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VIRGINIA RACING COMMISSION

February 17th, 2010

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:34 a.m.

COMMISSION MEMBERS:

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

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

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1 FEBRUARY 17, 2010

2 MR. BURNETT: All right. We're starting a
3 little bit late this morning, not too much. Good
4 morning. Thank y'all for coming. Glad you could
5 make it with the weather conditions we've all
6 experienced. Those who came from Northern Virginia
7 found their way on some slippery roads and drifts
8 this morning, I'm sure.

9 The first order of business is item one,
10 approval of the minutes from our regular meeting on
11 January 20th. It's found under Tab 1.

12 I might tell some folks that Commissioner
13 Brown had planned on being here today, but was
14 unable to make it. He injured himself feeding
15 horses yesterday. He did something to his shoulder
16 and is off to see the doctor this morning. He's
17 unable to make it. Hope he'll get well.

18 MR. PETRAMALO: May I make a comment with
19 regard to the minutes?

20 MR. BURNETT: Please.

21 MR. PETRAMALO: I know you're going to find
22 this difficult to believe, but something that I said
23 at the meeting last time was in error.

24 MR. SIEGEL: What you said was in error or
25 there's an error in --

1 MR. PETRAMALO: It's not in the minutes, but
2 you may remember, we were talking about the increase
3 in handle with the ADW companies, and I made the
4 representation that the increase from 2008 to 2009
5 was 37 percent. That was erroneous. It should have
6 been seven percent. We had a computer error in our
7 printout, which did not include in the 2008 base
8 YouBet while YouBet was included in the 2009 base.

9 And the reason, you may remember in 2008, we
10 settled the litigation with YouBet. So it never got
11 put in. I apologize. The correct number is 6.7
12 percent, almost seven percent.

13 MR. BURNETT: Thank you.

14 MS. RICHARDS: I see a correction here also.

15 MR. BURNETT: We'll take corrections from
16 anyplace we can get them.

17 MS. RICHARDS: It was noted that I said horses
18 were being deposited across county lines after being
19 slaughtered elsewhere. I didn't say that. I
20 said --

21 MR. BURNETT: Where are you in the minutes?
22 I'm sorry.

23 MS. RICHARDS: Oh, I'm sorry. Page 2, I
24 guess, second or third paragraph.

25 MR. BURNETT: There it is. Stated that

1 they're working on a policy --

2 MS. RICHARDS: After they had been slaughtered
3 elsewhere, I meant not slaughtered, but they had
4 been -- they're just being taken from the racetrack
5 and dumped in the field, empty fields and pastures.

6 MR. HARRISON: Whether they're slaughtered or
7 not?

8 MS. RICHARDS: No, on four legs.

9 MR. BURNETT: After they had been acquired
10 elsewhere.

11 MR. SIEGEL: You don't mean dumped in the
12 sense that they were dumped --

13 MS. RICHARDS: Right. Exactly.

14 MR. SIEGEL: -- but that they were left there.

15 MS. RICHARDS: Bad choice of words.

16 MR. BURNETT: I think deposited across the
17 county in fields, would that be helpful?

18 MS. RICHARDS: Yes. Not slaughtered.

19 MR. BURNETT: Right.

20 MS. RICHARDS: They're still alive at the
21 time.

22 MR. BURNETT: They're essentially abandoned.

23 MS. RICHARDS: Abandoned, yes.

24 MR. BURNETT: All right. We're having a
25 lively examination of our minutes more than I

1 recall.

2 MR. SIEGEL: Healthy.

3 MR. PETRAMALO: Wait until we get to the other
4 stuff.

5 MR. BURNETT: We're just warming up, folks.
6 Any other comments with respect to the
7 minutes?

8 MR. SIEGEL: I move they be approved as
9 corrected.

10 MR. BURNETT: Thank you.

11 Do we have a second?

12 MR. MILLER: Second.

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

15 Note: (Aye.)

16 MR. BURNETT: The motion carries unanimously.

17 The next item is commissioners comments.

18 Comment from any commissioners on any matters of
19 interest?

20 I guess I might solicit a comment or two from
21 anybody who might be able to tell us the status of
22 the legislative affairs. I understand that the
23 historic racing bill has made some progress in the
24 senate, but not yet crossed over. Is that a fair
25 characterization, Frank?

1 MR. PETRAMALO: Yes. Senate Bill 513 as
2 amended came -- was reported favorably out of the
3 Senate Finance Committee. It had previously been
4 reported out of the Senate General Laws, so it will
5 now go to the floor. And I think because it's been
6 reported favorably, it has a very strong likelihood
7 of passing.

8 The bill that will go to the floor is a
9 compromise bipartisan package between a bill
10 submitted by Senator Herring and one submitted by
11 Senator Norment. For our purposes, the key is as
12 follows. Forty-five percent of the net revenue goes
13 to Colonial, and six percent goes to the horsemen's
14 purse account to be distributed by the Racing
15 Commission, and two percent goes into the Breeders'
16 Fund. So Colonial gets 45 and the horsemen get a
17 combined eight percent.

18 MR. FERGUSON: Mr. Chairman?

19 MR. BURNETT: Yes, sir.

20 MR. FERGUSON: Just to add to that, I would
21 also point out the bill, the compromised bill or the
22 rolled in bill has a half percent to the Commission.

23 MR. PETRAMALO: I'm sorry. That's correct.
24 Yes.

25 MR. FERGUSON: Senator Herring's had that;

1 Senator Norment's did not. It is on the floor now.
2 It was not acted on yesterday, which was a crossover
3 date for most legislation. I believe they're
4 treating it as a revenue bill, which means they have
5 until Friday to act on it on the floor. I would
6 also expect that it'll be reported from the senate
7 and go to the house.

8 MR. BURNETT: Favorably?

9 MR. FERGUSON: Yes. It was, I think, a 10 to
10 4 vote in Senate Finance.

11 MR. BURNETT: I don't know if you attended the
12 Senate Finance, did the dissenters explain why they
13 opposed?

14 MR. FERGUSON: No. It was kind of an odd mix
15 from -- you know, from an observer's point of view
16 who was -- who opposed it and who supported it for
17 that matter. For example, Senator Watkins, who is
18 opposed to the lottery, voted in favor of the bill.
19 Senator Whipple, who I would have just sort of
20 guessed would have supported the bill, voted against
21 it. So I'm not quite sure what the motivation for
22 those votes were. Maybe Frank or someone else has a
23 better read on that than I do because I didn't talk
24 with them.

25 MR. PETRAMALO: Well, those of us in the

1 audience had reads, but I'm not sure we would want
2 to share them publicly.

3 MR. BURNETT: All right. Just to fill out the
4 record a little bit. You may have mentioned this
5 earlier, Frank, that two percent would go to the
6 Virginia Breeders' Fund. In addition, half a
7 percent to the Virginia-Maryland Regional College of
8 Veterinary Medicine, as said before, half a percent
9 to the Racing Commission, a quarter of a percent to
10 the Virginia Horse Industry Board, and a quarter of
11 a percent to the Virginia Equine Center Foundation,
12 and then it had the standard limitation language on
13 \$30 million cap.

14 MR. PETRAMALO: Yes. And there was, I think,
15 two percent or perhaps slightly more went to the
16 Virginia Tourism Commission or whatever.

17 MR. BURNETT: Two percent went to the Virginia
18 Tourism Corporation to be used for marketing of
19 tourism in Virginia.

20 MR. PETRAMALO: I'm sorry. I should have
21 brought the bill with me.

22 MR. BURNETT: I have it here. That's fine.

23 Do we have any folks who are good handicappers
24 of the legislature that want to predict what's going
25 to happen in the house?

1 MR. FERGUSON: I think, Mr. Chairman, it faces
2 a very difficult future in the house.

3 MR. BURNETT: I read in the paper that a
4 senator characterized the house as a place where if
5 somebody submitted a bill requiring a surface to air
6 missile be included in every home sale in Virginia,
7 that it would pass. So that was a comment on the
8 legislation. They might be a tad conservative over
9 there. I don't know what that tells us about our
10 chances.

11 There's been a lot of snow in the north. It's
12 been tough on horses and tough on horse owners.
13 It's been tough on racing. A lot of days missed, I
14 think. Hopefully, many of them will get made up. I
15 don't know that it will have a great impact on
16 Colonial's activities in the spring. Hopefully,
17 we'll see early warm weather and lots of
18 groundwater, and the pond will be full by virtue of
19 the amount of moisture we've received, but who
20 knows. It's a long way away.

21 I'm looking forward to our VRIG meeting after
22 this one today. I did attend the meeting of the
23 horse breeders and -- well, a combined meeting, I
24 guess, of some members of the VTA and some members
25 of the VHBPA last week, looking at creative ways to

1 encourage further participation here at Colonial
2 Downs and continue to improve on the meet. There
3 was discussion of purse distribution, both the
4 regular purse funds and the Breeders' Fund.

5 I am told by Dave, who may go into this in
6 more detail later in the meeting, that the
7 compliance of our ADW licensees with the new statute
8 and its requirement of a one percent contribution to
9 the Breeders' Fund is projected to yield
10 approximately 400 and some thousand dollars to the
11 Breeders' Fund. I hope that that committee will
12 re-visit the bonus program that has been tried in
13 various forms in the last couple, three years, and
14 see if something good can come from it.

15 I would note that we could -- the first year
16 the hundred percent breeders bonus program paid a
17 hundred percent to Virginia-breds running in open
18 company here, and it was so popular it exhausted the
19 fund and it consumed about \$1.1 million. Because
20 those funds were inadequate to cover and it left
21 virtually nothing for the breeders that year, the
22 compromise the following year was to pay one
23 hundred percent matching bonus to the winner only
24 and not pay down. Correct me if I'm misstating
25 this.

1 MR. PETRAMALO: With a cap of \$10,000.

2 MR. BURNETT: With a cap of \$10,000.

3 I think also a cap of \$500,000 on the entire
4 fund.

5 MR. PETRAMALO: Yes.

6 MR. BURNETT: One of the things that I thought
7 might be beneficial in my thinking about this is
8 that we're always very winner oriented in racing.
9 When racing was a sport of kings and fun for wealthy
10 people and the economics were not as prominent as
11 they are today, it didn't make that big of a
12 difference whether somebody who was second, third,
13 or fourth really made anything. Everybody was
14 trying to win.

15 If somebody who has a good racing program wins
16 20 percent of the time and loses 80 percent of the
17 time, to help the folks with rising costs, it might
18 make some sense for the thoroughbred folks to
19 consider taking a page out of the standardbred
20 folks' book, who for many, many years have paid 50
21 percent to the winner rather than 57 or 60 percent
22 that thoroughbred folks pay. They distribute the
23 differential down the ladder in a heavier way.

24 My thinking is there are a lot of folks who
25 are going out of our business, which means less

1 horses in our gates, less wagering, et cetera,
2 because they can't even make training bills.
3 They're willing to be in the business in a
4 break-even proposition or even lose some money, but
5 when the numbers get to a certain size, they just
6 can't take it anymore.

7 I think it would be beneficial to have
8 somebody do an analysis of a few stables and a few
9 owners to see what impact having a redistribution of
10 the purse amounts might have for the economics of a
11 given owner. So I think it's worth looking at. I
12 hope we'll study it a little bit.

13 Likewise, with the Breeders' Fund incentive
14 awards, we might consider paying the winner who's
15 already getting whatever the share of the purse
16 might be, 57 percent or 60 percent, give the winner
17 a 50 percent bonus, and then pay down to sixth place
18 with a hundred percent bonus for second through
19 sixth, match that fund. So that second through
20 sixth person has got their shipping money and all
21 the rest for coming down here and making an effort.
22 That would result in, if you do the math, a cost of
23 70 percent of the purse amounts.

24 So perhaps with -- so, in other words, if you
25 had a \$10,000 purse and you were matching, you would

1 use 7,000 to make up -- to pay 50 percent to the
2 winner and a hundred percent to second through
3 sixth.

4 MR. SIEGEL: It may draw more horses as well.

5 MR. BURNETT: That's right. That's the idea,
6 I think.

7 And then lastly, an idea that I thought might
8 have some legs and might make some sense, the
9 breeders who sell their horses and don't run them
10 here in Virginia or anywhere else where they might
11 get a Virginia bonus feel closed out, and at some
12 levels they've complained that, you know, we ought
13 to -- we breed these horses. We ought to be able to
14 get some benefit out of the breeders bonuses. If
15 you're paying matching funds to the folks that own
16 them down there at the races, we get closed out.

17 There might be some wisdom in thinking about
18 whether or not you can segregate all or part of the
19 breeders award from the horses; that is, you could
20 sell a horse with 50 percent of the breeders' rights
21 and have the seller retain 50 percent. It would
22 require some registration with the VTA, the
23 horsemen's bookkeeper would have to know about it.
24 I don't think it would be that complicated to do,
25 but it might be a compromise that would cause people

1 to think about -- that sell horses, about breeding
2 them and sending them Colonial Downs' way if we have
3 a very vigorous bonus program.

