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

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

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

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

MR. SCOGGINS: Greg Scoggins on behalf of XpressBet.

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

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

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

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

Let's take the application of EZ Horseplay first.

MR. WEINBERG: Good morning. I'm Jim Weinberg appearing on behalf of EZ Horseplay, and to my right is Ian Stewart, President of Colonial Downs.

Whatever time we don't use, I'd like to reserve for rebuttal, but we will attempt to be very brief.

I believe the Commission has received our application. The staff has confirmed that it is in order, that EZ Horseplay has satisfied all the legal
requirements for licensure. I'm authorized to represent that Colonial Downs will abide by the conditions set forth in the staff report regarding its operations. I would also note that Colonial Downs continues to be the only ADW provider licensed in Virginia that makes a voluntary contribution to the Virginia Thoroughbred Association. It receives eight-tenths of one percent of all thoroughbred handle wagered through EZ Horseplay.

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

MR. BURNETT: Fellow commissioners, any questions?

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

MR. WEINBERG: No, to the VTA.

MR. BURNETT: I'm sorry.

All right. In the coming year, is your intention to cease with that payment and instead make the statutorily required payment of one percent to the Breeders Fund?
MR. WEINBERG: There is a --

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

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

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

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

Accordingly, it's my recommendation to my fellow commissioners that in the granting of these licenses that we amend the staff's recommendation and ask the providers to agree that should the
Commission after examining this decide that another method such as the bond that we had in the past be more appropriate, that we reserve the right to impose that condition of security for account holders.

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

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

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

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

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

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

MR. WEINBERG: Right.

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

MR. WEINBERG: Absolutely.

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

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

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

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

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

Anything further?

MR. WEINBERG: No. Thank you.

MR. BURNETT: Thank you.

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

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

As Mr. Weinberg stated, we would like to reserve that balance of the time available to us for any rebuttal that's necessary. We hope to also be brief in our presentation, but recognize that we stand in somewhat of a unique situation compared to
other ADW providers that will be before you today.


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

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

XpressBet is of the view that under U.S. constitutional principles, the contracts clause of the U.S. Constitution provides us the opportunity and right to continue operating through 2012 under
the terms of our agreement in that insofar as it is inconsistent with the provisions of HB-240, and we fully anticipate and look forward to performing our obligations in Virginia as a licensed ADW in Virginia subject to the expectation that we be allowed to do so under the terms of our agreement as opposed to what might otherwise be demanded by the statute.

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

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

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

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

MR. SCOGGINS: I think to state it differently but maybe equally, to what extent the federal laws
and the state constitution allow the contract terms to trump the requirements of the statute. We may be saying the same thing differently, but --

MR. BURNETT: I think we are.

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

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

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

MR. SCOGGINS: Correct.

MR. BURNETT: Is that a fair statement?

MR. SCOGGINS: That's a fair statement.
MR. BURNETT: Which puts us in a position of deciding whether or not we are willing to grant a license under those circumstances.

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

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

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

MR. CHABRIER: No, we do not.

MR. SCOGGINS: Actually, if I might. The
issue that we have is by being licensed in Oregon as an ADW hub, we comply with Oregon law. Conceptually, we do not have a problem with the Racing Commission evaluating whether and to what extent they feel Virginia account holders are satisfactorily protected by what we do pursuant to Oregon law.

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

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

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

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

MR. WEINBERG: Just a procedural question.

MR. BURNETT: Thank you.

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

MR. BURNETT: I'm sorry.

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

MR. BURNETT: To the extent that there are
some commonalities and I think many of the ADW providers have similar objections to the statute that's in place, unless there is an objection, I suggest we have that discussion at the end of all of the presentations of each ADW license applicant. Anybody have any objection to that? Any member of the public who would like to do it a different way?

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

MR. WEINBERG: Thank you.
MR. SCOGGINS: Thank you.
MR. BURNETT: Thank you.

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

Welcome, Mr. Blackwell. How are you?

MR. BLACKWELL: Good. How about yourself?

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

MR. BLACKWELL: Good to see you.

MR. BURNETT: Proceed, please.
MR. BLACKWELL: Brad Blackwell on behalf of Churchill Downs Technology Initiatives Company, doing business as TwinSpires.

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

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

MR. BURNETT: Any questions?

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

MR. BLACKWELL: Sure.

