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

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

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

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

MR. BURNETT: Please.

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

MR. SIEGEL: What you said was in error or there's an error in --
MR. PETRAMALO: It's not in the minutes, but you may remember, we were talking about the increase in handle with the ADW companies, and I made the representation that the increase from 2008 to 2009 was 37 percent. That was erroneous. It should have been seven percent. We had a computer error in our printout, which did not include in the 2008 base YouBet while YouBet was included in the 2009 base.

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

MR. BURNETT: Thank you.

MS. RICHARDS: I see a correction here also.

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

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

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

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

MR. BURNETT: There it is. Stated that
they're working on a policy --

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

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

    MS. RICHARDS: No, on four legs.

    MR. BURNETT: After they had been acquired elsewhere.

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

    MS. RICHARDS: Right. Exactly.

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

    MS. RICHARDS: Bad choice of words.

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

    MS. RICHARDS: Yes. Not slaughtered.

    MR. BURNETT: Right.

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

    MR. BURNETT: They're essentially abandoned.

    MS. RICHARDS: Abandoned, yes.

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

   MR. SIEGEL: Healthy.

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

   MR. BURNETT: We're just warming up, folks.

   Any other comments with respect to the minutes?

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

   MR. BURNETT: Thank you.

   Do we have a second?

   MR. MILLER: Second.

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

   All in favor indicate by saying aye.

   Note: (Aye.)

   MR. BURNETT: The motion carries unanimously.

   The next item is commissioners comments.

   Comment from any commissioners on any matters of interest?

   I guess I might solicit a comment or two from anybody who might be able to tell us the status of the legislative affairs. I understand that the historic racing bill has made some progress in the senate, but not yet crossed over. Is that a fair characterization, Frank?
MR. PETRAMALO: Yes. Senate Bill 513 as amended came -- was reported favorably out of the Senate Finance Committee. It had previously been reported out of the Senate General Laws, so it will now go to the floor. And I think because it's been reported favorably, it has a very strong likelihood of passing.

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

MR. FERGUSON: Mr. Chairman?

MR. BURNETT: Yes, sir.

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

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

MR. FERGUSON: Senator Herring's had that;
Senator Norment's did not. It is on the floor now. It was not acted on yesterday, which was a crossover date for most legislation. I believe they're treating it as a revenue bill, which means they have until Friday to act on it on the floor. I would also expect that it'll be reported from the senate and go to the house.

MR. BURNETT: Favorably?

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

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

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

MR. PETRAMALO: Well, those of us in the
audience had reads, but I'm not sure we would want
to share them publicly.

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

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

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

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

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

Do we have any folks who are good handicappers
of the legislature that want to predict what's going
to happen in the house?
MR. FERGUSON: I think, Mr. Chairman, it faces a very difficult future in the house.

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

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

I'm looking forward to our VRIG meeting after this one today. I did attend the meeting of the horse breeders and -- well, a combined meeting, I guess, of some members of the VTA and some members of the VHBPA last week, looking at creative ways to
encourage further participation here at Colonial Downs and continue to improve on the meet. There was discussion of purse distribution, both the regular purse funds and the Breeders' Fund.

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

I would note that we could -- the first year the hundred percent breeders bonus program paid a hundred percent to Virginia-breds running in open company here, and it was so popular it exhausted the fund and it consumed about $1.1 million. Because those funds were inadequate to cover and it left virtually nothing for the breeders that year, the compromise the following year was to pay one hundred percent matching bonus to the winner only and not pay down. Correct me if I'm misstating this.
MR. PETRAMALO: With a cap of $10,000.

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

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

MR. PETRAMALO: Yes.

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

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

My thinking is there are a lot of folks who are going out of our business, which means less
horses in our gates, less wagering, et cetera, because they can't even make training bills. They're willing to be in the business in a break-even proposition or even lose some money, but when the numbers get to a certain size, they just can't take it anymore.

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

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

So perhaps with -- so, in other words, if you had a $10,000 purse and you were matching, you would
use 7,000 to make up -- to pay 50 percent to the
winner and a hundred percent to second through
sixth.

