, well, we know how we ended up there.

You know, we know it's going to be $200,000 less. Understand, it is the HBPA's prerogative to take that account wagering money and do whatever they would like with it. I think that's just a conclusion to draw from, that at the end of the day, we're going to have less purse funds. We just need to recognize how we got there and not sort of scratch our head.

MR. BURNETT: Again, I think this is more of what Commissioner Ferguson was saying earlier is that, you know, here we are doing the pit bull thing at a certain level, and we need to find a way to turn our energies in expanding the pie as opposed to fighting over how we're allocating the pie we have. I understand all sides of it. It's just difficult to know what to do about it.

Maybe I can carry us off on another question that I have, and that is this commitment to the way
it's always been, winners get paid the big money.
We want to go for winning and everything else, to me
is a bit like, you know, really prizing that first
class ticket on the Titanic, and here we're in the
business that is losing owners daily because
expenses are so high for them to own horses and to
participate in this game, and the few that are
hanging on -- whether it's in their own economic
interest or not. Some people I think speak against
their own economic interest and say, oh, I still
think, you know, we need to pay winners.

Part of me says, you know, okay, if that's
what y'all want, then let's give it a try. I agree
that we need to hang onto the brand. The other side
of me says, gee, you know, what's going to help
Tyler fill his gate, what's going to bring people
into the game, what's going to cause some guy down
the road that says, oh, yeah, I see you guys have
been breeding horses. I might like to try that to
try his or her hand at the Virginia racing game.

Are you going -- you know, which method of
paying down, the 10% to the winner extra, the 100%
second through sixth is sort of -- is supportive of
that notion. I'm not saying I'm necessarily
championing it. I'm just wondering what
consideration was given to it because it's -- these folks have got to pay their bills, and I'm wondering what is healthier for the industry.

MR. PETRAMALO: There are two things we did in recognition of that -- that is in recognition of not spreading it out through the sixth place finish. One is what I mentioned before, writing Virginia racing -- Virginia restricted races.

The second thing, and I believe this was Tyler's suggestion that we readily agreed to, is we're going to pay through the last place finisher. Right now you get paid if it's one through six. The winner gets under the current formula -- I believe the winner gets 57%, the second is 21, et cetera. We are going to pay all the way through last place. So even in an inexpensive race, say a 10 or a $15,000 purse, the person who finishes eighth is still going to get 120 or 150 bucks that at least covers the jock mount fee and helps with the shipping. It isn't much, but it's --

MR. BURNETT: No, no.

MR. PETRAMALO: But we're not insensitive to the concerns.

MR. PETTY: And I would add with the preface that there's no person or organization in this room
that I think other time has worked harder at making the pie bigger than me and the Virginia Thoroughbred Association. I can't tell you -- I spent the entire last two years almost doing that exclusively, and frankly, we failed miserably at it and need to get back to what Commissioner Miller suggested not too long ago and get back on that.

And I think at the other end of the spectrum is that to promote, sustain, and grow this industry, that is directed at us, and I don't think we've inflicted a thousand cuts on anybody. I think we've given and given and given and taken back quite a bit less than others. And so my group -- and that's just not my mindset, that's a little bit of my group's mindset.

So you would expect that group to want to protect back end awards and to want to have stakes races and want to open races. I wouldn't necessarily look for that group to have a real big dog in the fight, not to wear out the analogy, on the 100% Bonus, but the overwhelming majority of my members that are breeders are also owners. And when they put their owner hat on, most of the folks that I talk to and that I respect that have been in this thing, I'm not always a big fan of conventional
wisdom. I think we spend too much time in the box, but what I heard from them was that when I win the race, and whether it was Ferris Allen as a trainer or it was somebody who was an owner, if I win the race, then I want the big pay day.

I don't want to -- you know, Jill Gordon-Moore sat with me and what did she say, Frank, she won $65,000 in bonus and it cost her $63,000 to win them. So if we don't pay the winner a bonus, then her equation is going to be I won 29,000, but it cost me 63,000, you know. It's going to devalue her wins. It's going to ease some of her pain, but it's not going to help that math. I realize that's one example. It's going to help somebody else, but these folks that I heard from --

MR. BURNETT: Did you do her math, by the way, on what it would be under today's formula, the formula suggested? I'd just be curious --

MR. PETTY: I don't know how much she won and how much she didn't win, but of course, the numbers are going to change no matter what, but whatever that 115 or $16,000 shot she did have was going to become 1,500 under the 10%/100% second through sixth, and that was going to change her math in a way that was going to make what was frankly already
frustrating, more frustrating.

I heard it again and again and again and again, and it was the only -- we went through the survey results in the meeting, and we had ten different options, seven was the most anybody agreed upon. We went through the surveys that we had up on the web, and they were all over the place and they were up and down. But then when you go out and you break it down to these two issues that overwhelmingly people said pay the winner.

So it just -- it's a little bit -- part of it, I think, goes back to basic philosophy. Does every kid get a medal or does the kid that won get a trophy? It comes down with certain people to that sort of -- and it comes down to people in this game are optimistic and believe they're going to succeed. That's why they're doing it. This is my interpretation of it. I mean, I just heard enough of different stories to try and extrapolate where they're coming from. And that's where we are.

I think -- you know, I ask this Commission all the time to be cognizant of the mandate to promote, sustain, and grow the industry. And it's not promote, sustain, and grow the purse account. It's not promote, sustain, and grow Colonial Downs, and I
realize they're big factors that we need to promote, sustain, and grow in order to promote the industry.

You have to keep the industry in mind. We're frequently kind of treated like the third-class citizen who is trying to get everybody's money when, in fact, we're the backbone of this thing in a lot of ways and we contributed, contributed, and contributed. So we're trying to find a fix for our hard economic issues, and then we need as much as everybody else to get in the room and find a long-term plan.

MR. BURNETT: Another issue for the Summit, Vic.

MR. HARRISON: I was one of the folks that voted against the winners only calculation, but my only point is I worry about this asterisk that's going to be after the 100%. Currently, there's 37 percentage point spread between first and second place. Under the second through sixth get a 100% and at least a 10% bump to the winner, that would at a minimum be 27% and maybe inch up closer to 37 percentage points, but regardless that's just my -- I'm just saying that. Editorially that's what I believe, and I think it would bring more people into the gate and I was outvoted, but whatever we do,
we're going to be subject to criticism, I think, for what we put in the asterisk.

So can we really maintain the brand if we put 100% with the asterisk, and then under the asterisk we have, well, winner only, $10,000 cap per race, and when we hit $500,000, that's it for the season. You're out of luck after that. You know, how is that going to impact the sales next year when they say, well, you know, there was 100% Bonus, but it wasn't really or if we went second through sixth, it would be the same kind of thing. It just worries me that it's not really quite 100%, that this asterisk is going to get in the way of the marketing of the 100%.

MR. PETTY: I think if we can reach an answer to your question that you believe is credible and that the Commission believes is credible and everybody from an integrity standpoint is okay with the answer, from a marketing standpoint, you know, to use the Holiday Inn Express, nobody ever asks you could the guy really do surgery. I mean, marketing, branding is this big picture stuff. So as long as we have some disclosures that everybody is satisfied with, I don't think the market and the customer is gonna be -- you know, some guy is going to do the
math and, yeah, you're right. I only got an 86%
bonus, but it's still double what everybody else in
the world gets.

So I think if we're upfront, we have a
credible -- the short answer, I don't think it will
hurt the marketing component. I think people are
going to say they're doing their best. They're
trying to do what's right here. They're doing the
best they can, and for the majority of people, they
got their 100%.

I think it has to be in big letters, it has to
be disclosed, and we have to make sure everybody
knows it and early and often. When it runs out, it
runs out.

MR. BURNETT: Any questions or comments,
gentlemen?

Anybody inclined to make a motion?

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Yes.

MR. LERMOND: I don't know if the issue has
been resolved about whether there's going to be six
stakes races or five.

MR. PETRAMALO: Correct. The Jamestown issue.

MR. BURNETT: Why don't we see what the
consensus of our Commission is on the first and
second items, which would be the 100% with an asterisk and more -- two Virginia-bred races per week for the eight weeks, correct?

MR. PETTY: In the book. That's the key.

MR. BURNETT: In the book.

For what it's worth, while I like Vic may disagree or think I disagree on what might be best for the industry, I think, one, we're going to get criticized nobody what we do by a certain number of people on various sides of it, and two --

MR. PETTY: We're getting used to that.

MR. BURNETT: Yeah. And I think that we shouldn't be substituting our judgment for that of a committee that's worked very hard on this and a bunch of folks that's got a lot of skin in the game, unless we think it does violence to the mission of the program we're charged with overseeing.

So my inclination would be, fellow commissioners, to go along with the recommendation of this committee for the 100% winners only with the asterisk and two open races a week in the book. I'd be pleased to hear how the Jamestown can be worked out. I have my reservations about two year olds running in August in stakes races, but again, if that's the wish of the crowd, then I'm not going to
MR. MILLER: Are you making that as a motion?
MR. BURNETT: I can make that as a motion.

That's fine.
MR. MILLER: I'll move that.
MR. BURNETT: All right.
MR. FERGUSON: I'll second it, but you think you've got enough money to make that go through, because of the decreases in the number of Virginia-breds and the number of race days?

MR. PETTY: We put $200,000 in the back to cover breeders awards and if we have to borrow from Peter to pay Paul. The only issue Dave has is the timing, when the money is available. That's where it gets tricky.

MR. MILLER: Well, could I ask as we discuss this motion? Well, that would apply to the $25,000 Jamestown race, too, wouldn't it?

MR. PETTY: Yes.

MR. MILLER: I think I'll just move that -- unless you want to discuss the Jamestown race more.

MR. FERGUSON: Was that part of this motion, the Jamestown race?
MR. MILLER: I'm going to attempt to make it apart of it, so we can get out of here.
MR. PETTY: Duly noted and appreciated.

MR. MILLER: I would move that we adopt the 100% Bonus with the asterisk at the open Virginia races. There's seven of them; is that right?

MR. PETRAMALO: Two a week.

MR. MILLER: Two a week, and that we retain the Jamestown stakes race for two year olds.