MR. BURNETT: -- what I characterized as
condition eight, the bond requirement. I take it you heard the back and forth with the prior applicants.

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

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

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

MR. BLACKWELL: No, we do not.

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

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

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

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

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

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

MR. BLACKWELL: Sure.

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

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

MR. BLACKWELL: Yes.

MR. BURNETT: Thank you.
MR. BLACKWELL: Thank you.

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

Good morning, gentlemen.

MR. COHEN: Good morning, Chairman Burnett.

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

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

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

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

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

MR. COHEN: But I'm "northern" northern Virginia, which I have learned --
MR. REYNOLDS: You're on the other side of the river.

MR. BURNETT: Mr. Petramalo --

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

MR. BURNETT: That's true.

MR. PETRAMALO: Right on the Potomac River.

MR. BURNETT: All right. Thank you.

Mr. Cohen, go ahead.

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

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

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

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

So, therefore, we respectfully request renewal
based on the current pre-existing terms of our contract with Colonial Downs that run through 2010. Mr. Grossman can answer further questions that you may have about the pending license and the operations.

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

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

MR. COHEN: That's exactly right, Commissioner Burnett. Lawyers always like to state things in their own terms. Yours are as good mine will be, but to be succinct about it, in accepting whatever
license the Commission deems in its discretion to
offer YouBet, we simply don't want to waive the
rights that we've raised today --

MR. BURNETT: That's understood.

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

MR. BURNETT: Thank you.

Any questions of this applicant, fellow
commission members?

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

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

MR. BURNETT: Thank you.

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

MR. COHEN: Thank you, Chairman Burnett.

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

MR. BURNETT: Always?

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

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

MR. COHEN: Thank you.

MR. BURNETT: Thank you.

Have there been any Mr. Hindman sightings?

MR. HARRISON: If his plane arrived on time at 11:20, I would suspect he'll be here a little before -- I'm sorry, 10:20, he would be here about
eleven o'clock today. So he's still probably about 20, 25 minutes away.

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

MR. SCOGGINS: Mr. Chairman --

MR. BURNETT: Mr. Scoggins?

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

MR. BURNETT: Any objection to that, gentlemen?

Please come forward. What did you miss?

MR. SCOGGINS: I have always found that when it comes to legal matters and administrative matters, it pays to go last because you can draw from the wisdom of others, and I find that this day
is no exception to that and so what I would like to
do is to clarify XpressBet's position.

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

MR. BURNETT: For the record --

MR. SCOGGINS: In essence, what he said.

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

MR. SCOGGINS: The risk for us to take.

MR. BURNETT: That's exactly right.
Thank you. Any further questions of
Mr. Scoggins?

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

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

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes. Mr. Miller?

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

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

MR. MILLER: That's what I mean.

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

    MR. MILLER: Okay.

    MR. BURNETT: Any other further discussion before we go into a stimulating legal discussion? Is there anybody that would like to speak to the legal issues as they may be relevant to the granting of these ADW licenses? Mr. Weinberg?

    MR. WEINBERG: Pardon me one moment.

    MR. BURNETT: Certainly. Take a moment.

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

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

    MR. WEINBERG: To be clear for the record, Virginia Horsemen's Benevolent and Protective Association, as well as the VHHA are partners in EZ Horseplay. I am speaking really just for the Colonial Downs component of that team, but I would speak to the legal issues in that I believe the chairman began that discussion in the correct place, and that is this is probably not the proper forum to address constitutional issues, which is one of the issues raised by the applicants. The proper forum for that is the judicial branch, not the executive branch of government.
The second issue relates to the nature of this contractual right, and I would suggest to you that is a contract that is between those applicants and Colonial Downs and the horsemen, who are also party to that agreement and share 50/50 under that arrangement, that there is some dispute as to whether the law changed the rights under that contract, but that is a dispute between YouBet in one case and XpressBet in one case and Colonial Downs and the horsemen, not a dispute with the Commission.

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

Obviously, if Colonial Downs feels it has contractual obligations to make payments back to YouBet and XpressBet, it will. Again, I don't think
that this is the -- this Commission is the proper
forum to resolve what may be a contractual dispute,
not a constitutional dispute. If it is a
constitutional dispute with all due respect, again,
it's not this forum that that issue should be
resolved in. It should be resolved in a judicial
forum.

