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VIRGINIA RACING COMMISSION

January 20th, 2010

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:39 a.m.

COMMISSION MEMBERS:

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

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

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1 JANUARY 20, 2010

2 MR. BURNETT: We're a little late starting  
3 this morning. I apologize. We let our security man  
4 get the doors open for the public. We don't want to  
5 exclude anybody from this fine meeting. We have  
6 such large crowds.

7 The first order of business this morning is,  
8 as we do every January, election of a chair and vice  
9 chair for the coming year.

10 Gentlemen, any thoughts one way or the other?

11 MR. BROWN: I would make a suggestion.

12 MR. BURNETT: Would that be a motion?

13 MR. BROWN: It would be a motion to go with  
14 our current chairman to re-elect --

15 MR. SIEGEL: And vice chair as well.

16 MR. BROWN: And vice chair as well.

17 MR. BURNETT: You're combining one and two and  
18 nominating myself and Mr. Miller for chair and vice  
19 chair?

20 MR. BROWN: Yes, sir.

21 MR. REYNOLDS: Second.

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

23 All in favor?

24 Note: (Aye.)

25 MR. BURNETT: All right. That's done. Thank

1 y'all.

2 MR. PETRAMALO: Congratulations.

3 MR. BURNETT: I feel great. I feel great.

4 It's just like Massachusetts, isn't it?

5 The next item is the approval of the minutes  
6 of our regular meeting from December 16th. I did  
7 look at them and I saw a couple typo items I thought  
8 ought to be corrected.

9 On page 2, the next to the last paragraph,  
10 where it indicates my motion with respect to the  
11 licenses, the language changes from third person to  
12 first person. I would ask where it says with the  
13 additional condition of the reservation of the  
14 Commission's right to impose a bond, the Commission  
15 finds that the so-called Oregon separate account  
16 protection of account holders funds is insufficient  
17 to protect account holders in Virginia. Those are  
18 the two corrections I thought ought to be made.

19 MR. HARRISON: Okay.

20 MR. MILLER: Mr. Chairman?

21 MR. BURNETT: Yes.

22 MR. MILLER: It's not that important. It gets  
23 the crux across, but the last sentence doesn't  
24 make -- it's not really grammatically correct.

25 MR. BURNETT: Do we need an and between Brown

1 and passed?

2 MR. MILLER: The motion was seconded.

3 MR. BURNETT: Seconded by Commissioner Brown  
4 and passed unanimously by commissioners.

5 I guess the choice of words over on -- on the  
6 next page under standard race days, the discussion  
7 about permit holders is characterized as a rousing  
8 discussion. I was wondering who was roused.

9 With those, are there any other corrections or  
10 alterations about our minutes?

11 MR. BROWN: Are you going to omit rousing?

12 MR. BURNETT: If our scrivener is satisfied  
13 with that, I might characterize it as a spirited  
14 discussion.

15 MR. HARRISON: Spirited.

16 MR. BURNETT: Whatever you like.

17 Any further observations with regard to the  
18 minutes?

19 Is there a motion?

20 MR. SIEGEL: I move they be accepted as  
21 amended.

22 MR. BROWN: Second.

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

24 All in favor indicate by saying aye.

25 Note: (Aye.)

1 MR. BURNETT: All right. Go into  
2 commissioners comments.

3 Fellow commissioners, any comments about  
4 anything at this point?

5 I would only observe that the historical  
6 racing bill apparently has been introduced again  
7 this year by Senator Norment. For what it's worth,  
8 we had a little bit of a look at it and tried to  
9 apply numbers that we think reflect what might  
10 happen in Virginia from an economic standpoint were  
11 the bill to succeed. I think most folks are at this  
12 point somewhat skeptical that the bill will have  
13 success, but who knows.

14 Our numbers were -- and Dave will correct me  
15 if I'm wrong, that we thought realistically there  
16 could be about 1,500 machines initially with what  
17 they call the win, which is the amount of money  
18 available to be divided among the various  
19 stakeholders after payment to the bettor or user of  
20 the machine of about \$150 a day. If you multiply  
21 \$150 a day times 365 days times 1,500 machines, that  
22 number is about 82 and a half million dollars.

23 As the bill is currently proposed, 50 percent  
24 of that amount or 41 million dollars roughly would  
25 go to the state and 40 percent of that, roughly 32

1 or 33 million dollars would go -- 34 million, I  
2 think, would go to the licensee, leaving  
3 approximately 8.2 million dollars to be divided  
4 among horsemen for purses and other stakeholders.

5 Now, I think the horsemen would get --  
6 horsemen breeders fund -- both the standardbred,  
7 thoroughbred, and breeders fund as currently  
8 proposed would get four percent of 82 million  
9 dollars. It would be about three million dollars to  
10 be divided --

11 MR. PETRAMALO: Right.

12 MR. BURNETT: -- between purses and the like,  
13 and there's some others.

14 There's zero proposed for the Commission in  
15 terms of any regulatory expenses that might be  
16 incurred in supervising the use of 1,500 machines,  
17 which strikes us as probably not the way it should  
18 be, but we'll just have to see how that plays out.

19 Does anybody have any comment as to whether  
20 we're getting those numbers roughly in the ballpark?  
21 Are we missing the division in any way? I don't  
22 want --

23 MR. PETRAMALO: You mean the win numbers per  
24 machine?

25 MR. BURNETT: No, more the division. Have I

1 characterized the division accurately as you all  
2 understand the bill?