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

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

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

There might be some wisdom in thinking about
whether or not you can segregate all or part of the
breeders award from the horses; that is, you could
sell a horse with 50 percent of the breeders' rights
and have the seller retain 50 percent. It would
require some registration with the VTA, the
horsemen's bookkeeper would have to know about it.
I don't think it would be that complicated to do,
but it might be a compromise that would cause people
to think about -- that sell horses, about breeding
them and sending them Colonial Downs' way if we have
a very vigorous bonus program.

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

MR. BURNETT: Correct. The breeders' award.

MR. PETRAMALO: Right.

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

MR. PETRAMALO: Right.

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

MR. PETRAMALO: Right.

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

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

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

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

No. 4, executive secretary's report. Vic?

Mr. Harrison?

MR. HARRISON: Thank you, Peter.

I have a few items here. The first one is the hours of operation issue. We discussed this last month, and we've come up with a draft of a standard form. It will be a VRC form, and we'll give it to the racetrack. Whenever they have a change in their
hours of operation, they'll complete it and send it into us for our review/approval.

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

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

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

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

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

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

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

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

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

MR. BURNETT: Okay.

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

MR. SIEGEL: So none of this is correct?

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

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

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

MR. SIEGEL: There goes my questions.

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

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

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

MR. BURNETT: Let me try a different way. Do you intend any promotion to see if raising consciousness about the meet might also raise consciousness about attendance or actual attendance? I mean, is there going to be any push to try it, or are you -- because it strikes me that if it's closed
traditionally on Tuesdays, and that's what the clientele knows regardless of whether there's a meet or not, they're going to assume that it's closed on Tuesday even if it's open. So without any fanfare about it, you'd likely not see a satisfactory result.

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

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

MR. STEWART: That's my opinion today.

MR. BURNETT: Yeah. Sure.

MR. STEWART: It could change.

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

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

MR. BURNETT: We should provide you one.
Would you make sure that --

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

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

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

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

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

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

MR. HARRISON: Yes.

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

MR. HARRISON: No.

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

MR. REYNOLDS: Second.

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

Note: (Aye.)

MR. BURNETT: The motion carries. Thank you.

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

And, finally, there's the issue of the 10 percent source market fee. As you mentioned, four out of the five ADW providers appear to be in compliance with the provision of the July 2009 legislation. XpressBet seemed to have paid the one
percent Breeders' Fund and the half percent to the VRC, but then paid Colonial Downs and the horsemen under the provisions of their current contract, and then they deducted the one percent Breeders' Fund from that payment.

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

MR. LERMOND: No.

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

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

MR. LERMOND: All except for XpressBet.

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

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

MR. PETRAMALO: Checks made out to the VHBP?

MR. LERMOND: Yes, sir.

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

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

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

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

MR. STEWART: They're a little late.

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

MR. HARRISON: We expect --

MR. MILLER: Monday was a holiday.

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

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

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

MR. LERMOND: Yes, sir.

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

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

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

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

MR. SCOGGINS: Yes.

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

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

MR. BURNETT: And item No. 7 was?

MR. LERMOND: They had to have scanned copies
of the checks made out in the amount of five percent
with respect to handle, plus -- that's for the
horsemen's side and a check to Colonial for five
percent of the handle, monthly handle.
MR. BURNETT: I'm sure that's an oversight on the part of XpressBet and that that will be corrected next month. Mr. Scoggins?

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

MR. BURNETT: Yes.

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

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

MR. BURNETT: So that there's no confusion on
the record, my recollection is that when you were
here on application for the license that you
committed to the conditions attached to the staff
report, specifically condition seven that
Mr. Lermond has referred to, but reserved your right
to seek whatever legal redress you felt appropriate
in light of your view of the law. I'm trying to --

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

MR. BURNETT: One could.