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

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

MR. BURNETT: Any questions from the
Commission?
Thank you, Mr. Weinberg.

Any further comment from anyone else?

Mr. Petramalo?

MR. PETRAMALO: Yes.

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

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

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

MR. PETRAMALO: Right. Okay.

And following up on Commissioner Miller's question, we then as the horsemen's organization would expect that as of February 10th, we would be paid the five percent required by the new statute, unless one of those organizations that I mentioned were in some fashion or other to take some legal action to stall having to do that. That seems to me to be the context that we're in.
The legal questions raised are very interesting, but I would at the outset join Jim Weinberg's observation that it's certainly not for this Commission to look at those legal issues at this time, if any. As a state regulatory agency, I think you have to operate on the presumption that the state law under which you're working is constitutional. I don't think you can choose to say, well, the General Assembly may have passed that, but it's unconstitutional.

With that aside, I'm not going to get into the merits of the constitutional argument other than to point out some obvious constitutional law propositions. Greg Scoggins, I believe, on behalf of XpressBet was basically saying the state law cannot impair the obligations of XpressBet's contract with Colonial and the horsemen. There is a section in the federal constitution, Article 1, Section 10 that says no state shall pass a law that impairs the obligation of private contracts, but there have been decisions going back at least 100 years which have all almost uniformly held that that section of the federal constitution does not restrict the state's exercise of its police power to protect and promote the health, safety, and welfare
of its citizens, including taking regulatory actions
as well as taxing.

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

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

MR. BURNETT: Thank you, Mr. Petramalo.

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

MR. HINDMAN: I'm fine.

MR. BURNETT: Please come forward and we'll
take up your application. Just to bring you up to
speed as to where we are, we have agreed that we'll
hear whatever presentation each applicant would like
to give us. They've all been very brief. Our
interest has been whether or not there's anything in
the staff report that jumps out at folks, and we
have reserved any decision on all of the
applications until we've heard all of the
presentations. We just concluded, subject to your
wanting to add anything to it, any comment anybody
wants to make on the legal appropriateness,
ramifications, et cetera, of the newly passed
HB-2604 provisions as they might relate to these
applications. Is that a fair statement, folks?

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

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

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

First of all, we really appreciate our long
association with the state of Virginia, with
Colonial Downs, with the horsemen. We feel like it's been a mutually beneficial relationship up to this point. Over the last year, in a very disappointing year for horse racing, our business in this state grew 12 percent, which we were proud of and thought was encouraging.

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

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

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

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

So we're concerned, I think -- setting aside the legal concerns, from a commercial point of view, we're concerned from a couple of different perspectives. Number one is any rational business
will look at different markets on a ROI basis in terms of looking to grow their business or even continue their business. When the business becomes uneconomic, it's very difficult to make that decision to continue the business at the level you were doing it before, continue the level of service, which I think would be detrimental to the Virginia racing industry.

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

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

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

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

MR. BURNETT: Thank you.

Any questions?

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

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

The Commission wants to give itself the opportunity to study the account holder security of
that method further, and accordingly is adding as a
condition of these licenses the reservation of right
to impose a bond with notice and opportunity to be
heard on any applicant at some further time. We
hope, one, that it won't be necessary, and two, that
if it is, it won't be burdensome. We just feel that
our due diligence requires that we have a closer
look and get a legal opinion on the method in Oregon
to be sure we're providing adequate protection for
Virginia resident account holders.

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

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

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

MR. HINDMAN: Sure.

MR. BURNETT: And then we have told each of
the other applicants that while we -- should we
accept the recommendations of staff, one through
seven, and impose that as a condition of licensure that we do not intend by its acceptance of that license and conduct of business that they are from our perspective waiving any right to object in another forum, at another time, or for that matter before us at another time.

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

MR. HINDMAN: With agree with that as well.

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

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

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

However, I think when you look at the economic ramifications -- there are tracks that are net importers, and there are tracks that are net exporters. When you look at the ramifications of this law, I think economically it would be a difficult scenario to see that you can negotiate your way on the exporting side of the Colonial Downs' signal to make yourself commercially viable, but I really haven't run those numbers. That's just my gut instinct on that.
MR. BURNETT: Any other questions?

Mr. Miller?

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

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

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

MR. PETRAMALO: Yes. That's correct.

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

MR. PETRAMALO: Correct.