3 MR. PETRAMALO: Yeah. It's right here in the  
4 bill. It's the same bill that Senator Norment put  
5 in last year.

6 MR. BURNETT: That's right.

7 MR. PETRAMALO: Identical.

8 I'm just looking at the last page. Fifty  
9 percent to the Commonwealth Transportation Trust  
10 Fund, one and a half percent to be divided equally  
11 among the Virginia localities where the racetrack  
12 and the satellite facility is located, one and a  
13 half percent to the Virginia Tourism Corporation,  
14 43 percent to the licensee, and four percent to the  
15 horsemen's purse accounts and the Virginia Breeders  
16 Fund as follows. Seventy-five percent of the four  
17 percent to the thoroughbred purse account,  
18 18 percent of the four percent to the standardbred,  
19 and seven percent of the four percent to the  
20 Breeders Fund. It caps it -- it caps the horsemen's  
21 four percent share at \$30 million.

22 MR. BURNETT: A problem we'd like to have,  
23 right?

24 Thank you. I just wanted to put that out  
25 there, that's it there. I don't know if anybody



1 wants to comment on the bill itself, but I have not  
2 heard anyone suggest that it will receive treatment  
3 any differently from what it received last year, for  
4 what's that's worth.

5 Any other comments?

6 Committee reports, we have none.

7 Executive secretary's report. Mr. Harrison?

8 MR. HARRISON: Thank you, Mr. Chairman.

9 I received an e-mail at the end of December  
10 from an organization known as Eight Belles Legacy,  
11 and the subject matter is limited to anti-horse  
12 slaughter policies in jurisdictions such as ours. I  
13 believe that every racing commission in North  
14 America probably received a similar e-mail. And so  
15 I thought I would lay it out there for the group  
16 here today just for informational purposes, that  
17 this is an issue and it should be looked at and  
18 we're, in fact, doing that.

19 One of the claims in the e-mail was that --  
20 they say they are facilitating the adoption of these  
21 kind of rules in state racing jurisdictions, other  
22 than New York, which has already recently adopted  
23 the new anti-horse slaughter policy.

24 Well, it's not the state of New York. The New  
25 York Racing and Wagering Board is not acting on

1 anything relating to horse slaughter at this time,  
2 but NYRA has. NYRA that owns and -- operates at  
3 least Aqueduct, Belmont, and Saratoga, they came up  
4 with a policy on their own, but it's not mandated by  
5 the state. So there are a couple of inaccuracies in  
6 there.

7 I included her e-mail in this packet here, and  
8 then I went to the NYRA site and I downloaded their  
9 in-house policy, which gives harsh penalties to any  
10 owner or stable at NYRA found to have directly or  
11 indirectly sold a horse for slaughter and that  
12 person will have his or her stalls permanently  
13 revoked from all NYRA tracks.

14 The quote here from NYRA's CEO Charlie  
15 Hayward, "This policy sends the message that the  
16 horse slaughter will not be tolerated and those  
17 participating in this practice, even knowingly or  
18 for lack of due diligence, will not be welcome in  
19 our track."

20 I also included an article written last year  
21 by a Ray Paulick of *Blood Horse*, because in this  
22 article by Ray Paulick, he lists many of the  
23 steering groups, the NTRA, the Breeders Cup, Jockey  
24 Club, Keeneland, Magna, the NHBPA, and it's  
25 interesting that some of these organizations are

1 willing to step up to the plate and take a stand,  
2 one way or the other, and others are non-committal,  
3 because it's very complex issue, the whole issue of  
4 the expiration of a horse's life and how you deal  
5 with the ramifications of that.

6 It's really just for informational purposes.  
7 This is probably a worthwhile endeavor to take a  
8 close look at this and so I included that, as well  
9 as an article from this past December by Bill Finley  
10 at ESPN, where he says that the demise of greyhound  
11 racing in certain states like Massachusetts should  
12 be a wake up call to the horse racing industry as  
13 well.

14 MR. SIEGEL: Vic, who handles the enforcement  
15 of this policy?

16 MR. HARRISON: Where?

17 MR. BURNETT: In New York or --

18 MR. HARRISON: In New York --

19 MR. SIEGEL: Or anywhere.

20 MR. HARRISON: -- it's the racetracks  
21 themselves.

22 MR. SIEGEL: The Commission would?

23 MR. BURNETT: The stewards actually rule folks  
24 off, if I'm not mistaken.

25 MR. SIEGEL: In this particular case.

1 MR. HARRISON: Yeah. The Racing Commission in  
2 New York is not looking at this issue at the moment.

3 MR. SIEGEL: Do the stewards have power to do  
4 this as well?

5 MR. PETRAMALO: No. No.

6 MR. SIEGEL: You're saying no?

7 MR. BURNETT: It's state by state how the  
8 stewards are appointed.

9 MR. PETRAMALO: It's a NYRA policy. It would  
10 be as though Colonial Downs adopted this policy. It  
11 would be up to Colonial Downs to enforce it by  
12 denying stalls. It would not be the stewards who  
13 are employed by the Racing Commission.