4 MR. PETRAMALO: We talked about this once
5 before. The seller -- in your hypothetical, that if
6 the seller might retain a 50 percent interest in
7 what ultimately would be the owners' bonus?

8 MR. BURNETT: Correct. The breeders' award.

9 MR. PETRAMALO: Right.

10 MR. BURNETT: What we call a breeders' award,
11 but really goes to the owner.

12 MR. PETRAMALO: Right.

13 MR. BURNETT: So that the breeder can say this
14 horse comes with a 50 percent Virginia Breeders'
15 Fund Award.

16 MR. PETRAMALO: Right.

17 MR. BURNETT: I think -- you don't want to
18 segregate it completely, because then why would I
19 hold it back. Now the guy who owns the horse
20 doesn't -- or the gal doesn't have any reason to go
21 to Virginia because they don't get any difference.
22 Likewise, the owner himself or herself doesn't
23 necessarily want to take it to Virginia. The whole
24 point is to have charity start at home.

25 I think we've gotten to the point in the

1 economics of this game in Virginia that we need not
2 worry about Virginia-bred horses running elsewhere
3 in the country. We need to worry about
4 Virginia-bred horses running here in Virginia and
5 doing what we can do for those loyal stalwart
6 Virginia owners and breeders who are doing
7 everything they can think of to keep racing alive in
8 Virginia, and one of the things we can do is return
9 some money to them so they can stay in business. If
10 a horse runs in California, you know, more power to
11 them, I hope they do well, but I think first things
12 first and we should focus on Virginia.

13 I'm too long on my comments, but that's what
14 I've been thinking about. Anything else on
15 commissioners comment?

16 All right. Move to committee reports. None
17 this month. That's helpful.

18 No. 4, executive secretary's report. Vic?
19 Mr. Harrison?

20 MR. HARRISON: Thank you, Peter.

21 I have a few items here. The first one is the
22 hours of operation issue. We discussed this last
23 month, and we've come up with a draft of a standard
24 form. It will be a VRC form, and we'll give it to
25 the racetrack. Whenever they have a change in their

1 hours of operation, they'll complete it and send it
2 into us for our review/approval.

3 We have an example of that in your booklets
4 here. It's a draft. It took an hour or so working
5 in Excel to come up with it. It's amendable, so any
6 ideas would be appreciated. We'll work with Jeff
7 and Jeanna in coming up with a form that's
8 acceptable to them, too. It'll be something along
9 those lines.

10 MR. BURNETT: It strikes me that the one thing
11 I would be looking for here in light of our prior
12 discussion about what would require our approval and
13 what wouldn't would be that bright line, and my
14 thought would be that -- I think we agreed at least
15 tentatively that if there were changes in whole
16 days, that would come to us. If there were changes
17 in just hours, it would be based on some percentage.
18 I thought there was a fair amount of agreement on
19 that.

20 My thought would be that there ought to be a
21 box here someplace that totals percentage change
22 such that even though you're checking it, if all the
23 math is right, it's informational only if it's below
24 "X".

25 MR. HARRISON: Right.

1 MR. BURNETT: If it's above "X", it will be
2 put on the docket for us to look at.

3 MR. HARRISON: Sure. There will be. There
4 will be a total column down at the bottom, and it'll
5 be easy to calculate a percentage there. I thought
6 the best or easiest thing, the least intrusive thing
7 was to be notified every time they make a change.
8 That's all. The significant items would then be
9 passed on to the Commission for their approval.

10 MR. BURNETT: It certainly captures the hours
11 all in one sheet. It's an easy snapshot.

12 MR. HARRISON: Well, it's a work in progress.
13 It should be done soon, though.

14 MR. BURNETT: Just to make sure I'm reading
15 this correctly, is Hull Street only open on -- is
16 the only OTB that's open on Tuesday?

17 MR. HARRISON: No. That's the other point I
18 was going to make. No, that's just -- that doesn't
19 reflect reality as it is right now.

20 MR. BURNETT: Okay.

21 MR. HARRISON: Those are just numbers thrown
22 in there, dates and hours thrown in there to make
23 the spreadsheet work.

24 MR. SIEGEL: So none of this is correct?

25 MR. HARRISON: Some of it is, but no, it's a

1 draft of a spreadsheet.

2 MR. BURNETT: Pay no attention to the
3 fill-ins.

4 MR. HARRISON: Right. It's just an example.

5 MR. SIEGEL: There goes my questions.

6 MR. HARRISON: The other point I wanted to
7 make with respect to that, though, when the hours
8 did change last month, both the Hull Street and
9 Broad Street OTBs are -- they used to flip-flop
10 days. One was open Monday and one was open Tuesday,
11 but now they're both closed on Tuesday.

12 My question to Colonial Downs is that when
13 live thoroughbred racing starts and Tuesday is a
14 live race day, will either of those OTBs or SWFs
15 plan to be open?

16 MR. STEWART: I think the issue will be what
17 the business looks like at that point in time. The
18 mere fact that the meet is running wouldn't be
19 determinative.

20 MR. BURNETT: Let me try a different way. Do
21 you intend any promotion to see if raising
22 consciousness about the meet might also raise
23 consciousness about attendance or actual attendance?
24 I mean, is there going to be any push to try it, or
25 are you -- because it strikes me that if it's closed

1 traditionally on Tuesdays, and that's what the
2 clientele knows regardless of whether there's a meet
3 or not, they're going to assume that it's closed on
4 Tuesday even if it's open. So without any fanfare
5 about it, you'd likely not see a satisfactory
6 result.

7 MR. STEWART: We've promoted the live meet
8 into the parlors, you know, on a regular basis, but
9 I think if we don't believe the business is
10 sufficient to sustain the operation on a Tuesday,
11 the mere addition of live racing at Colonial Downs I
12 don't think will tip the scale. I can't tell you
13 what business is going to look like three months
14 from now.

15 MR. BURNETT: No, but you've been doing this
16 awhile and if I'm understanding what you're saying,
17 you're not really expecting the live meet factor is
18 going to change much at these locations.

19 MR. STEWART: That's my opinion today.

20 MR. BURNETT: Yeah. Sure.

21 MR. STEWART: It could change.

22 MR. BURNETT: Before we leave this form, any
23 comment from Colonial or Jeff on the form itself?

24 MR. STEWART: I've not seen the form.

25 MR. BURNETT: We should provide you one.

1 Would you make sure that --

2 MR. HARRISON: We'll be working with the
3 track.

4 MR. BURNETT: We'll get it to you as quickly
5 as possible. We want it to work easily. Thank you.

6 MR. HARRISON: We received an application for
7 a limited license from the Strawberry Hill races for
8 the May 15th race day. We'll be reviewing that this
9 coming week. We have put the State Fair and
10 Strawberry Hill on notice that there are a couple of
11 issues that they need to be cognizant of. One is
12 the fact that everyone needs to be licensed and that
13 there are new licensing fees, and the other that any
14 past performance lines on these now pari-mutuel
15 races need to be from sanctioned events. I think we
16 ran into an issue last year where some of the
17 steeplechase races, those lines came from
18 non-sanctioned events.

19 So, anyway, we're working through those
20 issues, and I expect we'll have a recommendation
21 sometime over the next week or two for you. It will
22 be an agenda item for the March meeting.

23 MR. BURNETT: May I go back to the hours of
24 operation issue for a moment?

25 MR. HARRISON: Yes.

1 MR. BURNETT: Do we need to approve the letter
2 request of Mr. Wingrove dated January 25th, and then
3 the -- because I see your letter granting approval
4 of a change through today's meeting. Do we need to
5 address the continuation of that change?

6 MR. HARRISON: Yes.

7 MR. BURNETT: Okay. Do you have any objection
8 to the change continuing?

9 MR. HARRISON: No.

10 MR. BURNETT: I would accordingly move that we
11 approve the change requested by Mr. Wingrove in his
12 January 25th letter with respect to changes in the
13 operation of SWFs. Do we have a second?

14 MR. REYNOLDS: Second.

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

17 Note: (Aye.)

18 MR. BURNETT: The motion carries. Thank you.

19 MR. HARRISON: My next comment related to the
20 2010 legislation, but that's already been discussed.

21 And, finally, there's the issue of the 10
22 percent source market fee. As you mentioned, four
23 out of the five ADW providers appear to be in
24 compliance with the provision of the July 2009
25 legislation. XpressBet seemed to have paid the one

1 percent Breeders' Fund and the half percent to the
2 VRC, but then paid Colonial Downs and the horsemen
3 under the provisions of their current contract, and
4 then they deducted the one percent Breeders' Fund
5 from that payment.

6 Mr. Scoggins -- do you have anything to add,
7 Dave?

8 MR. LERMOND: No.

9 MR. HARRISON: Mr. Scoggins is here and he can
10 speak to that issue if there are questions.

11 MR. PETRAMALO: Which four of the five have
12 complied?

13 MR. LERMOND: All except for XpressBet.

14 MR. PETRAMALO: Because we haven't gotten any
15 checks except from TVG.

16 MR. LERMOND: We told them we needed to see
17 scanned copies e-mailed to us, and we have seen
18 those from all four.

19 MR. PETRAMALO: Checks made out to the VHBPA?

20 MR. LERMOND: Yes, sir.

21 MR. BURNETT: It sounds like they're in the
22 mail, Frank.

23 MR. LERMOND: I hate to use that term, but
24 yes, that's correct.

25 MR. PETRAMALO: Okay. Fine.

1 MR. WEINBERG: Dave, just to be clear. We
2 haven't -- Colonial Downs hasn't seen anything from
3 TwinSpires, but you have?

4 MR. LERMOND: I saw that yesterday, late
5 yesterday.

6 MR. STEWART: They're a little late.

7 MR. BURNETT: Snow. Must be the snow. That's
8 what Fed Ex will tell you these days.

9 MR. HARRISON: We expect --

10 MR. MILLER: Monday was a holiday.

11 MR. STEWART: It's your rule, so you can
12 interpret it however you wish.

13 MR. LERMOND: The companies that didn't have
14 them to us by the 10th are going to be reminded that
15 we expect it by the 10th next month. This was the
16 first month, so we decided to be lenient.

17 MR. BURNETT: I think a reminder of strict
18 compliance when you're dealing with other people's
19 money is not such a bad idea. Will you just keep us
20 apprised each month as we go forward of the
21 timeliness of payments?

22 MR. LERMOND: Yes, sir.

23 MR. BURNETT: We don't want to let people
24 think that we're trying to let things drift. If
25 folks start wandering off the base path, we want to

1 get them corrected.

2 Mr. Scoggins, do you have any comment on what
3 I fairly understood Mr. Harrison told us?

4 MR. SCOGGINS: Only if there's a question to
5 which I need to respond.

6 MR. BURNETT: My question is, are you in
7 compliance in your view?

8 MR. SCOGGINS: Yes.

9 MR. BURNETT: May I ask the same question of
10 Mr. Harrison or Mr. Lermond? I don't understand the
11 deductions and payments and whether you regard them
12 as being in compliance with the statute. They may
13 be in compliance with the contract, but part of our
14 job is to be certain that they're in compliance with
15 the statute.

16 MR. LERMOND: They would not be in compliance
17 with item No. 7, which was a condition of their
18 license from the last meeting when we approved their
19 ADW license.

20 MR. BURNETT: And item No. 7 was?

21 MR. LERMOND: They had to have scanned copies
22 of the checks made out in the amount of five percent
23 with respect to handle, plus -- that's for the
24 horsemen's side and a check to Colonial for five
25 percent of the handle, monthly handle.

1 MR. BURNETT: I'm sure that's an oversight on
2 the part of XpressBet and that that will be
3 corrected next month. Mr. Scoggins?

4 MR. SCOGGINS: Just to clarify a point when I
5 answered your question yes --

6 MR. BURNETT: Yes.

7 MR. SCOGGINS: -- we deem it to be in
8 compliance with the law of Virginia as we see it.
9 It is not consistent with what the statute requires,
10 but as you know during the licensing hearing on the
11 ADW, we take a position that our contract supersedes
12 the requirements of the statute. So we acted in
13 accordance with what our contract provides. We feel
14 we are in compliance with the law as we interpret
15 the relationship of our contract to the statute.

16 As it relates to future activity, we've had
17 some discussions very recently with Colonial Downs
18 relative to the process or how money gets -- you
19 know, complying with the requirement of what amount
20 goes and whatnot, and I would hope and expect that
21 by March you'll see a different practice than what
22 we did in February. We did not have the benefit of
23 those discussions to affect our -- the way we did
24 things this month.