MR. MILLER: Now, does everyone understand that even if you challenge this fee that's been set by the statute and you file a court proceeding, whatever, that if we are notified -- it's my
understanding that if the Virginia Racing Commission
were to be notified by anyone. It could be a
jockey. It could be anyone. If they notify us that
XYZ ADW has not paid. We get that notice sometime
after February the 10th. Unless there's some kind
of court restraining order or injunction or
something against the Commission, we'll be duty
bound to start a proceeding to revoke the license.
Does everyone understand that?

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

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

MR. BURNETT: Mr. Scoggins?

MR. SCOGGINS: For purposes of providing a
specific response from XpressBet, Commissioner
Miller, yes, we understand that to the extent
there's any decision made to forego payment of any
of the amounts, whether it be the source market fee
or the breeders' fee, or doing it in a manner
different than what the statute would otherwise
suggest, we would have to undertake additional
judicial action in order to preserve our rights or
allow us to preserve our rights with respect to that
position.

MR. MILLER: Thank you.

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

EZ Horseplay?

MR. STEWART: Absolutely. We understand.

MR. BURNETT: YouBet. Mr. Cohen?

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

MR. BURNETT: Sometimes those of us who are
horsemen tend to be slow learners, bad listeners,
and after the fact we come in and say, well, we
really didn't understand that. So Mr. Miller is
just making sure that those of us that are horsemen
fully understand what's going on. I include myself as one of them, so don't anybody take offense to that.

I left somebody out. TwinSpires?

MR. BLACKWELL: Yes. TwinSpires --

MR. BURNETT: Mr. Blackwell?

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

MR. BURNETT: Thank you, sir.

Anything further, Mr. Hindman?

MR. HINDMAN: No. Thank you.

MR. BURNETT: Thank you very much.

MR. HINDMAN: Thank you.

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

MR. COHEN: Chairman Burnett?

MR. BURNETT: Mr. Cohen?

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

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

MR. COHEN: I can speak from here if the
Commission can hear me.

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

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

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

MR. BURNETT: Thank you very much.

Anything further on this subject from anyone?

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

MR. REYNOLDS: I suggest we go into a short
closed meeting.

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

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

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

MR. BROWN: Second.

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

Note: (Aye.)

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

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

MR. BURNETT: We're back on the record. I hereby certify pursuant to Virginia Code Section 2.2-3712 that to the best of each member's
knowledge, one, only public business matters
lawfully exempted from open meeting requirements
under this chapter, and two, only such business
matters as were identified in the motion by which
the closed meeting were convened were heard,
discussed, or considered in the meeting by the
public body. This is a role call vote. Mr. Siegel?

MR. SIEGEL: Aye.

MR. BURNETT: Mr. Brown?

MR. BROWN: Aye.

MR. BURNETT: Mr. Miller?

MR. MILLER: Aye.

MR. BURNETT: Mr. Reynolds?

MR. REYNOLDS: Aye.

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

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

MR. BROWN: Well, I think --

MR. BURNETT: Mr. Brown?

MR. BROWN: In my opinion, everybody has met
their criteria to get licensed and I don't know how
you would like to play the motion out. Is there a specific way you --

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

MR. BROWN: I would second that motion.

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

Note: (Aye.)

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

All right. We're going to go into our regular monthly meeting. For the record, this meeting was shown, I'm sure, on the FOIA notices as beginning at 12:30. It's not yet 12:30. It's 11:30 or so.
We're going to begin early and to the extent anyone is prejudiced by our starting this meeting early, it would only be someone who appears between now and 12:30 saying they wanted to hear the beginning of the meeting. If that should occur, I have suggested to our fellow commissioners that we'll just start again. Mr. Miller had a very good idea that we could simply ask that person to go through the record with the court reporter, and we'd be available to answer any questions and deliberate further if need be.

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

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

MR. REYNOLDS: I move they be approved.

MR. MILLER: I second.

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

All in favor by saying aye.

Note: (Aye.)

MR. BURNETT: The minutes are approved.

All right. Commissioner comments. I do have
a few. We had good Virginia representation at the
University of Arizona Symposium on racing in Tucson
last week. Both Executive Secretary Harrison and
myself attended the RCI Board of Directors meeting.
There was a fair amount of business taken up at that
meeting.

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

Go ahead, Vic, share any thoughts you have.