14 MR. BURNETT: Well, depending on the state.

15 MR. HARRISON: Right.

16 MR. PETRAMALO: Well, I'm talking about  
17 Virginia.

18 MR. SIEGEL: Obviously, I'm concerned about  
19 our state.

20 MR. BURNETT: Right.

21 MR. SIEGEL: How would we, for example? It  
22 would be up to the racetrack itself?

23 MR. WEINBERG: Or the Commission adopting  
24 regulations.

25 MR. BURNETT: What Ms. Posada and the Eight

1 Belles Legacy people would like I am sure would be  
2 at least the Commission to issue regulations. She  
3 would like it better if the Virginia legislature  
4 would pass a statute to that effect, but we've got  
5 some horsemen in this room who have had a lot of  
6 experience with race horses on both the thoroughbred  
7 and standardbred side, and I think all of us regard  
8 ourselves as responsible owners who want the best  
9 for horses.

10 But that said, I think one of the questions  
11 that arises is, for example, in the NYRA policy,  
12 what does a humane way of dealing with a horse  
13 unable to continue racing really mean? If not  
14 putting a particular horse down, who would otherwise  
15 be left to stand in a field in the summertime unfed  
16 and unwatered to starve to death -- and those that  
17 don't believe that, we can give you lots of  
18 examples, is that considered a humane alternative to  
19 slaughter?

20 I just raise that as a hypothetical. It's  
21 very difficult. Some horses that come off the  
22 racetrack are in such a condition from a soundness  
23 standpoint and from a mental stability standpoint,  
24 that they are a danger to anything other than an  
25 experienced handler of horses. They can oh so

1 easily get into the hands of someone that doesn't  
2 know what they're holding, and they can inflict  
3 significant human injury on a moment's notice, in a  
4 heartbeat. That's just a philosophical question if  
5 everybody is playing by the rules and how you go  
6 about it all.

7 I think what we also need to consider is if  
8 there is not a reasonable outlet for these horses to  
9 go someplace after they leave the racetrack, what  
10 alternatives will horsemen who for economic reasons  
11 and trainers for economic reasons need to get horses  
12 out of their possession and out of their stalls,  
13 what will they do to make those horses go away?

14 Will we find horses down in the back woods  
15 that are just shot and dropped there and let the  
16 animals and the buzzards to chew on them? You know,  
17 hunting groups can only feed so many horses to their  
18 hounds and, you know, it -- if I euthanize a horse  
19 on my farm, am I in violation of this policy? It's  
20 a race horse. I just have more questions than I  
21 have answers. I'd love to hear from other horsemen  
22 and what they think. Robin would be a good person  
23 to hear from.

24 MS. RICHARDS: Well, I live in Clarke County,  
25 which butts up to West Virginia, and we're having a

1 very serious problem. The good news is because  
2 we're a very small county, we can experiment and  
3 we're coming up with a county policy because this is  
4 very much in our face right now.

5 It's very easy to be politically correct as  
6 Charles Town has been in making this policy, but  
7 it's almost impossible with all the layers of  
8 ownership and brokers coming and taking horses, and  
9 what they're doing is dumping them in fields on our  
10 side of the state line, and it's a significant  
11 problem. There is no easy answer just for all the  
12 reasons you indicated.

13 MR. SIEGEL: It's such a thin line it seems to  
14 me that the racetrack would not want to take on that  
15 responsibility of dealing with the issues, the legal  
16 issues and otherwise. As you say, someone could  
17 sell a horse to a legitimate broker and that horse  
18 could be destroyed the next day. And where does the  
19 responsibility lie? It just seems like a slippery  
20 slope for whoever is going to enforce it and for us  
21 to regulate it might even make it slipperier.  
22 That's my thought.

23 MS. RICHARDS: The only successful places so  
24 far have been those with slot money that have built  
25 actual facilities to take a horse and hold it until

1 they can deal with it in some manner --

2 MR. SIEGEL: Right.

3 MS. RICHARDS: -- but just to make a policy is  
4 an empty threat.

5 MR. BURNETT: I had a discussion with John  
6 Hanna a week or two ago, and the size of the issue,  
7 you have, you know, 35,000 foals a year. Just with  
8 horses in and horses out of the system, say half of  
9 those become race horses, you figure you got about  
10 20,000 horses a year that are trying to become race  
11 horses. That's a lot of horses. A lot of horses.

12 MR. BROWN: But you have some in there that  
13 are going to find jobs, whether it be pulling a cart  
14 somewhere, number one. Number two, they'll become a  
15 hunter jumper or become some sort of show horse.  
16 There's going to be that certain percentage --

17 MR. BURNETT: That's it.

18 MR. BROWN: -- that, number one, are not going  
19 to be for the average person to get around, whether  
20 it be an old race horse or whether it be something  
21 that's a little out there, so to speak. I mean, not  
22 all horses -- they're all individuals.

23 MR. BURNETT: That's just thoroughbred. We  
24 haven't added the standardbred population to it or  
25 the quarter horse population to it.



1 MR. BROWN: I mean, it's huge. People are  
2 giving horses away and can't give them away.

3 MR. BURNETT: Well, you know, maybe Doc Harden  
4 can just weigh in here and give us the solution  
5 since he's a veterinarian.

6 Do you have any thoughts, Doc?

7 DR. HARDEN: Thank you.

8 The historical impact, up until about 2007  
9 when the slaughter of horses was permitted, there  
10 was roughly a hundred thousand horses annually that  
11 were slaughtered in the U.S. that were being  
12 exported for human consumption. So that's a value  
13 of about 50 million dollars into the horse industry,  
14 not thoroughbred industry. This is bet horses,  
15 pleasure horses, show horses, wild horses, that  
16 amounted to about a hundred thousand a year. So  
17 that's -- that was stopped after 2007 by federal  
18 legislation.