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

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

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

MR. BURNETT: My thought is simply whether or
not this is the forum in which you're going to seek
legal redress by a little bit of disobedience of one
sort or another to what you committed to or whether
you're going to -- and I understand if the legal
advice is that payment would constitute a waiver of
your rights in some forum, maybe that's where it has
to go, but we will wait until next month and hope
that this problem solves itself. I don't think
we're going to be able to sit and permit the method of payment that our staff views to be in violation of your requirements to go on beyond next month.

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

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

MR. SCOGGINS: As do we.

MR. BURNETT: Anything else, Mr. Harrison?

MR. HARRISON: No, sir.

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

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

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

MR. LERMOND: That's correct.
MR. PETRAMALO: And, of course, TVG.

MR. LERMOND: And Colonial Downs.

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

MR. LERMOND: No.

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

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

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

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

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

MR. LERMOND: Yes, sir. Everyone has paid the one percent to the Breeders' Fund.
MR. PETRAMALO: Okay. That's where I was confused. So the Breeders' Fund -- just looking at the gross number, the Breeder's Fund should have picked up about $40,000 in January?

MR. LERMOND: That's correct.

MR. PETRAMALO: Gotcha. Okay.

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

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

MR. WEINBERG: Exactly.

MR. BURNETT: I'll leave you smart people to your devices to figure out how that ought to go
forward, and I feel I've gotten a wonderful assurance from Mr. Scoggins that by March this will all be moot.

MR. SCOGGINS: We hope.

MR. BURNETT: Hope springs eternal.

MR. SCOGGINS: That's right.

MR. BURNETT: All right.

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

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

Next item -- anything further on the --

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

MR. BURNETT: There you are.

Anything further from the executive secretary's report?

MR. HARRISON: Nothing.

MR. BURNETT: Thank you.

We next move to the approval of the Thoroughbred Horsemen's Agreement and the Advance Deposit Account Wagering Agreement. There's been a little bit of preliminary discussion on this issue
today with our counsel and with the executive
director, as well as having received the staff
report, which I think has been shared with Colonial
Downs and the horsemen.

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

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

If that makes sense, I would like to walk
through the contract and then seek comment in
whatever form makes the most sense to all of us as
we go through it. I think probably provision by
provision and letting everybody comment, then moving
on to the next. If we have to go back to something,
we'll do that, but that would be my approach if it's okay with my fellow commissioners.

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

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

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

MR. STEWART: Not even that much.

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

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

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

MR. BURNETT: Under the amounts to be
deposited, you got the black line change at the top of page five, related to wagering on simulcast horses and related to wagering on live horses, these tie back to the other provisions in the contract with respect to SWFs and the like, as well as the statutory amounts. Do I understand that correctly?

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

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

MR. WEINBERG: Yes.

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

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

MR. BURNETT: All right.

MR. WEINBERG: -- from the prior contract.
MR. STEWART: I put it in there because I didn't remember which one it was going to, quite honestly.

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

MR. WEINBERG: I believe that's right.

MR. BURNETT: Yeah.

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

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

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

MR. BURNETT: Thank you, Counsel.

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

MR. BURNETT: Okay. Thank you.

I'm thinking that everybody on this dais knows better than I do how one calculates the EBITDA, but you go on for a couple of pages here with new language about the calculation of EBITDA, and I
think I understand what you're trying to accomplish here. What the common sense in me says is where's the potential for people to be fussing and us to get dragged into some difference in interpretation, and now is the time to iron out those kinds of issues.

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

MR. SIEGEL: Actually you can't.

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

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

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

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

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

MR. PETRAMALO: Handle.
MR. WEINBERG: Excuse me. It's handle.

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

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

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

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

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

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

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

Everybody is acting in good faith.

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

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

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

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

MR. PETRAMALO: I might have one here.

MR. BURNETT: Under the black line page 6, paragraph two.
MR. WEINBERG: Yes.

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

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

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

MR. STEWART: For the year.

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

MR. WEINBERG: That's right.

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

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

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

MR. STEWART: Right.

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

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

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

What we did last year and if you had the same
handle last year -- this year that you had last year
and if by this arrangement, what would the
difference be for the various parties?

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

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

MR. PETRAMALO: Yeah.

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

MR. BURNEETT: I apologize.