MR. FERGUSON: Well, I have a question. Is the Jamestown race in the fully executed document that you signed?

MR. PETRAMALO: There's no reference to the Virginia-bred stakes in the document.

MR. FERGUSON: Most documents that I sign -- there's a lot of discussion before and after, most of the documents I sign say this is the agreement. No matter what we discussed before or after, is that qualification -- is that qualifier in this contract?

MR. PETRAMALO: No.

MR. BURNETT: I think there's no requirement nor is there any prohibition.

MR. PETRAMALO: The only stakes races in the contract are the Derby, the Turf Cup, the All Along, the Oaks, and I believe Zeke Ferguson, I think.

MR. FERGUSON: Who?

MR. PETRAMALO: Zeke Ferguson.
MR. FERGUSON: Who's he?

MR. PETRAMALO: Some very prominent Virginia horseman at least from the past.

MR. MILLER: Anyway, that's my motion.

MR. BURNETT: All right.

MR. FERGUSON: Does Colonial Downs have any comments on that? I mean, is this a killer? I mean, this comes out of the blue or is this -- I keep getting back to the document. Are we throwing something at them that's not in the document?

MR. WEINBERG: Throwing? The assumption in negotiating the agreement was that there were 13 $50,000 races.

MR. PETRAMALO: Twelve.

MR. WEINBERG: Twelve.

MR. PETTY: And you probably counted the Jamestown at that point.

MR. WEINBERG: Right. We did. We counted the Jamestown. So the expectation was that the Jamestown was part of the structure.

MR. FERGUSON: So if -- if we go along with this, what follows? What's the --

MR. WEINBERG: We run the Jamestown --

MR. BURNETT: It's consistent with their expectation.
MR. WEINBERG: It's consistent with what we thought.

MR. FERGUSON: Where was the money -- in other words, am I taking skin off your rear-end or --

MR. STEWART: The real question is whether there's money in the account to pay for it.

MR. BURNETT: I think that's right. Do we want to approve this until we -- that particular race until we know more about the ability to fund it?

MR. PETRAMALO: I don't understand what the ability to fund is. We before discussed it as a cash flow problem for the Breeders' Fund; that is, the Breeders' Fund would need 25,000 by whenever the race is run at the end of the meet. The representation I made was, if necessary, the HBPA will loan the Breeders' Fund $25,000 to do that.

MR. MILLER: That covers the cash flow problem.

MR. PETRAMALO: That's the cash flow problem.

MR. MILLER: That's in August.

MR. PETRAMALO: Well, the end of --

MS. RICHARDS: End of July.

MR. PETRAMALO: When the meet ended in August, it was August, but it would be the end of July.
MR. MILLER: The end of July.

MR. DALE: But at that time of year, the HBPA is so tight for cash, that 25,000 would otherwise go into the purse funding account.

MR. PETRAMALO: You don't know the financial capabilities of the board of directors of the HBPA without saying more.

MR. DALE: Well, if they're going to borrow that money -- I'm saying from an internal sources, it'll be very tight.

MR. PETRAMALO: We're not borrowing it from internal sources or at least we're not borrowing it from money that would otherwise go into the purse account.

MR. FERGUSON: So you're representing that you have --

MR. PETRAMALO: Yes.

MR. FERGUSON: Okay. That's all I need.

Second.

MR. BURNETT: The motion has been moved and seconded. 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: Thank you, folks. I'm a little
more troubled perhaps than others about Duke's concern about the flow of money. I think that's part of an integrity issue, and I'm not pointing fingers at anybody or talking about cash flow. I just think we should look at it and make sure that --

MR. PETRAMALO: Let's -- to take a page from Commissioner Ferguson, let's look at the contract. What it does is require us to sit down as of May 1st or whatever and make a good faith determination as to how much gap funding would be needed and how much is going to be available to pay purses.

MR. BURNETT: That's great.

MR. PETTY: It might borrow an extra hundred grand.

MR. BURNETT: Let's have our executive director hear the results of your May 1 meeting so that the Commission knows where everybody stands. If there's an issue, we want to know. If everybody is hunky-dory, we want to know that too. We'll just go from there. I don't think we ever want to get in a situation where folks are accusing us of not being able to pay timely purses, and I don't know that we have. I'm just saying we need to keep squeaky clean, if we can.
MR. STEWART: The track has always covered it.

MR. BURNETT: Right. And that's the way we want it and that's the way you've been in the past, and let's keep it going that way.

MR. STEWART: Well, as I said, we're not -- this year, we aren't going to do that.

MR. BURNETT: Right.

MR. DALE: We're not in a position to.

MR. BURNETT: And we're in a new arrangement that's supposed to cover all that, and so that's why let's keep a close eye on it and make sure it does.

MR. MILLER: Frank we'll cover it personally.

MR. PETRAMALO: Yes.

MR. STEWART: That's what I heard.

MR. FERGUSON: I sent Glenn $75 yesterday.

MR. PETRAMALO: That'll help.

MR. BURNETT: All right.

MR. PETTY: Duly noted and appreciated.

MR. BURNETT: We have Tyler's coupling rule is the last item other than -- no. We got Brad still. I don't want to leave him out.

MR. FERGUSON: Those poor guys. They've been sitting back there all day listening to us.

MR. BURNETT: Coupling rule. Mr. Harrison, do you want to set that for us?
MR. HARRISON: Okay. The racing secretary has proposed the uncoupling or deletion of language in the current rules that require the coupling of horses as one betting interest that share common ownership and common training -- excuse me, common trainers, and I think what this rule revision does is allows the racing secretary the freedom to uncouple those horses with respect to the training position. Is that right, Tyler?

MR. PICKLESIMER: Yeah. Different owners is just that, different owners. They're not going to be coupled whether the trainer owns a piece of one of them or not. It's just -- you know, if it walks like a duck, it's a duck. It's, you know, different owners.

There's also a little addition here, in a stakes race, allowing us to separate singular entries in a stake of 50,000 or more. Again, giving us, you know, another betting interest, maybe some increase handle, a little bit more money for the horsemen association and the stake.

MR. BURNETT: Let me --

MR. HARRISON: Do you want me to expand a little?

MR. BURNETT: If you like to, that would be
MR. HARRISON: It is my feeling that there is oversight enough from the stewards stand and from the Racing Commission, and over the totalizator and the racing itself, that the bettors don't need to be, quote/unquote, protected from themselves with respect to trying to ascertain the strategy of a trainer that has two horses in a race. I think that that's part of the handicapping process. I think that even inexperienced handicappers or bettors that are just playing numbers or colors of horses, they -- this will be transparent to them, except that if they select that horse and one of these two are trained by the same horse -- by the same trainers, and the horse happens to win, and they selected the correct one.

I'm just saying that the benefits of creating the additional wagering interest here far outweigh, in my opinion, any negative impact that might be had on an inexperienced bettor that might not understand that this trainer has two animals in a race. I definitely think the experienced handicapper or the experienced bettor understands that this is a speed horse, and this is a closing horse, and that the speed horse is probably in there and he may not be
around at the end of the race and that the closing
horse will. That's all part of the handicapping,
and that's just basic handicapping.

I'd say, you know, maybe 85% of the players at
the racetrack will understand that regardless of
whether or not these two horses are coupled as a
wagering interest or not.

MR. PICKLESIMER: It gives us, you know,
another tool that a lot of other jurisdictions have,
you know, Kentucky, California, Florida, New York is
a little different. They have to have, I think, the
same owner, different owner, like a million dollars
to split, but New York is special.

MR. MILLER: In any event, even for the
unsophisticated bettor, the program always -- I
mean, it's there --

MR. PICKLESIMER: Yeah.

MR. MILLER: -- in black and white. I look at
it -- as Vic says, you know, myself and my wife,
when we go to a race, we don't figure our bet on who
the jockey is or who the owner is. My wife goes by
the name of the horse or the color of the horse or
whatever, and the fact that -- we can see there's
three horses in the race or two horses in the race
being trained by the same trainer or two by the same
MR. PETRAMALO: I think I agree with Vic entirely, but there's even more empirical evidence to support the rightness of Vic's view.

Here's the history of the rule. Up until the 2008 meet, if you had a common owner or a common trainer, they had to be coupled. Prior to the meet last year, we changed the trainer rule. So a trainer who had two horses in the race did not have to be coupled, and we ran all 2008 with trainers with two horses being uncoupled.

What Tyler has proposed I think is a slight modification that importantly in a stakes race gives Tyler the opportunity not only to insist that a trainer run uncoupled, but that an owner run uncoupled. That's the new feature, that he can uncouple where you have common ownership.

The other less important, but it's a feature nonetheless because it's a change, is in the past if the trainer did not want to be uncoupled, he could say no, no, no, I want to be coupled, and there's a reason for doing that. I won't bore you with the explanation, but the change now doesn't permit the trainer to do that unless there are more than eight betting interests in a race.
MR. PICKLESIMER: Actually, we struck that eight betting interest.

MR. PETRAMALO: Oh, I like that. You took it out?

MR. PICKLESIMER: It just -- it gives basically the -- subsection six gives us the permission to split a different owner entry. If we struck it completely, you know, we wouldn't be able to display it.

MR. PETRAMALO: Okay.

MR. PICKLESIMER: But, you know, basically, that's sort of commonplace everywhere now. It's going to become pretty helpful to the dirt races, you know, a guy has got two in there trying to make a go, you know.

MR. BURNETT: I'll tell you what my difficulty with it is. I know the trend is to do more of it, but here we are in an industry that everybody thinks is corrupt. We're contributing to the notion, incorrect in my view, that letting horses be uncoupled lets trainers play games and not that anybody would think a trainer or an owner would play games with a race, but I think it puts the wrong image out there.

That said, I also think it helps you fill
races and that's what makes the world go round. So
I'm torn between the two positions, but I'll -- I
think I'm going to defer to the judgment of my
fellow commissioners. If they're not that bothered
by it, I guess I won't be either. We can see what
it does.

MR. FERGUSON: The amateur -- as an amateur
bettor, I can't even understand the racing form.
I've never heard of coupling until today, so it
doesn't affect the guys on the street like me. And
if it doesn't affect the guys on the street like
Clint or me who bet, you know, colors or trainer
names, things like that, and then the guy that --
the professional gambler we'll call him, it doesn't
affect him because he knows better. No harm, no
foul.