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

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

The usual suspects with respect to agenda items were offered on the symposium meeting days. Medications was a large issue, the issue of jockeys, minimum payouts and minimum weights, Betfair, betting exchanges, they were all more to the point I think this year by necessity. It wasn't quite so spread out with the agenda items as they might have been in the past. I think that was by design due to the smaller amount of people attending, but it's still a worthwhile place and we noticed -- Peter mentioned the RCI meetings the prior two days to the
official start, and there was a ROAPs meeting in attendance and some of the other steering groups.

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

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

Everybody talks about uniformity. They'd like to get to uniformity, but very few folks want to change their own ways. Every state wants to do it their own way. They're fiercely protective of an individual state commission's right to enforce their
When I was chair of RCI, Ed Martin and I kicked around this idea of having a compact and thought that that might be a way short of asking the federal government to step in, which is deemed by almost every racing commission and person involved in racing as being an invitation to disaster. We want to continue self-regulating, but we need to find a way to get together in a national compact that has voluntary participation, has its own rule making might well be the well. The test will come when we start seeing issues that states can't agree on and see if they can find a way to find a common ground, but it's a start. It was going to require six states to come into being. New York is the first one, and we'll see where that goes.

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

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

MR. HARRISON: Alan Foreman.

MR. BURNETT: Alan Foreman put the whole program together and had the chief lab person from California and from New York, and it was enlightening in terms of how technical some of this has become based on the chemistry and the pharmacology. To put on these cases now requires almost an FBI-type to establish chain of custody and get another chemist to establish what was in the sample, and then a pharmacologist to establish what affect, if any, it had on the animal and to include or exclude it as an environmental contaminant, and the one thing that's abundantly clear is these cases are extraordinarily expensive.
So anything we can do to avoid even getting to that point makes a lot of sense. I'm not suggesting laxity. I'm suggesting holding a high standard out there among our horsemen in terms of the way we do things such that we don't find ourselves feeling compelled to put on a very expensive case to maintain our principles. Anything we can to keep that nice, clean environment that we have in Virginia I think ought to continue.

Anything else about the symposium?

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

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

MR. BURNETT: State government, yeah.

MR. HARRISON: I'm not sure. Anyway, he made a very nice presentation on that. We're hopeful,
and I think it's a nice fail safe to have. Even if it doesn't move forward, who knows. There may be some kind of a national office sometime in the future.

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

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

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

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

MR. HARRISON: No committee reports.

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

MR. HARRISON: Thank you, Chairman Burnett.

The first item I have is the final report of the 2009 standardbred meeting. This was written and compiled by Jean Chalk, the Senior Commonwealth Judge. It doesn't break much new ground here. It
covers many of the same -- with respect to
statistics at least -- items that Ian did in last
month's summary of the harness meet.

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

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

I would like to read into the record the two
new pieces, which were the cameras and the whip
rule, if I might. Under cameras, the judges believe
that the fifth camera, the pan two camera shot,
which was removed for the 2009 race meet, should be
returned in 2010. The pan one camera alone does not
provide adequate coverage of the racing oval. These are the judges' opinions.

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

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

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

MR. HARRISON: Right.

And on that issue, I think you'll hear in
Dr. Harden's report, he mentions that we've had Joe Roney, our Director of Enforcement, administering these tests. We think his time could be put to better use at that point of the day, so we're looking to in subsequent years to have others administer the Breathalyzer tests. It's something that we're going to look at this winter and implement in the spring.

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

MR. BROWN: Mr. Chairman?

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

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

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

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

MR. HARRISON: I certainly will.
MR. BURNETT: All right. Anything else?

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

MR. BURNETT: Dr. Harden, welcome.

DR. HARDEN: Thanks.

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

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

We had the fewest number of -- total number of horses racing this year as we've had certainly in a number of years. We had 600 -- slightly over 600 horses make 3,060 starts. You know, that's roughly five starts per horse, but that's an average number. There were many horses started 12, 13, 14 times in a nine-week meet, plus there might have been a couple
of qualifying races thrown in there as well. These
horses just had the devil beat out of them, and the
horsemen were -- let's just say there was a sense of
malaise in the barnyard area.