19 So where are those hundred thousand horses a  
20 year now since then?

21 Unwanted horses has become a huge issue  
22 nationwide. The wild horse population out west, out  
23 there on the plains, that's a huge problem. They  
24 need to round those up and contain the numbers. A  
25 lot of animal rights groups are very much

1 interfering with land management insofar as how to  
2 maintain them healthily. They're trying to stop any  
3 control of the wild horses. The population is going  
4 to become such that they're now going to be subject  
5 to disease and starvation and all the other forms of  
6 death, which are probably worse than a humane  
7 slaughter.

8 So I don't have an answer. I do know, though,  
9 that a number of these animal rights, animal welfare  
10 groups are duplicitous, and I am very concerned  
11 about any cooperation with them to the extent that  
12 they turn on you. It's a public relations nightmare  
13 that they're trying to draw a lot of commissions  
14 into. You make a statement that seems, you know,  
15 very noble and upfront, and you'll read it in the  
16 newspaper entirely differently than how it was  
17 presented and intended.

18 So I don't have the answer to the issue other  
19 than tread carefully.

20 MR. BURNETT: We'll stop talking about it.  
21 Thank you, Doctor.

22 You know, to me it all turns on how you define  
23 euthanizing and humane treatment. As you said,  
24 nature does things to animals that if at the hand of  
25 a human being would be characterized as inhumane.

1 So it is a thorny issue, and anything that you can  
2 do as we go forward to keep us abreast of choices,  
3 solutions, problems, different things, different  
4 ways of trying to get our arms around this problem,  
5 we would greatly appreciate it.

6 DR. HARDEN: Well, I'll try to follow it.

7 MR. BURNETT: Mr. Harrison, anything else on  
8 that subject?

9 MR. HARRISON: No. I'm glad we had the  
10 discussion.

11 MR. BURNETT: RCI rules.

12 MR. HARRISON: The RCI rules, these are the  
13 four rules that were passed by the RCI model rules  
14 committee in December in Tucson. So what I thought  
15 I'd do here is -- I'm not recommending them for  
16 adoption. I'm just -- again, this is for  
17 informational purposes. I just want to end that  
18 disconnect between what happens at the national  
19 level with the steering group or the model rules  
20 committee and the racing commission. I think all  
21 racing commissions that participate probably do the  
22 same thing. I'm just bringing it back here for you  
23 all to see what's happening on the national level.

24 There are four of them here. The first one  
25 relates to realtime transaction monitoring. This is

1 a wagering monitoring system that's been in and out  
2 of the news for the past few years. Actually, ever  
3 since the programmer from Autotote was able to get  
4 into the pari-mutuel pools and manipulate them with  
5 respect to the pick six wager that happened on  
6 Breeders Cup Day in 2002, there's been a call for an  
7 independent, outside auditor to monitor the wagering  
8 activity in realtime.

9 And so all that happened here at the RCI  
10 meeting was adoption of the definition of such a  
11 system. So it reads, "An operating system that can  
12 respond to input immediately, within the actual time  
13 in the real world during which an event takes place.  
14 The system must be able to react to a steady flow of  
15 new information without interruption and perform its  
16 tasks within the same time constraints as the  
17 totalisator system it monitors."

18 MR. BURNETT: Are there actual times in the  
19 unreal world?

20 MR. HARRISON: Well, I know. There's a couple  
21 of -- sometimes you see in contracts, they'll say,  
22 "From the beginning of time," right? This is  
23 similar to that.

24 MR. BURNETT: That is -- well, okay.

25 MR. HARRISON: The next item falls under the

1 heading of racing secretary, and it relates to  
2 jockey weights. So the recommendation was that a  
3 notice shall be included in the daily racing program  
4 that all jockeys will carry approximately three  
5 pounds more than the published weight to account for  
6 safety equipment (vest and helmet) that is not  
7 included in the required weighing out procedures.  
8 Additionally, with the stewards' approval, jockeys  
9 may weigh in with an additional three pounds for  
10 inclement weather gear.

11 It's just a notice that we put in the program,  
12 that the actual weight as posted in the program that  
13 a horse is carrying, whether it's 126 pounds or  
14 whatever, it's actually increased by up to three  
15 pounds to account for this additional equipment.

16 MR. BURNETT: That's when they go out to get  
17 on the horse.

18 MR. HARRISON: Right.

19 MR. BURNETT: If the wagers should be  
20 standing next to the scale when a jockey weighs out  
21 and sees that he weighed in at -- to use your 126  
22 plus three, therefore, he ought to weigh out at 129  
23 and, in fact, he's at 130 or 131 when he comes off,  
24 the stewards will potentially approve that because  
25 of mud and other materials that got onto the

1 equipment while he was racing.

2 MR. HARRISON: Right. It's nothing -- these  
3 variances in weights, it's nothing new. It's just  
4 bringing a little more realism to the subject of the  
5 amount of weight that a horse is carrying.

6 The next one was weights. The scale of  
7 weights, and it reads, "With the exception of  
8 apprentices, no jockey shall be assigned a weight of  
9 less than 118 pounds." I think we discussed this at  
10 our last meeting. What it does, it's simply raising  
11 the minimum weight a jockey can race at.