MR. PICKLESIMER: You know, we're not gonna --
this isn't a fair meet, you know. There's a
different caliber of horsemen, you know.

MR. FERGUSON: Vic has to explain a racing
form to me every time I go to a race, so it doesn't
affect me as an amateur.

MR. MILLER: This is an amendment to the
existing. I move that we adopt the proposed
amendment. If it doesn't work out, we can re-visit
it sometime in the future.

MR. FERGUSON: Second.

MR. MILLER: We'll see how it goes.

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

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: There you go. Tell us how it works out, Tyler.

MR. PICKLESIMER: All right.

MR. BURNETT: All right. Brad's turn.

MR. SCOGGINS: He just left. He's trying to catch his flight.

MR. PETTY: Mr. Chairman, I'm happy to fill his space until he gets back with a quick item.

MR. BURNETT: Did we not vote on the Breeders' Fund?

MR. PETRAMALO: Yes, we did.

MR. PETTY: There's a Virginia-bred horse scheduled to participate in the Kentucky Derby, and we are putting together a little bit of a public relations campaign to benefit him. He has a Facebook page, and he has a Twitter page. He has some hats coming and we're working on reaching into
various pots of money and trying to find ways to promote the fact that a Virginia-bred horse in the Derby. If he wins, he would be the first Virginia-bred horse since 1993 when Sea Hero won, and he would be the fifth Virginia-bred horse in the history of the Derby to have won the race.

I bring it up because we may come hat in hand, Vic is in the loop, at some point asking for some help paying for some of this. It's hard to say no when you have this kind of opportunity.

MR. BURNETT: Only come back hat in hand. Have a hat to give away.

MR. PETTY: Yeah, but I bring it up today for this reason. At some point a reporter will call you and ask you about this hopefully, especially if you win, and if an intrepid reporter asks you, and he should, why more Virginia-bred horses aren't running in races like this, then you have the perfect opportunity to have the conversation about making the pie bigger because that's the answer. At some point of our PR campaign, that will be a component of it. The reason there's not more Quality Road in the big races is because our Breeders' Fund is small, we don't breed as many horses, and it's because we have this pari-mutuel industry that is
stifled by restricted legislation.

MR. BURNETT: Right.

MR. PETTY: We will get around to the pie
growing part of the conversation at some point. So
just be aware when someone asks you that, that's
part of the answer.

MR. BURNETT: Right.

MR. PETTY: If we paid more guys more money,
there would be more of these.

MR. BURNETT: If they take the handcuffs off.

MR. PETTY: Yes.

MR. BURNETT: Speaking of -- we almost
adjourned.

MR. BLACKWELL: Right.

MR. BURNETT: Talk to us about advanced
deposit account wagering.

MR. BLACKWELL: First of all, I appreciate the
time today to speak to you. It's really a number of
issues that I want to speak to.

MR. BURNETT: For the record, Brad Blackwell.

MR. BLACKWELL: I'm sorry. Brad Blackwell on
behalf of TwinSpires. Thank you.

MR. BURNETT: I'm sorry.

MR. BLACKWELL: That's okay.

I did want to speak to a number of issues
today. One is to provide the Commission an update, where we are in the licensing process; two is to probably provide a little bit of an overview or summary of account wagering because I think there's so many times when account wagering providers get up here and we say we have an agreement in place. It's been approved. We fly back home. I just want to make sure that the Commission is aware of kind of how account wagering works. And I apologize if I oversimplify things or maybe go into some issue that you may already know, and I promise to be quick.

And then third, the reason I'm here is to make sure that the Commission is respectfully aware of its current obligation under the temporary license statute, and so I just want to make sure the Commission is aware of that. I've had numerous conversations with staff and thought it would be a good idea to get before you today to do all of those three things.

So, first of all, in terms of the history of where we are right now, I'm sure you will recall that TwinSpires was essentially forced to request a temporary license at the December 17th, 2009 [sic], Virginia Racing Commission meeting. As a result of not having a hub agreement in place with Colonial
Downs, the licensee.

Virginia is the only state that I'm aware of, and I deal with a lot of Racing Commissions and handle account wagering on behalf of TwinSpires throughout the country, but Virginia is the only state that I'm aware that requires a licensee to have an agreement with a competitor, an in state competitor, because TwinSpires does not compete with Colonial Downs. TwinSpires does compete with EZ Horseplay. We're competing for customers in the same market, and the Virginia Racing Commission essentially licenses us to do business in this market.

A big part of what account wagering does is that it provides a forum to send race signals throughout the country so that people can wager on various products, and so we carry a number of signals to various markets throughout the United States. And really what account wagering does is it provides, one, a convenience factor to people who want to wager on horses.

In fact, when I was over in the Virginia Racing Commission offices, I saw an advertisement for EZ Horseplay, which said if you're home sick, if it's bad weather, you're on vacation or at work, it
provides a mechanism to wager on horse racing. So it's providing value to the horse racing industry, because as we have seen, fewer people are probably going to racetracks. We have a younger generation of people who are more probably in tune with using a computer than they are going to a racetrack.

So account wagering, one, provides a mechanism to distribute these signals widely, and it also appeals to a younger customer base where it's more technology driven. We have a lot of our older customers at Churchill Downs Racetrack that just do not want to play account wagering. They don't want to mess with the computer. They don't know about the computer. They would prefer to go to the track, but this really appeals to a younger customer. It's something that we invested money in. We tried to produce a innovative product that we think will appeal to people, that will drive people to this industry. I know there's been a lot of talk today about what this industry can do to grow the nickel instead of fighting over the same nickel, and I think this is one way we can do this.

All reports show that account wagering is really the only growing segment of our industry. So that's why I'm really concerned with the direction
that Virginia is going, I'll get to that later, with
regards to what's happening with account wagering.

So, anyway, TwinSpires, as you know, we're
currently under a temporary license. At the
December 17th, 2009 [sic], Virginia Racing
Commission meeting, the Commission basically ordered
TwinSpires and Colonial Downs to try to reach an
agreement by January 1st. If we were unable to do
that, then we were required to go to mediation.

So we have gone through that process. We went
to mediation. Mediation was unsuccessful. And to
be honest, I was really disappointed with that
process because my expectation was that the
mediation would really bring the parties together.
I think this is what the Commission intended. Bring
the parties together, have them try to work towards
a middle ground to where we can reach an agreement
and not be in this position today.

I really did not get the feeling that Colonial
Downs went into that mediation with that in mind nor
did I feel they made a good faith effort to try to
reach an agreement and, in fact, they did not come
off of their starting point at all. Their request
of TwinSpires was to pay the same rates that we'd
been paying for the two years, plus pay an
additional $200,000. That was their position, and they did not move off that stance. So the mediator quickly wrapped up the mediation and said, you know, I'm sorry. I just think we're wasting our time, you know. I'll report that mediation was unsuccessful.

So that's kind of where we are right now.

TwinSpires is currently operating under a temporary license, and we really feel that Colonial Downs has been focused on something else besides negotiating in good faith with us. I'm sure the Commission is aware that there was a house bill recently passed which dictates a 10% statewide source market fee to be split between the racetrack, and the horsemen, and then also imposes a 1% Breeders' Fund fee on account wagering providers operating in the state for every wager taken, and then there's also a half a point that goes to the Virginia Racing Commission to handle the oversight responsibilities. Virginia was already one of the least profitable account wagering states in the country. Now with this new statute, they are the least profitable account wagering state out there. I can go through some numbers later on to really emphasize the direction that this is taking.

I think what's going to happen is that this is
going to cut off or at least stymie the growing segment of our industry. I think that's going to be bad for the industry as a whole. I think it's going to be bad for Virginia racing specifically, and I know that's your responsibility is Virginia racing. So I definitely wanted to bring that to your attention.

The other thing that I wanted to walk through is that under the statute, this temporary license statute, and I've got some copies for the Commission. I've highlighted some provisions to make them a little bit easier to read and I've also added some comments in red, kind of go through my thought process. And I'll distribute this.

MR. BURNETT: Thank you.

MR. BLACKWELL: As you'll see -- as I discussed, we went through the mediation and basically the statute states that -- and if you look at the first highlight in red, I'm going to read the next highlights written in black, which says if during the term of the temporary license, the parties are unable to reach agreement through mediation, then the Commission shall, and I'll emphasize the word shall because in law this is accepted to mean must or is obligated to, it's not a
permissive term here, specify the percentage of the
total gross handle of wagers placed with the
advanced deposit wagering applicant from within the
Commonwealth to be paid by the applicant to an
unlimited licensee and representatives of the
recognized majority horsemen's group.

So at this point, I just want to point --
again, respectfully point out to the Commission that
I think you right now have an obligation since we've
been through an unsuccessful mediation, which is
documented by Exhibit A to what I just handed out,
Exhibit A is the mediator's report, which shows that
we attended the mediation on a certain date as
requested or actually as required by the Commission,
that mediation was unsuccessful in resolving the
issues between TwinSpires, Colonial Downs, and the
horsemen's group. So I think right now the
Commission has the obligation to set this rate.

The statute goes on to talk about how this
race will be determined. It talks about what the
Commission can consider, which are, among other
factors, the contractual agreements that other
advanced deposit account wagering licensees have
with an unlimited licensee and representatives of
the majority horsemen's groups. So that was one of
the things that I wanted to point out, kind of where
we are right now.

Now, I kind of want to take a step back and
just look kind of at the economics of account
wagering in Virginia. As I mentioned, prior to this
new statute, which takes place July 1st, Virginia is
one of the least profitable states for someone to
conduct account wagering in. If you look at 2008,
there's basically a 20.4% tax takeout rate.
Hopefully, everyone understands that, but I'll kind
of go over it. Basically, of the wagers that are
placed, 20.4% comes down to kind of industry
participants, the rest of it goes back to paying
winning wagers from customers.

