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VIRGINIA RACING COMMISSION

December 16th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 10:06 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman
Mark T. Brown
David C. Reynolds
Clinton Miller
Stuart Siegel

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

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1 DECEMBER 16, 2009

2 MR. BURNETT: Good morning. We're a little
3 late starting a meeting that was scheduled for ten
4 o'clock. Welcome. The appeal that was set for
5 nine-thirty this morning, gentlemen, due to illness
6 of the appellant, that's been continued to next
7 month. We'll keep you posted on the status of it.

8 Because we have some new folks with us and
9 because we have some important substantive issues, I
10 would remind everybody when they're presenting to
11 the Commission to please speak up so that our court
12 reporter can get the full text and full comments
13 that anybody wishes to make on any subject.

14 Our first order of business today before going
15 into our regular monthly meeting is the -- are the
16 applications for renewal of ADW licenses for 2010.
17 They're under Tab 1. Our first application is with
18 EZ Horseplay.

19 I have a set of procedures that the Commission
20 uses for formal fact-finding conferences, which
21 technically this is. Unless somebody would like to
22 have these read into the record, I think that our
23 usual process of hearing from everybody and full
24 opportunity for rebuttal will suffice, and I'll
25 dispense with the five minute reading. Does anybody

1 have any objection to that? Mr. Scoggins?

2 MR. SCOGGINS: Greg Scoggins on behalf of
3 XpressBet.

4 Mr. Chairman, my question is I thought I heard
5 you say formal fact-finding, or is it informal
6 fact-finding?

7 MR. BURNETT: I'm sorry. I'm reading from the
8 top of my Virginia Racing Commission procedural
9 guidelines here and it says formal, but I believe
10 this is informal. That's being confirmed by our
11 counsel, let the record show, so it's an informal
12 fact-finding conference.

13 MR. PETRAMALO: Let's not stand on formality.

14 MR. BURNETT: No. Let's not do that. Not to
15 further confuse anyone, Mr. Petramalo.

16 Let's take the application of EZ Horseplay
17 first.

18 MR. WEINBERG: Good morning. I'm Jim Weinberg
19 appearing on behalf of EZ Horseplay, and to my right
20 is Ian Stewart, President of Colonial Downs.
21 Whatever time we don't use, I'd like to reserve for
22 rebuttal, but we will attempt to be very brief.

23 I believe the Commission has received our
24 application. The staff has confirmed that it is in
25 order, that EZ Horseplay has satisfied all the legal

1 requirements for licensure. I'm authorized to
2 represent that Colonial Downs will abide by the
3 conditions set forth in the staff report regarding
4 its operations. I would also note that Colonial
5 Downs continues to be the only ADW provider licensed
6 in Virginia that makes a voluntary contribution to
7 the Virginia Thoroughbred Association. It receives
8 eight-tenths of one percent of all thoroughbred
9 handle wagered through EZ Horseplay.

10 I'm happy to respond to any questions that the
11 Commission has regarding our application.

12 MR. BURNETT: Fellow commissioners, any
13 questions?

14 Mr. Weinberg, I have two, and I think you'll
15 be able to answer them very easily. Historically
16 and voluntarily, you've been paying point eight
17 percent to the Virginia Thoroughbred Association
18 Breeders' Fund or to the Breeders' Fund. I'm sorry.
19 Not to the Virginia Thoroughbred Association.

20 MR. WEINBERG: No, to the VTA.

21 MR. BURNETT: I'm sorry.

22 All right. In the coming year, is your
23 intention to cease with that payment and instead
24 make the statutorily required payment of one percent
25 to the Breeders Fund?

1 MR. WEINBERG: There is a --

2 MR. STEWART: We have an agreement that
3 extends through the calendar year 2010 that covers
4 the payment to the VTA, and we intend to abide by
5 the agreement.

6 MR. BURNETT: All right. That's Mr. Stewart
7 for Colonial Downs. Thank you.

8 And then my second question and one that will
9 apply to all applicants is that staff has
10 recommended that we abandon our prior practice of
11 requiring a bond from ADW providers and that we
12 adopt essentially or recognize the Oregon
13 requirement of segregated accounts at a FDIC insured
14 bank, and the details of that are in the staff
15 report. I'm sure you've all seen them.

16 There were several questions raised about
17 essentially the details of the Oregon method,
18 whether that method provides equivalent protection
19 to account holders, and we don't feel that we have
20 had the opportunity to fully examine that
21 circumstance.

22 Accordingly, it's my recommendation to my
23 fellow commissioners that in the granting of these
24 licenses that we amend the staff's recommendation
25 and ask the providers to agree that should the

1 Commission after examining this decide that another
2 method such as the bond that we had in the past be
3 more appropriate, that we reserve the right to
4 impose that condition of security for account
5 holders.

6 I guess in terms of an immediate standpoint,
7 we have only this applicant in front of us, but I'm
8 going to ask the same question of all the other ADW
9 providers, to give you a little notice so you know
10 what's coming.

11 MR. STEWART: We're happy to comply with
12 whatever bonding requirements the Commission might
13 decide are appropriate.

14 MR. BURNETT: My last question is pretty
15 straightforward. Is EZ Horseplay a separate
16 corporate entity from Colonial Downs?

17 MR. WEINBERG: It is not. It's a doing
18 business as.

19 MR. BURNETT: All right. So in terms of the
20 five percent and five percent payments, I think Dave
21 had it right the first time. I questioned whether
22 or not they were separate entities and asked whether
23 or not this report should reflect that the five
24 percent payment be made from Colonial Downs to EZ
25 Horseplay. It strikes me that that would be a check

1 deposited in the same account and would thus be
2 unnecessary.

3 MR. STEWART: I'm not even sure there's an EZ
4 Horseplay bank account to tell you the truth.

5 MR. WEINBERG: Right.

6 MR. BURNETT: And that's fine with me. I
7 don't think necessarily the recommendation needs to
8 change. I just thought that EZ Horseplay should
9 abide by the exact same rules as all the other ADW
10 providers, and I know you agree.

11 MR. WEINBERG: Absolutely.

12 MR. BURNETT: I don't have any other
13 questions. Do we -- is it the pleasure of the
14 Commission to grant licenses as they come up, or do
15 you want to take them all as a whole?

16 MR. MILLER: I move we wait until we've heard
17 all the applicants and after hearing all the
18 applicants, then we will make our decision on the
19 respective license.

20 MR. BURNETT: Anybody have any objection to
21 Mr. Miller's suggestion? Why don't we do it that
22 way.

23 MR. MILLER: The reason I do that, just in
24 case there's some sort of unique variation or
25 something, we wouldn't want to have to come back and

1 revisit it.

2 MR. BURNETT: Thank you, Mr. Miller. We'll
3 make all the ADW providers sweat until the very end.
4 How's that? All right. Thank you.

5 Anything further?

6 MR. WEINBERG: No. Thank you.

7 MR. BURNETT: Thank you.

8 All right. We next have -- I think we're
9 going to put TVG to the end because I think
10 Mr. Hindman is going to be late in arriving, so our
11 next application will be XpressBet.

12 MR. SCOGGINS: Good morning, Mr. Chairman,
13 members of the Commission, my name is Greg Scoggins.
14 I am vice president of Regulatory and Business
15 Development for MEC. I'm here on behalf of
16 XpressBet, Inc. Seated to my right is Gene
17 Chabrier, who is the Director of Regulatory Affairs
18 for XpressBet, Inc. We are here obviously to
19 address XpressBet's application for an ADW license
20 for 2010.

21 As Mr. Weinberg stated, we would like to
22 reserve that balance of the time available to us for
23 any rebuttal that's necessary. We hope to also be
24 brief in our presentation, but recognize that we
25 stand in somewhat of a unique situation compared to

1 other ADW providers that will be before you today.

2 MR. BURNETT: Not a problem. Thank you. Go
3 ahead.

4 MR. SCOGGINS: We've reviewed the staff
5 reports and for the most part do not have any
6 concerns with respect to the recommended elements of
7 any license that you would choose to award to us.
8 We do take issue or have concerns with respect to
9 two recommendations, however. Specifically, those
10 are recommendation two and recommendation seven.

11 As the staff report has explained and as many
12 of you commissioners know, XpressBet entered into an
13 agreement with Colonial Downs several years ago.
14 That agreement expires at the end of 2012. It
15 provides among other things a mechanism by which the
16 fee that XpressBet receives, the source market fee
17 that we pay to the track and to the horsemen is to
18 be determined and it is, we all recognize, different
19 from what is now required by a statute, I believe it
20 was HB-240 that was passed earlier this spring, and
21 is inconsistent with our agreement.

22 XpressBet is of the view that under U.S.
23 constitutional principles, the contracts clause of
24 the U.S. Constitution provides us the opportunity
25 and right to continue operating through 2012 under

1 the terms of our agreement in that insofar as it is
2 inconsistent with the provisions of HB-240, and we
3 fully anticipate and look forward to performing our
4 obligations in Virginia as a licensed ADW in
5 Virginia subject to the expectation that we be
6 allowed to do so under the terms of our agreement as
7 opposed to what might otherwise be demanded by the
8 statute.

9 MR. BURNETT: Let me respond -- well, by first
10 asking whether any fellow commissioners have
11 questions.

12 MR. MILLER: Again, your agreement goes
13 through 2011?

14 MR. SCOGGINS: It goes through 2012. It
15 expires on December 31st of 2012.

16 MR. BURNETT: Would it be fair to say that the
17 bone of contention or legal issue here is whether or
18 not the law of Virginia and the law of the United
19 States permits the statute passed this year, HB-240,
20 the provisions thereof to essentially trump or
21 supersede the contract provisions that are in
22 conflict with it, between XpressBet and Colonial
23 Downs? Is that the issue?

24 MR. SCOGGINS: I think to state it differently
25 but maybe equally, to what extent the federal laws

1 and the state constitution allow the contract terms
2 to trump the requirements of the statute. We may be
3 saying the same thing differently, but --

4 MR. BURNETT: I think we are.

5 I think you'll agree that that issue isn't
6 before us today.

7 MR. SCOGGINS: We would take the view that you
8 do have the right to address issues as it relates to
9 our obligations to the extent those issues are
10 reflected in state and federal constitutions. So we
11 think you do have the authority to do that or to
12 take into consideration our position.

13 MR. BURNETT: Well, I think we have to at some
14 level based on the way you have phrased where you
15 are with the application, and what I mean by that is
16 to the -- if I -- maybe it's implicit in what you
17 say, and I'll ask you to make it expressly so. You
18 are in agreement that if we were to grant you a
19 license, you would be delighted to have one and you
20 would be willing to comply with provisions one,
21 three, four, five, and six of the staff report, but
22 not provisions two and seven?

23 MR. SCOGGINS: Correct.

24 MR. BURNETT: Is that a fair statement?

25 MR. SCOGGINS: That's a fair statement.

1 MR. BURNETT: Which puts us in a position of
2 deciding whether or not we are willing to grant a
3 license under those circumstances.

4 MR. SCOGGINS: That's correct. Or pursue an
5 alternative that the Commission feels is
6 appropriate.

7 MR. BURNETT: All right. Based on that
8 representation and where we stand, I think we're
9 agreeing on what the issue is here. Do any
10 commissioners have any further questions of this
11 applicant?