25 MR. BURNETT: So that there's no confusion on

1 the record, my recollection is that when you were
2 here on application for the license that you
3 committed to the conditions attached to the staff
4 report, specifically condition seven that
5 Mr. Lermond has referred to, but reserved your right
6 to seek whatever legal redress you felt appropriate
7 in light of your view of the law. I'm trying to --

8 MR. SCOGGINS: One could argue that we've
9 created a case in controversy.

10 MR. BURNETT: One could.

11 MR. PETRAMALO: I think one could say that the
12 commitment that was made at the last meeting has
13 been breached.

14 MR. BURNETT: Well, I think that's --

15 MR. PETRAMALO: Not to put too fine a point on
16 it.

17 MR. BURNETT: My thought is simply whether or
18 not this is the forum in which you're going to seek
19 legal redress by a little bit of disobedience of one
20 sort or another to what you committed to or whether
21 you're going to -- and I understand if the legal
22 advice is that payment would constitute a waiver of
23 your rights in some forum, maybe that's where it has
24 to go, but we will wait until next month and hope
25 that this problem solves itself. I don't think

1 we're going to be able to sit and permit the method
2 of payment that our staff views to be in violation
3 of your requirements to go on beyond next month.

4 MR. SCOGGINS: Totally understand and totally
5 recognize that but for you and your approval of our
6 license and your regulatory oversight, you know,
7 that's how we bore our license. So if you feel you
8 need to take actions to regulate how you interpret
9 the law, then we understand that.

10 MR. BURNETT: We hope all that will be
11 unnecessary. We trust you'll take care of it.

12 MR. SCOGGINS: As do we.

13 MR. BURNETT: Anything else, Mr. Harrison?

14 MR. HARRISON: No, sir.

15 MR. PETRAMALO: Can I just go back over
16 something, Dave? You said that you have scanned
17 copies of checks written under the five percent,
18 five percent statutory requirement from TVG,
19 TwinSpires, and YouBet; is that correct?

20 MR. HARRISON: YouBet's confirmation was
21 verbal. We haven't seen the scanned copies of the
22 check.

23 MR. PETRAMALO: And TwinSpires, do you have a
24 copy of a check written to the VHBPA?

25 MR. LERMOND: That's correct.

1 MR. PETRAMALO: And, of course, TVG.

2 MR. LERMOND: And Colonial Downs.

3 MR. PETRAMALO: And Colonial Downs. And you
4 have nothing from XpressBet?

5 MR. LERMOND: No.

6 MR. PETRAMALO: XpressBet just paid the one
7 percent into the Breeders' Fund and the half percent
8 to the Commission.

9 MR. LERMOND: Mr. Scoggins said that they paid
10 like they would have under their existing agreement,
11 which is eight point something, and then they
12 deducted the one percent. To be clear, we haven't
13 seen those checks and we haven't seen YouBet's
14 checks for the source market fee.

15 MR. STEWART: It might be helpful, we did get
16 a check from XpressBet late yesterday afternoon. We
17 did receive a check from YouBet for our share.

18 MR. LERMOND: We have a letter from, I think,
19 Gene Chabrier to Mr. Stewart stating a fair
20 interpretation of the payment.

21 MR. PETRAMALO: Well, getting back to the
22 Breeders' Fund, did XpressBet pay the Breeders' Fund
23 one percent?

24 MR. LERMOND: Yes, sir. Everyone has paid the
25 one percent to the Breeders' Fund.

1 MR. PETRAMALO: Okay. That's where I was
2 confused. So the Breeders' Fund -- just looking at
3 the gross number, the Breeder's Fund should have
4 picked up about \$40,000 in January?

5 MR. LERMOND: That's correct.

6 MR. PETRAMALO: Gotcha. Okay.

7 MR. WEINBERG: To the extent it illuminates
8 how at least Colonial Downs views the payment
9 mechanism, we found it helpful to contrast YouBet
10 with XpressBet in that there's an existing contract
11 with each of those entities. YouBet complied with
12 what I understood to be condition seven of the
13 order, paid the five percent, five percent.
14 Colonial Downs in turn wrote them a check in
15 compliance with the terms of the contract with
16 YouBet for what was the overage between what would
17 have been due under the contract and what was due --
18 what was paid in under the five percent.

19 MR. BURNETT: And without getting into
20 privileged discussions between counsel and your
21 clients, it strikes me as that's a nice way to keep
22 the Commission out of the controversy.

23 MR. WEINBERG: Exactly.

24 MR. BURNETT: I'll leave you smart people to
25 your devices to figure out how that ought to go

1 forward, and I feel I've gotten a wonderful
2 assurance from Mr. Scoggins that by March this will
3 all be moot.

4 MR. SCOGGINS: We hope.

5 MR. BURNETT: Hope springs eternal.

6 MR. SCOGGINS: That's right.

7 MR. BURNETT: All right.

8 MR. SCOGGINS: I'm optimistic, but I don't
9 want to make guarantees.

10 MR. BURNETT: Someone recently told me about a
11 Zen refrigerator magnet that said, "Leap and the net
12 shall appear." Take that leap, maybe the net will
13 be there.

14 Next item -- anything further on the --

15 MR. PETRAMALO: Sort of like the sub-prime
16 mortgage market.

17 MR. BURNETT: There you are.

18 Anything further from the executive
19 secretary's report?

20 MR. HARRISON: Nothing.

21 MR. BURNETT: Thank you.

22 We next move to the approval of the
23 Thoroughbred Horsemen's Agreement and the Advance
24 Deposit Account Wagering Agreement. There's been a
25 little bit of preliminary discussion on this issue

1 today with our counsel and with the executive
2 director, as well as having received the staff
3 report, which I think has been shared with Colonial
4 Downs and the horsemen.

5 In addition, I was just delivered here a few
6 minutes ago a copy of the Amended and Restated
7 Advance Deposit Account Wagering Agreement, which I
8 am told removes the Virginia Harness Horse
9 Association from the agreement, which in turn has an
10 impact on the horsemen's agreement and some of the
11 issues that I think the Commission will want to
12 consider.

13 It is our intention to seek legal advice from
14 counsel on -- it's my intention to move a closed
15 session for seeking legal advice on the contract
16 today, but I think it would be helpful if we went
17 through it to everybody's satisfaction to flush out
18 some of the issues so that we're not guessing in any
19 way when we're receiving legal advice.

20 If that makes sense, I would like to walk
21 through the contract and then seek comment in
22 whatever form makes the most sense to all of us as
23 we go through it. I think probably provision by
24 provision and letting everybody comment, then moving
25 on to the next. If we have to go back to something,

1 we'll do that, but that would be my approach if it's
2 okay with my fellow commissioners.

3 Vic, I'd just ask you to chime in. You put
4 some effort into this staff report, and we may want
5 you to flush out some of your view points. Why
6 don't we begin by using your report.

7 You had no issue with the term of the
8 agreement? Does anybody want to discuss the term of
9 the agreement, which is three years?

10 Access to thoroughbred accounts, horsemen's
11 accounts, I don't think there's any huge changes
12 there. I would ask with respect to the interest
13 provision, as I understand it now, Colonial Downs
14 will receive the interest on the thoroughbred
15 partners account, and the last time I checked banks
16 weren't paying very much interest. Are we talking
17 the half to one percent range interest on that?

18 MR. STEWART: Not even that much.

19 MR. PETRAMALO: The interest last year was
20 \$3,200.

21 MR. BURNETT: Yeah. Right. So we're not
22 talking a big ticket item here.

23 MR. WEINBERG: It's largely symbolic to help
24 offset the cost of the horsemen's bookkeeping.

25 MR. BURNETT: Under the amounts to be

1 deposited, you got the black line change at the top
2 of page five, related to wagering on simulcast
3 horses and related to wagering on live horses, these
4 tie back to the other provisions in the contract
5 with respect to SWFs and the like, as well as the
6 statutory amounts. Do I understand that correctly?

7 MR. PETRAMALO: I'm not sure I'm following
8 you. Where are you in the staff report?

9 MR. BURNETT: I'm under paragraph four, page
10 five under subsection A.

11 MR. WEINBERG: Yes.

12 MR. BURNETT: I'm looking at the agreement.
13 I'm sorry.

14 MR. WEINBERG: If you recall, Commissioner
15 Burnett, the directive of what to contribute to the
16 various horsemen's accounts and purse accounts are
17 in two different parts of the statute. One deals
18 with live racing and one deals with simulcast
19 racing. The ability to use what gets deposited into
20 the horsemen's account from simulcast racing is
21 unspecified in the statute. With respect to the
22 live racing provision, it is specified. That's
23 why -- that language is clarity, not a change --

24 MR. BURNETT: All right.

25 MR. WEINBERG: -- from the prior contract.

1 MR. STEWART: I put it in there because I
2 didn't remember which one it was going to, quite
3 honestly.

4 MR. BURNETT: And your reference to paragraph
5 14 is simply the federal authorization issue, right?
6 It doesn't -- all it is is the money that comes --

7 MR. WEINBERG: I believe that's right.

8 MR. BURNETT: Yeah.

9 MR. WEINBERG: No. I'm sorry. Paragraph 14
10 is of the statute -- of 369, which is what relates I
11 think to the existence.

12 MR. BURNETT: I'm on page 24. I'm sorry.
13 Okay. Now I gotcha. I'm with you now. It's not
14 paragraph 14 of the contract. It just happens to
15 involve authorization of simulcast racing.

16 MR. WEINBERG: Paragraph 14 of the statute
17 which deals with --

18 MR. BURNETT: Thank you, Counsel.

19 MR. WEINBERG: -- the requirement that there
20 be this contract.

21 MR. BURNETT: Okay. Thank you.

22 I'm thinking that everybody on this dais knows
23 better than I do how one calculates the EBITDA, but
24 you go on for a couple of pages here with new
25 language about the calculation of EBITDA, and I

1 think I understand what you're trying to accomplish
2 here. What the common sense in me says is where's
3 the potential for people to be fussing and us to get
4 dragged into some difference in interpretation, and
5 now is the time to iron out those kinds of issues.

6 My question is then is there some benchmark or
7 standard for the development or definition of EBITDA
8 that is a little more specific than generally
9 accepted accounting practices? And the reason I say
10 that is because I expect that under generally
11 accepted accounting practices, you can have lots of
12 different ways of EBITDA being construed.

13 MR. SIEGEL: Actually you can't.

14 MR. BURNETT: I'm pleased to hear that.

15 MR. SIEGEL: I think it's pretty pure.

16 MR. BURNETT: That's what I need to hear.

17 MR. SIEGEL: What he's addressing here I think
18 is in the event of not reaching certain targets and
19 EBITDA, certain things would happen. I didn't read
20 it thoroughly either, but it appears that way.

21 MR. WEINBERG: Right. There is a way to
22 ratchet back to the prior paradigm if we achieve
23 certain EBITDA -- or I guess it's handle. I'm
24 sorry.

25 MR. PETRAMALO: Handle.

1 MR. WEINBERG: Excuse me. It's handle.

2 MR. STEWART: But as to the definition of
3 EBITDA, I think the investment bankers and the SCC
4 have pretty well defined that.

5 MR. BURNETT: That's what I wanted to hear.
6 So if it's the same thing that you would submit to
7 the SCC, then everybody's got an industry standard
8 that they can use and there's not a whole lot to
9 fight about.

10 MR. STEWART: Right. I don't anticipate there
11 would be a whole lot of discussion.

12 MR. WEINBERG: And generally accepted
13 accounting principles are words of art. Sometimes
14 you hear GAAP accounting, that is generally accepted
15 accounting principles.

16 MR. PETRAMALO: But I think you're going the
17 wrong way on this. I don't think there's anything
18 unusual about using EBITDA. For example, in EBITDA,
19 one of the recognized expense categories might be
20 labor overhead or something like that. Our concern
21 was that the labor overhead now not include
22 somebody's brother-in-law in a no-show job. That's
23 why we included the sentence on page five, saying
24 the calculation shall be made using ones you've
25 already used.

1 MR. BURNETT: Sure.

2 MR. PETRAMALO: That's our concern. I think
3 that should be a legitimate concern, not with the
4 pure notion of what constitutes EBITDA.

5 MR. BURNETT: In some respects that may be
6 even better because I'm sure that prior EBITDAs have
7 been prepared in conformity with generally accepted
8 principles. There's your standard. Everybody is
9 going to use that. I'm just trying to avoid a bunch
10 of wiggling and misinterpretation later because the
11 folks didn't understand each other is all.
12 Everybody is acting in good faith.

13 MR. HARRISON: Frank referenced page six.
14 What we're all referring to is the black line
15 version of the contract.

16 MR. BURNETT: I'm sorry. I'm going through
17 the black line version.

18 MR. PETRAMALO: Do you have another copy?
19 I've got so many copies in front of me here, I'm not
20 sure exactly what's what.

21 MR. WEINBERG: I'm sorry, Frank. I didn't
22 bring an extra one.

23 MR. PETRAMALO: I might have one here.

24 MR. BURNETT: Under the black line page 6,
25 paragraph two.

1 MR. WEINBERG: Yes.

2 MR. BURNETT: I think that's a long way of
3 expressing a simple concept. Would you tell me how
4 that fraction if the -- you have 50 percent
5 multiplied by a fraction of the cumulative year to
6 date, divided by the cumulative year to date total,
7 blah, blah. What is that supposed to be? Does that
8 result in a monthly prorated share?