So if you go back and look at 2008, these are
kind of TwinSpires' numbers, which I'll kind of
round up or -- to be a little bit more being simple,
but a host track, the track who was putting on the
show that was wagered upon, averaged about 5.7 of
the takeout or 28% of the dollars available to pay
industry participants. TwinSpires paid an 8.7
source market fee, so 8.7% of the wagers went back
to Colonial Downs and their horsemen, which
represented 43 percent of the available money that
could go to industry participants. As I mentioned
before, a .5 percent went to the Racing Commission, and TwinSpires itself kept 5.5% of those wagers which amounted to 27%.

So we have the host track, who was putting on the show that was wagered upon, got 28% of the available money, Colonial Downs and their horsemen got 43% of the available money, and TwinSpires, who is bringing those races to Virginia residents, paying marketing costs, paying tote costs, paying video screening costs, paying website hosting costs, paying for our call center located in Oregon so that wagers may be taken, paying for a customer service center in Lexington, Kentucky, to handle any issues with the website, all those expenses are deducted from the 5.5%.

On the other hand, Colonial Downs and the horsemen here had to spend zero dollars on those wagers and had to really put forth zero effort for those dollars. So this is, again, to put into perspective of kind of the way account wagering looks right now in Virginia.

The other thing that I'd like to point out that TwinSpires and other account wagering providers do is that we also take the Colonial Downs signal and distribute it throughout the country. In 2008,
our numbers show that over 86% of the wagers we received took place outside the Commonwealth of Virginia. We were distributing that signal on behalf of Colonial Downs, so the overwhelming majority of those wagers were taking place outside the Commonwealth.

One other thing that I would like to point out is, as I mentioned, TwinSpires and other licensees in Virginia are competing with EZ Horseplay. So EZ Horseplay is not really subject to this source market fee because essentially they would be paying themselves. The other thing is -- so they're not subject to that same cost. The other thing is if you look back at 2008 and EZ Horseplay has enjoyed a significant less cost for host fees. If you look at it on a track by track basis, and I won't take you through that, but just, for example, one track. If you look back at 2008, EZ Horseplay paid a 3.6% host fee for Santa Anita races. TwinSpires on the other hand paid 8% for that same content. That same content was made available through account wagering to Virginia residents. So a Virginia resident wagered through EZ Horseplay on a Santa Anita race that returned 3.6% to Santa Anita and their horsemen who were putting on the show. If they wagered
through TwinSpires, they returned 8.0% to Santa Anita and their horsemen.

So as you can see, and some of this may be hard to follow, but the economics are really out of whack and unfair. And when we first entered this state, the Commonwealth two years ago, we started with zero customers. We just launched TwinSpires. We were up here -- I think it was probably April of 2007. We got our license. There was some difficulty in getting the license because we had to deal with Colonial Downs in order to enter the market, so we had to have an agreement in place.

So as we were going through that process, we finally accepted the terms. It was similar to terms that we were told other account wagering providers were operating under, and then we were told that we could not enter the state, we would not receive a license until we also agreed to make our content that was associated with Churchill Downs available to the Colonial Downs/EZ Horseplay system, essentially our competitor.

So we tried to keep those issues separate. We had no problem with providing that content to EZ Horseplay. We feel that the industry is best-served by broad distribution, and it's well-documented that
Churchill Downs along with Magna, and through the joint venture, TrackNet Media, has tried to make racing available as broadly as possible. So we've gone through dealing with the issues of certain tracks, including our own at one point, were part of exclusive agreements that were not available to all account wagering providers.

So we have gone through that process. We've made our signals available, and then this was essentially used against us later, where Colonial Downs basically said, you know, they would not sign a hub agreement with us because host fees were going up, and they wanted to blame that on Churchill Downs, that there was never a real positive to being associated with racing signals, but there was only a negative because host fees were going up, which we felt had been dictated by market forces.

So, again, my purpose here today is, one, to kind of provide a little bit more light on account wagering because, again, I think most meetings I've been apart of, we kind of roughly talk about whether someone is approved or not approved, but to provide a little bit more detail about what it takes to run an account wagering provider. It's not just a phone system. It's not just a computer. There's a lot of
hard costs associated with it, and Virginia has not been a very profitable state to operate in. When you're dealing with those types of margins, it makes it difficult to really re-invest in a particular state, to advertise in a particular state, and we think that really stifles the ability to grow this market and to create more dollars for the industry. And, again, the second thing I wanted to do was point out where I feel we are at this point. I feel like the Commission has an obligation to set a hub rate as the statute says, that this hub rate that would be set by the Commission would basically be for a year term after the one year temporary license, and so we feel that this rate would be set through the end of 2010. At this point, I'm more than happy to answer any questions.

MR. FERGUSON: Brad --

MR. BLACKWELL: Yes.

MR. FERGUSON: -- do you need Colonial Downs to exist? Do you need -- can you exist without Colonial Downs?

MR. BLACKWELL: When you say we, you're talking about TwinSpires, the account wagering provider?

MR. FERGUSON: TwinSpires, yeah.
MR. BLACKWELL: As long as we -- no, we don't need Colonial Downs to exist in order for us to have account wagering. For TwinSpires to operate, we operate in Virginia pursuant to a license.

MR. FERGUSON: Because they have the franchise to do horse racing in Virginia?

MR. BLACKWELL: Right. There's -- through the statutory obligation, we're -- under the current statute, we have to have an agreement in place with a licensee before we have satisfied our statutory requirements for a license.

MR. FERGUSON: So the state has said that you must have an agreement with Colonial Downs --

MR. BLACKWELL: Correct.

MR. FERGUSON: -- to exist?

MR. PETRAMALO: And the horsemen.

MR. FERGUSON: And the horsemen.

MR. BLACKWELL: Correct.

MR. MILLER: What are you paying now under your temporary --

MR. BLACKWELL: We are paying 8.3% of all wagers. One of the other things is -- and I'm glad you brought that up. Under our previous agreement, and I assume other agreements are like this, there was a concept in place where the ADW provider,
Colonial Downs, would essentially share in the pain of host fees going above a certain percent because it's obviously accepted that host fees can go up, so that neither party was hit with it because this is -- I think it's oversimplifying how this typically works is to say 8.3%.

I think staff can probably weigh in on this, but it's a little bit more complicated than that. It's not just 8.3%. I don't think everyone is tied to a certain percent. That was what all ADW companies averaged out to last year, and I think you basically took what was paid in source market fees and did a mathematic formula to realize what was the average. So that's not truly what probably the average is today.

MR. MILLER: Pardon my ignorance --

MR. BLACKWELL: Sure.

MR. MILLER: -- but where does the 8.3% go today?

MR. BLACKWELL: Today that 8.3% would be paid to Colonial Downs, who I think share that with their horsemen. That goes directly to Colonial Downs. They share that -- I think, and Ian can -- or someone else from Colonial Downs can verify, but I think that they split that 50/50 with their
horsemen.

MR. MILLER: One other question. This may have nothing to do with any --

MR. BLACKWELL: Sure.

MR. MILLER: Nothing to do with anything, but I was just intrigued by the fact you are paying -- again, you're paying Santa Anita eight --

MR. BLACKWELL: We're paying more than that now, but in 2008, we were paying 8% compared to --

MR. MILLER: Colonial Downs was paying?

MR. BLACKWELL: -- 3.6%, but again, they can verify that that was --

MR. MILLER: Is there some explanation for why the deviation?

MR. BLACKWELL: I don't know that there's an explanation, but I think that basically they're considered a regional ADW. So because they're a regional ADW, they're only accepting wagers in their region in Virginia. They were just afforded that because they were associated with a racetrack, and typically I think they were receiving the same brick and mortar rates for -- because they were at the racetrack, and they said, hey, this is just an extension of the racetrack, and so they received more favorable rates.
MR. PETRAMALO: Can I ask a question of Brad?

MR. BURNETT: Yes.

MR. PETRAMALO: I was under the impression that the Virginia Racing Commission had issued a six-month temporary license that expired on June 30th of this year with a fixed rate of 8.4%.

MR. BURNETT: 8.3.

MR. PETRAMALO: 8.3?

MR. BURNETT: I got the minutes right here. Six-month license effective January 1 through June 30th, 8.3%.

MR. BLACKWELL: That's correct.

MR. PETRAMALO: And your requirement or your request today is that from July 1st through 2010 that the Commission issue a second temporary license at a hub rate to be determined?

MR. BLACKWELL: No. I'm pointing out to the Commission that a provision in the statute has been triggered, that it clearly states that if during the term of the temporary license, which I think we'll all agree we're under right now --

MR. PETRAMALO: Correct. Correct.

MR. BLACKWELL: -- and I've attached as Exhibit B minutes of the December 17th, 2009 (sic), VRC meeting, which says we were granted a temporary
license. So if during the term of a temporary license, the parties are unable to reach agreement through mediation -- we sat through mediation. We were unable to reach an agreement through mediation. So that's taken place. The Commission shall -- and, again, I don't think there's any argument as to whether that's a -- provides permission. I think it provides -- clearly provides obligation that they shall specify what the source market fee would be, that's been triggered. So I don't think there's anything that takes the Commission outside that obligation.

MR. WEINBERG: There was a subsequent meeting and action by the Commission in February post mediation. The Commission received the mediator's report, took action, and set the rate at 8.3 pursuant to the statute.

MR. LERMOND: I believe the rate was set before the mediation took place.

MR. BURNETT: I thought it was.

MR. BLACKWELL: It set at the December 17th meeting.

MR. WEINBERG: Excuse me. We came back from mediation. We requested to be heard on the baseball arbitration provision. This Commission ruled that
that provision was not applicable, that it was going
to set a rate based upon the preceding sentence and
did so. Mr. Blackwell wasn't here.

MR. BLACKWELL: No. I was not privy to that
being an agenda item.

MR. WEINBERG: But it was on the agenda, and
it was done. I did not bring the minutes with me,
but I'm fairly confident that either at the January
or February meeting, this Commission reconvened and
accepted the mediator's report and took action
pursuant to the statute.

MR. BURNETT: I don't dispute your
recollection, although I recall there being some
discussion of giving Mr. Blackwell the opportunity
to speak about this issue. If I'm not mistaken, I'm
looking at the mediator's reporter right now, we did
not have in front of us the two things that the
statute requires, which are the last offer and all
that information, so we couldn't do that if we
wanted to.