12 MR. BURNETT: Your chart, this fellow Steve  
13 apparently developed up there at the top.

14 MR. HARRISON: Steve Barham.

15 MR. BURNETT: Anybody that's looking at this  
16 needs to move those two years, three years, four  
17 years, five years over. You would think that a  
18 three year old doesn't start racing -- a horse  
19 doesn't start racing until he's three in August.  
20 That two years needs to sit ovetop of the X's to  
21 read the appropriate weights.

22 MR. HARRISON: Right.

23 MR. BURNETT: Mr. Harrison, you skipped over  
24 jockey mount fees.

25 MR. HARRISON: Okay. I'll get back to that.

1 That was not intentional.

2 Jockey mount fees also fall under the heading  
3 of ARCI Rule 006-020, racing secretary. It reads,  
4 "The organization representing the majority of horse  
5 owners and jockeys should reach and present an  
6 agreement to the commission 30 days prior to the  
7 start of a race meet. In the absence of a contract  
8 or special agreement, and taking into consideration  
9 local conditions and total purses paid at their  
10 racing facility, the commission shall use the  
11 following as a guideline for establishing jockey  
12 mount fees."

13 We also discussed this somewhat at our  
14 December meeting. I believe Frank had a few  
15 comments at that time.

16 MR. BURNETT: I'd like to ask for further  
17 comments if the horsemen or the track are interested  
18 in making them. What I think might be helpful to  
19 the Commission, Mr. Harrison, is if perhaps you  
20 could provide us with a chart that compares the fees  
21 that jockeys receive at Colonial Downs with the --  
22 I'll characterize them as the default amounts under  
23 this rule just so we can compare them.

24 As a segway into asking the horsemen to  
25 comment, I understand from Robin Richards that the

1 National HBPA is very keen on jockey fees being  
2 reflective of local practice and local control and I  
3 wanted to, one, confirm that, and two, ask if this  
4 suggestion under Rule G that you just read of having  
5 owners and jockeys present an agreement to the  
6 Commission 30 days prior to the start of a race meet  
7 is something that the HBPA and the VHBPA for that  
8 matter would think might make sense for us here.

9 MS. RICHARDS: Well, up until now nationwide  
10 the process of negotiation between the horsemen and  
11 the jockeys has seemingly worked well. Part of our  
12 problem with that was we didn't believe that RCI  
13 should go down that road of dictating such fee --  
14 such things as fees, because where is that going to  
15 go from there?

16 MR. PETRAMALO: A national scale doesn't take  
17 into account local conditions. One size doesn't fit  
18 all. The scale at the New York tracks would not  
19 necessarily apply at Beulah Park or should apply at  
20 Beulah Park or Charles Town or Colonial Downs. The  
21 national HBPA's view is that this should be subject  
22 of local negotiations.

23 As it stands, I haven't looked at this in a  
24 while, but the -- my impression is that the jockey  
25 fees here at Colonial are probably slightly lower



1 than the suggested one. The last time I looked we  
2 had a policy, jockeys were paid 10 percent of the  
3 winning purse -- 10 percent for winning, five  
4 percent for second, five percent for third, and then  
5 there were set amounts for unplaced finishes  
6 depending on the size of the purse in that race.

7 Just scanning this, it looks to me that we are  
8 probably five or ten dollars below this, but again  
9 I'm thinking the last time I looked at this was, you  
10 know, three or four years ago. So I'm assuming it  
11 hasn't changed because we've never been approached  
12 by anyone from the Jockeys Guild or anyone  
13 purporting to represent the jockeys racing here to  
14 discuss fees.

15 MS. RICHARDS: The other thing is that the  
16 Jockey Guild really doesn't represent a lot of the  
17 jockeys that we employ here in the Mid-Atlantic.  
18 The picture has been changing over the last few  
19 years.

20 MR. BURNETT: Well, let me make sure I am  
21 reading this correctly. I don't read this rule as  
22 RCI dictating anything. What I read it as -- it's  
23 almost a three-step process, but the first step is  
24 the owners and jockeys before a particular meet  
25 even, whether it's -- whether it's the same state in

1 the same year, but before a meet should present a  
2 schedule and to me it can't get a whole lot more  
3 local than that or more focused on the jockeys that  
4 actually ride there. And in the absence of that  
5 happening, that the Commission should take into  
6 account local conditions and total purses that are  
7 paid to the facility and that they should use this  
8 default as a guideline.

9 I don't -- you know, it seems to me that what  
10 Frank is saying is completely consistent with what  
11 we see here, that well, gee, let's see. Virginia is  
12 within five bucks of this default scale and taking  
13 local conditions and everything into account, let's  
14 leave it alone. I mean, that seems like what  
15 they're trying to accomplish here is exactly what  
16 the HBPA has suggested.

17 MS. RICHARDS: Well, just simply nationwide,  
18 it would be more of a burden on owners who are --  
19 the gap now for owners is 1.7 billion dollars, and  
20 we just had issue with the way they came up with  
21 that scale.

22 MR. PETRAMALO: Well, I think the problem with  
23 the guidelines is that the guidelines tend to be  
24 regarded as the model. So if I'm representing the  
25 Jockey Guild and the HBPA offers five percent, and I

1 say, well, wait a minute. The national standard is  
2 seven percent. Why in the world would I agree to  
3 five percent? That's the problem.