9 MR. STEWART: Yes. The objective here is
10 basically cumulative as you go along so that --

11 MR. BURNETT: Okay. So you take out monthly
12 fluctuations and end up with a cumulative total. Is
13 that the notion?

14 MR. STEWART: For the year.

15 MR. BURNETT: Each month for whatever has
16 occurred -- right.

17 MR. WEINBERG: That's right.

18 MR. BURNETT: So each month isn't fixed alone.
19 It's in the end, in December, you finish off with an
20 annual cumulative that works for everybody.

21 MR. STEWART: Right. I guess the easiest way
22 to explain it, the percentage of thoroughbred handle
23 will fluctuate a little bit each month. It will be
24 different in January than it will be in February.
25 So we'll calculate it in January, then when we come

1 to February, we'll calculate the cumulative number
2 for the two months.

3 MR. BURNETT: Right. So whatever check might
4 be written for the month of February might well not
5 reflect that activity for that month. It'll reflect
6 the difference between what's already been paid and
7 what the cumulative total should be.

8 MR. STEWART: Right.

9 MR. BURNETT: Do the same thing in March, same
10 thing in April on through.

11 On sort of a larger level here for me, fellow
12 commissioners, and it may be something that is not
13 an issue, when we're being asked to approve a
14 contract, we're being asked to do more than just
15 understand what the parties have come to for an
16 agreement. We're being asked to look at it and be
17 sure that it's in the best interest of Virginia
18 racing and our statutory charge.

19 I wonder if we can pass that kind of judgment
20 without understanding what the dollar amounts are
21 with respect to this arrangement versus going on the
22 way the system has been designed heretofore. Am I
23 making sense?

24 What we did last year and if you had the same
25 handle last year -- this year that you had last year

1 and if by this arrangement, what would the
2 difference be for the various parties?

3 Now, maybe we don't need to get to that level
4 of detail, but my reading of this is that we've got
5 a pretty significant drop off in activity in a
6 number of OTBs or SWFs such that Colonial could be
7 coming to us and saying, you know what, this isn't
8 really profitable for us to operate these things,
9 and we would under the current payment schedule that
10 we have to recognize, we think we'd be better off to
11 close them than leave them open.

12 The horsemen say wait a minute. We can help.
13 If you'll keep them open, we'll take a hair cut to
14 such and such a level in exchange for their being
15 open, for their staying open. That half a loaf is
16 better than none type of thinking. Am I reading
17 this correctly?

18 MR. PETRAMALO: Yeah.

19 MR. WEINBERG: Yeah. I think in response, I
20 believe staff has a schedule with respect to what it
21 was and what it would be showing a comparison of the
22 two methodologies.

23 MR. BURNETT: I apologize.

24 MR. WEINBERG: I'm looking on item four of the
25 staff report.

1 MR. REYNOLDS: Page two.

2 MR. PETRAMALO: Should we get to the bottom
3 line? It's a \$280,000 hair cut just on this
4 paragraph. That's not a net hair cut. That's a
5 hair cut on this paragraph. Meaning \$280,000 less
6 is going to the horsemen's purse account under the
7 new formula as opposed to the old statutory -- as
8 opposed to the old contract formula.

9 MR. BURNETT: So the horsemen take a take
10 \$282,315 hair cut?

11 MR. PETRAMALO: Correct.

12 MR. BURNETT: And what --

13 MR. SIEGEL: Do you get anything in exchange
14 for that?

15 MR. PETRAMALO: Yes.

16 MR. WEINBERG: Yes.

17 MR. SIEGEL: I mean, there's another side, I'm
18 sure.

19 MR. WEINBERG: Absolutely.

20 MR. PETRAMALO: Commissioners, if you're at
21 just a very gross dollar hair cut for this whole
22 contract at least to the extent you can quantify
23 things, it's about \$200,000, because we are picking
24 up 70 -- in my estimate 70 to 80,000 under the new
25 formula for signal sale sharing. So if we're

1 picking up say 80 -- just for round figures, if
2 we're picking up 80 here and giving up 280 there,
3 we've giving up a total of \$200,000.

4 MR. STEWART: I might add one small point.
5 The reduction in the Virginia Derby purse I believe
6 will -- that was money that Mr. Petramalo has argued
7 on numerous occasions was not flowing to his
8 membership. I suspect that \$150,000 will come back.

9 MR. PETRAMALO: Yeah. No, I appreciate you
10 pointing that out, but I would kind of put that
11 under the intangibles. There's a value to us
12 knowing that for at least the next three years the
13 track is committed to come and ask you to approve 40
14 days of racing. There's some value to the horsemen
15 to know that, and there is value in shifting money
16 from the stakes race to the overnight races, but
17 those are more difficult to quantify than \$280,000
18 here and 70 or \$80,000.

19 MR. WEINBERG: Not to -- I'm sorry. Excuse
20 me.

21 MR. REYNOLDS: You agree with the \$200,000
22 placed in --

23 THE REPORTER: I'm sorry. I need you to speak
24 up.

25 MR. REYNOLDS: This section here of the staff

1 report, page two paragraph four. Do you agree with
2 that?

3 MR. HARRISON: We agree with what we wrote.
4 What we might have done is and what I thought we did
5 was include that little piece, the schedule that Ian
6 had presented us in response, but we're comfortable
7 with what we've seen, yes.

8 MR. REYNOLDS: Do you agree with what they
9 said, though, about the \$200,000?

10 MR. HARRISON: Yes. I agree with what Frank
11 is saying, yes.

12 MR. BURNETT: To close the loop a little bit
13 further, if I'm looking at this report or this
14 letter outlining -- I don't know if you're familiar
15 with it or not.

16 MR. PETRAMALO: Yes.

17 MR. BURNETT: It looks to me, you know, just
18 doing a little bit of math here that we're in the
19 750 to \$800,000 range cumulatively for purses
20 generated from those three locations in 2009, and so
21 we're going to be a little better than a third of
22 that short. As to those three locations, you're
23 taking a 35 to 40 percent reduction in purse account
24 money. I'm not --

25 MR. PETRAMALO: Yeah. That's correct.

1 MR. BURNETT: Am I hitting the numbers
2 accurately?

3 MR. PETRAMALO: Yeah. Just add up the 2009
4 column and compare it to 2010.

5 MR. BURNETT: I just wanted to make sure I'm
6 not missing anything.

7 MR. WEINBERG: Yeah.

8 MR. BURNETT: That's what I was looking for,
9 Vic, here that I hadn't seen.

10 MR. PETRAMALO: That's right.

11 MR. LERMOND: Commissioner Reynolds, that
12 number would be offset by probably the \$100,000 that
13 the horsemen are going to receive more in signal
14 sales. So I think Frank's net number of 200,000 --

15 MR. PETRAMALO: Yeah. It's a good ballpark.
16 It's a good ballpark number.

17 MR. BURNETT: I'm not suggesting --

18 MR. PETRAMALO: Not that we're happy
19 particularly with Ian, you understand.

20 MR. BURNETT: Of course we understand that.

21 MR. PETRAMALO: We're just being practical.
22 That's all.

23 MR. BURNETT: Right.

24 He can express his unhappiness with you here
25 shortly.

1 MR. STEWART: I'm always happy with
2 Mr. Petramalo. We get along fine.

3 MR. BURNETT: There you are.

4 I am a little concerned -- more than a little
5 concerned by staff's comment in the box on page two
6 under paragraph four that the -- after the colon at
7 the bottom of the first paragraph, utilizing the
8 proposed formula, in 2010 we can expect purses of
9 \$137,000 a day. However, a continued annual handle
10 decline of 20 percent, which we can talk about
11 whether it's realistic, would indicate daily purse
12 levels of 110 in 2011 and 88 in 2012. Can we have
13 some comment on that?

14 MR. PETRAMALO: Those are overnight purses.

15 MR. BURNETT: Only?

16 MR. PETRAMALO: Only, yeah. Overnight, not
17 daily, but it's simple arithmetic. If the handle
18 keeps going down 20 percent a year, bingo, then
19 you're running 40 days.

20 MR. BURNETT: What was our decline last year
21 in handle?

22 MR. PETRAMALO: Seventeen percent. Well, the
23 SWF was 17 percent.

24 MR. BURNETT: Gross handle, does anybody know
25 that?

1 MR. PETRAMALO: Gross handle --

2 MR. STEWART: I'm not sure to tell you the
3 truth.

4 MR. PETRAMALO: -- 10.6 percent. Well, here's
5 how I figured the gross handle because you know my
6 problems with numbers. If you take the SWF handle
7 that was down about 17 percent and you take the ADW
8 handle that was up as we now know 6.7 percent
9 overall, it shows a decline of about 11 percent.

10 MR. BURNETT: In gross handle dollars, but for
11 which should not be taken to mean the same thing
12 with respect to purses at all because of the
13 difference in take-outs and all the rest.

14 MR. PETRAMALO: Well, it's pretty close. It's
15 pretty close. The SWFs were getting roughly five
16 percent, and then ADWs, it's --

17 MR. BURNETT: Four.

18 MR. PETRAMALO: Four, four and a half before
19 the new statute --

20 MR. BURNETT: Right. I don't mean to belabor
21 this.

22 MR. PETRAMALO: -- which Mr. Scoggins
23 committed before to comply with. Is he still here?

24 MR. BURNETT: He's still here. He's smiling,
25 so we're all right.

1 MR. STEWART: I would point out to you that if
2 we were to experience those two numbers, I think our
3 problems would be a lot bigger than a decline of
4 overnight purses.

5 MR. BURNETT: If the numbers are that size --

6 MR. STEWART: No. If we experience a 20
7 percent decrease next year and a 20 percent decrease
8 the year after that --

9 MR. PETRAMALO: We would be in serious
10 trouble.

11 MR. BURNETT: Exactly.

12 MR. LERMOND: Mr. Chairman?

13 MR. BURNETT: Yes.

14 MR. LERMOND: I think the reason the 20
15 percent number was used is because over the last two
16 years, that's been the month-to-month comparison as
17 far as the handle, bricks and mortar, racetrack and
18 OTBs have been down consistently 20 percent for over
19 two years. Until that starts to turn, we assume
20 that trend. Hopefully, it doesn't continue, but
21 that's been the trend for over two years. The ADW,
22 a little increase is not nearly enough to offset the
23 major impact of that 40 percent.

24 MR. BURNETT: Understood. Well, it may be
25 viewed as gloom and doom, it is still an accurate

1 trajectory or extrapolation where we've been over
2 the last two years.

3 MR. LERMOND: We budget out -- with the state,
4 we budget our numbers on the 20 percent decline.
5 Our revenues are derived directly from it.

6 MR. BURNETT: Okay. Any further questions on
7 those provisions of the contract before we leave
8 them?

9 Any questions about the signal sales
10 provision? We touched on it earlier, but as I
11 understand it, Colonial Downs is going to cap its
12 expenses at 55,000, which it's fairly close to
13 already according to the staff report. And that's
14 where this additional revenue for the horsemen comes
15 from --

16 MR. PETRAMALO: Correct.

17 MR. BURNETT: -- essentially from that
18 capping.

19 Would somebody tell me where the four-sevenths
20 comes from in the expense of ratios?

21 MR. STEWART: We currently use seven cameras,
22 and three of them are required by the Racing
23 Commission. We're allocating four of them to the
24 marketing of the signal.

25 MR. BURNETT: Gotcha.

1 With respect to your review of revenue and
2 expense information and I probably should know the
3 answer to this question, I see that the parties have
4 agreed to share that as necessary with the
5 appropriate confidentiality protections. I think
6 the Commission will likely want to review those
7 projections as well.

8 Are the parties adequately protected by the
9 current state of the law and agreement such that the
10 provision of those numbers to the Commission will
11 not create problems?

12 MR. WEINBERG: I have two responses. To the
13 extent we can receive assurances as Colonial Downs
14 has in the past that those -- that that data would
15 be excluded from the Freedom of Information Act
16 because it's deemed to be tax gathering information,
17 we would -- Colonial Downs would be comfortable. I
18 think in the past counsel to the Commission has
19 provided that type of informal assurance.

20 Alternatively, as we operated for a number of
21 years, was to have the Commission staff come over,
22 take notes, take down whatever information it would
23 like to take. Those notes were clearly protected
24 rather than us submitting copies of documents to the
25 Commission which were then discoverable under FOIA.

1 I'm not trying to be difficult.

2 MR. BURNETT: No.

3 MR. WEINBERG: You may recall, Colonial Downs'
4 parent company, Jacobs Entertainment, has publicly
5 registered debt, therefore making it a publicly
6 registered company. And so there is some concern
7 that this EBITDA data would be material, non-public
8 information that would create some problem.

9 MR. LERMOND: Mr. Chairman?

10 MR. BURNETT: Yes, Mr. Lermond.

11 MR. LERMOND: Just to comment on that issue.
12 Each year the ADW applications that are received
13 have confidential information contained in it,
14 XpressBet, and we always hang our hat on that we
15 have an exemption that Mr. Weinberg referred to,
16 that because this is business sensitive information,
17 the Department of Taxation uses this same exemption
18 when they get FOIA requests. We would deny any
19 request based on that exemption.