MR. WEINBERG: Well, with all due respect, you
elected not to. I was prepared to provide you that,
but this Commission ruled that that was not
applicable in this instance, that the preceding
sentence was.
MR. MILLER: Question.

MR. BURNETT: Please.

MR. MILLER: Jim, are you suggesting then that TwinSpires is locked in at 8.3% for an additional one-year term from -- this says from the one-year term of the applicant's temporary license, but the temporary license ended in six months instead of a year.

MR. LERMOND: It could be a year if they extended it.

MR. WEINBERG: I am absolutely disagreeing. This Commission elected to give TwinSpires a six-month license. That's what it -- which it did at its -- I'm sorry. I believe it was at its February meeting and has taken action under the statute. So continuing -- I apologize. I don't have the statute in front of me, but my recollection is the ability to renew that license is assuming that mediation or negotiations are continuing, but we have been through the ongoing part, the negotiations, the mediation, it has ended, and the Commission awarded a six month -- a license that terminates June 30th at 8.3%.

MR. LERMOND: We did that in the December meeting. It's right here in the minutes.
MR. WEINBERG: No. I suggest to you -- with all due respect, you came back. You had the mediator's report. Commissioner Miller made the suggestion should we call Mr. Blackwell. There was some discussion of Mr. Blackwell's absence from this meeting. I'm sorry. I don't have the transcript.

MR. CANAAN: I think that was February.

MR. PETRAMALO: Well, it had to be February because I was not at that meeting.

MS. RICHARDS: Frank wasn't there.

MR. PETRAMALO: The mediation was on February 2nd in Richmond.

MR. WEINBERG: Right. The report was published before the meeting because I remember forwarding it to Mr. Harrison before the meeting. If you have the transcript of the February meeting, I think it will --

MR. FERGUSON: So based on that?

MR. WEINBERG: Well, I would suggest to you -- my reaction is I disagree with about 85% of everything Mr. Blackwell has said. If you are asking me what is the procedure, I believe this Commission have taken final action, the 30 days for appeal has run, and if it is inclined to reconsider the license application, I would suggest an informal
fact-finding conference needs to be scheduled and the parties need to be heard.

MR. MILLER: Okay. So you are suggesting that as of June 30th of this year, their license as an ADW; is that right?

MR. BLACKWELL: Yes.

MR. MILLER: Provider ceases in Virginia?

MR. WEINBERG: Correct.

MR. MILLER: They can no longer operate in Virginia.

MR. WEINBERG: They can come to the Commission.

MR. MILLER: They can come back and ask for a license.

MR. WEINBERG: They do not need a contract with Colonial Downs. The statute makes it clear. You pay the rate set forth in the statute. You get a license. So the infirmity that Mr. Blackwell complained about is gone. Don't have to talk to us. Don't have to talk to the horsemen.

MR. MILLER: And they would be tied to the statutory rate that the legislature set in the last session or whatever session of the General Assembly it was, which is?

MR. PETRAMALO: Ten percent.
MR. MILLER: Ten percent.

MR. BLACKWELL: Ten percent, plus 1% to the Breeders' Fund, plus a half percent to the Commission. So essentially 11 and a half of the 20 that's available would go to Virginia in some form or fashion.

I will state for the record that we, one, question the validity of the statute and the way it works. We think it has serious constitutional issues with it. So I think that no one is surprised by that. I'm sure that others will agree in that stance.

The second thing I would like to say is that, one, I was not privy that action had taken place in February. I was aware that and was at the meeting in December where a six-month temporary license was issued at a rate of 8.3%. No change has been made since that point. We engaged in conversations with Colonial Downs as required by the Commission. We attended mediation as required by the Commission. I was informed by Mr. Weinberg at the mediation that he would merely inform the Commission that mediation was unsuccessful. There was no discussion of taking any type of further action. So if something occurred, you know, again, I don't think that this
process has demonstrated a good faith effort by Colonial Downs. I think what it's shown is a desire to basically push TwinSpires out of the market.

There was -- in December, there was a request to deny us a license in general, and as you may recall, we discussed the consequences of that, one, we had the ability to request a hearing if that took place and, two, if we were denied a license and unable to take wagers, then our customers would migrate to other places, including EZ Horseplay.

So it's obviously, you know, an attempt, you know, to put us out of business, put us out of the state. Under the new statute, which they have pushed, leaves nothing for account -- an out-of-state account wagering provider. I'm sure that Mr. Scoggins on behalf of XpressBet can basically speak to the economics of that as well.

And that's where I suggest respectfully that -- I'm really concerned with the direction of Virginia racing because I think you're taking companies, out-of-state providers who are investing in the technology, investing in websites, investing in things that are going to drive customers to our store and you're basically forcing them out of the market or you're decreasing the margins to the point
where they cannot do that. They cannot compete with
things.

As I will also point out, there will be other
forms of wagering that we will be competing with in
the future. There's already discussions of online
poker in California right now, and right now account
wagering is the arm of the industry that has the
opportunity to compete with these other forms of
interests and account wagering is obviously
returning, you know, money to the industry. I don't
think anyone will dispute that. When I go back and
look and we went from zero customers and zero
dollars in 2007 to 2008, we paid, you know, about
$720,000 to Colonial Downs.

MR. FERGUSON: So I'm hearing two things. You
now do have the right to work outside of the
parameters. You could cut a deal directly with the
Virginia Racing Commission, is that --

MR. BLACKWELL: No.

MR. FERGUSON: And pay ten point something
percent, or are you still forced to go through
Colonial Downs?

MR. BLACKWELL: Right now we're currently
operating under the current statute, and so that's
what we're dealing with today. I feel that, you
know, right now regardless of what's happened in a separate meeting, I think the Commission has an obligation whether they -- I wasn't there to understand if it was properly explained. I wasn't there to understand what took place. I'd be more than happy to read minutes and try to catch up, but I still think that it does not take away the obligation.

MR. MILLER: Let me see if I can boil this down to what our choices are here today.

MR. BLACKWELL: Sure.

MR. MILLER: One choice would be, and correct me if I'm wrong, I'm not saying this is the choice we made, but let me know if this is off the wall.

One choice is what you're suggesting is in accordance with the statute that is now written and in light of the statute that was passed that becomes effective July 1, what you are seeking here today is that the Virginia Racing Commission set a hub rate for you today under the old statute that would run for one additional year as a, quote, temporary, unquote, license for an additional year at whatever hub rate we would set --

MR. BLACKWELL: Correct.

MR. MILLER: -- regardless of the statute that
was passed that goes into effect July 1.

MR. BLACKWELL: Right.

MR. MILLER: And in that event, what we would be doing is deferring your -- make your objection for an additional year because in an additional year, you know -- well, in an additional year, you'll be back saying, you know, that statute that was passed that goes into effect July 1, 2009, is unconstitutional, et cetera, et cetera, et cetera. Right?

MR. BLACKWELL: Right.

MR. MILLER: So that's your best case scenario today if we set a hub rate that's satisfactory --

MR. BLACKWELL: Well, right now I guess we're operating under the current state, and I was never under the impression -- and I've had numerous conversations with staff -- that anything had changed. We were still operating under a temporary license. This obligation does not go away. The fact that maybe the Commission chose not to take action does not alleviate the obligation. It does not say you have a certain --

MR. MILLER: You're asking us to comport with the statute.

MR. BLACKWELL: Absolutely.
MR. MILLER: That's the law.

MR. BLACKWELL: Absolutely. I don't think it has a -- again, I wasn't privy to this meeting to know what was discussed, if the Commission discussed, well, we think shall means something else. I don't know what, but I think when you read the statute, it's very clear what the Commission's obligation is.

MR. MILLER: Can I just continue?

MR. BURNETT: Please.

MR. MILLER: I would point out that that would be your best case scenario, and then your worst fear scenario under that, even under -- if we operate under today's statute and do what you suggest, set a hub rate today that would run for an additional year to keep you as a temporary licensee under whatever hub rate we set today --

MR. BLACKWELL: Right.

MR. MILLER: -- for an additional year --

MR. BLACKWELL: Right.

MR. MILLER: -- would be that the Commission would say, okay, we're going to set a hub rate for this additional year, but in light of the fact the Virginia legislature has passed a law that goes into effect July 1 --
MR. BLACKWELL: Right.

MR. MILLER: -- that sets forth what they describe as an equitable, fair rate --

MR. BLACKWELL: Right.

MR. MILLER: -- for out-of-state providers, that we as the Commission feel that we should take cognizance, judicial notice, whatever you want to call it of what that wise legislature did, because they always know what's best --

MR. BLACKWELL: Right.

MR. MILLER: -- and therefore, we would just simply impose what they set forth in the statute that goes into effect July 1. And then you go on the attack immediately instead of waiting for one year, I would suggest, because we would be setting an 11 and a half percent rate and to say that's what -- you know, that's the heart -- the moral soul of Virginia has spoken. We're just going to pass it on.

MR. BLACKWELL: Right. And I appreciate your comments, Commissioner Miller, and I would like to say two things on that. One, I would disagree that the 11 and a half percent as I mentioned before and alluded to, I disagree that that is an equitable and fair percentage.
MR. MILLER: Don't take me wrong.

MR. BLACKWELL: Right. I understand.

MR. MILLER: I certainly don't contest that.

MR. BLACKWELL: My second point is the statute is also clear, and I'll read from it again. In setting this rate, the Commission shall consider among other factors, and granted that's wide open, but the contractual agreements that other advanced deposit account wagering licensees have in place.

So I think, you know, you're required to take a look at that, and I think the thing is I felt like TwinSpires has been kind of singled out, as I mentioned, and Mr. Weinberg can, you know, disagree with 85% of what I say and maybe I'll increase that factor here, but I really felt like Colonial Downs did not want us to have a hub agreement.

Now, why would they not want us to have a hub agreement? Only two things make logical sense, because I think we bring value to this market. I think we bring a strong brand name. I think we bring a quality product that Colonial Downs has benefited greatly from. In fact, they've benefited economically more than we have from our own product, our own connections in this industry. So that doesn't make a lot of sense. It's one of two
things. Either they want to eliminate us as
competition and have people use their EZ Horseplay
system or they were wanting to keep us from having a
hub agreement so that we are subject to this new
statute come July 1.