MR. WEINBERG: I'm looking on item four of the
staff report.
MR. REYNOLDS: Page two.

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

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

MR. PETRAMALO: Correct.

MR. BURNETT: And what --

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

MR. PETRAMALO: Yes.

MR. WEINBERG: Yes.

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

MR. WEINBERG: Absolutely.

MR. PETRAMALO: Commissioners, if you're at just a very gross dollar hair cut for this whole contract at least to the extent you can quantify things, it's about $200,000, because we are picking up 70 -- in my estimate 70 to 80,000 under the new formula for signal sale sharing. So if we're
picking up say 80 -- just for round figures, if we're picking up 80 here and giving up 280 there, we've giving up a total of $200,000.

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

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

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

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

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

MR. REYNOLDS: This section here of the staff
report, page two paragraph four. Do you agree with that?

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

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

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

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

MR. PETRAMALO: Yes.

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

MR. PETRAMALO: Yeah. That's correct.
MR. BURNETT: Am I hitting the numbers accurately?

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

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

MR. WEINBERG: Yeah.

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

MR. PETRAMALO: That's right.

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

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

MR. BURNETT: I'm not suggesting --

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

MR. BURNETT: Of course we understand that.

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

MR. BURNETT: Right.

He can express his unhappiness with you here shortly.
MR. STEWART: I'm always happy with Mr. Petramalo. We get along fine.

MR. BURNETT: There you are.

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

MR. PETRAMALO: Those are overnight purses.

MR. BURNETT: Only?

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

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

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

MR. BURNETT: Gross handle, does anybody know that?
MR. PETRAMALO: Gross handle --

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

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

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

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

MR. BURNETT: Four.

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

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

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

MR. BURNETT: He's still here. He's smiling, so we're all right.
MR. STEWART: I would point out to you that if we were to experience those two numbers, I think our problems would be a lot bigger than a decline of overnight purses.

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

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

MR. PETRAMALO: We would be in serious trouble.

MR. BURNETT: Exactly.

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Yes.

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

MR. BURNETT: Understood. Well, it may be viewed as gloom and doom, it is still an accurate
trajectory or extrapolation where we've been over
the last two years.

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

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

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

MR. PETRAMALO: Correct.

MR. BURNETT: -- essentially from that
capping.

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

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

MR. BURNETT: Gotcha.
With respect to your review of revenue and expense information and I probably should know the answer to this question, I see that the parties have agreed to share that as necessary with the appropriate confidentiality protections. I think the Commission will likely want to review those projections as well.

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

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

Alternatively, as we operated for a number of years, was to have the Commission staff come over, take notes, take down whatever information it would like to take. Those notes were clearly protected rather than us submitting copies of documents to the Commission which were then discoverable under FOIA.
I'm not trying to be difficult.

MR. BURNETT: No.

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

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Yes, Mr. Lermond.

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

MR. BURNETT: Thank you.

The next issue is the EZ Horseplay, HBPA Thoroughbred Horsemen's Agreement, and the provisions of this contract as well as the attached contract, which is the one we just -- the new amended one we just received.
I have two general concerns that I have frankly not come to a conclusion on. One is that we are in such a fluid environment, I worry about being locked into a three-year deal regardless of what it looks like. I just worry about that. I've seen so much change in the ADW environment, and I think what we've seen in the last three years has been dramatic and I'm not sure getting tied to some agreement makes a lot of sense. That's one concern I have.

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

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

MR. WEINBERG: There's no exclusivity provision in our arrangement.
MR. BURNETT: For some reason I thought I read that, and it concerned me some.

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

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

MR. BURNETT: Right.

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

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

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

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

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

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

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

MR. WEINBERG: For example, as a result of machines being more widely dispersed, account wagering revenue exceeds five percent in handle, the
horsemen participate in that excess.

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

    MR. WEINBERG: Correct.

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

    I want to get a feel for what the swing is for
the horsemen in terms of what they might or might
not get compared to what the current deal is both
with the thoroughbred horsemen and with the harness horsemen.

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

MR. BURNETT: Sure.