12 All right. I think consistent with
13 Commissioner Miller's -- oh, let me ask the question
14 I asked the others. You heard my concerns stated
15 earlier about the Oregon Racing Commission's
16 regulation change in which they have apparently
17 dispensed with the bond requirement and instead
18 imposed a separate account requirement. Maybe I
19 should refer to the position I would like to take in
20 addressing that as condition eight of the seven. In
21 addition to the seven that the staff have
22 recommended, this would be an additional one. Do
23 you have any problem with going forward that way?

24 MR. CHABRIER: No, we do not.

25 MR. SCOGGINS: Actually, if I might. The

1 issue that we have is by being licensed in Oregon as
2 an ADW hub, we comply with Oregon law.

3 Conceptually, we do not have a problem with the
4 Racing Commission evaluating whether and to what
5 extent they feel Virginia account holders are
6 satisfactorily protected by what we do pursuant to
7 Oregon law.

8 The only caveat or qualification I would have
9 to that statement is we would reserve the right to
10 object to any additional stipulation that the Racing
11 Commission might impose to the extent we feel that
12 it is unreasonable. In other words, pursuant to any
13 APA appeal rights that we might have.

14 MR. BURNETT: I would be delighted to join you
15 in protecting any of your procedural and substantive
16 rights to be heard on it. I think to the extent
17 that we wanted to impose any further requirements on
18 you as a part of your license, that we would give
19 you notice of that, opportunity to come in and tell
20 us why we're right or wrong or partially right or
21 partially wrong, and a decision would then be made
22 and you can take that and do what you need to do
23 with it after that. It is not my intention that we
24 spring anything on you or that you agree to anything
25 now other than we may well come back to you and say

1 this is what we're requiring. We'll give you the
2 opportunity to be heard on that.

3 MR. SCOGGINS: I appreciate that, and I
4 apologize to the extent I'm being overly procedural
5 in nature, but I wanted to make sure that there was
6 a meeting of the minds as far as what the
7 expectations were on how that would be addressed.
8 Otherwise, we're fine with allowing you to proceed
9 in that fashion.

10 MR. BURNETT: All right. Anything further on
11 this application other than the decision itself?
12 Any further -- oh, Mr. Weinberg?

13 MR. WEINBERG: Just a procedural question.

14 MR. BURNETT: Thank you.

15 MR. WEINBERG: Looking at your procedure, item
16 four discusses oral comments from the public or
17 other applicants --

18 MR. BURNETT: I'm sorry.

19 MR. WEINBERG: -- and whether you want to do
20 that. I suspect, I don't know, but my comments will
21 pertain to others as well, so I'm happy to wait, but
22 I didn't want the record to close on this particular
23 application without expressing a different view of
24 the law.

25 MR. BURNETT: To the extent that there are

1 some commonalities and I think many of the ADW
2 providers have similar objections to the statute
3 that's in place, unless there is an objection, I
4 suggest we have that discussion at the end of all of
5 the presentations of each ADW license applicant.
6 Anybody have any objection to that? Any member of
7 the public who would like to do it a different way?

8 It doesn't seem like we have an objection.
9 We'll hear from everybody on that subject at the
10 conclusion of all these ADW presentations. Thank
11 you, Jim.

12 MR. WEINBERG: Thank you.

13 MR. SCOGGINS: Thank you.

14 MR. BURNETT: Thank you.

15 Other than a decision and a discussion as
16 Mr. Weinberg has suggested, we'll go on to -- that
17 concludes XpressBet's application presentation, and
18 we'll move on to Churchill Downs Technology
19 Initiative Company doing business as TwinSpires.

20 Welcome, Mr. Blackwell. How are you?

21 MR. BLACKWELL: Good. How about yourself?

22 MR. BURNETT: Fine. Thank you. Good to see
23 you.

24 MR. BLACKWELL: Good to see you.

25 MR. BURNETT: Proceed, please.

1 MR. BLACKWELL: Brad Blackwell on behalf of
2 Churchill Downs Technology Initiatives Company,
3 doing business as TwinSpires.

4 TwinSpires has submitted their application for
5 2010, and at this point we continue to make our
6 concerns known to the Commission, to the
7 Commonwealth of Virginia regarding the statute,
8 regarding the -- not only the undue burden this
9 statute creates on interstate commerce, but
10 essentially works to shut down interstate commerce.

11 We've maintained these concerns ever since
12 this statute was passed, not only from a
13 constitutional commerce clause perspective, but also
14 from the perspective that the Interstate Horse
15 Racing Act speaks very clearly about the rights that
16 states have with regard to the interstate wagering
17 on horse racing. So we continue to voice those
18 objections to the Commission, and at this point
19 we're happy to answer any questions the Commission
20 may have of TwinSpires.

21 MR. BURNETT: Any questions?

22 I'll work backwards from where I did the last
23 time with --

24 MR. BLACKWELL: Sure.

25 MR. BURNETT: -- what I characterized as

1 condition eight, the bond requirement. I take it
2 you heard the back and forth with the prior
3 applicants.

4 MR. BLACKWELL: Right. And TwinSpires in
5 accordance with Oregon law maintains segregated
6 accounts for the customer separate from all other
7 accounts that either TwinSpires or Churchill Downs
8 may have. We also have a bond posted in Oregon in
9 addition to numerous other states, and so we feel
10 that we are a financially stable company. We have
11 complied with each and every statute where we
12 maintain a license, and obviously have no concern
13 about the safety of our customers' accounts.

14 MR. BURNETT: Likewise, I would not want any
15 applicant to think that we have any concern about
16 any applicant, only that we perform our due
17 diligence to be certain that we're performing our
18 job as we should.

19 Do you have any objection to that condition
20 being part of any grant of license that we might
21 come back and ask you to post a bond for?

22 MR. BLACKWELL: No, we do not.

23 MR. BURNETT: And, of course, you'll have full
24 opportunity to be heard on it as I said earlier.

25 MR. BLACKWELL: Right.

1 MR. BURNETT: With respect to conditions one
2 through seven as set forth in the report, which I
3 assume you've seen, other than the expression of
4 your concerns, do you have any problem with
5 complying with those terms as a condition of the
6 license being granted?

7 MR. BLACKWELL: We'll reserve the right to
8 comment on that at a later time.

9 MR. BURNETT: All right. But for purposes --

10 MR. BLACKWELL: But for the purposes of being
11 granted a license today, we are doing what we deem
12 necessary to obtain a license. So if those
13 conditions are upon us today, we have no problem as
14 of right now with those conditions.

15 MR. BURNETT: Thank you. That's helpful.

16 MR. BLACKWELL: Sure.

17 MR. BURNETT: Based on that, any further
18 questions from the Commission?

19 Mr. Blackwell, other than our making a final
20 decision and also hearing legal arguments and
21 observations by yourself and others at the end of
22 all these presentations, that would conclude your
23 presentation, I think?

24 MR. BLACKWELL: Yes.

25 MR. BURNETT: Thank you.

1 MR. BLACKWELL: Thank you.

2 MR. BURNETT: We next turn to the application
3 of YouBet.com.

4 Good morning, gentlemen.

5 MR. COHEN: Good morning, Chairman Burnett.

6 MR. BURNETT: Good to have you here in
7 Virginia. Would you identify yourselves for the
8 record, please?

9 MR. COHEN: We will. My name is Michael
10 Cohen, C-O-H-E-N, with the law firm Paul Hastings
11 and with me from YouBet today is Jeff Grossman, the
12 Chief Marketing Officer for YouBet.

13 MR. BURNETT: Welcome. Please proceed with
14 your presentation.

15 MR. COHEN: Thank you, Mr. Chairman and
16 Commissioners. For the record, I started in
17 Virginia this morning. I got up in Virginia. I go
18 to sleep in Virginia every night, and I drove down
19 to Virginia here this morning. Although I know many
20 people don't consider Arlington to be Virginia, it's
21 still part of the Commonwealth.

22 MR. BURNETT: There are more northern
23 Virginians in this room than you know.

24 MR. COHEN: But I'm "northern" northern
25 Virginia, which I have learned --

1 MR. REYNOLDS: You're on the other side of the
2 river.

3 MR. BURNETT: Mr. Petramalo --

4 MR. PETRAMALO: There is no Virginian in this
5 room that is further north than I am.

6 MR. BURNETT: That's true.

7 MR. PETRAMALO: Right on the Potomac River.

8 MR. BURNETT: All right. Thank you.

9 Mr. Cohen, go ahead.

10 MR. COHEN: To proceed, Chairman and
11 Commissioners, YouBet is pleased to present its
12 application for a license today. You have it before
13 you. I did want to make two points, if I could,
14 that I believe differentiate YouBet somewhat or at
15 least present unique circumstances with respect to
16 YouBet's license application.

17 First, YouBet has a source market fee contract
18 in place with Colonial Downs that is vested through
19 2010. Colonial Downs is contractually obligated in
20 that agreement to support that contract, and what's
21 more, that contract was part of a settlement in the
22 United States Federal District Court for the Eastern
23 District of Virginia in Richmond. It was a
24 condition and component to that settlement, and
25 there is a federal district court order retaining

1 jurisdiction over that contract, over that
2 settlement, and over that vested right.

3 The United States District Court not only has
4 the ability to enforce that contract and that vested
5 right, but this Commission was a signatory to the
6 resolution of that lawsuit and to the request to the
7 federal district court to retain jurisdiction over
8 that vested right as was the Commonwealth of
9 Virginia.

10 So we would contend from a legal standpoint
11 that there's nothing inconsistent with the new
12 statute, so to speak, but the new statute cannot
13 alter a vested right conferred under the old
14 statute, and that's perfectly consistent with
15 Virginia Code Section 1-239. It's not a matter of
16 prospective or retroactive application. It's simply
17 a confirmation that when you have a vested rent, a
18 vested property right that is conferred under an
19 existing statute that runs to a certain period of
20 time, a new statute cannot alter that vested right
21 until it has expired. All of those laws don't
22 require conflict. They require perfect, consistent
23 reading, and we believe can be read perfectly
24 consistently in that regard.

25 So, therefore, we respectfully request renewal

1 based on the current pre-existing terms of our
2 contract with Colonial Downs that run through 2010.
3 Mr. Grossman can answer further questions that you
4 may have about the pending license and the
5 operations.

6 Commissioner Burnett, anticipating a couple of
7 your questions, let me address two of them. YouBet
8 has no problem or concerns with your additional
9 condition eight as it has been referred to. In
10 addition, YouBet is prepared to comply with a
11 license on whatever terms the Commission offers,
12 that YouBet reserves its rights to pursue
13 enforcement of a license on grounds that I've
14 articulated.

15 MR. BURNETT: Would it be fair for me to
16 characterize that position as one in which you're
17 willing to move forward with a license as we might
18 require, but do not want that agreement to any
19 conditions we impose to act as any waiver on any
20 future opportunity to revisit the issues as you've
21 described them?

22 MR. COHEN: That's exactly right, Commissioner
23 Burnett. Lawyers always like to state things in
24 their own terms. Yours are as good mine will be,
25 but to be succinct about it, in accepting whatever

1 license the Commission deems in its discretion to
2 offer YouBet, we simply don't want to waive the
3 rights that we've raised today --

4 MR. BURNETT: That's understood.

5 MR. COHEN: -- or the objections that we've
6 raised today.

7 MR. BURNETT: Thank you.

8 Any questions of this applicant, fellow
9 commission members?

10 I do have one that I haven't asked the others
11 because you have a somewhat unique circumstance with
12 respect to your recent acquisition or having been
13 acquired. Do you anticipate that you will operate
14 in Virginia for the coming year as a completely
15 separate entity, if you're at liberty to tell us, or
16 might we hear that you're going to become a single
17 entity at some point in the future?