I just don't feel like they put forth a good
faith effort. To me, they held out. They didn't
want us to have an agreement, and they weren't
required to give us an agreement. There's nothing
that requires them to have an agreement, but this
has been a problem in the past, and I think that's
why this statute is in place.

There is people here with a lot more history
on this subject that I am. I've been, I guess,
coming to these meetings for about two years now,
but this language was in place before. I almost had
to use it the first time we tried to get a license
here because I could not get a hub agreement, then I
had to use it two years later.

So I think this statute is in place to prevent
someone like a TwinSpires, who's coming in, who's
been a good corporate citizen, you know, for two
years, who has paid their way, has grown their
business, who's invested in the industry, from being
held out of the market and also held out at rates
that are unfair. I think there's many things in this statute that were well thought out, and I think that this statute is in place to allow someone to come in and not be held -- kept out of the market. That's the statute that we have before us today. Again, I could disagree with, you know, whether it should be in place all together, but that's what I have before me and the only thing that I can discuss in front of this Commission today.

MR. MILLER: To save some time, should we consider today or shortly or sometime within the next few weeks time frame, if we were to decide that we agreed with you, that you should be granted under this statute --

MR. LERMOND: Right.

MR. MILLER: -- that one year additional temporary license, this is directed at -- the 8.3% is an accurate reflection now of the average of what various out-of-state ADW providers are paying.

MR. LERMOND: When I gave you the 8.3% in December, that was based on the first three quarters of 2008. That was the most current information I had because I calculate it quarterly.

MR. MILLER: So you would look at that again.

MR. LERMOND: I may look at it again, but I
think the statute says that you have two choices.  
A, the advanced deposit account wager's applicant  
best offer or the best offer of the unlimited  
licensee.

MR. BURNETT: Gentlemen, let's get some focus  
on this. The statute may be well thought out and  
all the nice things that Brad has been saying about  
our legislature, but they were thinking ahead of me  
because I'm having some difficulty reconciling a  
couple of sentences in this statute, and I'll  
preserve my criticism of those who write them for  
another time, but help me with this.

In the -- it says if during the term of the  
temporary license -- we granted a temporary license.  
If during the term of a temporary license, the  
parties are unable to reach agreement through  
mediation, the Commission shall specify a  
percentage, all right, et cetera, et cetera, et  
cetera, to be paid. In doing so, we shall consider  
these various factors of the contractual agreement,  
right? That sounds like some discretion that we  
give -- you know, come up with some number that's  
fair. It sounds like it's a charge to be equitable  
to me, then the following sentence says that the  
percentage shall be the best offer made by either,
one or the other. Now, which is it? Those two --
help me out.

MR. WEINBERG: This is what was determined in
February. I can only --

MR. BURNETT: Thank you.

MR. WEINBERG: That what was applied was C.
Not what you're looking at in A. That if a
temporary license is granted, which is what the
Commission decided to do, then the temporary license
shall pay to the Commission the one-half based upon
the average. That was the Commission's conclusion
in February, that C applied. Not the sentences you
just read.

The interpretation then was at the conclusion
of this temporary license, if the parties still have
not reached an agreement during the term of the
temporary license, then for the renewal license,
this baseball arbitration provision applies.

MR. BURNETT: For the second six months?

MR. WEINBERG: Whatever the term the
Commission decides it shall be.

MR. BURNETT: Help me now.

MR. WEINBERG: Well, then the -- well, no.
Then you have to give a one-year license, because
that's what the last sentence of A says.
MR. BLACKWELL: Once you have unsuccessful mediation.

MR. WEINBERG: No. That is not what the Commission --

MR. LERMOND: Once the year is up.

MR. WEINBERG: Once the first temporary license expires.

MR. FERGUSON: Which is June 30?

MR. WEINBERG: June 30.

MR. CANAAN: And the reason it was June 30 is at the February meeting, you had received a legislative report on a pending house bill that may take effect July 1st. So you specifically said, oh, if that happens, we need to go to June 30.

MR. BURNETT: Because it's a six-month license?

MR. CANAAN: Correct.

MR. WEINBERG: That's right.

MR. CANAAN: Because there may be a new statute July 1st, and we'll cross that bridge when we get to it.

MR. BURNETT: Yeah. And maybe those of you that are involved with the legislature and interpreting what -- you know, how they write, I'm not sure I understand in plain English what it
means, shall be effective for one year from the
one-year term of the applicant's temporary --

MR. FERGUSON: It made the assumption that we
gave them a one year temporary.

MR. LERMOND: Six-month term, correct.

MR. BURNETT: It says from the one-year term
of, is it from the beginning of the one-year term or
from the end of the one-year term? I know which way
each side wants to read that, but it's opposite ends
of the spectrum. To me, it just invites multiple
interpretations.

And is the one-year term of the applicant's
temporary license, does that mean the sum of two
six-month licenses? Is that what we're talking
about?

MR. BLACKWELL: Right.

MR. BURNETT: There is no single license. He
got one six-month license, and he gets another
six-month license. You have two licenses during
that period of time, and they refer to it as a
one -- a one-year term of the applicant's temporary
license in the singular. There never was a one-year
term.

MR. BLACKWELL: If I may --

MR. BURNETT: To me, it's not well-written and
it just makes it that much more difficult for us to work with.

MR. BLACKWELL: To me, the spirit of the statute, it talks about, you know, a six month and it talks about a one year. It talks about an additional one-year term. So essentially in this situation, it provides -- again, I think the spirit of this is to keep someone from being kept out of the market. And that's clearly, you know, what is going on now and now it's complicated by the fact that there is a statute out there that provides an even greater economic advantage to Colonial Downs here.

MR. FERGUSON: Does the state of Virginia have the right to keep you out of the market?

MR. WEINBERG: Can I -- I mean, we've been accused of bad faith I think half a dozen times. I would like to respond to our motivation.

MR. MILLER: I don't think -- does anyone want to hear a response to that motivation?

MR. WEINBERG: Okay. Fair enough.

MR. MILLER: I always assumed -- when I was a judge, I always assumed, you know, you have the complete and absolute mirror image counter argument to everything he says.
MR. WEINBERG: Fair enough.

MR. BURNETT: What I would like to focus on, gentlemen, particularly given the late hour is what this Commission's obligation is, if any, today.

MR. FERGUSON: That's why I asked the question.

MR. BURNETT: What obligation do we have and, Brad, through no fault that I'm prepared to weigh against him was unaware or was not here, and I will read you the note in the minutes from the February meeting.

A discussion ensued about the TwinSpires temporary license. Mediation was held on February 2nd that did not result in a settlement. Chairman Burnett made a motion to continue the temporary license of TwinSpires until July 1st, the date of the new ADW legislation ostensibly goes into effect. The motion was seconded by Commissioner Miller and carried unanimously.

Just so everybody knows where we stand, we as a Commission in February said TwinSpires got a license at 8.3% from now until June 30th -- well, July 1st here.

MS. BOUZEK: If I can say in March, Mr. Weinberg stated that that needed to be changed
to June 30th.

MR. BURNETT: I think the only thing we changed, so we don't send Vic across the way again.

MR. WEINBERG: I think if you checked the transcript, Mr. Canaan made that observation, that it should be June 30th.

MS. BOUZEK: Or one of the two lawyers.

MR. BURNETT: Made that observation in February?

MR. WEINBERG: In February.

MR. BURNETT: And apparently we ignored him, how could we have done that?

MR. CANAAN: I can't believe it.

MR. PETTY: First it's ever happened.

MR. WEINBERG: My impression is that the Commission has no obligation to do anything today. It has granted its license, a temporary license. If TwinSpires wants to file an application for a new temporary license or an extension of a temporary license, I suppose the Commission could entertain that between now and June 30th.

MR. BLACKWELL: If I may --

MR. WEINBERG: But I would suggest to you after June --

MR. PETRAMALO: Well, let me make a couple of
observations. First of all, it's clear that my
hiking in the Himalayas in February completely
screwed up everything because I missed that meeting.

MR. BURNETT: You would have fixed it.
MR. PETRAMALO: I would have fixed it.

Seriously, it's interesting. It's interesting
that -- the point that Brad raises is very
interesting and maybe -- I would suggest the
Commission doesn't need to do anything today, which
is not to say that that is denying Brad's request,
but maybe you ought to ask for formal written
position papers from the parties because this is the
first time that I've even thought about this as an
issue that Brad is raising, and then you can take it
from there. And at the very least, we could take it
up at the next meeting after everybody had the
opportunity to read in writing what everybody else
has to say on the issue.

MR. BURNETT: When you say position papers,
you're speaking of legal position --

MR. PETRAMALO: Yeah.

MR. BURNETT: -- as opposed to last offers and
all that?

MR. PETRAMALO: No, no. Legal positions.

What the legal status is of the temporary license
with regard to TwinSpires -- the issue with regard
to TwinSpires.

MR. FERGUSON: That's why I want to get back
to my question. Is the state of Virginia required
to let you operate in the state of Virginia?

MR. PETRAMALO: If they meet the licensing
requirements.

MR. FERGUSON: They're required.

MR. PETRAMALO: Oh, yeah. Possession of a
license issued by the Virginia Racing Commission is
essential in order to operate in the state of
Virginia.

MR. FERGUSON: We're required to give him a
license?

MR. PETRAMALO: Only if he meets the licensing
requirements.

MR. CANAAN: Yeah, if he meets the statutory
requirements.

MR. FERGUSON: We are required, not we have
the option to --

MR. PETRAMALO: No.

MR. FERGUSON: -- or we may.

MR. PETRAMALO: If they meet all of the
criteria under the statute, you're required to
license him.
MR. FERGUSON: It's like zoning only easier.

MR. PETTY: Excuse me?

MR. FERGUSON: It's like zoning only easier.

MR. PETTY: If I may also point out, one issue also on this is -- all these issues about who should charge what and repayment will be resolved either between the parties or through the statute or whatever at some point, but what concerned me when we went through this process about temporary licenses is if Commissioner Miller's best case scenario for TwinSpires were to unfold, then TwinSpires would, by the virtue of having this temporary license, avoid making any contribution to the Breeders' Fund until whenever it expired in 2010.