20 MR. BURNETT: Thank you.

21 The next issue is the EZ Horseplay, HBPA
22 Thoroughbred Horsemen's Agreement, and the
23 provisions of this contract as well as the attached
24 contract, which is the one we just -- the new
25 amended one we just received.

1 I have two general concerns that I have
2 frankly not come to a conclusion on. One is that we
3 are in such a fluid environment, I worry about being
4 locked into a three-year deal regardless of what it
5 looks like. I just worry about that. I've seen so
6 much change in the ADW environment, and I think what
7 we've seen in the last three years has been dramatic
8 and I'm not sure getting tied to some agreement
9 makes a lot of sense. That's one concern I have.

10 Secondly, I do have a concern about the
11 potential antitrust implications and the horsemen's
12 involvement with antitrust implications of there
13 appearing to be an arrangement whereby the horsemen
14 are the exclusive partner of EZ Horseplay to the
15 exclusion of any competitors that might want to cut
16 a similar type of deal.

17 Now, maybe I've misunderstood that, but the
18 easiest way for me to ask the question would be if
19 XpressBet came to the horsemen and said, we'd like
20 to work out a deal with you guys where we go to
21 every beach resort and put our new machine in it,
22 would there be any prohibition on the part of the
23 horsemen from entering into such an agreement?

24 MR. WEINBERG: There's no exclusivity
25 provision in our arrangement.

1 MR. BURNETT: For some reason I thought I read
2 that, and it concerned me some.

3 All right. Any comment by anybody on the
4 account wagering provisions and/or the contract
5 that -- I guess I do have one more question. And
6 that is how if the harness horsemen are not going to
7 share in this enterprise and the thoroughbred
8 horsemen are, is there going to be any conflict in
9 how the operation works? Who's responsible for
10 what? Are we going to hear somebody saying my
11 office is being gored and I'm not part of this, or
12 is someone saying someone's getting a free ride and
13 they're not part of this or all that?

14 MR. WEINBERG: To be clear, there is an
15 existing agreement on the allocation of expenses,
16 which remains in place with the harness horsemen.
17 This amendment only deals with the investment in
18 certain hardware, the kiosks that we had talked
19 about, the touchscreen computers that we've talked
20 about, and the thoroughbred horsemen have agreed to
21 share in that portion of that expense in return for
22 ownership interest in that equipment. So the
23 harness horsemen will neither contribute to that
24 expense nor share in the ownership of that
25 equipment. So that's a narrower issue than how you

1 cast it.

2 MR. BURNETT: Right.

3 MR. WEINBERG: The general cost sharing is
4 still in place. We're just dealing with one
5 component of what constitutes an operating expense
6 under the agreement.

7 MR. BURNETT: What is the anticipated benefit
8 for the horsemen in having ownership interest in
9 these machines?

10 MR. STEWART: I think it'll enable those to be
11 rolled out faster because obviously they're helping
12 to pay for the costs more. It's not a cheap
13 endeavor. It's a big investment.

14 MR. BURNETT: Where is the horsemen's money
15 coming from?

16 MR. STEWART: It's in effect coming from --
17 they're taking a reduced share to help pay for the
18 machines.

19 MR. BURNETT: And then when does their return
20 on that investment kick in?

21 MR. STEWART: As the machines gain wider
22 distribution, increase volume.

23 MR. WEINBERG: For example, as a result of
24 machines being more widely dispersed, account
25 wagering revenue exceeds five percent in handle, the

1 horsemen participate in that excess.

2 MR. BURNETT: Essentially, in exchange for
3 taking less of a percentage in the building time
4 frame -- in the rollout component before they're up
5 and operational, which allows more to be rolled out,
6 so that there's more money there to be put into that
7 part of it, when they start operating and get some
8 of the money back, they get more than they would
9 otherwise be entitled to.

10 MR. WEINBERG: Correct.

11 MR. BURNETT: And it sounds like we got a
12 difference in approach between the harness horsemen
13 and the thoroughbred horsemen in terms of the
14 harness horsemen are saying, well, you know, that's
15 a risk we're not interested in participating in so
16 we'll take our "X". So let's just assume that
17 they're wildly successful. The harness horsemen
18 will get what is already agreed upon, which is what
19 is my question, and then what will the thoroughbred
20 horsemen get assuming it's widely successful. I'm
21 going to ask the same question if it's widely
22 successful.

23 I want to get a feel for what the swing is for
24 the horsemen in terms of what they might or might
25 not get compared to what the current deal is both

1 with the thoroughbred horsemen and with the harness
2 horsemen.

3 MR. WEINBERG: Let me do the latter first, if
4 I may.

5 MR. BURNETT: Sure.

6 MR. WEINBERG: The current deal is the same,
7 except that we're asking will you participate in the
8 cost of equipment. In rolling out this equipment,
9 will you consider it an operating cost. The
10 thoroughbred horsemen have said yes; the harness
11 horsemen have said no. So putting the new equipment
12 aside, the arrangement is the same as I described it
13 to you.

14 MR. BURNETT: But the growth is affected.

15 MR. WEINBERG: Right. That's right. In an
16 ideal world, we would not have this issue of
17 distinguishing between the breeds, and this is a new
18 wrinkle that we've only had to do deal I would say
19 in the last four or five days. So we're still
20 working out how do you reward the thoroughbred and
21 not the harness who may get a free ride, so to
22 speak, on the bump in handle.

23 MR. STEWART: We're hopeful that over time
24 perhaps the harness guys will change their mind.

25 MR. SIEGEL: They're not represented here.

1 Oh, they are. I'm sorry.

2 DR. DUNAVANT: Yes.

3 MR. SIEGEL: Are you in agreement with what's
4 been said?

5 DR. DUNAVANT: Yes, we are. You know, our --
6 the VHHA said we would reduce our days.
7 Classically, we haven't raced on credit at all. We
8 have raced with money that we had at the time, and
9 that's what we continue to want -- continue to do.
10 They really don't want to get in business with
11 Colonial Downs on these kiosk things.

12 Our biggest purse money comes from the OTBs.
13 We take a hit on the advance deposit wagering, you
14 know. There are a lot more people that understand
15 thoroughbred racing than they do our product.
16 Nationwide they're quite a bit more popular, and
17 they are a lot more racetracks. We have a core
18 group that are harness horse fans that bet our
19 product, and I think we're doing like 27 percent
20 down in eastern -- at the OTBs down there. We're
21 doing like ten percent at the advance deposit
22 wagering facility -- product.

23 These kiosks, you know, they can call up
24 harness racing, but 98 percent of the people that
25 are going to those moose clubs and things, all they

1 know is seeing somebody ride a horse in a race.
2 They aren't familiar with our product. We didn't
3 think that it would be prudent for us to go into the
4 ownership of these machines. Consequently, we
5 thought our best bet was to help Colonial by
6 reducing the number of weeks.

7 In my discussions with them, they said, you
8 know, it's not so much the days. We need to cut
9 back on the weeks. So we're proposing cutting two
10 weeks off of our last meet and cutting eight days,
11 and we have been fortunate in that we have set aside
12 some money from this account deposit wagering. We
13 want to maintain that -- you know, some slush fund
14 money. We contributed like 130,000 to our stakes
15 program last year out of that money and at the
16 present rate with all the declines, we should have
17 enough money to race 28 days in 2010.

18 Hopefully, things will turn around and we can
19 apply for more days in 2011, but nationwide all the
20 races are going to -- racing for less purse, even if
21 they have the casino booths. I mean, the casinos
22 aren't doing as well as they were and all the purses
23 are down, and we figured it's just prudent to cut
24 back on our days and weeks and see what happens in
25 another year.

1 MR. SIEGEL: How long is this contract?

2 MR. BURNETT: This particular contract I think
3 is three years.

4 MR. WEINBERG: Which contract?

5 MR. BURNETT: The thoroughbred horsemen's
6 contract.

7 MR. WEINBERG: Yes, it's three years.

8 MR. BURNETT: Can you help me with what you
9 think the difference in rollout in terms of -- I
10 don't know whether it's in dollars, volume of
11 machines or handle dollars or how you would
12 characterize it, but how much difference in terms of
13 expansion does the thoroughbred horsemen's
14 participation make? Am I making sense?

15 In other words, you're going to put out --
16 these machines cost \$15,000 a pop. If they don't
17 participate, you say we're going to put this many
18 per month or this many per year out in place, and we
19 think they'll generate this amount of handle that
20 we're projecting, but if the horsemen will work with
21 us, we're going to put this many machines out and
22 it'll generate this much handle. That kind of
23 projecting I think would be helpful for us to sort
24 of get a sense of what is trying to be accomplished
25 here.

1 MR. STEWART: Well, I mean, the thoroughbred
2 horsemen, I guess they would be bearing
3 approximately 40 percent, I guess, of the cost over
4 a five-year period. So it's difficult to put a fine
5 point on it, quite honestly, as to exactly what that
6 difference would be. Jacobs Entertainment
7 corporate-wide allocates it's capital expenditure
8 funds based on obviously the needs of the various
9 business units and the potential for return of those
10 dollars in general.

11 The fact that the horsemen are willing to
12 participate with us I think is influential in
13 getting greater allocations of money to Colonial
14 Downs as opposed to some of the other businesses of
15 Jacobs Entertainment. I couldn't put a point on it
16 exactly as you would like.

17 MR. BURNETT: Well, would it be fair to say
18 you don't have at this point a target number of
19 machines or a target level of handle over years?

20 MR. STEWART: Oh, no. That's not true.

21 MR. BURNETT: That's what I'm trying to get a
22 feel for is what you're trying to get with this
23 thing.

24 MR. STEWART: I would like to roll out a
25 hundred locations this year, if we could.

1 MR. BURNETT: Is it one machine per location?

2 MR. STEWART: One per location.

3 MR. BURNETT: One \$15,000 machine and other
4 subsidiary computer screens and the like?

5 MR. STEWART: Well, the machine is about 11.
6 When you're all done with the location, it's
7 \$15,000.

8 MR. BURNETT: Fully setup in a club or a
9 restaurant?

10 MR. STEWART: Yeah.

11 MR. BURNETT: Okay.

12 MR. STEWART: But as you all know, it's a new
13 endeavor. You know, we're going to go at it
14 incrementally. We have ten kiosks out there right
15 now. We're pleased with what they're doing. We
16 think there's good potential for it. We've ordered
17 25 more. We'll deploy those 25 more. You know, in
18 a couple months from now, if we're happy with how
19 they've done, we'll continue on.

20 MR. SIEGEL: Where are those ten?

21 MR. STEWART: They're located in various moose
22 clubs and elk clubs.

23 MR. SIEGEL: Around the state?

24 MR. STEWART: Yeah. They're around the state.
25 There's one outside of Abingdon. There's one in a

1 place called Callao. There's one in Petersburg.
2 There's one up in -- Mary, you know where they are.

3 MS. CALABRESE: Tappahannock, Woodbridge,
4 there's a couple in Woodbridge, a club in Norfolk.

5 MR. STEWART: There's one in Dinwiddie.
6 There's one in a place called Verona.

7 MS. CALABRESE: We took one out of Sandston
8 and moved it for a while.

9 MR. STEWART: It's a situation where we're
10 going into relatively small places. Some of them
11 are very successful, and I anticipate some won't be.
12 And some haven't been, and we've moved them to
13 different places. One of the beauties of the
14 business is it's very easy to get in, and it's very
15 easy to get out. We can deploy into a particular
16 location. If we don't like what we're doing after
17 three or four months, we'll go on to the next one.

18 MR. SIEGEL: Beyond moose clubs, what's the
19 target?

20 MR. STEWART: Well, we've discussed this many
21 times. We would like to deploy it into bars and
22 restaurants.

23 MR. SIEGEL: How far are you away from doing
24 that? The 25 that you've ordered, will that take
25 you into bars and restaurants?

1 MR. STEWART: It potentially could. I mean,
2 it's a lot of twists and turns to the bars and
3 restaurants.

4 MR. SIEGEL: It becomes a risk.

5 MR. STEWART: Absolutely.

6 MR. LERMOND: Mr. Chairman?

7 MR. BURNETT: Yes, sir.

8 MR. LERMOND: I'll try to help you a little
9 bit. Before this new year January 1, this practice
10 was really going on, and the reason I say that is
11 because the horsemen had agreed that they would take
12 out certain expenses before they split the profits
13 from EZ Horseplay. Some of those expenses were
14 getting these moose clubs set up. I don't know.
15 There may have been some machine costs already that
16 was split.

17 I can tell you for the first nine months of
18 2009 if you just offset those expenses over what was
19 made on EZ Horseplay, it was a loss of about
20 125,000, and that would have been split between the
21 horsemen and Colonial. Colonial just -- that's an
22 investment for them, I believe, and the horsemen,
23 really that money was coming out of the source
24 market fees that they were receiving from XpressBet
25 and TwinSpires and the other folks.

1 MR. STEWART: But there weren't machine costs
2 into that. That was --

3 MR. LERMOND: Well, okay. Then that's just
4 strictly legal fees and some salaries. I believe
5 they had some salaries in there.