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

MR. BURNETT: But the growth is affected.

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

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

MR. SIEGEL: They're not represented here.
Oh, they are. I'm sorry.

DR. DUNAVANT: Yes.

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

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

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

These kiosks, you know, they can call up harness racing, but 98 percent of the people that are going to those moose clubs and things, all they
know is seeing somebody ride a horse in a race. They aren't familiar with our product. We didn't think that it would be prudent for us to go into the ownership of these machines. Consequently, we thought our best bet was to help Colonial by reducing the number of weeks.

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

Hopefully, things will turn around and we can apply for more days in 2011, but nationwide all the races are going to -- racing for less purse, even if they have the casino booths. I mean, the casinos aren't doing as well as they were and all the purses are down, and we figured it's just prudent to cut back on our days and weeks and see what happens in another year.
MR. SIEGEL: How long is this contract?

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

MR. WEINBERG: Which contract?

MR. BURNETT: The thoroughbred horsemen's contract.

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

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

In other words, you're going to put out -- these machines cost $15,000 a pop. If they don't participate, you say we're going to put this many per month or this many per year out in place, and we think they'll generate this amount of handle that we're projecting, but if the horsemen will work with us, we're going to put this many machines out and it'll generate this much handle. That kind of projecting I think would be helpful for us to sort of get a sense of what is trying to be accomplished here.
MR. STEWART: Well, I mean, the thoroughbred horsemen, I guess they would be bearing approximately 40 percent, I guess, of the cost over a five-year period. So it's difficult to put a fine point on it, quite honestly, as to exactly what that difference would be. Jacobs Entertainment corporate-wide allocates its capital expenditure funds based on obviously the needs of the various business units and the potential for return of those dollars in general.

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

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

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

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

MR. STEWART: I would like to roll out a hundred locations this year, if we could.
MR. BURNETT: Is it one machine per location?

MR. STEWART: One per location.

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

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

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

MR. STEWART: Yeah.

MR. BURNETT: Okay.

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

MR. SIEGEL: Where are those ten?

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

MR. SIEGEL: Around the state?

MR. STEWART: Yeah. They're around the state. There's one outside of Abingdon. There's one in a
place called Callao. There's one in Petersburg.
There's one up in -- Mary, you know where they are.

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

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

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

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

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

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

MR. SIEGEL: How far are you away from doing
that? The 25 that you've ordered, will that take
you into bars and restaurants?
MR. STEWART: It potentially could. I mean, it's a lot of twists and turns to the bars and restaurants.

MR. SIEGEL: It becomes a risk.

MR. STEWART: Absolutely.

MR. LERMOND: Mr. Chairman?

MR. BURNETT: Yes, sir.

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

I can tell you for the first nine months of 2009 if you just offset those expenses over what was made on EZ Horseplay, it was a loss of about 125,000, and that would have been split between the horsemen and Colonial. Colonial just -- that's an investment for them, I believe, and the horsemen, really that money was coming out of the source market fees that they were receiving from XpressBet and TwinSpires and the other folks.
MR. STEWART: But there weren't machine costs into that. That was --

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

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

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

MR. STEWART: No. No.

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

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

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

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

MR. PETRAMALO: No. No.
MR. LERMOND: When I do my comparisons, I'm just comparing Colonial, EZ Horseplay commission or breakage to the expenses that are provided to me by Colonial on a quarterly basis.

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

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

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

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

MR. STEWART: Right. It's lumped all
MR. LERMOND: I've a listed a negative source market fee for Colonial when I do my comparisons because that's the only fair way to do it.

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

MR. LERMOND: It was your deal.

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

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

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

I guess I still -- I mean, everything I'm hearing sounds like it's an enterprise that makes sense for all the parties to get involved in. What I'm unclear about is what's the upside potential on these things. When does -- when does it look like
the horsemen will -- the thoroughbred horsemen would
catch up with their harness horsemen counterparts,
if you will. Let's not worry about -- and I don't
disagree with Charlie in terms of their harness
horse folks may not have as wide an audience in this
type of betting, but maybe the easier way to do it
is compare the old arrangement, compare the straight
take-out arrangement versus this investment
arrangement and ask when does the investment break
even, when does the investment start to become a
better looking deal than they otherwise would have
had if they didn't have a risk in this. Am I making
sense?