18 MR. COHEN: Chairman Burnett, the acquisition
19 hasn't closed. It's still pending regulatory
20 approval as well as other conditions precedent to
21 closing. Until that occurs, YouBet will continue to
22 operate as an independent business in Virginia as an
23 independent entity. I don't have a time table for
24 the Commission on that acquisition, particularly
25 given the inability to predict regulatory approvals

1 that will be required.

2 MR. BURNETT: Thank you.

3 Any further questions? Subject to only the
4 further comment on our legal discussion and our
5 grant of license on conditions, we'll consider that
6 a concluded presentation, if that's all right.

7 MR. COHEN: Thank you, Chairman Burnett.

8 One added comment. Mr. Weinberg, who I have
9 great respect for, always has a different view of
10 the law than me.

11 MR. BURNETT: Always?

12 MR. COHEN: I'm sure -- always. And I have no
13 doubt that he will have an opportunity to comment on
14 that. To the extent that there is rebuttal, not
15 just to repeat, but truly rebut anything that may
16 come up, I would like an opportunity to address
17 that.

18 MR. BURNETT: We would be delighted to give
19 you every opportunity.

20 MR. COHEN: Thank you.

21 MR. BURNETT: Thank you.

22 Have there been any Mr. Hindman sightings?

23 MR. HARRISON: If his plane arrived on time at
24 11:20, I would suspect he'll be here a little
25 before -- I'm sorry, 10:20, he would be here about

1 eleven o'clock today. So he's still probably about
2 20, 25 minutes away.

3 MR. BURNETT: Since our legal discussion is
4 only going to take four or five minutes, we're still
5 going to have -- I tease, but my suggestion would be
6 let's go ahead and hear from folks on the legal
7 issues, and I'm sorry if Mr. Hindman might miss some
8 of that, and when he returns we can be done with
9 that argument or that discussion and can take up his
10 application then, or we can -- or we won't be done
11 and wait until its done, and then take up his
12 application. Is that acceptable to everybody?

13 MR. SCOGGINS: Mr. Chairman --

14 MR. BURNETT: Mr. Scoggins?

15 MR. SCOGGINS: -- if I may have the
16 opportunity to re-open the discussion with respect
17 to XpressBet. I would like to approach the table
18 for that purpose.

19 MR. BURNETT: Any objection to that,
20 gentlemen?

21 Please come forward. What did you miss?

22 MR. SCOGGINS: I have always found that when
23 it comes to legal matters and administrative
24 matters, it pays to go last because you can draw
25 from the wisdom of others, and I find that this day

1 is no exception to that and so what I would like to
2 do is to clarify XpressBet's position.

3 We would like to incorporate by reference the
4 legal arguments that had been made by the other
5 ADWs; namely, Churchill Downs, doing business as
6 TwinSpires or TwinSpires itself, and then YouBet,
7 and also to clarify as far as the Commission is
8 concerned that we are willing to accept a license as
9 condition -- subject to any conditions you have, but
10 by doing so do not wish to express a consent -- we
11 do so reserving any rights we may have to express
12 objections or raise the issues that we have
13 discussed in connection with our application.

14 MR. BURNETT: For the record --

15 MR. SCOGGINS: In essence, what he said.

16 MR. BURNETT: For the record, we accept and do
17 not expect from the Commission's standpoint to
18 impose any waiver on any of these applicants.
19 Whether or not some other tribunal determines that
20 it is a waiver, it is beyond our power and not
21 within our authority or jurisdiction to determine.
22 So we accept it as not being a waiver, whether
23 someone else does is going to be for a later day.

24 MR. SCOGGINS: The risk for us to take.

25 MR. BURNETT: That's exactly right.

1 Thank you. Any further questions of
2 Mr. Scoggins?

3 MR. SCOGGINS: I just didn't want my comments
4 to be interpreted as an invitation for you to deny
5 us a license.

6 MR. BURNETT: Understood. We wouldn't do that
7 if we could help it.

8 MR. MILLER: Mr. Chairman?

9 MR. BURNETT: Yes. Mr. Miller?

10 MR. MILLER: If we go ahead and grant these
11 licenses today and don't address the point raised by
12 condition seven in each -- the recommendations of
13 staff in each applicant's file number seven, that
14 will have to come to a head at least by mid-February
15 2010, will it not?

16 MR. BURNETT: It strikes me if we impose the
17 condition seven, then it will have to come to a
18 head.

19 MR. MILLER: That's what I mean.

20 MR. BURNETT: If we do not, it may drift on
21 for a long time. That's right. If we grant the
22 licenses, certainly the failure of any party to meet
23 a condition that is part of the license would
24 trigger probably an obligation on our part and maybe
25 a desire on the part of others to see to the

1 enforcement.

2 MR. MILLER: Okay.

3 MR. BURNETT: Any other further discussion
4 before we go into a stimulating legal discussion?

5 Is there anybody that would like to speak to
6 the legal issues as they may be relevant to the
7 granting of these ADW licenses? Mr. Weinberg?

8 MR. WEINBERG: Pardon me one moment.

9 MR. BURNETT: Certainly. Take a moment.

10 MR. PETRAMALO: I'm not waiving my rights to
11 say anything.

12 MR. BURNETT: You have a standing non-waiver,
13 Mr. Petramalo.

14 MR. WEINBERG: To be clear for the record,
15 Virginia Horsemen's Benevolent and Protective
16 Association, as well as the VHHA are partners in EZ
17 Horseplay. I am speaking really just for the
18 Colonial Downs component of that team, but I would
19 speak to the legal issues in that I believe the
20 chairman began that discussion in the correct place,
21 and that is this is probably not the proper forum to
22 address constitutional issues, which is one of the
23 issues raised by the applicants. The proper forum
24 for that is the judicial branch, not the executive
25 branch of government.

1 The second issue relates to the nature of this
2 contractual right, and I would suggest to you that
3 is a contract that is between those applicants and
4 Colonial Downs and the horsemen, who are also party
5 to that agreement and share 50/50 under that
6 arrangement, that there is some dispute as to
7 whether the law changed the rights under that
8 contract, but that is a dispute between YouBet in
9 one case and XpressBet in one case and Colonial
10 Downs and the horsemen, not a dispute with the
11 Commission.

12 I think that issue was addressed directly by
13 the legal opinion that this Commission sought in
14 dealing with the interaction of those existing
15 agreements, the existing licenses at the time and
16 what went into effect now at renewal. I think that
17 that opinion states the Commission has the authority
18 to ensure that ADW providers are making the payments
19 directed by 59.1-369(5) to the entities identified
20 therein. However, I find no statutory or regulatory
21 mechanism by which the Commission may control the
22 use of such payments by the recipient.

23 Obviously, if Colonial Downs feels it has
24 contractual obligations to make payments back to
25 YouBet and XpressBet, it will. Again, I don't think

1 that this is the -- this Commission is the proper
2 forum to resolve what may be a contractual dispute,
3 not a constitutional dispute. If it is a
4 constitutional dispute with all due respect, again,
5 it's not this forum that that issue should be
6 resolved in. It should be resolved in a judicial
7 forum.

8 With that said, it is slightly more
9 complicated in that as this commission thinks about
10 those issues, one of those parties is the Breeders'
11 Fund, which is not subject to any of those
12 agreements and would expect that contributions be
13 made to the Breeders' Fund as provided in the
14 statute and, indeed, I agree with the Attorney
15 General's Office that the proper approach of this
16 Commission is to require all the applicants to make
17 the payments required by the statute. If there are
18 underlying contractual rights that then dictate how
19 Colonial Downs and the horsemen must deal with those
20 payments, so be it, but not in the course of
21 granting or conditioning licenses today.

22 I'm happy to respond to questions from the
23 Commission.

24 MR. BURNETT: Any questions from the
25 Commission?

1 Thank you, Mr. Weinberg.

2 Any further comment from anyone else?

3 Mr. Petramalo?

4 MR. PETRAMALO: Yes.

5 My name is Frank Petramalo. I'm here on
6 behalf of the Virginia Horsemen's Benevolent and
7 Protective Association.

8 I just want to make sure I understand the
9 context now. YouBet, XpressBet, and TwinSpires have
10 all represented that they will accept licenses from
11 the Commission with condition seven, which basically
12 says comply with the new law, but at the same time
13 they reserve their right to challenge that condition
14 seven sometime in the future should they so choose.

15 MR. BURNETT: For what it's worth, that's what
16 I think I heard.

17 MR. PETRAMALO: Right. Okay.

18 And following up on Commissioner Miller's
19 question, we then as the horsemen's organization
20 would expect that as of February 10th, we would be
21 paid the five percent required by the new statute,
22 unless one of those organizations that I mentioned
23 were in some fashion or other to take some legal
24 action to stall having to do that. That seems to me
25 to be the context that we're in.

1 The legal questions raised are very
2 interesting, but I would at the outset join Jim
3 Weinberg's observation that it's certainly not for
4 this Commission to look at those legal issues at
5 this time, if any. As a state regulatory agency, I
6 think you have to operate on the presumption that
7 the state law under which you're working is
8 constitutional. I don't think you can choose to
9 say, well, the General Assembly may have passed
10 that, but it's unconstitutional.

11 With that aside, I'm not going to get into the
12 merits of the constitutional argument other than to
13 point out some obvious constitutional law
14 propositions. Greg Scoggins, I believe, on behalf
15 of XpressBet was basically saying the state law
16 cannot impair the obligations of XpressBet's
17 contract with Colonial and the horsemen. There is a
18 section in the federal constitution, Article 1,
19 Section 10 that says no state shall pass a law that
20 impairs the obligation of private contracts, but
21 there have been decisions going back at least 100
22 years which have all almost uniformly held that that
23 section of the federal constitution does not
24 restrict the state's exercise of its police power to
25 protect and promote the health, safety, and welfare

1 of its citizens, including taking regulatory actions
2 as well as taxing.

3 I came across one case where two railroad
4 companies contracted for certain rates. The state
5 later on came out with its own rate, which was
6 different. The railroad company said wait a minute.
7 You're violating the federal constitution. You're
8 impairing our contracts. The Supreme Court said no.
9 The police power of the state trump.

10 In any event, there are interesting
11 constitutional issues, but if we have to face them,
12 we will, but certainly not here. So we would urge
13 that you grant the licenses with condition seven and
14 if those organizations want to challenge that, we'll
15 be available to make the challenge.

16 MR. BURNETT: Thank you, Mr. Petramalo.

17 Is there further comment from anybody else? I
18 thought I saw Mr. Hindman come in. Welcome. I'll
19 give you a chance to settle in. If you need a
20 little bit more time, let us know.

21 MR. HINDMAN: I'm fine.

22 MR. BURNETT: Please come forward and we'll
23 take up your application. Just to bring you up to
24 speed as to where we are, we have agreed that we'll
25 hear whatever presentation each applicant would like

1 to give us. They've all been very brief. Our
2 interest has been whether or not there's anything in
3 the staff report that jumps out at folks, and we
4 have reserved any decision on all of the
5 applications until we've heard all of the
6 presentations. We just concluded, subject to your
7 wanting to add anything to it, any comment anybody
8 wants to make on the legal appropriateness,
9 ramifications, et cetera, of the newly passed
10 HB-2604 provisions as they might relate to these
11 applications. Is that a fair statement, folks?