6 MR. PETRAMALO: Well, but there wasn't --

7 MR. LERMOND: But that's all going to go away
8 now, because Colonial is going to pick up all of
9 those costs except for the hardware and the
10 purchasing of the hardware, if I understand that
11 correctly.

12 MR. STEWART: No. No.

13 MR. LERMOND: You're still going to deduct
14 salaries and other things?

15 MR. STEWART: It's a 50/50 proposition.

16 MR. PETRAMALO: I'm not sure I'm following the
17 first part, Dave, when you talk about the first nine
18 months. We, the HBPA, never transferred any money
19 to Colonial to help fund that \$125,000 deficit. We
20 didn't get anything from EZ Horseplay because there
21 was no net to split.

22 MR. LERMOND: Right. In essence, you got less
23 from the source market fees from the other account
24 wagering companies.

25 MR. PETRAMALO: No. No.

1 MR. LERMOND: When I do my comparisons, I'm
2 just comparing Colonial, EZ Horseplay commission or
3 breakage to the expenses that are provided to me by
4 Colonial on a quarterly basis.

5 MR. PETRAMALO: I guess I'm not following you.
6 Why would you conclude that we get less from TVG
7 because of the experience with EZ Horseplay?

8 MR. LERMOND: Because Colonial lumps it all
9 together and says this is what you're getting from
10 us and from these other account wagering companies,
11 and then you deduct these expenses, but for me to
12 come up with a fair -- actually what the source
13 market fee is from just EZ Horseplay, I just compare
14 the commission or breakage from EZ Horseplay, which
15 I get from the reports, deducting expenses that are
16 provided to me by Colonial, and that's where I
17 get -- for the first nine months --

18 MR. PETRAMALO: This is something that I'm
19 hearing for the first time.

20 MR. LERMOND: It's buried in a bigger
21 calculation, but if you just look at EZ Horseplay
22 and take out the expenses associated with EZ
23 Horseplay, y'all are both in the negative. You see
24 before listed --

25 MR. STEWART: Right. It's lumped all

1 together.

2 MR. LERMOND: I've a listed a negative source
3 market fee for Colonial when I do my comparisons
4 because that's the only fair way to do it.

5 MR. PETRAMALO: Well, I understand that. I
6 was not aware that the horsemen's share from TVG,
7 XpressBet, YouBet, et cetera, and TwinSpires was
8 being lumped into one pot with EZ Horseplay, and
9 then the EZ Horseplay expenses were coming out of
10 that big pot and that number coming to us. Is that
11 what you're saying is happening?

12 MR. LERMOND: It was your deal.

13 MR. STEWART: Under the agreement, we agreed
14 to split all account wagering revenues 50/50. We
15 lumped it all together.

16 MR. PETRAMALO: Oh, this is a serious problem.

17 MR. BURNETT: Well, that's why we're putting
18 all this stuff on the table today because I don't
19 think we're going to come to a decision today, but I
20 think it's helpful to have these discussions.

21 I guess I still -- I mean, everything I'm
22 hearing sounds like it's an enterprise that makes
23 sense for all the parties to get involved in. What
24 I'm unclear about is what's the upside potential on
25 these things. When does -- when does it look like

1 the horsemen will -- the thoroughbred horsemen would
2 catch up with their harness horsemen counterparts,
3 if you will. Let's not worry about -- and I don't
4 disagree with Charlie in terms of their harness
5 horse folks may not have as wide an audience in this
6 type of betting, but maybe the easier way to do it
7 is compare the old arrangement, compare the straight
8 take-out arrangement versus this investment
9 arrangement and ask when does the investment break
10 even, when does the investment start to become a
11 better looking deal than they otherwise would have
12 had if they didn't have a risk in this. Am I making
13 sense?

14 You're asking them to invest in these machines
15 so that you can get them out there faster. They're
16 as a result of that investment receiving less
17 proceeds from the machines in the short run than
18 they would if they just got a fixed take-out from
19 whatever machines you put in there because they're
20 not investing in those machines. They're just going
21 to get whatever the take-out is.

22 MR. STEWART: I mean, that makes the
23 assumption that we would do what we were going to do
24 without them.

25 MR. BURNETT: Exactly. Yeah. Yeah. No. No.

1 I'm saying -- what I thought I heard you say was
2 yeah, you were going to do what you were going to do
3 without them, but it's much slower.

4 MR. STEWART: It would be much slower.

5 MR. BURNETT: Maybe not. You need a partner.
6 Okay.

7 MR. SIEGEL: In the spirit of you
8 cooperating --

9 MR. PETRAMALO: Well, I think it's similar to
10 what we did in 2001 or 2002 when there were only
11 four OTBs and in order to give Colonial the
12 incentive to spend its money and go out and do a lot
13 of things to open up five more, we gave them a
14 discount from the statutory rate. We became, quote,
15 partners with them. We were kind of -- even
16 psychologically we were partners, because we now had
17 a vested interest in what we were doing because we
18 were, in effect, helping pay for them by reducing
19 from six percent to four and a half percent.

20 To me what we're talking about here is another
21 iteration in this --

22 MR. BURNETT: And I'm just trying to quantify
23 it.

24 MR. PETRAMALO: Yeah. I don't know whether
25 you can.

1 MR. BURNETT: Let's use your analogy. When we
2 negotiated that deal that took -- let's say the
3 take-out was six percent, six, seven, eight, there
4 was no incentive and all the rest.

5 MR. PETRAMALO: Right.

6 MR. BURNETT: After 20 years, Scott County is
7 just a raging success at the end of that license and
8 this commitment ends and now you're entitled to the
9 statutory eight percent, let's just say.

10 MR. PETRAMALO: Right.

11 MR. BURNETT: So you say, well, why in the
12 heck would we do four and a half? We made our
13 investment. We invested at a point and a half for
14 that 20 years, and now we want the payoff. We want
15 to get the eight assuming all things stay the same.

16 MR. PETRAMALO: Right.

17 MR. BURNETT: So the answer to my question
18 would be, well, you know, at 20 years we're going to
19 be picking up an extra two percent for the next 20
20 years and we're going to make our money.

21 What I want to know about these machines is,
22 right now it looks like there isn't going to be any
23 return because you're investing whatever return you
24 might have in buying machines and putting them out
25 there and getting them going. When are you going to

1 start seeing some money out of this endeavor that's
2 going to benefit the horsemen and start finding its
3 way into purses and benefit racing? Not benefit the
4 people that manufacture the machines and sell them.
5 That's what I'm trying to get at. When are we going
6 to see a return on this endeavor?

7 MR. PETRAMALO: Well, that's difficult to say.

8 MR. BURNETT: Of course.

9 MR. PETRAMALO: It's going to depend on
10 whether it's successful or not, but it seems to me
11 the general consensus is to increase handle, we've
12 got to increase distribution of the product and
13 that's what we're attempting to do here with the
14 animal clubs, et cetera. Rather than going with the
15 old model, the sticks and bricks, which is
16 antiquated now, we're going with a new model. We're
17 hoping that it's a very cheap model, very low
18 overhead, and we're hoping that it will work and
19 that it will generate handle.

20 As I said at the outset, if you look at what
21 just happened here in the last three years, we're up
22 to a situation where clearly a third of all off-site
23 wagering is now gravitated to the internet. That's
24 where it's going. What we're saying is we're
25 getting on the bandwagon here. Here's a new

1 distribution system. We hope it works.

2 MR. BURNETT: Okay. Let me try it a little
3 bit differently. It seems our due diligence puts us
4 in a position of asking the same question the bank
5 would ask, okay? Now you're borrowing the money
6 from me, and I'm asking the question the bank asks.
7 When is the cash -- when is the lease going to
8 start, when are they going to start paying rent, and
9 how much is it going to cost to build the building
10 and to rent it out and when are going to start
11 seeing some positive cash flow? That's what I want
12 to know.

13 You've got -- I mean, I know Mr. Jacobs has to
14 be asking these questions. If you don't want to say
15 them publicly, that's okay, but -- or if you don't
16 want to answer them publicly, but we need to know
17 whether this is a wish and a promise and maybe 20
18 years from now we're going to make some money, or is
19 it something that we expect that there's going to be
20 a cash flow that's going to positively start
21 contributing to purse funds in three years or in
22 five years or in eight years or whatever it is.

23 MR. STEWART: It's contributing positively
24 already.

25 MR. BURNETT: Well, it's unclear to me when

1 I'm understanding there's going to be some
2 investments in these machines that cost \$15,000.
3 You've got to recover that somehow. Are you
4 amortizing that over some period of time?

5 MR. WEINBERG: Five years.

6 MR. PETRAMALO: Five years.

7 MR. WEINBERG: It's in the agreement.

8 MR. BURNETT: Okay. So maybe there's an
9 illustration in the agreement when I read it that I
10 can -- I'll be able to understand how to do some
11 level of projecting so I can see a pro forma of what
12 things might like look. I'm just saying if somebody
13 asked me why did you approve that thing, I'd like to
14 be able to say in the span of a 25-story elevator
15 ride on a slow elevator what I did, you know, what I
16 approved. Right now what I'm hearing is basically
17 we're hopeful this is going to work. I just need to
18 get a little bit more concrete is what I'm trying to
19 tell you.

20 MR. STEWART: We've run projections. We've
21 run models. We've been running the EZ Horseplay
22 business for, I don't know, four or five years now.
23 We've been in the moose clubs for well over a year,
24 and we had this model out there. The kiosks have
25 been operational since July. So if the Commission

1 would like to see some kind of model, I'd be happy
2 to provide something for them.

3 It is profitable. The clubs right now are
4 generating close to \$100,000 in handle a month.
5 That's really with only about -- well, there's ten
6 machines out there. Really only about six of them
7 are really carrying the ball. So, you know, if
8 you'd like, you can multiply that by ten and it'll
9 do a million dollars a month.

10 Now, my crystal ball isn't all that clear.
11 We're at the beginning rather than the middle or the
12 end. It's hard to say exactly how it's all going to
13 come out, but so far, so good in my opinion.

14 MR. BURNETT: You don't view it as a huge risk
15 then?

16 MR. STEWART: No. I don't view it as a huge
17 risk at all. I think -- what I like about it a lot
18 is it's a very incremental risk. We're making
19 incremental investments. I don't have to come up
20 with five million dollars on day one to do this. I
21 can put it in ten places and see what happens, then
22 I can put in 25 more and see if I still like it. I
23 don't have to take over the state on day one.

24 MR. SIEGEL: The reason I asked about how long
25 this contract was, like any new venture, no one

1 really knows how it's going to turn out long-term.
2 If it's hugely successful, then all the players may
3 want to look at it differently. Maybe the
4 standardbred people will want to get in. Maybe the
5 horsemen will want a bigger piece. So when do you
6 re-visit all this is the question.

7 MR. STEWART: Well, I mean, the truth is we're
8 in a very dynamic industry and there's things
9 changing all the time. The truth is we re-visit
10 issues with the horsemen all the time.

11 MR. SIEGEL: Notwithstanding what the contract
12 says.

13 MR. STEWART: Yeah. I mean --

14 MR. BURNETT: That's how Frank and Ian stay so
15 close.

16 MR. WEINBERG: And to be clear, Commissioner
17 Siegel, the EZ Horseplay agreement runs as long as
18 we have a license. The thoroughbred horsemen is a
19 three-year agreement, but I think Mr. Stewart's
20 answer is more accurate in response to the question
21 of how often do we re-visit. It's about every
22 month.

23 MR. REYNOLDS: Mr. Chairman, being a part of
24 Jacobs Entertainment, I'm sure you've got some
25 document that gives a forecast or a plan and so

1 forth and so on. I share your view. I would like
2 to be able to look at that.

3 MR. STEWART: I would be happy to share it
4 with you. I mean, I don't think the issue --

5 MR. BURNETT: Some kind of plan, business
6 plan.

7 MR. STEWART: -- is whether or not the model
8 works in the moose club. It does. The question is
9 is how many locations can you put them in there.

10 MR. WEINBERG: Candidly, that's the discussion
11 we've been having in the VRIG for the last six
12 months, seven months.

13 MR. STEWART: We're a long way from where we
14 were two years ago when we were sitting there going,
15 oh, gee, I wonder if we can do something at a moose
16 club. I wonder if we could find the technology that
17 would make it effective to bring product to the
18 public in this manner. In my opinion, those
19 questions have been answered affirmatively, very
20 definitively. The question is just how many places
21 do we want to put them in.

22 MR. BURNETT: All right. Further questions on
23 that particular subject? I think we're going to
24 look at some level of model/plan, which they'll
25 provide us, that I think will be valuable to answer

1 the kinds of questions Commissioner Reynolds and I
2 have shown some interest in. It's certainly -- I
3 mean, it's an exciting prospect. Don't
4 misunderstand my enthusiasm for it.