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

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

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

MR. STEWART: It would be much slower.

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

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

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

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

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

MR. PETRAMALO: Yeah. I don't know whether you can.
MR. BURNETT: Let's use your analogy. When we negotiated that deal that took -- let's say the take-out was six percent, six, seven, eight, there was no incentive and all the rest.

MR. PETRAMALO: Right.

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

MR. PETRAMALO: Right.

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

MR. PETRAMALO: Right.

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

What I want to know about these machines is, right now it looks like there isn't going to be any return because you're investing whatever return you might have in buying machines and putting them out there and getting them going. When are you going to
start seeing some money out of this endeavor that's
going to benefit the horsemen and start finding its
way into purses and benefit racing? Not benefit the
people that manufacture the machines and sell them.
That's what I'm trying to get at. When are we going
to see a return on this endeavor?

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

MR. BURNETT: Of course.

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

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

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

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

MR. STEWART: It's contributing positively already.

MR. BURNETT: Well, it's unclear to me when
I'm understanding there's going to be some investments in these machines that cost $15,000. You've got to recover that somehow. Are you amortizing that over some period of time?

MR. WEINBERG: Five years.

MR. PETRAMALO: Five years.

MR. WEINBERG: It's in the agreement.

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

MR. STEWART: We've run projections. We've run models. We've been running the EZ Horseplay business for, I don't know, four or five years now. We've been in the moose clubs for well over a year, and we had this model out there. The kiosks have been operational since July. So if the Commission
would like to see some kind of model, I'd be happy
to provide something for them.

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

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

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

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

MR. SIEGEL: The reason I asked about how long
this contract was, like any new venture, no one
really knows how it's going to turn out long-term.
If it's hugely successful, then all the players may
want to look at it differently. Maybe the
standardbred people will want to get in. Maybe the
horsemen will want a bigger piece. So when do you
re-visit all this is the question.

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

MR. SIEGEL: Notwithstanding what the contract
says.

MR. STEWART: Yeah. I mean --

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

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

MR. REYNOLDS: Mr. Chairman, being a part of
Jacobs Entertainment, I'm sure you've got some
document that gives a forecast or a plan and so
forth and so on. I share your view. I would like to be able to look at that.

    MR. STEWART: I would be happy to share it with you. I mean, I don't think the issue --
    MR. BURNETT: Some kind of plan, business plan.
    MR. STEWART: -- is whether or not the model works in the moose club. It does. The question is how many locations can you put them in there.
    MR. WEINBERG: Candidly, that's the discussion we've been having in the VRIG for the last six months, seven months.
    MR. STEWART: We're a long way from where we were two years ago when we were sitting there going, oh, gee, I wonder if we can do something at a moose club. I wonder if we could find the technology that would make it effective to bring product to the public in this manner. In my opinion, those questions have been answered affirmatively, very definitively. The question is just how many places do we want to put them in.
    MR. BURNETT: All right. Further questions on that particular subject? I think we're going to look at some level of model/plan, which they'll provide us, that I think will be valuable to answer
the kinds of questions Commissioner Reynolds and I have shown some interest in. It's certainly -- I mean, it's an exciting prospect. Don't misunderstand my enthusiasm for it.

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

MR. HARRISON: Peter, one comment, please.

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

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

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

MR. BURNETT: Right. I'm hoping you're going to provide us with an amended staff report before our next meeting such that we can be clear how -- what changes are in that very document and how they
may change other provisions in other documents and
your recommendation.

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

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

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

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

MR. BURNETT: I know. And there's -- I'll
reference that here a little further on collection
of nomination fees and the like. I think some of it
would be under the statute of limitations for
collections. Some things -- I think some of this old language could be parsed or removed to reflect where we really are at this point. I just want to avoid misunderstanding, that if it's old language, that's what it is, but it seems we've come to at this point really the Grand Slam is the center piece of a turf festival that is consistently about five or six races at this point. There had been discussions at other times of having three day or one week long turf festivals at the end of the meet or a separated time frame, and I want to know whether we're moving back into that at this point or whether this is what it is for now.