12 So if you would like to proceed at this time
13 on behalf of TVG, we would appreciate it.

14 MR. HINDMAN: Thank you very much, Chairman
15 Burnett. Commissioners, it's nice to see you again
16 for those I've seen before and for those who I
17 haven't, nice to meet you in person for the first
18 time. I just got off the red eye. So if I'm a
19 little slow on the uptake, you'll know why.

20 It's a pleasure to be here today to talk in
21 support of our application. Probably what I'm about
22 to say, even though I haven't heard what anybody has
23 said this morning will be strikingly familiar.

24 First of all, we really appreciate our long
25 association with the state of Virginia, with

1 Colonial Downs, with the horsemen. We feel like
2 it's been a mutually beneficial relationship up to
3 this point. Over the last year, in a very
4 disappointing year for horse racing, our business in
5 this state grew 12 percent, which we were proud of
6 and thought was encouraging.

7 There's two things I think are different about
8 today than other times I've appeared before you and
9 they're inter-related. The first being that there
10 is a new law in Virginia related to ADW, and the
11 price -- setting the price paid in source market
12 fees for ADW, and the second is that our agreement
13 with Colonial Downs is expiring.

14 I'll go to the law first. I think should we
15 be granted a license today, that doesn't mean that
16 we don't have serious concerns about the fairness
17 and legality of the law and should we be granted a
18 license with item No. 7 in the order, we will comply
19 with it, but that does not mean that we would not
20 keep our options open to seek judicial review of the
21 law, to otherwise challenge the law, or if we simply
22 can't live with the law, turn in our license, but we
23 haven't made any decisions related to that at this
24 time.

25 I think one of the things from an ADW

1 provider's perspective or at least TVG's perspective
2 that's important to keep in mind here is that we're
3 investing a lot in our product, our program to
4 attract customers to horse racing. We feel like
5 we've been successful in doing so over the years.
6 What we're really caught in is a situation where we
7 don't own racetracks. We're an independent ADW
8 provider. We don't set host fee rates. We don't
9 set source market fee rates. We have to negotiate
10 at arm's length for both of those. We don't have
11 the unilateral ability to set either one.

12 And what we really are getting ourselves into
13 at this point is a situation where import host fee
14 rates, which is what this bill has been passed in
15 reaction to I believe from a business commercial
16 reality, are being set at a certain level. Now
17 source market fee rates are being set at a certain
18 level. Both are very proud of themselves in terms
19 of the rates that they're setting and we're left in
20 the middle, and it becomes increasingly hard for us
21 to run a profitable business under those conditions.

22 So we're concerned, I think -- setting aside
23 the legal concerns, from a commercial point of view,
24 we're concerned from a couple of different
25 perspectives. Number one is any rational business

1 will look at different markets on a ROI basis in
2 terms of looking to grow their business or even
3 continue their business. When the business becomes
4 uneconomic, it's very difficult to make that
5 decision to continue the business at the level you
6 were doing it before, continue the level of service,
7 which I think would be detrimental to the Virginia
8 racing industry.

9 The second thing that I think is being
10 overlooked in all of this is normally when we
11 negotiate fees, we negotiate fees with racetracks,
12 and I don't think this is unique to TVG, globally
13 with respect to all of the business we're doing with
14 that racetrack.

15 I think with the source market fee being set
16 so high in Virginia, there should be concern for the
17 future of the distribution of Colonial Downs racing
18 nationally, internationally on ADW platforms because
19 I don't think that anybody is going to be real
20 excited about that possibility if they can't do
21 business in Virginia on an economic basis. I think
22 that that would be a great harm to the horsemen and
23 the track here in Virginia. Looking outside of its
24 borders and keeping in mind that over the last ten
25 years, the ADW channel has been the fastest growing

1 channel for horse racing nationwide, and it will
2 likely continue to be so for the foreseeable future.

3 Those are concerns that we would like to
4 address. We're open to having conversation with
5 everybody. We want to continue to do business with
6 everybody. We've enjoyed, again, being in this
7 state and serving customers in this state and would
8 like to continue to do so.

9 That's really what I was here to say today in
10 brief and willing to answer any questions you may
11 have.

12 MR. BURNETT: Thank you.

13 Any questions?

14 Let me ask you a couple different questions,
15 then I have one that's directly relevant to your
16 comments.

17 We have advised the other applicants that the
18 Oregon change of regulation to require segregation
19 of account holder funds apparently in lieu of a
20 bond, although I understand there are some bonds
21 posted in Oregon as well has been -- that method has
22 been recommended to us by staff as a way to move
23 forward in lieu of a bond here in Virginia.

24 The Commission wants to give itself the
25 opportunity to study the account holder security of

1 that method further, and accordingly is adding as a
2 condition of these licenses the reservation of right
3 to impose a bond with notice and opportunity to be
4 heard on any applicant at some further time. We
5 hope, one, that it won't be necessary, and two, that
6 if it is, it won't be burdensome. We just feel that
7 our due diligence requires that we have a closer
8 look and get a legal opinion on the method in Oregon
9 to be sure we're providing adequate protection for
10 Virginia resident account holders.

11 So that's an additional piece that we would
12 ask whether you have any objection to it.

13 MR. HINDMAN: We don't. As a matter of fact,
14 we've taken the additional step on our own volition
15 or voluntarily with TVG to bond the entire amount of
16 all its subscribers' funds. Every dollar a
17 subscriber deposits is fully bonded anyway, so we
18 would not object to that.

19 MR. BURNETT: You might get further inquiry on
20 that methodology from our capable counsel at some
21 point in the future.

22 MR. HINDMAN: Sure.

23 MR. BURNETT: And then we have told each of
24 the other applicants that while we -- should we
25 accept the recommendations of staff, one through

1 seven, and impose that as a condition of licensure
2 that we do not intend by its acceptance of that
3 license and conduct of business that they are from
4 our perspective waiving any right to object in
5 another forum, at another time, or for that matter
6 before us at another time.

7 So we think we understand the circumstances
8 each of you are in. We think it is beneficial to
9 Virginia racing to continue ADW activity, and that
10 the legal determinations that have been raised today
11 are for another day and may well be for another
12 forum, and we accept that.

13 MR. HINDMAN: With agree with that as well.

14 MR. BURNETT: All right. I guess just --
15 since you're speaking in the economic terms and the
16 business terms, one of the questions that came into
17 my mind as you were presenting was whether or not
18 TVG's acceptance or purchase of Colonial's signal if
19 at all, and if so, at what rate, is not a free
20 market balancing technique or avenue to say your
21 source market fee is too high. We're going to
22 offset that by not paying you as much for your
23 signal. Isn't that sort of a normal back and forth
24 of the free market system that would be available to
25 you and to others to perhaps counterbalance what is

1 perceived to be too high of a source market fee?

2 MR. HINDMAN: Well, I think -- just from TVG's
3 perspective, we're starting with a blank sheet of
4 paper we feel like with Colonial Downs in terms of
5 carrying its signal, and we'll engage with them to
6 see if there's an arrangement that we can come to to
7 do so.

8 I do think it's interrelated. All pricing in
9 horse racing is interrelated because of the import
10 and export interstate nature of the signal. I think
11 that -- again, as I said earlier, because we're all
12 arguing over the same 20-cents out of the dollar, I
13 think you do have to make choices and the choices
14 reflect the reality. We want to offer all the
15 content that's out there to our customers, period.

16 However, I think when you look at the economic
17 ramifications -- there are tracks that are net
18 importers, and there are tracks that are net
19 exporters. When you look at the ramifications of
20 this law, I think economically it would be a
21 difficult scenario to see that you can negotiate
22 your way on the exporting side of the Colonial
23 Downs' signal to make yourself commercially viable,
24 but I really haven't run those numbers. That's just
25 my gut instinct on that.

1 MR. BURNETT: Any other questions?

2 Mr. Miller?

3 MR. MILLER: This is just for everyone. I
4 just want to understand again. This 11 and a half
5 percent fee to do business in Virginia is not being
6 paid under the statute. As I understand it, it's
7 not being paid in a lump sum to any Virginia
8 governmental entity. Five percent goes to the
9 unlimited license of Colonial Downs. The five
10 percent that goes to the horsemen, who does that go
11 to?

12 MR. PETRAMALO: It goes to the thoroughbred
13 horsemen and the harness horsemen based on the
14 relative percentage of wagering on the respective
15 breeds.

16 MR. MILLER: But that's set forth in the
17 statute -- that entity is set forth in the statute?

18 MR. PETRAMALO: Yes. That's correct.

19 MR. MILLER: Then the one and a half percent
20 comes to the Virginia Racing Commission.

21 MR. PETRAMALO: Correct.

22 MR. MILLER: Now, does everyone understand
23 that even if you challenge this fee that's been set
24 by the statute and you file a court proceeding,
25 whatever, that if we are notified -- it's my

1 understanding that if the Virginia Racing Commission
2 were to be notified by anyone. It could be a
3 jockey. It could be anyone. If they notify us that
4 XYZ ADW has not paid. We get that notice sometime
5 after February the 10th. Unless there's some kind
6 of court restraining order or injunction or
7 something against the Commission, we'll be duty
8 bound to start a proceeding to revoke the license.
9 Does everyone understand that?

10 MR. HINDMAN: I can speak to TVG. We have no
11 intent to violate the terms of our order. So short
12 of a judicial intervention or another thing that
13 would either affect our licensing or affect the law,
14 we will comply with the terms of the order.

15 MR. MILLER: But, again, if someone doesn't
16 comply, we'll have to start proceedings. That's my
17 understanding. We will start proceedings to revoke
18 the license to do business in Virginia, unless we
19 get an order from a court saying you can't do that.
20 Does everyone understand that?

21 MR. BURNETT: Mr. Scoggins?

22 MR. SCOGGINS: For purposes of providing a
23 specific response from XpressBet, Commissioner
24 Miller, yes, we understand that to the extent
25 there's any decision made to forego payment of any

1 of the amounts, whether it be the source market fee
2 or the breeders' fee, or doing it in a manner
3 different than what the statute would otherwise
4 suggest, we would have to undertake additional
5 judicial action in order to preserve our rights or
6 allow us to preserve our rights with respect to that
7 position.

8 MR. MILLER: Thank you.

9 MR. BURNETT: Perhaps since we've had two of
10 the five organizations acknowledge the accuracy of
11 Commissioner Miller's response, we might for the
12 record ask the other applicants to do the same.

13 EZ Horseplay?

14 MR. STEWART: Absolutely. We understand.

15 MR. BURNETT: YouBet. Mr. Cohen?

16 MR. COHEN: Chairman Burnett, if you're asking
17 us to acknowledge that the Commission has stated its
18 intent to enforce the licenses that it issues, I'm
19 not sure there's any response required from us, but
20 yes, we understand that intent.

21 MR. BURNETT: Sometimes those of us who are
22 horsemen tend to be slow learners, bad listeners,
23 and after the fact we come in and say, well, we
24 really didn't understand that. So Mr. Miller is
25 just making sure that those of us that are horsemen

1 fully understand what's going on. I include myself
2 as one of them, so don't anybody take offense to
3 that.

4 I left somebody out. TwinSpires?

5 MR. BLACKWELL: Yes. TwinSpires --

6 MR. BURNETT: Mr. Blackwell?

7 MR. BLACKWELL: -- understands Commissioner
8 Miller's point. It is well received and we would
9 not have proceeded any other way.

10 MR. BURNETT: Thank you, sir.

11 Anything further, Mr. Hindman?

12 MR. HINDMAN: No. Thank you.

13 MR. BURNETT: Thank you very much.

14 MR. HINDMAN: Thank you.

15 MR. BURNETT: Gentlemen, any further
16 discussion on these applications? I have not gone
17 back and re-checked, but I suspect that if we feel
18 the need for a closed meeting, we can have one.