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

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

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

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

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

Otherwise, there were a few little minor problems, which we deal with just about every year, and we got in our plans during the winter to see if we can improve it, but I would like to see the harness horsemen take it among themselves to improve their willingness to go out and put on a show and to try to improve the status of harness racing. I think a lot of it is in their own hands, and they
basically are refusing to step up to the plate, so
to speak, just in putting on a professional
presentation in horse racing.

MR. BURNETT: Dr. Harden, maybe we could help
that process along a little bit just by inviting the
VHHA and others who have a stake in a professional
show in coming up with some ideas that might
motivate less carping, more pride, things that will
lift the spirits on the backside, which I think that
you put your finger on as part of the problem.
They're all just moping around the backside and
probably do the same thing when they're racing their
horses. That's not what we want the public to see.

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

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

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

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

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

So if anyone would like to sit down with us, we're very amenable to doing that. We are so dependent on outside stables. So few of our stables
are actually in Virginia and have no direct control
over those stables and entities, but we're willing
to take a swing at it.

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

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

MR. BURNETT: Great. Thank you.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

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

MR. BROWN: Industry-wide.

DR. HARDEN: It's an interesting point. When
I talk to my colleagues in other states, they
indicate this is industry-wide. And yet as I
understand it, the sales of standardbred horses this
winter were up. So somebody is spending money
buying horses. As compared to thoroughbreds, the
standardbreds are selling at higher prices. So it's kind of a paradoxical situation. I'm not sure -- I think the fact that so many harness horsemen race at fair meets and unregulated meets that they think they can come here and race unregulated.

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

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

If you travel to racetracks in the midwest and north of here and so forth, in the backstretch, the behaviors and the disappointment is industry-wide in my opinion. I think there's an awful lot of people
that are extremely discouraged. They can't afford
to pay their help anymore. They can't afford to buy
the horses they have in the past. The equipment
doesn't look as good as it used to. There are those
signs that let you know it is an industry-wide
problem.

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

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

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

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

MR. BURNETT: That raises a question I forgot to ask, then I'll shut up. For lots of reasons, but the two principle ones being doing right by the animal which should be first and foremost, and secondly, from a public perception standpoint, is there any merit in considering a starts per meet limitation on horses? I know people want to fill races and the secretary wants to fill them, but you know, a horse running 12 times in a five or six race
meet is going to cause certain members of the public to draw conclusions that aren't favorable.

MR. BROWN: It's about nine.

MR. BURNETT: Whatever it is.

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

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

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

MR. BURNETT: On that note, the next item.

Mr. Harrison?

MR. HARRISON: The next item is the 2010 standardbred race days and while acknowledging we're still many months away from the actual 2010 standardbred meet, we do have some months with which to make a decision. I just want to point out that we received the request in a timely fashion from both the VHHA and from Colonial Downs. And in summary, Charlie Dunavant's request is for 36 days
over a nine-week period beginning September 7th and
ending November 6th with a targeted average purse
per day of approximately $45,000, and that the
proposal from Colonial Downs is for a 30-day race
meet beginning Saturday, October 2nd and ending
Wednesday, November 10th with a targeted purse
amount of approximately $40,000.

MR. BROWN: Mr. Chairman?

MR. BURNETT: Yes, sir.

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

MR. STEWART: No.

MR. WEINBERG: No objection.

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

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

MR. HARRISON: I would ask that the Commission
approve the adoption of the final exemption to
10-60-15, fee schedule for permit holders as we have
proposed it. We have received the comments of Jim Weinberg for inclusion in the proposal, but I would ask that the Commission approve it as we have presented it, and I have pledged verbally and in writing to work with Jim and with Ian and especially with Pat Kelleher on satisfying the ancillary issues such as the three-day pass for a lower fee, to address those issues over the coming month or so, certainly before the live racing begins.

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

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

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

MR. BURNETT: That's what I mean. Outside of that, no others?
MR. HARRISON: No. There have been no other comments received.

MR. BURNETT: Any comments from commissioners?

I'm sorry. Ms. Smith?

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

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Mr. Lermond?

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

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

MR. BURNETT: Okay.

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

MR. HARRISON: No changes.

MR. BURNETT: I think what we have in front of us is the proposal of the commission staff on this issue, and correct me if I'm wrong, Jim, the
racetrack would like to alter this to the extent it applies to temporary employees and short-term outside work type of employees, parking lot attendants, perhaps landscape types, that kind of thing. Is that fair?