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

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

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

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

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

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

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

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

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

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

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

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

MS. RICHARDS: Yeah.

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

MR. PETRAMALO: No. What I was going to say is the loan, the advance, the credit line from the Virginia Commerce Bank was to the VHBPA, but we had two guarantors who signed on. Whether or not -- and, of course, we paid back as we told them probably slightly in advance of the schedule that we
told the bank. The question is in 2010 can we go to the bank and say, okay, we don't need these guarantors. Maybe yes, maybe no.

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

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

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

MR. BURNETT: That's where it is.

MR. PETRAMALO: Right.

MR. BURNETT: On page 15, collection of -- paragraph E, Collection of Nomination, Starter and Similar Fees. This goes back to 2002 with the people -- various horsemen not having paid, and it puts an indemnification provision for lack of a
better term in place where the horsemen will take
care of anything that isn't paid if Colonial Downs
takes certain steps to seek payment from the
horsemen that owe the money. There was discussion,
I recall, about, you know, starter fees, and other
nominations and the like.

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

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

MR. BURNETT: All right.

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

There's something in the contract that says if
we're talking about a nomination fee that wasn't
paid that Colonial solicited for publicity purposes,
it's their nickel and not ours. We never got around
to resolving that. It's small stuff, but it's still
out there. We will resolve it.
MR. BURNETT: Work on that, would you?

MR. PETRAMALO: Yes.

MR. BURNETT: All right. Thanks.

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

MR. PETRAMALO: Yes.

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

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

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

MR. BURNETT: Your paragraph eight on page 17 with respect to steeplechase races and the HBPA picking up the cost of any steeplechase races that
occur after the summer meet. We've got Strawberry
Hill applying now.

MR. PETRAMALO: That's different.

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

MR. PETRAMALO: Right.

MR. BURNETT: It should be left that way.

MR. PETRAMALO: Yes.

MR. BURNETT: Thank you.

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

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

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

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

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

MS. RICHARDS: Five hundred to a million.

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

MR. SIEGEL: Is that an annual premium?

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

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

MR. PETRAMALO: We're still --

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

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

MR. BURNETT: Page 21, the suites.

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

MR. STEWART: Frank is relentless.

MR. BURNETT: Give him a chicken wing or a pork chop.
MR. STEWART: You've got to draw the line somewhere.

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

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

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

MR. PETRAMALO: That's different.

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

MR. PETRAMALO: Correct.

MR. BURNETT: Just out of curiosity, how much
do those pads, concrete pads cost?

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

MR. PETRAMALO: I think there are --

MR. STEWART: There's eleven of them.

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

MR. BURNETT: Forty grand.

MR. PETRAMALO: Yeah.

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

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

In other words, it seems to me we don't want this process to drag on forever. Everybody benefits by having the agreement reached and everybody has their marching orders and move forward in an orderly fashion. By the same token, if we do our job and there are certain things that we think ought not to be in there or ought to be modified, it takes time.
for you folks to get back together and present us with something. So it's a hit or miss process. I'm trying to make that as efficient as it can be.

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

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

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

MR. PETRAMALO: Let's do it now.

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

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

    MR. BURNETT: Of course.

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

    MR. BURNETT: That's fair.

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

    MR. BURNETT: There are.

    MR. PETRAMALO: Yes.

    MR. REYNOLDS: That should be where we start.

    MR. BURNETT: Well, perhaps after receiving --

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

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

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

    MR. BURNETT: I think it would be helpful to
hear today what he's got to say before we listen to
our counsel. Does that make sense?

Please go ahead.

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

MR. BURNETT: Correct.

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

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

The other change that does not relate to the
VHHA withdraw was really a cash flow clarification. In a month where there is a loss, the HBPA is not being asked to write a check back to Colonial Downs. That loss is being carried forward against future amounts due.