19 MR. COHEN: Chairman Burnett?

20 MR. BURNETT: Mr. Cohen?

21 MR. COHEN: I would like to just add one
22 thing, if I could.

23 MR. BURNETT: That would be fine. Come
24 forward or where you are, either way.

25 MR. COHEN: I can speak from here if the

1 Commission can hear me.

2 MR. BURNETT: That would be fine. Thank you.

3 MR. COHEN: I do want to make YouBet's
4 position very clear today. We're not asking the
5 Commission to interpret the United States
6 Constitution. We're not the asking the Commission
7 to interpret the Virginia Constitution. We're not
8 asking the Commission to interpret statutory law.

9 What we're asking for plain and simple is a
10 renewal of our license on the rates that have been
11 negotiated under the prior statute and are subject
12 to a federal district court order. The Commission
13 has the authority to do that. It may not choose to
14 do that, but it has the authority to do it under the
15 statute that I cited. So this is not a
16 constitutional question that we're presenting for
17 the Commission at this point in time. Thank you,
18 Chairman Burnett.

19 MR. BURNETT: Thank you very much.

20 Anything further on this subject from anyone?

21 I'm next going to ask the Commission whether
22 it desires to go into a closed meeting or proceed
23 now with any deliberations on the licenses
24 themselves.

25 MR. REYNOLDS: I suggest we go into a short

1 closed meeting.

2 MR. BURNETT: That would be fine. The text is
3 coming. I can see it. Thank you.

4 Pursuant to Virginia Code Section
5 2.2-3711(A)(7), I move the Commission convene a
6 closed meeting for the following purpose:
7 Consultation of legal counsel employed or retained
8 by a public body regarding specific legal matters
9 requiring the provision of legal advice by such
10 counsel. In this case any legal advice that we may
11 seek or need with the respect to the granting of ADW
12 licenses or renewals thereof.

13 That's my motion. Do we have a second?

14 MR. BROWN: Second.

15 MR. BURNETT: It's been seconded by Mr. Brown.
16 All in favor indicate by saying aye.

17 Note: (Aye.)

18 MR. BURNETT: We'll go into closed session.
19 Hopefully not for long. Thank you.

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

23 MR. BURNETT: We're back on the record. I
24 hereby certify pursuant to Virginia Code Section
25 2.2-3712 that to the best of each member's

1 knowledge, one, only public business matters
2 lawfully exempted from open meeting requirements
3 under this chapter, and two, only such business
4 matters as were identified in the motion by which
5 the closed meeting were convened were heard,
6 discussed, or considered in the meeting by the
7 public body. This is a role call vote. Mr. Siegel?

8 MR. SIEGEL: Aye.

9 MR. BURNETT: Mr. Brown?

10 MR. BROWN: Aye.

11 MR. BURNETT: Mr. Miller?

12 MR. MILLER: Aye.

13 MR. BURNETT: Mr. Reynolds?

14 MR. REYNOLDS: Aye.

15 MR. BURNETT: The chair votes aye. Thank you.

16 We have had the opportunity to discuss some of the
17 legal ramification of these licenses satisfied that
18 we are prepared to move forward on all of the
19 applications, and accordingly, I would ask if
20 there's a motion with respect to any of the
21 licenses.

22 MR. BROWN: Well, I think --

23 MR. BURNETT: Mr. Brown?

24 MR. BROWN: In my opinion, everybody has met
25 their criteria to get licensed and I don't know how

1 you would like to play the motion out. Is there a
2 specific way you --

3 MR. BURNETT: I would be delighted to move the
4 approval of all five licenses subject to the seven
5 conditions recommended by staff and with the
6 additional condition of the reservation of our right
7 to impose a bond with appropriate notice and
8 opportunity to be heard in the event we find that
9 the so-called Oregon separate account protection of
10 client -- account holders funds is insufficient to
11 protect them in Virginia. That's my motion.

12 MR. BROWN: I would second that motion.

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

15 Note: (Aye.)

16 MR. BURNETT: All five licenses are granted.
17 The executive secretary will issue, of course,
18 separate licenses to each of you and let us hope
19 that they bring a prosperous year to Virginia and to
20 each of you in 2010. Anything further on that
21 issue?

22 All right. We're going to go into our regular
23 monthly meeting. For the record, this meeting was
24 shown, I'm sure, on the FOIA notices as beginning at
25 12:30. It's not yet 12:30. It's 11:30 or so.

1 We're going to begin early and to the extent anyone
2 is prejudiced by our starting this meeting early, it
3 would only be someone who appears between now and
4 12:30 saying they wanted to hear the beginning of
5 the meeting. If that should occur, I have suggested
6 to our fellow commissioners that we'll just start
7 again. Mr. Miller had a very good idea that we
8 could simply ask that person to go through the
9 record with the court reporter, and we'd be
10 available to answer any questions and deliberate
11 further if need be.

12 So we'll start that meeting now, unless
13 there's some objection on the part of anybody.
14 There's a lot of voting with feet here I can see
15 that.

16 Let's go into the approval of the minutes,
17 regular meeting minutes of November 17th. Has
18 everybody had a chance to review those minutes?

19 MR. REYNOLDS: I move they be approved.

20 MR. MILLER: I second.

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

22 All in favor by saying aye.

23 Note: (Aye.)

24 MR. BURNETT: The minutes are approved.

25 All right. Commissioner comments. I do have

1 a few. We had good Virginia representation at the
2 University of Arizona Symposium on racing in Tucson
3 last week. Both Executive Secretary Harrison and
4 myself attended the RCI Board of Directors meeting.
5 There was a fair amount of business taken up at that
6 meeting.

7 I'll let Vic, perhaps, expand on some of that.
8 I think with respect to the symposium as a whole it
9 was probably a lot like last year, about 50 percent
10 of what it's been at its peak in terms of
11 attendance. We think that's due in large part to
12 state budgetary concerns all across the country and
13 travel restrictions being one of the first things
14 that are imposed in terms of trying to save money.
15 So a lot of our friends and exhibitors that we often
16 see out there, weren't there, but thought that there
17 was a lot of good that took place.

18 Go ahead, Vic, share any thoughts you have.

19 MR. HARRISON: Yeah. It's a sign of the times
20 in that the attendance was down from last year, and
21 then last year was significantly down from the prior
22 year. In the past on the exhibit floor -- for those
23 of you who don't know the University of Arizona
24 Racing Symposium, it's the one convention you attend
25 if you only go to one a year. It's the largest in

1 the country, and it's the best attended.

2 In the past, they've had upwards of 50
3 exhibitors on the exhibit floor. Last year about 30
4 showed up. This year there were about a dozen. So
5 that's news worthy in and of itself. It's really
6 the medium is the message. The fact that there was
7 only a dozen exhibitors there. They had no diamond
8 sponsor, no gold sponsor, no silver sponsor, and
9 they cut the exhibit floor in half and they had us
10 meeting in smaller breakout rooms for the sessions.
11 So it felt like it was a well-attended, warm,
12 friendly place to be, but it was a little
13 disheartening to see the lack of attendance in
14 subsequent years here.

15 The usual suspects with respect to agenda
16 items were offered on the symposium meeting days.
17 Medications was a large issue, the issue of jockeys,
18 minimum payouts and minimum weights, Betfair,
19 betting exchanges, they were all more to the point I
20 think this year by necessity. It wasn't quite so
21 spread out with the agenda items as they might have
22 been in the past. I think that was by design due to
23 the smaller amount of people attending, but it's
24 still a worthwhile place and we noticed -- Peter
25 mentioned the RCI meetings the prior two days to the

1 official start, and there was a ROAPs meeting in
2 attendance and some of the other steering groups.

3 I think that's the way -- with the economy
4 being what it is and the travel restrictions being
5 in place, you'll see more and more of that. You'll
6 have one major meeting, and then all the industry
7 standard groups will meet around it in subsequent
8 days or later in the afternoon or earlier in the
9 morning. It's still a very worthwhile and timely
10 meeting to attend.

11 MR. BURNETT: Couple of specifics. RCI
12 endorsed, approved, resolved, I'm not sure what the
13 mechanism was, New York's effort to sponsor
14 legislation to start a national racing compact that
15 isn't limited to the licensing that the existing one
16 is. It's considered to be a significant but
17 something of a baby step towards establishing a
18 national racing compact that would have far broader
19 coverage and authority from participating states in
20 terms of the subject area it covers.

21 Everybody talks about uniformity. They'd like
22 to get to uniformity, but very few folks want to
23 change their own ways. Every state wants to do it
24 their own way. They're fiercely protective of an
25 individual state commission's right to enforce their

1 own laws and the like.

2 When I was chair of RCI, Ed Martin and I
3 kicked around this idea of having a compact and
4 thought that that might be a way short of asking the
5 federal government to step in, which is deemed by
6 almost every racing commission and person involved
7 in racing as being an invitation to disaster. We
8 want to continue self-regulating, but we need to
9 find a way to get together in a national compact
10 that has voluntary participation, has its own rule
11 making might well be the well. The test will come
12 when we start seeing issues that states can't agree
13 on and see if they can find a way to find a common
14 ground, but it's a start. It was going to require
15 six states to come into being. New York is the
16 first one, and we'll see where that goes.

17 There were a couple model rules passed at RCI.
18 One involving the payments to jockeys, mount fees.
19 It's a model rule, which means only it's suggested.
20 It'll come to every state to have a look at. We
21 historically have adopted a fair number of RCI model
22 rules, but I think we need to air it out fully here
23 in Virginia and see what we think of it, and we'll
24 be asking Vic to bring us that model rule and let
25 everybody get up to speed on it and see what, if

1 anything, we want to do with it.

2 And my last comment was, and Dave may have
3 something to say about this, ROAPs put on a very
4 good program of stewards -- of stewards'
5 responsibilities and the procedural components and
6 substantive hearings or penalty hearings for drug
7 abuses and all the technical pieces of proving up a
8 case, whether it be -- whether the defense is
9 environmental contaminants or whether the defense is
10 chain of custody or whatever it is. It had some top
11 people there, Scott Waterman. Who put it together?

12 MR. HARRISON: Alan Foreman.

13 MR. BURNETT: Alan Foreman put the whole
14 program together and had the chief lab person from
15 California and from New York, and it was
16 enlightening in terms of how technical some of this
17 has become based on the chemistry and the
18 pharmacology. To put on these cases now requires
19 almost an FBI-type to establish chain of custody and
20 get another chemist to establish what was in the
21 sample, and then a pharmacologist to establish what
22 affect, if any, it had on the animal and to include
23 or exclude it as an environmental contaminant, and
24 the one thing that's abundantly clear is these cases
25 are extraordinarily expensive.

1 So anything we can do to avoid even getting to
2 that point makes a lot of sense. I'm not suggesting
3 laxity. I'm suggesting holding a high standard out
4 there among our horsemen in terms of the way we do
5 things such that we don't find ourselves feeling
6 compelled to put on a very expensive case to
7 maintain our principles. Anything we can to keep
8 that nice, clean environment that we have in
9 Virginia I think ought to continue.

10 Anything else about the symposium?

11 MR. HARRISON: No. Just with respect to
12 the -- yes, with respect to the National Racing
13 Commission. The phrase used was federalism without
14 Washington. Meaning that at some point I think the
15 fear is there would be a national office of racing
16 that would be imposed on us, on the industry by the
17 government, the federal government in Washington.