MR. WEINBERG: That's one issue.

MR. BURNETT: All right.

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

MR. BURNETT: Okay. And to the extent that the Commission staff wants to work with -- I applaud you for that, work with the racetrack to ameliorate
this issue somehow. Other than money, how do you do it?

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

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

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

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

MR. RONEY: Mr. Chairman --

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

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

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

Now, as far as scrutiny goes for people who are tellers, they are held higher. They're fingerprinted. For the person in the parking lot who's sweeping, obviously they're not fingerprinted. Now, the problem in the past we've had where we've
had different fees for different people. Colonial Downs will take -- let's say someone is sweeping the parking lot, which is $5, and now you take them and make them a teller. Well, that's $10. Now, you take them and you can also cross train them to be a bartender. Well, that's another fee. That's another $10.

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

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

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

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

MR. BURNETT: Well, I think for purposes of -- to keep the record clean on something such as the
regulations, we ought to either approve or modify these regs, and then certainly recognize the --

MR. BROWN: Do we wait until then?

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

Ms. Bouzek?

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

I mean, it's hard to get somebody to pay $25 when they're making $8 an hour, and I just want to stand up on behalf -- I mean, that's what the OTB employees are paying, $25. Some of these people come out for nine weeks, and $25 is a hardship. Just like $50 is a hardship for the grooms. We got a 17-year-old kid coming, and you have to tell him he has to pay $25. So your first four hours of work are, you know, going to that. It's going to be
hard. I just wanted to comment on that. It just seems a bit unfair to have somebody work 365 days paying the same thing.

MR. BURNETT: Mr. West?

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

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

MR. BURNETT: Thank you.

Any further comment or questions from the Commission?

MR. BROWN: I think you have to kind of bite
the bullet and just keep it where it's at.

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

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

MR. SIEGEL: Does it stand that way now?

MR. LERMOND: Yes.

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

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

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

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

MR. SIEGEL: Okay.

MR. BURNETT: All right.

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

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

MR. LERMOND: We may even be willing to waive
the fee for the 30 or 40 people that are going to be coming here for two or three days out of the year, but somebody who's going to be working for the whole summer, you have to ask that person to pay $25. That's like if you get a job in landscaping, you're going to have to buy some gloves or you're going to have to buy some boots. It's not reimbursed as an employee expense, which not everybody itemizes, but it is deductible on your taxes.

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

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

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

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

MR. HARRISON: I'm not really following.

MR. BURNETT: Joe, Dennis, who else would be
making exceptions? Two or three people might say, yeah, okay, you don't need to pay the full boat.

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

MR. HARRISON: Well, the licensing staff basically.

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

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

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

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

MR. HARRISON: Yes.

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

MR. WEINBERG: I made one -- just so I'm clear. I made one exception to the schedule that
you're about to approve, and that is Colonial Downs proposed reducing from 25 to 15 the permit fee for employees of Colonial Downs who are not exposed to those sensitive areas that we talked about, the mutuel room, the jockey room, the backstretch. I think the discussion so far has been that the schedule opts for simplicity over trying to make those distinctions.

MR. BURNETT: I think that's fair.

MR. BROWN: I move we approve.

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

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

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

MR. REYNOLDS: I second.

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

Note: (Aye.)

MR. BURNETT: All right. Thank you all. And, again, just to be clear, Mr. Harrison is going to
work with Colonial Downs' staff and his own licensing staff to come up with some concessions where appropriate to help some of these people that are strained to get a license.

MR. HARRISON: Yes, we can do that.

MR. BURNETT: Thank you.

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

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

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

I would have thought all of these tracks with the exception of Colonial would be host tracks, and
you said we're receiving the signal.

MR. HARRISON: Right. Host tracks.

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

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

MR. HARRISON: Right.

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

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

MR. BURNETT: There you go. Thank you.

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

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

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

MR. BROWN: I make a motion to approve.

MR. REYNOLDS: Second.

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

Note: (Aye.)

MR. BURNETT: Motion carries. Thank you.

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

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

My recommendation to the Commission is we
defer this until our next meeting unless y'all feel otherwise. I'm sure both of these capable parties are happy to tell us anything you might like to know about their progress. Any comment from anybody?

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

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

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

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

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

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

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

Do we have a motion for adjournment?

MR. REYNOLDS: So move.

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