5 Any other questions on the issue at least at
6 this point of the EZ Horseplay agreement and
7 machines? If not, we'll move on to --

8 MR. HARRISON: Peter, one comment, please.

9 MR. BURNETT: I'm sorry. Go ahead, Vic,
10 please.

11 MR. HARRISON: This morning we received a
12 black line version of this Amended and Restated
13 Advance Deposit Account Wagering Agreement in which
14 they deleted the references to the VHHA with respect
15 to their sharing in the costs and revenues.

16 It's not exactly the same document that we
17 reviewed and that we wrote the staff report on, so I
18 just wanted to make that point. They learned over
19 the past four days that the harness horsemen were
20 not going to participate, so they distributed this
21 morning this document that you have in front of you.

22 MR. BURNETT: Right. I'm hoping you're going
23 to provide us with an amended staff report before
24 our next meeting such that we can be clear how --
25 what changes are in that very document and how they

1 may change other provisions in other documents and
2 your recommendation.

3 Any questions with respect to the Virginia
4 Derby and Colonial Turf Cup purses? Any comment
5 anybody wants to make on those?

6 With respect to the Virginia Turf Festival
7 Stakes Races, the phrase in order to develop more
8 fully the Virginia Turf Festival is used and the
9 Virginia Turf Festival shall consist of high quality
10 races. At this point is the Virginia Turf Festival
11 defined as those races that are referenced in this
12 paragraph, or we are talking about an expanded event
13 of some sort that isn't stated here that we're
14 moving towards?

15 MR. WEINBERG: Well, let me say this. It
16 leaves open that possibility under current handle
17 rates. I don't expect that there would be any
18 change from the races that you see here.

19 MR. PETRAMALO: This is basically the
20 identical language that's been in the contract for
21 eight years.

22 MR. BURNETT: I know. And there's -- I'll
23 reference that here a little further on collection
24 of nomination fees and the like. I think some of it
25 would be under the statute of limitations for

1 collections. Some things -- I think some of this
2 old language could be parsed or removed to reflect
3 where we really are at this point. I just want to
4 avoid misunderstanding, that if it's old language,
5 that's what it is, but it seems we've come to at
6 this point really the Grand Slam is the center piece
7 of a turf festival that is consistently about five
8 or six races at this point. There had been
9 discussions at other times of having three day or
10 one week long turf festivals at the end of the meet
11 or a separated time frame, and I want to know
12 whether we're moving back into that at this point or
13 whether this is what it is for now.

14 MR. WEINBERG: The short answer is we've
15 neither killed that opportunity off nor is there any
16 attempt to give it new life, but to just leave it
17 off to the side as it is.

18 MR. BURNETT: All right. I think the horsemen
19 and the track have worked hard with Tyler and others
20 to get where you want to be on condition books and
21 the like. Is that at this point satisfactory as
22 written?

23 MR. PETRAMALO: Yes. We're working very well
24 together.

25 MR. BURNETT: With respect to gap funding,

1 historically there has been some difference of
2 opinion between Colonial Downs and the horsemen and
3 sometimes others with regard to projections of
4 handle, and therefore, the amount of money that's
5 going to be available to pay back gap funding and
6 purse levels. We've had debates many a time, is
7 \$8 million available? No, there isn't. It's only
8 going to be seven, et cetera, et cetera.

9 This provides that Colonial Downs reasonably
10 determines the amount of money available to pay
11 back. As it shows here, I see Colonial Downs as the
12 arbiter of the gap. Is that what the parties
13 intend?

14 Top line on page 14 of the black line
15 contract. The gap amount shall not exceed the
16 amount that Colonial Downs reasonably determines can
17 be paid back from the horsemen's account on or
18 before December 31st, blah, blah, blah.

19 MR. WEINBERG: That's the way it was last
20 year.

21 MR. PETRAMALO: Let's see. There was another
22 sentence I was looking for. I can't quite find it,
23 but yeah. That's right. That language hasn't
24 changed.

25 MR. BURNETT: I worry a little bit about --

1 and maybe there's not a thing that can be done about
2 it, is that I know my friends at Virginia Commerce
3 Bank provide the gap funding. They do so because a
4 certain octogenarian signs on the dotted line, which
5 makes them very comfortable. What happens if he or
6 his fellow cosignator says no more?

7 Are you just left to renegotiate this
8 provision of trying to figure out how to provide it,
9 because it doesn't strike me without a knight and
10 shining armor for lack of a better term coming to
11 the rescue, that that gap funding is easily obtained
12 by the horsemen.

13 MR. PETRAMALO: Maybe yes, maybe no. The
14 first -- last year's credit line --

15 MR. BURNETT: Not an octogenarian. He's a
16 nonagenarian.

17 MS. RICHARDS: Yeah.

18 MR. BURNETT: I'm sorry, Frank. I didn't mean
19 to interrupt you.

20 MR. PETRAMALO: No. What I was going to say
21 is the loan, the advance, the credit line from the
22 Virginia Commerce Bank was to the VHBPA, but we had
23 two guarantors who signed on. Whether or not --
24 and, of course, we paid back as we told them
25 probably slightly in advance of the schedule that we

1 told the bank. The question is in 2010 can we go to
2 the bank and say, okay, we don't need these
3 guarantors. Maybe yes, maybe no.

4 But let's assume that the bank says, yes, you
5 need two guarantors and the guarantors say no. The
6 responsibility still is with the VHBPA to come up
7 with some way of funding the gap, but if after all
8 these efforts we can't do it, then we're going to
9 have to come back to Colonial Downs and talk to them
10 and say, look, here's the problem. Can we solve it?

11 MR. BURNETT: And isn't it fair that we're
12 basically all in the same position? We've got a
13 certain number of days, we've got a certain amount
14 of money, we've got certain borrowing capacity and
15 willingness to borrow, and all the rest. We just
16 have to mash that out in one form or another. Is
17 that --

18 MR. PETRAMALO: We would have to work it out.

19 MR. BURNETT: That's where it is.

20 MR. PETRAMALO: Right.

21 MR. BURNETT: On page 15, collection of --
22 paragraph E, Collection of Nomination, Starter and
23 Similar Fees. This goes back to 2002 with the
24 people -- various horsemen not having paid, and it
25 puts an indemnification provision for lack of a

1 better term in place where the horsemen will take
2 care of anything that isn't paid if Colonial Downs
3 takes certain steps to seek payment from the
4 horsemen that owe the money. There was discussion,
5 I recall, about, you know, starter fees, and other
6 nominations and the like.

7 Can we -- this tanging of 2002 and all these
8 fees attributable to the 2000 meet through 2012
9 meet, I would just ask you to look at that since
10 we're going to come back. Just say 2010 or 2009 or
11 eight, something to -- because I think that by its
12 own terms the prior years have to have dropped off
13 because Colonial Downs can't demonstrate that
14 they've provided those three billings.

15 MR. PETRAMALO: But that's not the only issue.

16 MR. BURNETT: All right.

17 MR. PETRAMALO: This is a little minor
18 problem. It has to be straightened out. It's a lot
19 of the numbers. Let me just give you an example.

20 There's something in the contract that says if
21 we're talking about a nomination fee that wasn't
22 paid that Colonial solicited for publicity purposes,
23 it's their nickel and not ours. We never got around
24 to resolving that. It's small stuff, but it's still
25 out there. We will resolve it.

1 MR. BURNETT: Work on that, would you?

2 MR. PETRAMALO: Yes.

3 MR. BURNETT: All right. Thanks.

4 Any questions about race days? I think
5 everybody understands that this is a commitment to
6 ask for, not a commitment by the Commission.

7 MR. PETRAMALO: Yes.

8 MR. BURNETT: I don't think anybody
9 misunderstands that. That will have to be addressed
10 when the time comes.

11 The issue of Virginia-bred races, I know
12 that's been a subject that everybody has worked very
13 hard on to try to get something that works for
14 everybody. It fills the gate and I think there's a
15 commonality of interest and all that. Any further
16 comment on that from the horsemen?

17 MR. PETRAMALO: No. We're still working on
18 it. It's looking good. We're hoping to have a much
19 more active recruitment for Virginia-bred horses to
20 come here and race in restricted races. We're
21 working with the racing secretary's office on ways
22 to maximize that.

23 MR. BURNETT: Your paragraph eight on page 17
24 with respect to steeplechase races and the HBPA
25 picking up the cost of any steeplechase races that

1 occur after the summer meet. We've got Strawberry
2 Hill applying now.

3 MR. PETRAMALO: That's different.

4 MR. BURNETT: That is different. That's
5 before the meet. Is there -- they're just
6 completely separate issues?

7 MR. PETRAMALO: Right.

8 MR. BURNETT: It should be left that way.

9 MR. PETRAMALO: Yes.

10 MR. BURNETT: Thank you.

11 Any questions about -- on page 20, jockey
12 insurance? Is this division different than it has
13 been historically with Colonial Downs paying 25,000
14 and the HBPA paying the difference?

15 MR. PETRAMALO: That's the way it was last
16 year, yes.

17 MR. STEWART: It's very similar to last year.
18 It's not exactly the same.

19 MR. BURNETT: It's a completely black line
20 section here.

21 MR. PETRAMALO: Well, the jockey insurance,
22 there's a little history here, but in order to kind
23 of give an incentive for jockeys to continue coming
24 here, we agreed with Colonial to raise the insurance
25 coverage. I forget -- how much?

1 MR. STEWART: It's a million.

2 MS. RICHARDS: Five hundred to a million.

3 MR. PETRAMALO: It's a million. We did this
4 about, I don't know, three or four years ago, and
5 the premium is roughly \$75,000. It started out with
6 us putting up \$25,000 and Colonial putting up
7 \$50,000.

8 MR. SIEGEL: Is that an annual premium?

9 MR. PETRAMALO: Yes. Yes. And now basically
10 under the new deal, it's going to just flip around.

11 MR. BURNETT: All right. I don't particularly
12 see the need to get involved with the discussion of
13 how much I see you getting your cocktail in the
14 suite up there on the top floor.

15 MR. PETRAMALO: We're still --

16 MR. BURNETT: You went through a lot of work.

17 MR. PETRAMALO: We're still discussing the
18 issue of chicken wings as of this morning.

19 MR. BURNETT: Page 21, the suites.

20 MR. PETRAMALO: As of this morning we
21 re-visited the issue, but Ian and I will work out
22 something.

23 MR. STEWART: Frank is relentless.

24 MR. BURNETT: Give him a chicken wing or a
25 pork chop.

1 MR. STEWART: You've got to draw the line
2 somewhere.

3 MR. BURNETT: On backstretch improvements and
4 programs, page 25 of the black line contract,
5 paragraph 16, I worry a little bit about the
6 Commission being bound in any way on more than an
7 annualized basis for anything that goes on on the
8 backstretch with these benevolence funds that may be
9 adequately addressed already.

10 MR. PETRAMALO: Well, what we're talking about
11 doing or what we're envisioning doing is the same
12 thing we've done for the last eight or ten years.
13 We will come to you with a budget. We're saying
14 based on the 30 percent breakage, we figure that
15 will be \$150,000 that can be allocated and we'll
16 come to you and say between the HBPA and the VHHA,
17 this is what we expect to do or what we propose to
18 do with the \$150,000. Just like we did last year.

19 MR. BURNETT: Okay. Is it -- the \$50,000 that
20 Colonial Downs provides --

21 MR. PETRAMALO: That's different.

22 MR. BURNETT: -- in 11 and 12 is separate from
23 the 150, correct?

24 MR. PETRAMALO: Correct.

25 MR. BURNETT: Just out of curiosity, how much

1 do those pads, concrete pads cost?

2 MR. STEWART: They're \$3,000 bucks a piece.

3 MR. PETRAMALO: I think there are --

4 MR. STEWART: There's eleven of them.

5 MR. PETRAMALO: No, 14. There's two per barn
6 and there are seven barns that remain to be done, so
7 you're looking at --

8 MR. BURNETT: Forty grand.

9 MR. PETRAMALO: Yeah.

10 MR. BURNETT: Okay. One procedural question
11 before we seek legal advice. The contract has a
12 provision that says we approve everything or it's
13 null and void, and that's understandable why the
14 parties would want to submit it that way.

15 To the extent that the Commission exercises
16 its power to strike provisions of the contract or
17 has heartburn about any of them, procedurally how
18 would you like to do deal with this?

19 In other words, it seems to me we don't want
20 this process to drag on forever. Everybody benefits
21 by having the agreement reached and everybody has
22 their marching orders and move forward in an orderly
23 fashion. By the same token, if we do our job and
24 there are certain things that we think ought not to
25 be in there or ought to be modified, it takes time

1 for you folks to get back together and present us
2 with something. So it's a hit or miss process. I'm
3 trying to make that as efficient as it can be.

4 Any suggestions? Shall we set some dates
5 perhaps between now and the next meeting to have our
6 executive director poll us about any issues we may
7 have and give you a chance to take a crack at them
8 so that maybe there's a decent chance we can approve
9 this at the next meeting?