18 So looking at the NRC in the context of that,
19 you could say and it was advertised as -- and I love
20 the phrase, federalism without Washington. I think
21 Rick Masters from the National Association of
22 Legislators.

23 MR. BURNETT: State government, yeah.

24 MR. HARRISON: I'm not sure. Anyway, he made
25 a very nice presentation on that. We're hopeful,

1 and I think it's a nice fail safe to have. Even if
2 it doesn't move forward, who knows. There may be
3 some kind of a national office sometime in the
4 future.

5 MR. BURNETT: Any other commissioner comments
6 on any subjects?

7 I should announce because I just heard that
8 our governor was very wise in his selection of the
9 renewal of a commissioner, Mr. Brown, who was
10 appointed for another five-year term yesterday I'm
11 told. I told him he might be able to break
12 Mr. Siegel's record here depending on how things go.
13 I'm counting the days, but it could happen.

14 Other than that, I don't have any further
15 comments. Anybody else?

16 Committee reports. Do we have any committee
17 reports today, Mr. Harrison?

18 MR. HARRISON: No committee reports.

19 MR. BURNETT: Executive secretary's report.
20 Mr. Harrison?

21 MR. HARRISON: Thank you, Chairman Burnett.

22 The first item I have is the final report of
23 the 2009 standardbred meeting. This was written and
24 compiled by Jean Chalk, the Senior Commonwealth
25 Judge. It doesn't break much new ground here. It

1 covers many of the same -- with respect to
2 statistics at least -- items that Ian did in last
3 month's summary of the harness meet.

4 I will say that it -- he mentions the racing
5 meet and one interesting item there is that other
6 than the traditional harness racing, mile races,
7 there were some that raced at three-quarters of a
8 mile and even one raced at a half a mile, which did
9 pretty well handle-wise. That may have been because
10 those were on TVG.

11 There's a piece on purses. There's a listing
12 that breaks out all of the rulings. A piece on
13 Breathalyzer testing. There were no on-track
14 accidents this year. There was a call out to the
15 Commission veterinarians and the track ambulance, a
16 piece on cameras, and the new whip rule, Virginia's
17 breeders stakes, the horses on the judge's list,
18 handle and attendance, and a special thank you to
19 certain individuals.

20 I would like to read into the record the two
21 new pieces, which were the cameras and the whip
22 rule, if I might. Under cameras, the judges believe
23 that the fifth camera, the pan two camera shot,
24 which was removed for the 2009 race meet, should be
25 returned in 2010. The pan one camera alone does not

1 provide adequate coverage of the racing oval. These
2 are the judges' opinions.

3 The whip rule. Towards the middle of the
4 meet, a house rule was implemented that mandated
5 that the drivers must keep a line in each hand and
6 thus control of their horse from the start of the
7 race to the finish, which allows for only a minimal
8 amount of wrist action. This made for a much better
9 and more competitive presentation of the racing
10 product, and the horses appeared healthier and
11 happier as a result.

12 So with respect to the judge's report, that's
13 it.

14 MR. BURNETT: Might I point out under the
15 Breathalyzer testing that with the exception of one
16 individual who apparently was celebrating the end of
17 the meet a little bit prematurely, we had 1,244
18 Breathalyzer tests of which there was only one
19 positive, and I'll repeat my view that I don't think
20 there's another organization in Virginia including
21 the legislature that could beat that test. I think
22 we should be very proud of that level of clean and
23 sober, if you will.

24 MR. HARRISON: Right.

25 And on that issue, I think you'll hear in

1 Dr. Harden's report, he mentions that we've had Joe
2 Roney, our Director of Enforcement, administering
3 these tests. We think his time could be put to
4 better use at that point of the day, so we're
5 looking to in subsequent years to have others
6 administer the Breathalyzer tests. It's something
7 that we're going to look at this winter and
8 implement in the spring.

9 MR. BURNETT: I should point out one more item
10 in this case. I'm not sure if everybody has this
11 report, but the fact that there were no on-track
12 accidents this year, no breakdown, and no horses
13 were euthanized has got to be a statistic that very
14 few programs meet.

15 MR. BROWN: Mr. Chairman?

16 MR. BURNETT: Yes, sir. Mr. Brown?

17 MR. BROWN: I must say with the colony of
18 drivers that we had this year, it's a miracle.

19 MR. BURNETT: That's not to say we need to do
20 any driver training or anything, but we'll just
21 welcome whatever miracle we can get.

22 Any further comment on the stewards' report?
23 I've not seen Jean here, but would you extend our
24 thanks to him for a thorough report?

25 MR. HARRISON: I certainly will.

1 MR. BURNETT: All right. Anything else?

2 MR. HARRISON: I'd like to turn the floor over
3 to Dr. Harden for the veterinarian's report.

4 MR. BURNETT: Dr. Harden, welcome.

5 DR. HARDEN: Thanks.

6 I'd like to keep my comments brief, but let me
7 preface them with something. I want everyone to
8 understand where I interface with the horsemen.
9 Probably from the Commission's standpoint, I have
10 more day-to-day interaction with the horsemen than
11 anyone else in the Commission.

12 2008 was probably from my perspective one of
13 the best harness meets we've had. 2009 was a great
14 disappointment from my perspective. The horsemen --
15 and this is my opinion of it. The horsemen were
16 just like the rest of the world, maybe the economy
17 was a significant factor to them and they were
18 depressed and in some cases desperate.

19 We had the fewest number of -- total number of
20 horses racing this year as we've had certainly in a
21 number of years. We had 600 -- slightly over 600
22 horses make 3,060 starts. You know, that's roughly
23 five starts per horse, but that's an average number.
24 There were many horses started 12, 13, 14 times in a
25 nine-week meet, plus there might have been a couple

1 of qualifying races thrown in there as well. These
2 horses just had the devil beat out of them, and the
3 horsemen were -- let's just say there was a sense of
4 malaise in the barnyard area.

5 The two or three or four stables that had a
6 lot of horses, they seemed to do real well. If you
7 weren't in one of those stables that was winning on
8 a regular basis, you were getting desperate. So a
9 lot of rumors started going, which I think
10 Commissioner Brown heard several of them himself.

11 People were saying so and so is taking his
12 horse out of the paddock just before the race. He's
13 taking him to the barn, giving him a shot, bringing
14 him back up, and winning the race. So we then
15 instituted a new policy in the paddock. We put a
16 commission employee there to check people's badge
17 coming -- with the horse coming into the paddock and
18 not allowing them to go back to the backside, which
19 actually that worked out very well, but now everyone
20 is complaining about having to show their badge to
21 come into the paddock.

22 To sum it up, one trainer told me rather
23 rudely, he said, "Why do y'all have so many rules
24 here when we're racing for \$2,000?" This was --
25 that just seemed to be the general attitude among

1 many of the horsemen.

2 Joe Roney, the security director, he and I
3 spent hours in the barns this year just trying to
4 observe and watch and see what's going on because of
5 the rumors that we're hearing. Every time we heard
6 a rumor about a specific horse, when that horse
7 raced, he went to the test barn. We had no
8 positives until the last week of the meet. We had
9 three positives of basically legitimate substances
10 that were, you know, administered.

11 So from a testing procedure, we did very well.
12 We're not seeing anything, but from an attitude
13 perception, it was not a very good attitude-type
14 thing. So this was part of my recommendation that
15 we really need more security presence in the barn
16 area just to spread the idea that Virginia has a lot
17 of integrity in its racing.

18 Otherwise, there were a few little minor
19 problems, which we deal with just about every year,
20 and we got in our plans during the winter to see if
21 we can improve it, but I would like to see the
22 harness horsemen take it among themselves to improve
23 their willingness to go out and put on a show and to
24 try to improve the status of harness racing. I
25 think a lot of it is in their own hands, and they

1 basically are refusing to step up to the plate, so
2 to speak, just in putting on a professional
3 presentation in horse racing.

4 MR. BURNETT: Dr. Harden, maybe we could help
5 that process along a little bit just by inviting the
6 VHHA and others who have a stake in a professional
7 show in coming up with some ideas that might
8 motivate less carping, more pride, things that will
9 lift the spirits on the backside, which I think that
10 you put your finger on as part of the problem.

11 They're all just moping around the backside and
12 probably do the same thing when they're racing their
13 horses. That's not what we want the public to see.

14 I don't know what the answer is and how we go
15 about it, but maybe there are some things that can
16 be done to boost things a little bit and let the
17 public see a better show over there.

18 DR. HARDEN: Well, those things would
19 certainly have my support and help in any way I can.

20 MR. BURNETT: Well, I think Commissioner Brown
21 would be willing to give driver's lessons. He can
22 help a few of them out that way, but I think we
23 should talk about it some when we get together next
24 at a committee level and see if we might come up
25 with a program or two.

1 Yes, ma'am?

2 MS. SMITH: Katherine Smith, and I'm the vice
3 president of the VHHA. We are very aware, very
4 aware of Dr. Harden's comments and sentiments and
5 agree. We had numerous discussions on the
6 disappointments of the last meet. Sadly, I think a
7 lot of the behavior that we saw, the quality of
8 racing that we saw, and certainly the quality of the
9 driver colony that Mr. Brown has mentioned were more
10 than likely a stout reflection of the purse monies.
11 We are not able to draw some of the larger stables
12 where you can count on a better quality horse,
13 better quality personnel tending the horses, and
14 better support for the racing itself.

15 The VHHA would like to have everyone know that
16 we would be amenable to working with any group of
17 people, Dr. Harden in particular, who would bring
18 any ideas to our organization so that we may work
19 with the very many out-of-state concerns and stables
20 to try to improve the quality of racing, the quality
21 of life on the backstretch, and the quality of care
22 of the animals.

23 So if anyone would like to sit down with us,
24 we're very amenable to doing that. We are so
25 dependent on outside stables. So few of our stables

1 are actually in Virginia and have no direct control
2 over those stables and entities, but we're willing
3 to take a swing at it.

4 MR. BURNETT: Thank you. That's a great start
5 right there when you got your commission
6 veterinarian and you got your horsemen association
7 really wanting to do something and recognizing the
8 problem. I'm sure there are some things that can be
9 done. How successful they'll be, we'll see. That's
10 a very good start. I'd be happy to help anyway I
11 can to address it.

12 MS. SMITH: But I do agree with Dr. Harden.

13 MR. BURNETT: Great. Thank you.

14 MR. MILLER: Mr. Chairman?

15 MR. BURNETT: Yes.

16 MR. MILLER: Do you all feel like that this is
17 unique to Colonial Downs, or is it an industry-wide
18 dip in enthusiasm?

19 MR. BROWN: Industry-wide.

20 DR. HARDEN: It's an interesting point. When
21 I talk to my colleagues in other states, they
22 indicate this is industry-wide. And yet as I
23 understand it, the sales of standardbred horses this
24 winter were up. So somebody is spending money
25 buying horses. As compared to thoroughbreds, the

1 standardbreds are selling at higher prices. So it's
2 kind of a paradoxical situation. I'm not sure -- I
3 think the fact that so many harness horsemen race at
4 fair meets and unregulated meets that they think
5 they can come here and race unregulated.

6 MS. SMITH: I think that's something we too
7 would concur with Dr. Harden on. The other thing is
8 that -- referencing the sales is a very good way of
9 realizing the separation that's going on in our end
10 of the business where you have -- we're quickly
11 getting to the point where you have a have and have
12 not situation in harness racing.