4 MR. BURNETT: Well, I think the world is a  
5 little bit upside down. My view is that Beulah Park  
6 and Charles Town and a jockey riding a 20 to 1 shot  
7 ought to get about 150 bucks for finishing last,  
8 because he -- Lord knows whether he's going to come  
9 back alive. If he gets on a horse in New York, he's  
10 got a decent chance of making it all the way around  
11 the racetrack. There's different ways of looking at  
12 it.

13 MR. PETRAMALO: Well, I think that's one of  
14 the considerations of the RCI rule that is before  
15 you.

16 MR. BURNETT: I'll make one last comment here.  
17 To the extent that the Jockey Guild doesn't  
18 represent jockeys as a whole and they're left with  
19 sort of a mishmash arrangement of representation, I  
20 think that augurs for there being some protection of  
21 the individual who may be only coming down here  
22 riding a few races in a meet that's not of great  
23 duration, not a lot of organizing for it by jockeys  
24 and other stakeholders. It's something that the  
25 Commission ought to make sure that there are

1 reasonable parameters on, that we don't want  
2 Virginia racing, for example, to have the  
3 representation of gouging jockeys nor do we want  
4 them to have the representation of owners getting  
5 gouged by jockeys.

6 So I think we have a little bit of skin in  
7 that game, and that we ought to make sure it stays  
8 where it needs to be. I don't have a problem with  
9 what our scale is now. I haven't heard anybody yelp  
10 about it, but I just thought it would be helpful to  
11 see where we actually do stand in light of what this  
12 default scale tells us.

13 MR. HARRISON: I'll make it happen.

14 MR. PETRAMALO: The only place that I was ever  
15 able to find a scale was in a condition book. I  
16 don't think there's anything in the regulations or  
17 any document that I saw absent the condition book.  
18 I don't think it's in the current ones, but maybe  
19 2006, 2007, it used to be in the condition book.

20 MR. BURNETT: I've seen it in some and not in  
21 others.

22 Any further comment on that subject?

23 Mr. Harrison, the Virginia Racing Improvement  
24 Group's meeting date is next on your list.

25 MR. HARRISON: No. There was one more RCI

1 rule to discuss.

2 MR. BURNETT: I'm sorry. Whoop. I thought we  
3 went through four. I'm sorry.

4 MR. HARRISON: That was postmortem exams.

5 MR. BURNETT: Right.

6 MR. HARRISON: The Commission may require a  
7 postmortem examination of any horse that dies or is  
8 euthanized on association ground. The postmortem  
9 examination shall be conducted according to the most  
10 recent edition of the American Association of Equine  
11 Practitioners (AAEP) Guidelines for the Necropsy of  
12 Racehorses.

13 I suppose this touches a little on the -- or  
14 it might on the issue of horse slaughter, but Doc  
15 Harden, do you have anything to add to this issue?

16 DR. HARDEN: We have through policy and  
17 stewards' rulings and so forth been essentially in  
18 compliance with this guideline. The problem where  
19 we run into an issue is the AAEP guidelines suggest  
20 a board certified veterinary pathologist at an  
21 accredited veterinary diagnostic lab. Well, there  
22 is none in our area. Invariably, when we have an  
23 issue, it's a Saturday or a Sunday and that further  
24 complicates issues.

25 So we basically have been operating under the

1 field necropsy clause that's recommended if time or  
2 distance preclude transport to a veterinary  
3 laboratory. Sometimes in a field necropsy, we'll  
4 transport a horse to one of the state laboratories,  
5 either in Warrenton or in Ivor and they will do it,  
6 or on occasion we have performed field necropsies  
7 here on the grounds.

8 That's the issue, though, because they  
9 recommend that it be done through a facility, and we  
10 don't have any facility on the grounds to do it. So  
11 when you start to get down to doing anything here,  
12 we don't have the facility or wherewithal to do  
13 those, but this is one of the things we're looking  
14 through as we go through our rule revisions as to  
15 what we need to do. For the most part, we're in  
16 compliance with the recommendations.

17 MR. BURNETT: Dr. Harden, on that issue of  
18 horse slaughter and euthanizing, does the AAEP put  
19 out any kind of guideline for when a horse should be  
20 euthanized? What standard or what judgment should  
21 be passed prior to making that recommendation to the  
22 owner?

23 DR. HARDEN: I'm not aware of anything  
24 succinctly prepared like that. They have a lot of  
25 guidelines that are in other areas of their policies

1 that you can infer or whatever, but I think their  
2 guidelines are going to have words like humanely and  
3 for the welfare of the horse, and things like that  
4 that are very much subject to individual  
5 interpretation.

6 MR. BURNETT: It would be helpful if a  
7 somewhat more specific standard of euthanizing could  
8 be developed and came from the veterinary community  
9 because they're trusted on that subject.

10 DR. HARDEN: Right. The thing of it is,  
11 though, the equine industry, we see it through the  
12 race horse's eyes, but the AAEP has rodeo horses,  
13 show horses, pet horses, race horses, endurance  
14 horses, and it becomes a daunting task to write a  
15 succinct paper that covers all of the, I guess,  
16 experiment.

17 MR. BURNETT: Thank you.

18 MR. HARRISON: As a point of information, this  
19 particular rule did not initially pass the model  
20 rules committee voting process. It was actually  
21 rejected until they changed the word shall to may in  
22 this C-1. It initially read, "The Commission shall  
23 require a postmortem examination." As Doc said, a  
24 lot of the racing jurisdictions don't have the  
25 facilities to do that. So they changed it to may

1 require, and it passed the group.