I think that is a weapon that every company is going to come in and endeavor to use in order to not have to pay the Breeders' Fund 1% and having sat here through one hundred million dollars of ADW with no contribution -- TwinSpires, for example, had they been required to pay that 1% when they first got their license would have contributed $100,000 roughly. They paid 700,000 to the horsemen and Colonial. If you do the math, it would be about a hundred grand to the Breeders' Fund.
In their current license, beyond the parameters of the recently enacted legislation, I think they have an opportunity to say, "We don't have pay until our temporary license has completely expired." I think other companies will come in here and try similar strategies. I just throw that out to further muddy the waters.

MR. BURNETT: I can add a little clarity to some of this. Jerry did point out that the motion should be through June 30. I amended my motion to say until the statute takes effect if the governor signed it. So I think the motion as it stands from the February meeting was through June 30th at midnight.

We also said that -- I'm quoting, 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 or legislature will go in 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.

So that was what I was remembering, that we were trying -- because Brad wasn't here, we wanted
to provide him and his company the opportunity to
come here and say, you missed it. You should have
done it differently under the statute, which
especially is what I'm hearing today.

MR. BLACKWELL: Right. And if I may,
Chairman, I have a copy of the December 17th meeting
minutes, and I was reflecting back upon those, I was
at that meeting. And in issuing the temporary
license, the motion that you made, Chairman, was
that we be granted a six-month temporary license,
and there was two conditions. One, that we try to
work something out before January 1st; the second is
that we would participate in mediation.

Then the motion went on to state that if
mediation was unsuccessful, then the Commission will
determine whether to revoke our license. It didn't
talk about taking other steps. So I think at the
February meeting, the Commission was merely
following up with the motion that was passed in
December, to acknowledge that the mediation was
unsuccessful and decide whether you were going to
revoke our license at that point in time.

MR. BURNETT: I think that was our intention.
I think that was our intention was to continue the
statute quo.
MR. BLACKWELL: Right. Right. And so I disagree with Mr. Weinberg that that February meeting was anything other than that, and it seems like the minutes that you were reading back into the record did not reflect any further action or contemplation of what the statute requires. And that's why initially I was going to be on the agenda last month and actually trying to make an effort to work out something with Colonial Downs during that time through TrackNet Media and we were unsuccessful, once again, in trying to reach some type of hub agreement.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Please.

MR. MILLER: Following up on what Glenn -- I think Glenn just stated. And since you highlighted the portion in there where we indicated that TwinSpires should have the opportunity to come back to present whatever they want to present to change the circumstances that we imposed on them before or accept or whatever they were going to do, I suggest that we set for our next meeting in May for further discussion of this matter and that hope -- and TwinSpires in the meantime and that Colonial Downs in the meantime, anyone -- any other party in the
meantime present us with legal briefs as to what they think this Commission -- candidly, what this Commission must do or what this Commission should do.

MR. FERGUSON: Would Commissioner Miller be willing to be a mediator?

MR. MILLER: No. I can't even get my daughter straightened out.

MR. BURNETT: Well, I agree with Mr. Miller. I'm concerned about this question of what affect the statute, new statute going into effect on July 1 will have on existing contracts, which is one class or group of ADW providers, and then that class of one, TwinSpires with its temporary license will go up until the second before the statute goes into effect. And what, if any, action we can take prior to July 1 may affect either one of those or both of those classes and what action we can or can't take after July 1.

I think, Jim, you said earlier, I'm noticing in the transcript that it was your view that after July 1, we would probably divest of any jurisdiction to make any decision about these licenses outside of what's said in the statute. I just think it's something that we -- I think Commissioner Miller is
appropriately anticipating that this could turn into
something of a hornet's nest of why not and try and
deal with it now before July 1 rather than make it
that much more difficult after July 1.

MR. FERGUSON: So any agreements we have would
be grandfathered after July 1?

MR. BURNETT: That's the question.

MR. PETRAMALO: Well, that's interesting,
because then you would -- it would seem to me have
to expand the scope of the interested parties.
You'd have to request a brief or a position paper
from all the currently licensed ADWs in addition.

MR. MILLER: You know, that's a good point,
Frank. I'd like to hear from every licensee.

MR. PETTY: There's only three.

MR. MILLER: Well, whoever they are. I would
like their observation about what this legislature
did.

MR. BURNETT: I was listening with one ear
while I was reading the transcript and, Glenn, I
thought I was hearing him say others would come in,
and I think --

MR. PETTY: I certainly would if I were them.

MR. BURNETT: Trying to hold the contract in
place until it expires.
MR. PETTY: Until it expires, that's what I would do.

MR. MILLER: Because they're going to want to know what -- how this is going to eventually affect them. So I would suggest that we give them notice --

MR. BURNETT: I'm looking down towards our counsel for perhaps drafting that notice and request to all.

MR. PETRAMALO: You've got XpressBet, YouBet, TVG, EZ Horseplay is already here, and TwinSpires.

MR. MILLER: We'll have to set it up as a formal notice for a formal hearing with counsel and all that.

MR. BURNETT: If need be, we can e-mail back and forth to craft what we believe the precise legal questions are that we would like the applicants to address.

MR. MILLER: Yeah.

MS. DILWORTH: Yes, I can do that.

MR. BURNETT: You can propose that to us. We won't make any changes.

MR. PETRAMALO: Interesting.

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

MR. SCOGGINS: Greg Scoggins with XpressBet.
I have a formal question more probably for counsel than for the Commission, and that is what would be the formal basis for the request by the Commission. I haven't heard of any formal proceeding that would be at issue. I mean, there's no parties joined at this point.

MR. BURNETT: The controversy had --

MR. SCOGGINS: It's not a contested case for purposes of the various pleadings that Commissioner Miller has raised. In other words, I would see it more as each party state their case and put it in front of us and let us cogitate over it as opposed to there being some kind of formal proceeding over which you could mandate, subpoena, do things of that nature.

MR. PETRAMALO: I kind of agree with that. My suggestion was we just get the ball rolling in terms of finding out what the position is of each of the affected parties before you have to make a decision of whether or not to go forward with formal proceedings, et cetera.

MR. BURNETT: What is the longest notice we have to give for a formal hearing? Thirty days?

MR. WEINBERG: If you're doing an informal fact-finding conference, I think it's reasonable
notice. I'm not sure. It's no more than 30 days.

MR. BURNETT: Right. If that's the case, it strikes me that we could burn that bridge when we get to it at our next meeting and just see where we are from looking at these legal briefs, and then at that point after looking at all this, we feel compelled to have a formal hearing, we could still get one in June and issue a formal ruling if that's indicated.

MR. PETRAMALO: I'm not familiar with the state procedures, but isn't it just simply a matter of the Commission writing a letter to each one of its licensees saying this statute is passed. We'd be interested in hearing from you what affect, if any, it has on your existing license and your contract with Colonial and the horsemen? Can't you do that?

MS. DILWORTH: Yeah. I think we can do that.

MR. BURNETT: I think we can do that.

MS. DILWORTH: I think that it would probably be more appropriate to simply invite comments or invite legal basis on which each entity, if they so wish to express an opinion, as to the statute's affect on them and argument in support of that, but I will say that the attorney general's office has
looked at it and does have its own analysis as well.

MR. BURNETT: It's a head start. Good. That will be helpful.

Greg?

MR. SCOGGINS: I guess I'm still puzzled by the fundamental question, which is you're going to seek input from folks, and then to what end?

MR. FERGUSON: You're looking for a spark?

MR. SCOGGINS: No. I can tell you what our position is going to be today, and I can provide you with the information. My question is with the benefit of whatever writings we submit, whatever writing Colonial submits on behalf of itself and EZ Horseplay, et cetera and so forth, what's the end game?

MR. FERGUSON: To help us.

MR. BURNETT: Well, come July 1 will we not be urged to take or sometime into July urge when the first payment is due, when it doesn't constitute 11 and a half percent, I think someone is going to be urging us to lower the boom on those that don't pay the 11 and a half percent, at which point we'll have to make a decision on.

MR. SCOGGINS: There's any number of scenarios, but at that point in time you'll be faced
with a formal hearing again, and there will be all of the presentation of the evidence again. I think it would be a bit of a duplication of effort on your part to have an informal discussion on this with all that information only to be overwhelmed with it yet a second time when it comes to an issue of legal -- that has binding legal impact.

It's one thing for us to engage in discussion of, well, we think it might be this. We think it might be that. Obviously, the AG's office has an opinion that hasn't been shared yet, and that's appropriate because it's part of legal advice. Colonial has a view they haven't shared yet. We've kind of shared our view, but it's one thing to talk about it in context of a friendly discussion. It's another thing to talk about it in context of a contested legal case that has implications that affects contracts that are already in place.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Go ahead.

MR. MILLER: If the other providers don't want to participate, we certainly do have a -- we have an issue before us right now with TwinSpires. It's important to TwinSpires. And so I think if -- I think we need to set a hearing for May as to
TwinSpires' request. I mean, obviously, they're requesting an extension of a temporary license; is that not correct?

MR. BLACKWELL: A request for the Commission to follow its statutory obligation to set a rate for one year past the one-year temporary license.

MR. MILLER: As they interpret this statute, so we're going to set a hearing on that motion, on that request, aren't we?

MR. BURNETT: I don't have a problem with that.

MR. MILLER: So what I'm suggesting, he's going to have his lawyers come in with their stuff, I assume Colonial Downs will want -- they can either respond or not respond with their stuff, Frank can participate with his stuff if he wants to, and anyone that doesn't want to participate, feel free not to, but we're going to have to make a decision on TwinSpires.

MR. BURNETT: Well, go to the other class of ADW providers or licensees out there, it strikes me that this is the closest the litigant is going to getting an advisory opinion and from a tribunal.

MR. MILLER: Exactly. They can either participate or not.
MR. BURNETT: They will give them a head start on -- and maybe they can talk us out of a position that the attorney general has helped us with or talk us into something, but it seems like it might help you as much as hurt you, but proceed as you be so advised.

MR. MILLER: Mr. Scoggins says there's no issue. There may be no issue for you at this particular time, but seeing what's been raised by TwinSpires, if I were your attorney and I saw this coming up on the docket of the Racing Commission, I would certainly want to intervene in some fashion to participate in this hearing.