13 There are those people that are racing at the
14 Meadowlands and the large tracks, which in many
15 cases are funded by slot machines where you have
16 huge purses, and those people can afford to go to
17 sales and spend a great deal of money on horses, and
18 then you got the folks at the fair racing level, and
19 they're just hand to mouth. There's a huge middle
20 where there are very few people actually racing.
21 It's an industry-wide standard. I concur.

22 If you travel to racetracks in the midwest and
23 north of here and so forth, in the backstretch, the
24 behaviors and the disappointment is industry-wide in
25 my opinion. I think there's an awful lot of people

1 that are extremely discouraged. They can't afford
2 to pay their help anymore. They can't afford to buy
3 the horses they have in the past. The equipment
4 doesn't look as good as it used to. There are those
5 signs that let you know it is an industry-wide
6 problem.

7 MR. BURNETT: In follow-up to that, if you
8 were to get the word out that we're going to impose
9 a higher standard of some sort, whatever that
10 message is, and the result of that message was that
11 you had a better caliber of horsemen, if you will,
12 and better conduct on the backside and a better show
13 over here, but at the expense of numbers that you
14 had 500 pretty good horsemen over there -- 500
15 pretty good horses as opposed to 700 as we've had in
16 prior years, is that a trade off that we can live
17 with, or will it doom the business to have 500
18 horses on the backside despite good, quality
19 horsemen, smaller fields, et cetera, et cetera?

20 DR. HARDEN: Well, you're asking a question
21 that's over my pay grade. Working in the barn area,
22 I would much prefer 500 better quality horses.
23 Whether that's going to translate to bigger handle,
24 I have no idea.

25 MS. SMITH: You really need the race secretary

1 here to address that question. You're well over my
2 pay grade as well, but I think that we like to think
3 of 800 head as being a pool large enough that a
4 racing secretary can really write races that are,
5 you know, competitive wide open. He's got a range
6 or variety of conditions that he can write to at
7 that point if you got 800 head on the plate, but I
8 agree again, you know, 500 very good horses is in
9 many regards superior to 800 poor ones.

10 The issue, however, if you think about it
11 logistically, these horses race every week for the
12 most part. They race once a week, but if you only
13 have 500 horses, many of them are going to have to
14 race two times a week. Many of them are going to
15 have to race two times a week. And that's awful
16 hard on a horse.

17 MR. BURNETT: That raises a question I forgot
18 to ask, then I'll shut up. For lots of reasons, but
19 the two principle ones being doing right by the
20 animal which should be first and foremost, and
21 secondly, from a public perception standpoint, is
22 there any merit in considering a starts per meet
23 limitation on horses? I know people want to fill
24 races and the secretary wants to fill them, but you
25 know, a horse running 12 times in a five or six race

1 meet is going to cause certain members of the public
2 to draw conclusions that aren't favorable.

3 MR. BROWN: It's about nine.

4 MR. BURNETT: Whatever it is.

5 MR. BROWN: You're right. They should start
6 about nine times. Going twice or something. I
7 could see doing it once maybe, but I couldn't see
8 it --

9 MR. BURNETT: Again, we don't need to decide
10 that today, but I think it's the kind of thing we
11 ought to talk about.

12 MS. SMITH: I think that's something we would
13 probably want to talk about, too. I think there
14 were a number of concerns on the backstretch in that
15 regard.

16 MR. BURNETT: On that note, the next item.
17 Mr. Harrison?

18 MR. HARRISON: The next item is the 2010
19 standardbred race days and while acknowledging we're
20 still many months away from the actual 2010
21 standardbred meet, we do have some months with which
22 to make a decision. I just want to point out that
23 we received the request in a timely fashion from
24 both the VHHA and from Colonial Downs. And in
25 summary, Charlie Dunavant's request is for 36 days

1 over a nine-week period beginning September 7th and
2 ending November 6th with a targeted average purse
3 per day of approximately \$45,000, and that the
4 proposal from Colonial Downs is for a 30-day race
5 meet beginning Saturday, October 2nd and ending
6 Wednesday, November 10th with a targeted purse
7 amount of approximately \$40,000.

8 MR. BROWN: Mr. Chairman?

9 MR. BURNETT: Yes, sir.

10 MR. BROWN: I'd like to, if we could, see if
11 we could push that off until January. Dr. Dunavant,
12 he's been a little sick. I think that's in the best
13 interest of everybody involved unless Colonial Downs
14 has an objection to that.

15 MR. STEWART: No.

16 MR. WEINBERG: No objection.

17 MR. BURNETT: I can't imagine any adverse
18 impact waiting a month to address that issue.
19 Unless other commissioners object, I'm fine with
20 that.

21 All right. Adoption of the final exempt
22 amendments to 11VAC10-60-15.

23 MR. HARRISON: I would ask that the Commission
24 approve the adoption of the final exemption to
25 10-60-15, fee schedule for permit holders as we have

1 proposed it. We have received the comments of Jim
2 Weinberg for inclusion in the proposal, but I would
3 ask that the Commission approve it as we have
4 presented it, and I have pledged verbally and in
5 writing to work with Jim and with Ian and especially
6 with Pat Kelleher on satisfying the ancillary issues
7 such as the three-day pass for a lower fee, to
8 address those issues over the coming month or so,
9 certainly before the live racing begins.

10 I didn't want to alter what you had in front
11 of you that was approved conditionally at a prior
12 commission meeting. So I would ask that you approve
13 it as we have proposed it.

14 MR. BURNETT: Before I seek comment from the
15 public and I certainly want comment from commission
16 members, is that the only area of objection that
17 you're aware of with respect to this request, is
18 this issue that we discussed at prior meetings about
19 temporary, short-term employees at racetracks? Has
20 anybody else expressed any concerns or issues?

21 MR. HARRISON: Only what I've seen in Jim's
22 document, which is that and similar issues related
23 to that, parking attendants.

24 MR. BURNETT: That's what I mean. Outside of
25 that, no others?

1 MR. HARRISON: No. There have been no other
2 comments received.

3 MR. BURNETT: Any comments from commissioners?
4 I'm sorry. Ms. Smith?

5 MS. SMITH: I would like to make a comment. I
6 don't think that it will change the decision of the
7 VRC, but the standardbred horsemen again felt that
8 while we agree with the owner and trainer/driver
9 licensing, that we felt that in many cases it
10 works -- a \$50 fee works a hardship on the grooms.
11 Again, they are less able to pay than everyone else,
12 but we understand the cost of doing business.

13 MR. LERMOND: Mr. Chairman?

14 MR. BURNETT: Mr. Lermond?

15 MR. LERMOND: We made the groom fee \$25 for
16 the exact reason you just stated.

17 MS. SMITH: Oh, okay. I hadn't seen that.
18 Thank you.

19 MR. BURNETT: Okay.

20 MR. BROWN: Mr. Chairman, what other changes
21 were made from what we were given last month?

22 MR. HARRISON: No changes.

23 MR. BURNETT: I think what we have in front of
24 us is the proposal of the commission staff on this
25 issue, and correct me if I'm wrong, Jim, the

1 racetrack would like to alter this to the extent it
2 applies to temporary employees and short-term
3 outside work type of employees, parking lot
4 attendants, perhaps landscape types, that kind of
5 thing. Is that fair?

6 MR. WEINBERG: That's one issue.

7 MR. BURNETT: All right.

8 MR. WEINBERG: There is a second issue that
9 maybe I was not as clear about, and that is that
10 there are some employees who are not in any of what
11 I would call the sensitive areas of racing that are
12 being asked to pay the same permit fee as those that
13 are. So we tried to differentiate between the guys
14 in the parking lot who are not here for a three-day
15 pass. They're here for the whole meet. They need a
16 permit, but they are different from a mutuel teller
17 or a guy in the paddock area who understands the
18 level of scrutiny and whether there is a difference.
19 That was the point we were trying to make. And they
20 would pay \$15 rather than 25. You asked how many
21 people are affected by that differential, and it's
22 357 people.

23 MR. BURNETT: Okay. And to the extent that
24 the Commission staff wants to work with -- I applaud
25 you for that, work with the racetrack to ameliorate

1 this issue somehow. Other than money, how do you do
2 it?

3 In other words, we pass this. They have to
4 spend the money on it. I doubt you have the
5 authority to waive licensing fees for categories
6 that you later identify might not need to pay as
7 much, or is there a way -- I'm just curious to know
8 what tools are available to all of us to try and
9 solve this problem if we pass this as it is
10 currently requested.

11 MR. HARRISON: Well, I think we have a way of
12 satisfying the request for a three-day employee at a
13 reduced rate, but it's going to take, I believe, the
14 cooperation of the racetrack in implementing the
15 enforcement of that. With our staff, I'm not sure
16 we could adequately ensure that every one of those
17 employees is actually doing that kind of work.

18 So we need -- we need to work on getting the
19 cooperation from especially Pat Kelleher's group,
20 which I think we can do. We've done similar things
21 in the past.

22 Now, I don't know, Joe, if you want to chime
23 in on this issue or not.

24 MR. RONEY: Mr. Chairman --

25 MR. BURNETT: Thank you.

1 MR. RONEY: -- Pat and I have discussed that
2 same situation that Vic has just addressed. What we
3 would like to do, and this is just in the talking
4 stages, for those three-day events, whoever Pat
5 hires or Colonial Downs hires, we get a list from
6 him on who those individuals are.

7 Now, if I, in turn, go back there four days
8 later, let's say the meet is -- the Virginia Derby
9 is over, I go back and find somebody who's back
10 there who is still on that one-day license, then we
11 have a serious issue. That would allow the
12 Commission, I think, to fine Colonial Downs for
13 having unlicensed help at that point.

14 So that's something that we can work out as
15 far as the one-day license goes for special events.
16 We're not even -- we may not even charge. We may
17 say you know what, they're yours. You handle them.
18 You take care of them. You give them your license,
19 and that will be that. We won't have to get
20 involved at all.

21 Now, as far as scrutiny goes for people who
22 are tellers, they are held higher. They're
23 fingerprinted. For the person in the parking lot
24 who's sweeping, obviously they're not fingerprinted.
25 Now, the problem in the past we've had where we've

1 had different fees for different people. Colonial
2 Downs will take -- let's say someone is sweeping the
3 parking lot, which is \$5, and now you take them and
4 make them a teller. Well, that's \$10. Now, you
5 take them and you can also cross train them to be a
6 bartender. Well, that's another fee. That's
7 another \$10.

8 So our thinking was that one set fee of \$25,
9 and this way if Colonial Downs decides to cross
10 train somebody, if they take the guy from the
11 parking lot and now they're going to make them a
12 cook or they're going to make them a bartender, they
13 can do that. We don't have to worry about making
14 sure that he's licensed with all three types of
15 permits, so we were just trying to keep it simple.

16 MR. BURNETT: All right. Any further
17 questions from the Commission of either Colonial
18 Downs or staff?

19 Any further comment from Colonial Downs? Do
20 we have a motion with regard to these fees?

21 MR. BROWN: I make the motion that we approve.
22 Is the proposed stipulation that our people get
23 together with Colonial Downs or --

24 MR. BURNETT: Well, I think for purposes of --
25 to keep the record clean on something such as the

1 regulations, we ought to either approve or modify
2 these regs, and then certainly recognize the --

3 MR. BROWN: Do we wait until then?

4 MR. BURNETT: No. I mean, I think we can vote
5 on this one way or the other if we have a motion and
6 a second. I'm just saying we can ask outside of
7 that motion that there be cooperation to ameliorate
8 things if that's what is indicated after we've
9 addressed this.