2 MR. BURNETT: And to be clear, we have not  
3 adopted any of these particular -- we have ones that  
4 are similar and the like, but these are for our  
5 information --

6 MR. HARRISON: That's right.

7 MR. BURNETT: -- and are not being proposed as  
8 regulations in Virginia at this point.

9 MR. HARRISON: That's right.

10 MR. BURNETT: Thank you.

11 Anything further on the ARCI approved rules?

12 MR. HARRISON: No.

13 MR. BURNETT: Okay. Now to item C.

14 MR. HARRISON: Item C, the next Virginia  
15 Racing Improvement Group meeting. I initially  
16 thought that perhaps we could get together on  
17 February 1st, but then taking into account the time  
18 and costs related to travel, I propose that we get  
19 together after the February 17th meeting of the VRC.  
20 We'll have minutes from our prior meeting. Jim and  
21 I will get together on those and distribute those  
22 shortly. That's it.

23 MR. BURNETT: Will you put together a proposed  
24 agenda for that meeting?

25 MR. HARRISON: Of course.



1 MR. BURNETT: I think it would be helpful if  
2 we could be focused on whatever it is, give a people  
3 a chance to give a little thought to the subjects  
4 that we will be discussing.

5 All right. Any questions or comments on that  
6 item, gentlemen?

7 Move to Item 7, stakeholders. The first item  
8 is OTB/SWF January hours of operation request, which  
9 is a letter found under Tab 4. Mr. Stewart or  
10 Mr. Weinberg?

11 MR. WEINBERG: I'd be happy to.

12 As Chairman Burnett alluded to, I believe you  
13 have the materials under Tab 4 in your books.  
14 Mr. Stewart has requested an adjustment to the  
15 operating hours at the satellite wagering facilities  
16 in light of fewer broadcast signals from racetracks,  
17 Track Media's boycott of all tracks in the  
18 Mid-Atlantic with respect to its content, and a  
19 general decline in handle. We're happy to address  
20 any questions the Commission has.

21 MR. BURNETT: If I might comment, and I would  
22 invite you to correct me if I'm wrong, Mr. Weinberg,  
23 but I think there may be some difference of  
24 viewpoint of whether the regulations contemplated a  
25 track coming to the Commission for changes in hours

1 versus changes in lists of tracks. I think from a  
2 regulatory, remedial, assert your jurisdiction type  
3 of viewpoint, the broader definition would be one  
4 that the Commission would say, yeah, that fits us,  
5 and the racetrack says leave us alone. Let us do  
6 our own business. We say no, no. It's in our  
7 definitions.

8           Hopefully, we don't need to fuss about that.  
9 I think I for one have a lot of respect for you all  
10 trying to figure out the economics of your SWF and  
11 what will work, and I think the free market and  
12 profit motive is probably consistent with the best  
13 interest of racing. So I don't see it as a huge  
14 issue and perhaps without having to reach that  
15 issue, we could agree that you all will let us know  
16 in advance when you want to change hours so that we  
17 can at least have the opportunity to weigh in. If  
18 we need to have a bigger fight than that, we can  
19 have that.

20           I think it's important that the Commission  
21 understand what's going on in the trenches with  
22 racing and looking at summaries at the end of a  
23 monthly meeting is of some benefit, but when Jeanna  
24 comes forward and says nobody is home on this date  
25 and this date and this date and to make this thing

1 work, we need to do this and that, I think it is  
2 more information for this Commission to absorb and  
3 understand what is happening in the racing  
4 landscape.

5 So that's the way I would approach this, and I  
6 know that Vic gave, in accordance with the  
7 regulations that our abled counsel helped us with,  
8 an approval of what you requested through today, and  
9 unless other commissioners have a problem with it, I  
10 personally have no problem with voting for  
11 continuing that schedule until we hear otherwise  
12 from you.

13 Any comment or --

14 MR. BROWN: I agree. I think they're doing a  
15 fine job as far as analyzing their business, and  
16 you've got to make changes.

17 MR. STEWART: I guess the issue really is a  
18 matter of degree. You know, if we decide --

19 MR. WEINBERG: Go ahead. I'm sorry. I was  
20 going to try to frame it for Peter, and I didn't  
21 want to interrupt you, but I think conceptually we  
22 all agree. I think we travel different paths in  
23 getting to the same conceptual idea.

24 Candidly, I was going to raise this in a  
25 letter just so that we could get on that same

1 conceptual path, but I think hours of operation were  
2 addressed in the licensing process. You may recall  
3 every time a license is issued, it says to the  
4 extent that you deviate materially from the terms of  
5 this license, you need Commission approval.

6 So I think where Mr. Stewart was heading was  
7 that if we decided opening at 11:30 rather than noon  
8 made a lot of sense, I'm not sure the Commission  
9 would really want to hear about that. If we were  
10 telling you that Thursday is awful in Vinton and  
11 it's not worth opening the doors and we'd like to  
12 close on Thursday, that might rise to the level of  
13 materiality in that. So if we could come to some  
14 conceptual arrangement of what sort of felt like  
15 material versus immaterial, I think that would be  
16 helpful. Please correct me if that's wrong.

17 MR. STEWART: No. That's correct.  
18 Historically, I think we've communicated from time  
19 to time, and I don't know whether in this case it  
20 was different. Maybe it was; maybe it wasn't.  
21 We're happy to do whatever is reasonable. Like I  
22 said, it's all a matter of degree.