MR. SCOGGINS: Please don't misunderstand my statements as someone who's running away from a fight. There is a real issue out here that affects TwinSpires potentially in a much different way than those who have licenses, permanent licenses in place for this year. The extent to which your ruling as it affects TwinSpires' license on our licenses will be considered, and to the extent we feel the need to either intervene or file amicus briefs or things of that nature, then we will do what we feel is appropriate.

There is a separate issue that probably from
the standpoint of -- for all the benefit of the
lawyers, there's probably some collateral estoppel,
res judicata issues that wouldn't apply because you
don't have identity of parties such that any ruling
as it applies to TwinSpires, may not necessarily
apply to us, although it would be informative to us
to see where you all are going. So we may choose a
different course than to participate in the
proceeding based on what we feel is our best
judgment. YouBet, obviously, I'm not going to speak
for them, they have that same decision to make, as
does TVG.

MR. HARRISON: Mr. Chairman?

MR. BURNETT: Please.

MR. HARRISON: Isn't it true, though, at some
point all of the out-of-state ADW providers are
going to have to make a decision whether or not
you're going to continue to do business here in
Virginia by paying the 11 and a half percent? Even
if you get a temporary extension and your contract
runs through another two years or however long it
amounts to, at some point that's going to be the
bottom line, that's going to be where the rubber
meets the road. Just to put it in perspective,
No longer does there need to be a contract in place after July 1st between the ADW providers and the unlimited licensee here. Really, as long as they're willing to pay the 11 and a half percent, the 10%, and the 1%, and the half percent, they can do business here as an ADW provider as long as they pass our requirements.

MR. SCOGGINS: I think Vic makes a good point, which is the 800 pound guerilla sitting in the room, and that is when and if as it relates to each individual ADW provider, the law mandates that they pay 11 and a half percent back to the state, seven, 8, 9%, 6% to the host track, so that they're left with one and a half percent leftover, do they remain in the state -- in this state in the current form that they are? Does the 1% to the Breeders' Fund materialize? Does the 10% source market fee materialize?

I see it as an opportunity for us between now and January 1 to revisit the whole wisdom of whether that was the right way to approach it, potentially coming up with alternative language before January 1 comes, assuming -- making an assumption on my part that may prove to be mistaken, that the effective date of the legislation doesn't take place until new
licenses are issued as of January 1.

MR. BURNETT: July 1, you mean.

MR. SCOGGINS: No, no. The effective date is July 1, but we have a license that was issued effective January 1 of this year. So the question is to what extent this July 1 effective date impacts a license that was granted -- that started on January 1 of this year.

MR. FERGUSON: That's the grandfather question.

MR. BURNETT: Right.

MR. SCOGGINS: Yeah. It's a grandfather question of different magnitudes depending on the contractual --

MR. BURNETT: And in fullness of all the discussion included is the provider, the licensee's decision whether or not to live with what they may perceive as an onerous source market fee or fight the statute.

MR. SCOGGINS: There are numerous options --

MR. BURNETT: There are basically three choices or four.

MR. SCOGGINS: There are numerous options available to an ADW provider once they are hit with the reality of the statute's obligations, whenever
MR. BURNETT: Whenever that may be.

MR. SCOGGINS: So the question becomes to the extent of growing the pie, as we've talked about, what is necessary? Is there a different approach that needs to be taken even as to the statute that would prevent us not from -- that would eliminate the risk that not only is the pie being distributed in an inequitable fashion, but is shrinking because if my recollection is correct, there was about $50 million in ADW handle last year through 2008, that overall handle in Virginia has grown larger as a result of the ADW handle. To the extent that you lose any of that handle, you lose tax money, you lose money to the track and the horsemen, and you will lose Breeders' Fund money to the extent that the statute applies to that.

MR. PETRAMALO: Let me make a final comment here under category of "Don't Cry For Me Argentina." TwinSpires and XpressBet to a lesser extent are crying because they have to pay 11 and a half percent to support the Virginia horse racing industry, but ask them what they pay in source market fees in the other 38 states where they operate, it's either zero or substantially -- and
I'm underlying that, substantially less than five percent.

So go someplace else and make money, put it in your pocket, come to Virginia and make a little money, don't complain.

MR. WEINBERG: Can I just make a procedural request? If the Commission is to order a fact-finding conference for May, in the past we have set procedures of when parties need to file written documents and responses thereto. It would be helpful just to have some calendar out there so that things aren't filed at the last minute, and there's not an opportunity to really digest them.

MR. BURNETT: I'm unclear whether we agreed we were going to do the fact-finding root at our next meeting.

MR. WEINBERG: I misunderstood. I thought we started down that. With respect to the TwinSpires' request to extend a license, that that was being subject to a -- what is called a formal hearing.

MR. BURNETT: You need some brief reply dates.

MR. WEINBERG: That's all I'm suggesting.

MR. MILLER: In other words, they're going to set forth their best case in writing, and then you're going to respond and they're going to put
your best case in writing. They're going to respond, right?

   MR. WEINBERG: Right.

   MR. MILLER: So you want to --

   MR. BURNETT: Mr. Blackwell, what's the earliest date you can submit your initial brief?

   MR. BLACKWELL: I'll have to -- I'll get back to you on that, Mr. Chair.

   MR. BURNETT: What we want to do, I think, is allow 10 days at least for Colonial Downs to respond, five days for you to rebut, and seven days for the Commission to receive and distribute and the commissioners read all the briefs. So if you do that math --

   MR. PETRAMALO: Eight days from today.

   MR. BURNETT: It's on you pretty hard is what I'm saying.

   MR. BLACKWELL: We can move quickly.

   MR. BURNETT: Okay. Good. Thank you.

   MR. BLACKWELL: We're prompt in our position.

   MR. BURNETT: Great.

   Does that satisfy the need?

   MR. WEINBERG: That's fine.

   MS. DILWORTH: Can you just go over what the dates are then? We have five weeks from today.
MR. BURNETT: If we work backwards from the May date, we might as well the next date. We haven't done that.

MS. DILWORTH: May 20th.

MR. BURNETT: The next meeting is set for May 20th. By May 13th, the reply -- the rebuttal, if any, from Churchill shall be in the hands of the executive secretary of the Racing Commission by May 8th. The brief --

MR. BLACKWELL: I'm sorry. What's the --

MR. BURNETT: I'm working backwards.

MR. BLACKWELL: Okay.

MR. BURNETT: So any rebuttal brief would come five days, Colonial Downs' brief would be five days prior to that, so that would be by the 8th, and then your opening brief would be ten days prior to that, which is April, 28th, April 29th, something like that.

MR. PETRAMALO: Twenty-eighth.

MR. BURNETT: April 28th. Do those dates work?

MR. BLACKWELL: Luckily, May is a slow month for us.

MR. BURNETT: Yeah. There's nothing going on in May. You can go in the office on May 2nd or
whatever the Saturday is, the first Saturday in May.

MR. MILLER: April 28th and May 8th and May 13th.

MR. BLACKWELL: So April 28th is our position.

MR. PETRAMALO: Correct.

MR. BLACKWELL: And I should submit that to commission staff?

MR. BURNETT: Submit them to Vic and if you would indulge me at least, if you would e-mail me a copy when you send it, I'd just like to start reading it as soon as I can.

MR. BLACKWELL: Sure.

MS. DILWORTH: Just for your reference, the lawyers, the statute that applies to informal fact-finding proceedings is Virginia Code Section 2.2-4019.

MR. BURNETT: Any further business to conduct today? Mr. Scoggins has something further to say.

MR. SCOGGINS: Mr. Chair, in reference to the comments that Commissioner Miller made, a possibility of any other interested parties participating in the process, is there a deadline by which amicus briefs or intervening briefs should be submitted?

MR. BURNETT: How about if we give you the
opportunity to read both of the -- the briefs of
both parties and you submit by amicus brief in the
same time frame that we're requiring Mr. Blackwell
to submit rebuttal.

MR. SCOGGINS: That'd be fine.

MR. BURNETT: That does that work for you?

MR. SCOGGINS: That would be fine.

MR. STEWART: In difference to Commissioner
Miller, I won't expound on how we got here and why
we're here today and where we are, but I do look
forward to the opportunity to do that at a future
time.

MR. BURNETT: Thank you.

MR. MILLER: We'll have to be sure that the
other provider, the ADWs licensees are notified.
Mr. Scoggins knows and Brad knows, but --

MR. BURNETT: YouBet.

MR. HARRISON: TVG.

MR. MILLER: Let them know what we're doing
and give them an opportunity to respond. Give them
the, I guess, so they'll be able to respond after
rebuttal.

MR. BURNETT: They can respond at the same
time, amicus or other briefs. If they want to be
friend of the Commission, they can file them.
MR. HARRISON: Our letter will go out to all
the ADW providers.

MR. BURNETT: Okay.

MR. CANAAN: The letter is going to be --
explain that it's a notice for an informal
conference to act on TwinSpires request --

MR. BURNETT: Only.

MR. CANAAN: -- only. Gotcha.

MR. BURNETT: That's the only matter before us
right now.

MR. CANAAN: Correct.

MR. BURNETT: We're just giving Greg a free
ride.

MR. SCOGGINS: Which I choose or choose not to
join. One question, will the issue -- I assume that
the issue will be stated in the notice as to what is
being decided by the Commission or what it will be
debating?

MR. BURNETT: Yes, although I would read that
broadly from where you sit because I think there's
overlapping issues on whether what happens July 1.

MR. SCOGGINS: Right.

MR. BURNETT: For what's that worth. So, I
mean, I just can't imagine that we're not going to
hear some discussion of what jurisdiction this
Commission has after July 1 with respect to any licenses.

Are we adjourned, folks? I'm sorry to say this isn't a record, the length of the meeting. Some of the people that have been here a lot longer know that some of them in the old days went to midnight, didn't they, Jim?

MR. WEINBERG: They did.

MR. FERGUSON: I move that we adjourn.

MR. BURNETT: Second.

Note: The hearing concluded at 3:11 p.m.
CERTIFICATE

VIRGINIA:
COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on April 15th, 2009, New Kent, Virginia, at the time of the hearing herein.

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

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

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

My Commission expires:
March 31, 2011

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