10 Ms. Bouzek?

11 MS. BOUZEK: Jeanna Bouzek. I'm vice
12 president of operations. I just have a question.
13 If it's a year-round employee that's working in the
14 OTB paying \$25, shouldn't there be some kind of
15 relief for somebody that just comes and works
16 seasonally?

17 I mean, it's hard to get somebody to pay \$25
18 when they're making \$8 an hour, and I just want to
19 stand up on behalf -- I mean, that's what the OTB
20 employees are paying, \$25. Some of these people
21 come out for nine weeks, and \$25 is a hardship.
22 Just like \$50 is a hardship for the grooms. We got
23 a 17-year-old kid coming, and you have to tell him
24 he has to pay \$25. So your first four hours of work
25 are, you know, going to that. It's going to be

1 hard. I just wanted to comment on that. It just
2 seems a bit unfair to have somebody work 365 days
3 paying the same thing.

4 MR. BURNETT: Mr. West?

5 MR. WEST: Mr. Chairman, I just want to bring
6 up that whether they come and work for three months,
7 it costs us the same thing to issue that permit to
8 that employee as it does the one that works
9 year-round at the OTB. It used to be at the OTB you
10 had employees that worked concessions, and they
11 worked as tellers. They had to get two separate
12 permits. They were already paying \$20.

13 So we switched that and just made them staff
14 employees at Hampton or wherever, and it saved them
15 money. They're only paying 10, but the OTB had the
16 option -- like Joe was saying, they could cross
17 train them. They could use them in the money room.
18 They could use them as a bartender, but again the
19 amount that it costs us to issue a permit, whether
20 they work one day or ten days or a whole year, it's
21 still the same thing.

22 MR. BURNETT: Thank you.

23 Any further comment or questions from the
24 Commission?

25 MR. BROWN: I think you have to kind of bite

1 the bullet and just keep it where it's at.

2 MR. SIEGEL: Mr. Chairman, just for my own
3 clarity, the one or the three-day permit that we're
4 discussing could pertain to any of these categories
5 or only the less meaning jobs? I mean, if you had a
6 driver that came in for one day or any one of the
7 categories, where would they stand?

8 MR. LERMOND: Mr. Siegel, in that case, the
9 driver, owner, or participant would have to show
10 that they're licensed in another jurisdiction in
11 good standing. Along with that and an okay from
12 Mr. Roney, they would be given a one-day pass to be
13 able to go back to the backside.

14 MR. SIEGEL: Does it stand that way now?

15 MR. LERMOND: Yes.

16 MR. SIEGEL: So that wouldn't be a change. In
17 any of these other categories, that flexibility
18 would exist with this entire list?

19 MR. STEWART: Well, as point of background,
20 what we have is a situation on Virginia Derby Day
21 where we need a tremendous number of people working
22 in our F&B area, working in our parking area, and
23 stuff like that. So we're not really looking for it
24 to be in the mutuel room or as Jim characterized it,
25 the sensitive areas. We're looking for it more in

1 the other areas.

2 MR. WEINBERG: Perhaps for further
3 clarification, the proposed regulation submitted to
4 staff said at the end, "A person holding a permit
5 under this new subparagraph as temporary shall not
6 be granted access at any time to the backside,
7 racing animal, jockeys' rooms, drivers' rooms,
8 totalizator room, mutuels, or the money room." So
9 we were trying to be sensitive to that.

10 MR. HARRISON: We can work with them on
11 something that will be acceptable to all parties.

12 MR. SIEGEL: Okay.

13 MR. BURNETT: All right.

14 MR. PICKLESIMER: I actually hadn't seen that.
15 I'm sort of curious. If you got -- would an
16 assistant starter or a valet fall under the one-day
17 pass as an official? You know, we need to bring in
18 an assistant starter or a valet, would they qualify
19 for the one day if we got --

20 MR. RONEY: Yeah. Certainly. Again, we're
21 willing to work -- we know there's going to be
22 exceptions to the rule. We know we're going to have
23 to be a little flexible at times, and we're willing
24 to do that.

25 MR. LERMOND: We may even be willing to waive

1 the fee for the 30 or 40 people that are going to be
2 coming here for two or three days out of the year,
3 but somebody who's going to be working for the whole
4 summer, you have to ask that person to pay \$25.

5 That's like if you get a job in landscaping, you're
6 going to have to buy some gloves or you're going to
7 have to buy some boots. It's not reimbursed as an
8 employee expense, which not everybody itemizes, but
9 it is deductible on your taxes.

10 MR. SIEGEL: Well, there's clearly a gray area
11 here, and there's going to have to be some decisions
12 made and some flexibility made as well, but it
13 sounds as if there may be a number of people that
14 have this, the right to approve these variances.

15 Vic, will you be the one that ultimately makes
16 that decision or there are a number of people that
17 could waive these licenses in certain cases?

18 MR. HARRISON: Ultimately it's me, but these
19 folks work for me. So the policy comes down, and
20 they implement it. It would be standard, if that's
21 what you mean.

22 MR. SIEGEL: Yeah. And so how many people
23 would be involved in making exceptions, for example?

24 MR. HARRISON: I'm not really following.

25 MR. BURNETT: Joe, Dennis, who else would be

1 making exceptions? Two or three people might say,
2 yeah, okay, you don't need to pay the full boat.

3 MR. SIEGEL: It's taken on a case by case
4 basis.

5 MR. HARRISON: Well, the licensing staff
6 basically.

7 MR. LERMOND: We would expect a list from
8 Colonial ahead of time of the 30 or 40 people that
9 they assume are going to come in just for the two or
10 three big days and in conjunction with Joe Roney,
11 we'll look over the list.

12 MR. BURNETT: I assume that you intend to
13 develop in conjunction with Colonial Downs a policy
14 that everybody understands and can live with as
15 opposed to waiting until the onslaught comes, and
16 then figuring out how to deal with it.

17 MR. HARRISON: Right. We'll start up in
18 January.

19 MR. BURNETT: You're going to proactively come
20 up with a policy that everybody can live with.

21 MR. HARRISON: Yes.

22 MR. REYNOLDS: Did you review this, and are
23 you happy with it?

24 MR. WEINBERG: I made one -- just so I'm
25 clear. I made one exception to the schedule that

1 you're about to approve, and that is Colonial Downs
2 proposed reducing from 25 to 15 the permit fee for
3 employees of Colonial Downs who are not exposed to
4 those sensitive areas that we talked about, the
5 mutuel room, the jockey room, the backstretch. I
6 think the discussion so far has been that the
7 schedule opts for simplicity over trying to make
8 those distinctions.

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

10 MR. BROWN: I move we approve.

11 MR. BURNETT: I'm not sure the question has
12 been articulated is my problem. Do we have a motion
13 to approve these or to modify these as they're
14 proposed by staff? What is your motion, Mr. Brown?

15 MR. BROWN: My motion is to approve this list
16 the way it is right now.

17 MR. BURNETT: As proposed by staff. Do we
18 have a second?

19 MR. REYNOLDS: I second.

20 MR. BURNETT: It's been moved and seconded.
21 All in favor of passing the list as presented by
22 staff indicate by saying aye.

23 Note: (Aye.)

24 MR. BURNETT: All right. Thank you all. And,
25 again, just to be clear, Mr. Harrison is going to

1 work with Colonial Downs' staff and his own
2 licensing staff to come up with some concessions
3 where appropriate to help some of these people that
4 are strained to get a license.

5 MR. HARRISON: Yes, we can do that.

6 MR. BURNETT: Thank you.

7 The next item is the approval of host
8 simulcast tracks for 2010 under Tab 7.

9 MR. HARRISON: Tab 7. We received a request
10 from Mr. Jeffrey W. Wingrove, Director of
11 Simulcasting and Mutuels, for the simulcast. He
12 attached a list of thoroughbred and standardbred
13 tracks to participate in common or separate -- on a
14 common pool or a separate pool basis, and all these
15 tracks have been approved in the past and they've
16 done business with these folks in the past, I think
17 with the exception of the South African Racing.
18 South African Racing is -- it's my understanding
19 they are a major player in the International
20 Pari-Mutuel wagering business, and I would recommend
21 approval of this list of guest sites.

22 MR. BURNETT: May I ask a stupid question
23 before we vote on this?

24 I would have thought all of these tracks with
25 the exception of Colonial would be host tracks, and

1 you said we're receiving the signal.

2 MR. HARRISON: Right. Host tracks.

3 MR. LERMOND: We're the guest in this case.

4 MR. BURNETT: We are the guest, not this list
5 of tracks.

6 MR. HARRISON: Right.

7 MR. BURNETT: So simulcast track guest means
8 Colonial Downs is the guest, and the tracks listed
9 with the exception of Colonial are the host. Sorry
10 to be an idiot.

11 MR. HARRISON: It's kind of like jockeys
12 weighing in and jockeys weighing out.

13 MR. BURNETT: There you go. Thank you.

14 MR. LERMOND: In years' past, Mr. Chairman, we
15 used to approve this on a monthly basis, but we just
16 thought it was easier to get it done at the
17 beginning of the year.

18 MR. BURNETT: I was trying to make it more
19 difficult. Thank you.

20 Do we have a motion to approve the list of
21 tracks, guest or otherwise, submitted by
22 Mr. Wingrove for simulcast in the coming year?

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

24 MR. REYNOLDS: Second.

25 MR. BURNETT: It's been moved and second. All

1 in favor indicate by saying aye.

2 Note: (Aye.)

3 MR. BURNETT: Motion carries. Thank you.

4 We next turn to stakeholders, request from
5 Colonial Downs for 2010 thoroughbred race days.
6 Before we get into presentations or responses, it's
7 my understanding from both parties that real
8 progress has been made in reaching an agreement and
9 the likelihood one will be reached within 30 days is
10 far more than aspirational. A lot of people
11 believe -- the important people that are making this
12 agreement believe that they're very close to working
13 something out.

14 And while I'll be the first to say that I've
15 been on both sides of the table with this and I have
16 heard those representations made in the past and
17 they've looked been at with a scant from this side
18 of the dais on almost every occasion, I think this
19 is a circumstance where I for one with the little
20 bit of knowledge I have believe that we are very
21 close to an agreement between the horsemen and left
22 to their own devices, if they can come up with a
23 good agreement, I think we should give them every
24 opportunity to do that.

25 My recommendation to the Commission is we

1 defer this until our next meeting unless y'all feel
2 otherwise. I'm sure both of these capable parties
3 are happy to tell us anything you might like to know
4 about their progress. Any comment from anybody?

5 Silence is assent. That sounds good. We'll
6 put it over to the next meeting, and you better have
7 an agreement.

8 MR. REYNOLDS: That's been said before, too.

9 MR. BURNETT: That, too, has been said. Just
10 let that roll off.

11 All right. Public participation. We've had
12 some already. Do we have anymore? Waiting for that
13 special person to come through the door saying the
14 meeting should have started later.

15 MR. MILLER: You've got seven more minutes.

16 MR. BURNETT: Thank you. We'll be done by
17 then with any luck.

18 The next meeting, January 20th. Anybody got a
19 problem with that? That's the usual third
20 Wednesday. I don't see any need for a closed
21 meeting unless some commissioner says otherwise.

22 Do we have a motion for adjournment?

23 MR. REYNOLDS: So move.

24 MR. BURNETT: It's been moved and seconded by
25 the chair. We're adjourned.

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Note: The proceedings concluded at 12:24
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 December 16th, 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 December, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011