10 MR. PETRAMALO: Well, if the past is any
11 guide, this has happened, where the Commission has
12 come back and said, well, we don't like this or this
13 can't happen. At that very meeting, we've sat down
14 and worked out an accommodation and presented it at
15 that very meeting. All I'm suggesting is let's not
16 drag this out any longer. If there's particular
17 concern about a provision, let us know. We'll sit
18 down and see whether we can agree to --

19 MR. BURNETT: That's what I'm trying
20 accomplish here.

21 MR. PETRAMALO: Let's do it now.

22 MR. BURNETT: I'm not putting a gun to your
23 head, but we haven't even heard legal advice on
24 this. I think we would want to have our staff read
25 the attached contract. I don't think we're here for

1 approval today.

2 MR. WEINBERG: I don't want to give you a
3 lawyerly answer, but I hope you recognize it will
4 all depend on the issue.

5 MR. BURNETT: Of course.

6 MR. WEINBERG: I mean, it could be a 30-second
7 issue or it could be a three-week issue. It's hard
8 to tell you in the abstract.

9 MR. BURNETT: That's fair.

10 MR. REYNOLDS: Mr. Chairman, at the back of
11 the staff report is a recommendation.

12 MR. BURNETT: There are.

13 MR. PETRAMALO: Yes.

14 MR. REYNOLDS: That should be where we start.

15 MR. BURNETT: Well, perhaps after receiving --

16 MR. WEINBERG: I apologize. I was consulting
17 with my client. I didn't hear the question.

18 MR. BURNETT: I think it was more an
19 observation, that we should start with the
20 recommendations of our staff which are contained in
21 the back of the staff report.

22 MR. WEINBERG: I came prepared to respond to
23 those if that would be helpful.

24 MR. BURNETT: I think it would be helpful to
25 hear today what he's got to say before we listen to

1 our counsel. Does that make sense?

2 Please go ahead.

3 MR. WEINBERG: With respect to recommendation
4 A, that is what prompted the black line of the
5 agreement of the Amended and Restated EZ Horseplay
6 Agreement.

7 MR. BURNETT: Correct.

8 MR. WEINBERG: I think as your staff reviews
9 it, you will see all the changes but two relate to
10 removing the VHHA from that agreement. So although
11 there may be a lot of changes, they're all just to
12 take the VHHA out of the that agreement given the
13 answer we received on Friday as to how they would
14 like to be treated.

15 One of the mechanics of that is how the
16 expenses are shared, and there's an example in the
17 black line that shows to the extent the standardbred
18 horsemen were being allocated an expense for the
19 hardware, Colonial Downs picks up that expense.
20 Whereas, traditionally the expenses were shared
21 50/50 between the track and the horsemen, here
22 pending upon -- assuming harness is 80 percent of
23 the handle, they would be shared 60/40 if that makes
24 sense.

25 The other change that does not relate to the

1 VHHA withdraw was really a cash flow clarification.
2 In a month where there is a loss, the HBPA is not
3 being asked to write a check back to Colonial Downs.
4 That loss is being carried forward against future
5 amounts due.

6 MR. BURNETT: Consistent with that cumulative
7 workup.

8 MR. WEINBERG: Right. So that's the response
9 to A.

10 And B, the horsemen and Colonial Downs have
11 signed that contract. So if it is approved, B would
12 be addressed.

13 With respect to C, we all acknowledge our
14 agreement is merely an agreement to request those
15 days, that those days remain subject to the
16 Commission's discretionary approval.

17 With respect to item two, nothing in this
18 agreement is intended to diminish in any way or
19 limit in any way the Commission's authority under
20 369 to all information it would like from the
21 licensee. As we noted, we would like some assurance
22 that some of the confidential information or
23 non-public information will be protected under the
24 Commission's authority to so exclude those types of
25 materials from the Freedom of Information Act.

1 I think the reference in item three is -- the
2 answer is yes. We certainly acknowledge and agree
3 that the Commission has that statutory authority.
4 The reference to the deletion was only in past
5 years. Part of the give and take between the
6 parties has been assurances that the horsemen would
7 use some of those benevolence funds for specific
8 projects. So that type of agreement is not in this
9 new three-year agreement and, hence, approval of
10 benevolence fund spending was not a condition to the
11 effectiveness of this agreement.

12 I think that's where the confusion arose. We
13 aren't in any way trying to limit the Commission's
14 authority with respect to benevolence funds. The
15 fourth item, I think, is the same as the second
16 item. We will provide that information subject to
17 some assurance that it will be treated as
18 non-public.

19 MR. BURNETT: Thank you. Any questions on
20 those comments?

21 All right. Do we need to do anything further
22 on this contract before hearing from our counsel?
23 If not, pursuant to Virginia Code 2.2-3711(A)(7), I
24 move the Commission convene a closed meeting for the
25 following purpose: Consultation of legal counsel

1 employed or retained by the Commission regarding
2 specific legal matters requiring the provision of
3 legal advice by such counsel.

4 That's the motion. Is there a second?

5 MR. SIEGEL: Second.

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

8 Note: (Aye.)

9 MR. BURNETT: All right. We're going to go
10 into closed session. We'll be reasonably brief.

11 Note: The Commission went into closed
12 session, following which the hearing resumes as
13 follows:

14 MR. BURNETT: I hereby certify that in
15 accordance with Virginia Code Section 2.2-3712 that
16 to the best of each member's knowledge, one, only
17 public business matters lawfully exempted from open
18 meeting requirements under this chapter and, two,
19 only such business matters as were identified in the
20 motion by which the closed meeting was convened were
21 heard, discussed, or considered in this meeting.

22 It's a roll call vote. Commissioner Miller?

23 MR. MILLER: Aye.

24 MR. BURNETT: Commissioner Reynolds?

25 MR. REYNOLDS: Aye.

1 MR. BURNETT: The chair votes aye.

2 MR. SIEGEL: Aye.

3 MR. BURNETT: Commissioner Siegel votes aye.

4 We have had a good discussion with legal
5 counsel. Thank you, Commissioner Reynolds. Sorry
6 we held you so late. And would say this about where
7 our legal analysis has led us with respect to this
8 contract and how we think we can best and most
9 efficiently get to a final consideration on it.

10 There's really four issues that concern us.
11 One is the one raised by Commissioner Reynolds and
12 myself, some kind of a business plan that we can
13 look at and understand what the hopes and
14 expectations of the parties are recognizing that no
15 one has an absolutely accurate crystal ball.

16 MR. PETRAMALO: This is EZ Horseplay?

17 MR. BURNETT: Yes, this is EZ Horseplay.

18 Secondly, that -- we've asked staff to provide
19 the parties with their views of issues of
20 supervision of the activity that may be occasioned
21 by a broad base use of these cash in/cash out
22 machines. Supervision really comes in two forms,
23 that provided by Colonial Downs as part of its
24 operations, things like making sure cash machines
25 work and are properly serviced and that all sort of

1 thing, and then what supervision would be expected
2 of the Commission itself with regard to auditing and
3 with regard to meeting the expectations of the
4 legislature and the public in terms of discharging
5 our statutory duties.

6 And then in addition, the agreement should
7 contemplate existing regulations of ADW activity and
8 such regulations as maybe passed. It being the
9 intention of the Commission to as soon as possible
10 address whatever regulations are necessary for this
11 activity given that we believe it could well be
12 popular, it could well expand, it could well be
13 abused, not certainly by the operators but by
14 others, and that there could be some levels of
15 expectation from the public and others that we make
16 sure that everything about this activity is on the
17 up and up.

18 And then lastly, and I don't know exactly how
19 we address this, but the cost of all of this
20 supervision and the cost to racing generally from
21 what is surely to be some level of cannibalization
22 of conventional wagering. That's something that I
23 just put out there that was raised in our meeting
24 that we are asking staff to look a little bit more
25 closely, and I'll just leave it at that. It's an

1 issue that is of concern. How it fits into the
2 approval of an EZ Horseplay agreement for kiosks, I
3 am unclear about. That's the best way I can put it.

4 I think Vic is going to try to sharpen that
5 particular point over the next few days and try and
6 get you some better guidance to look at as you
7 discuss it with each other and what amendments you
8 may want to make to this agreement.

9 MR. PETRAMALO: By this agreement, you're
10 talking about EZ Horseplay?

11 MR. BURNETT: The EZ Horseplay agreement, yes.

12 THE DEFENDANT: What about the contract, our
13 horsemen's contract?

14 MR. BURNETT: We'll get to that in July,
15 Frank. No. I think that from a purely legal
16 standpoint, the greatest concern about the
17 horsemen's contract was its being tied to the
18 contract we just finished discussing, and that I
19 don't think there were major legal issues raised by
20 the agreement that you guys have proposed.

21 MR. PETRAMALO: Let me throw out for
22 discussion if it's appropriate at this time.

23 MR. BURNETT: Please.

24 MR. PETRAMALO: The EZ Horseplay contingency
25 in our horsemen's contract shows up in two places,

1 on what I have as page 9 paragraph G(2), and also --

2 MR. WEINBERG: In the black line, it is page
3 10.

4 MR. PETRAMALO: Also on page 34, the last
5 paragraph.

6 MR. WEINBERG: Page 36.

7 MR. PETRAMALO: Paragraph 29(B). We can
8 easily strike those from this contract.

9 MR. BURNETT: You can, but it's not going to
10 get you an approval today so I wouldn't waste your
11 time is the short answer.

12 MR. PETRAMALO: What's the problem?

13 MR. BURNETT: Well, one is Mr. Brown is not
14 here and two is Mr. Reynolds had the representation
15 made to him before he left that we would be
16 addressing this entire contract at our next meeting,
17 unless I can get him on the phone right now.

18 MR. PETRAMALO: Oh, all right. No, I see. I
19 understand. That's why I asked the question about
20 our contract to see whether there was anything
21 else -- all right.

22 MR. BURNETT: I'm not -- and I would ask other
23 commissioners to speak up. I was not hearing as a
24 result of our going through the contract and our
25 discussion with counsel any significant heartburn

1 with any of the contract that you folks have
2 developed. I think we've really spent most of our
3 time on the EZ Horseplay agreement. That's where
4 our concern lies with how that's going to play out.

5 MR. PETRAMALO: Understood.

6 MR. BURNETT: To the extent that I personally
7 had questions coming in, you've answered them for me
8 with respect to the contract. I'm comfortable with
9 what I see so far.

10 MR. WEINBERG: Just a bit of housekeeping.

11 MR. BURNETT: Please.

12 MR. WEINBERG: We need to have a contract,
13 quote/unquote, in place during the pendency of the
14 Commission's review. I suppose the Commission could
15 take the view that for purposes of the parties, we
16 have an agreement in place, but if that's not the
17 Commission's view, help us as to what we should do
18 to make sure no one can raise their hand and say
19 there isn't an agreement.

20 MR. BURNETT: I don't recall the specific
21 terms of your most recent extension of your existing
22 contract. Does it --

23 MR. WEINBERG: It expires.

24 MR. BURNETT: On a date certain?

25 MR. WEINBERG: Yes. Now, we can extend that.

1 If you prefer us --

2 MR. BURNETT: Can we agree right here on the
3 record that it's extended to the next meeting under
4 its current terms?

5 MR. PETRAMALO: Yes.

6 MR. WEINBERG: Yes.

7 MR. BURNETT: I think I'm satisfied with that
8 if my fellow commissioners are. I don't think
9 there's any impact to that.

10 MR. PETRAMALO: We extend the 2009 contract
11 until the next meeting on March -- whenever that is.

12 MR. BURNETT: To the next meeting of the
13 Commission at which time we'll consider the new
14 contract. I think that just protects us all from
15 being accused of not having a contract in place.

16 MR. WEINBERG: Thank you.

17 MR. BURNETT: Thank you for raising it.
18 Anything else in the nature of housekeeping or
19 substantive?

20 The next meeting is March 17th is what's
21 currently set.

22 MR. PETRAMALO: St. Patrick's Day?

23 MS. RICHARDS: You have to wear a green tie.

24 MR. BURNETT: You'll have to wear a green tie,
25 Frank.

1 MR. PETRAMALO: I don't think I have a green
2 tie. I guess I'll have to buy one.

3 MR. BURNETT: And your, you know, sobriety
4 lasts a little bit longer during the day than it
5 normally does on March 17th.

6 MR. PETRAMALO: Gotcha.

7 MR. BURNETT: I would mention as another
8 housekeeping matter, I would like to change our
9 meeting day from the third Wednesday of every month
10 only because I'm a member of bar counsel and I have
11 not attended a local bar meeting in my local
12 community for five years since being involved with
13 the Commission because they meet on the third
14 Wednesday of every other month. There's no
15 emergency to it. I just thought we might talk about
16 it at some point. If folks would give some thought
17 as to what works well, whether we change it to a
18 Tuesday or the second Wednesday, whatever. It's not
19 a big deal. If it's not going to be a burden on
20 others, I would like to change it at some point.

21 Any other business, gentlemen?

22 All right. We'll stand adjourned. Thank
23 y'all.

24 Note: The hearing concluded at 12:56 p.m.

25

CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on February 17th, 2010, 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 23rd day of February, 2010.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011