MR. BURNETT: Consistent with that cumulative workup.

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

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

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

With respect to item two, nothing in this agreement is intended to diminish in any way or limit in any way the Commission's authority under 369 to all information it would like from the licensee. As we noted, we would like some assurance that some of the confidential information or non-public information will be protected under the Commission's authority to so exclude those types of materials from the Freedom of Information Act.
I think the reference in item three is -- the answer is yes. We certainly acknowledge and agree that the Commission has that statutory authority. The reference to the deletion was only in past years. Part of the give and take between the parties has been assurances that the horsemen would use some of those benevolence funds for specific projects. So that type of agreement is not in this new three-year agreement and, hence, approval of benevolence fund spending was not a condition to the effectiveness of this agreement.

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

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

All right. Do we need to do anything further on this contract before hearing from our counsel? If not, pursuant to Virginia Code 2.2-3711(A)(7), I move the Commission convene a closed meeting for the following purpose: Consultation of legal counsel
employed or retained by the Commission regarding specific legal matters requiring the provision of legal advice by such counsel.

That's the motion. Is there a second?

MR. SIEGEL: Second.

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

All in favor indicate by saying aye.

Note: (Aye.)

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

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

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

It's a roll call vote. Commissioner Miller?

MR. MILLER: Aye.

MR. BURNETT: Commissioner Reynolds?

MR. REYNOLDS: Aye.
MR. BURNETT: The chair votes aye.

MR. SIEGEL: Aye.

MR. BURNETT: Commissioner Siegel votes aye.

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

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

MR. PETRAMALO: This is EZ Horseplay?

MR. BURNETT: Yes, this is EZ Horseplay.

Secondly, that -- we've asked staff to provide the parties with their views of issues of supervision of the activity that may be occasioned by a broad base use of these cash in/cash out machines. Supervision really comes in two forms, that provided by Colonial Downs as part of its operations, things like making sure cash machines work and are properly serviced and that all sort of
thing, and then what supervision would be expected
of the Commission itself with regard to auditing and
with regard to meeting the expectations of the
legislature and the public in terms of discharging
our statutory duties.

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

And then lastly, and I don't know exactly how
we address this, but the cost of all of this
supervision and the cost to racing generally from
what is surely to be some level of cannibalization
of conventional wagering. That's something that I
just put out there that was raised in our meeting
that we are asking staff to look a little bit more
closely, and I'll just leave it at that. It's an
issue that is of concern. How it fits into the approval of an EZ Horseplay agreement for kiosks, I am unclear about. That's the best way I can put it.

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

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

MR. BURNETT: The EZ Horseplay agreement, yes.

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

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

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

MR. BURNETT: Please.

MR. PETRAMALO: The EZ Horseplay contingency in our horsemen's contract shows up in two places,
on what I have as page 9 paragraph G(2), and also --

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

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

MR. WEINBERG: Page 36.

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

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

MR. PETRAMALO: What's the problem?

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

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

MR. BURNETT: I'm not -- and I would ask other commissioners to speak up. I was not hearing as a result of our going through the contract and our discussion with counsel any significant heartburn
with any of the contract that you folks have
developed. I think we've really spent most of our
time on the EZ Horseplay agreement. That's where
our concern lies with how that's going to play out.

MR. PETRAMALO: Understood.

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

MR. WEINBERG: Just a bit of housekeeping.

MR. BURNETT: Please.

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

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

MR. WEINBERG: It expires.

MR. BURNETT: On a date certain?

MR. WEINBERG: Yes. Now, we can extend that.
If you prefer us --

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

MR. PETRAMALO: Yes.

MR. WEINBERG: Yes.

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

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

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

MR. WEINBERG: Thank you.

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

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

MR. PETRAMALO: St. Patrick's Day?

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

MR. BURNETT: You'll have to wear a green tie, Frank.
MR. PETRAMALO: I don't think I have a green tie. I guess I'll have to buy one.

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

MR. PETRAMALO: Gotcha.

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

Any other business, gentlemen?

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

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

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on 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