23 MR. BURNETT: Yeah. I agree with that. I  
24 think, you know, of the hours open, half an hour in  
25 a day is a percentage point or two. A full day is

1 15 percent, if you will, or seven roughly. So in  
2 the world of -- if you announced a drop in gross  
3 sales of 15 percent, people at the stock market wake  
4 up. If you announce a half percent change, big  
5 deal. So I agree with you. I think perhaps a  
6 little back and forth, whether by letter, talking  
7 with Vic, or however you want to do it, let's just  
8 agree on some reasonable parameters that we'll know  
9 about and that we should weigh in on or be notified  
10 of and other ones are, you know, rise to -- or lower  
11 themselves to the level of nitpicking, which is not  
12 where we want to be.

13 MR. WEINBERG: I agree.

14 MR. SIEGEL: Our book doesn't indicate where  
15 you were, it just indicates kind of where you'd like  
16 to be. So I'm having difficulty understanding what  
17 the changes are.

18 MR. STEWART: Jeanna is probably more converse  
19 with that than I am.

20 MR. BOUZEK: I would like to -- I don't have a  
21 copy for everybody, but I'd like to submit --

22 MR. SIEGEL: Is it just a material of -- are  
23 you closing on Monday and Tuesday and you weren't  
24 already?

25 MR. BOUZEK: Right. That's a copy of the 2008

1 schedule. What's in yellow we can't take because of  
2 TrackNet. What's in blue is not offered this year.  
3 So what we've done is we closed our sites at seven  
4 o'clock on Sundays and Mondays, because there's only  
5 one harness track running on Sunday nights now.  
6 Mountaineer is not running. Del Mar is not running.  
7 So we can't keep a site open for one track. And  
8 then all of our sites are closed on Tuesday now. We  
9 had three sites that were open, but they're closed  
10 now because the content is just not there.

11 We're finding that our customers are waiting  
12 for the other days to come. Scott County we closed  
13 on Sundays altogether because, you know, we had 12  
14 people coming in there. It just wasn't feasible.

15 The thought process is we -- you know, we talk  
16 a lot to our customers. We're only going to come  
17 two days, and Sunday wasn't the day, then we're not  
18 losing that customer. They're coming two other  
19 days.

20 MR. SIEGEL: Do any of these days represent an  
21 increase in time, or are all these reductions?

22 MR. BOUZEK: All those are reductions. The  
23 yellow ones we can't take because it's TrackNet, and  
24 the blue ones are not being offered.

25 MR. HARRISON: Commissioner Siegel, to your

1 point, I did make the request in writing to the  
2 racetrack that for future such requests that they  
3 include the schedule as it is and the schedule that  
4 they are requesting.

5 MR. SIEGEL: Yeah. It's hard to tell whether  
6 it's material or not if you don't have the  
7 comparisons. So I just ask, are you talking about  
8 something that may be two percent or is it 15  
9 percent or 25 percent?

10 MR. WEINBERG: To be clear, here we're asking  
11 for Commission approval. I think it is material.  
12 It's a reduction on Sunday nights, I think, in all  
13 facilities, a reduction -- closing on Tuesday in  
14 three facilities where we were previously open, and  
15 closing altogether on Sunday in Scott County.

16 MR. BOUZEK: And Monday night at seven  
17 o'clock.

18 MR. SIEGEL: So your total hours to date or as  
19 proposed compared to where you were previously,  
20 would you say that's a 10 percent cut in hours? Do  
21 you have a number at all?

22 MR. STEWART: It's probably less than that,  
23 because the only -- we closed like three Tuesdays  
24 out of the eight. So that's probably in itself  
25 maybe three percent, three or four percent. The

1 rest of it might be another point or two.

2 MR. SIEGEL: Your drop in handle, I take it  
3 you deem to be considerably less than that cut in  
4 hours?

5 MR. STEWART: Correct. As Jeanna pointed out,  
6 there's -- especially late in the evening, there's  
7 very little product out there. There's very little  
8 thoroughbred product, and the harness product isn't  
9 as popular.

10 MR. BOUZEK: And there are nights you can --  
11 on Sunday night, you know, we get calls from  
12 Alberta. It's seven-thirty. We're here. Do you  
13 want us to stay? There's no nobody here.

14 I mean, so this is just something we decided  
15 to do. We've been tracking it, and we've been  
16 tracking the handle. The Martinsville site, the  
17 Vinton site, Scott County site, seven-thirty at  
18 night, no customers. You know, we've got full-time  
19 employees. We had to make sure they're getting  
20 their hours. Someone calls up, do you stay there or  
21 sit there to see if somebody shows up?

22 So to be fair to the customer, we like to post  
23 what the hours are going to be because you don't  
24 want somebody driving up from North Carolina to find  
25 that you closed because you didn't have any



1 customers. We're trying to provide customer service  
2 and --

3 MR. BURNETT: Again, I think that's in some  
4 respects where the Commission wants to be. It's the  
5 same as the customer, we want to know what's going  
6 on. I like Mr. Siegel's -- what I was hearing and  
7 his approach.

8 Maybe the way this could be presented -- I  
9 mean, this request is a mix of days and hours, which  
10 is fine, but I think in terms of looking at what  
11 we're doing percentage-wise, perhaps you tell us by  
12 location how many hours a week that location is open  
13 today, how many hours a week you're proposing that  
14 it be open. We can just look at the change. If  
15 it's 110 hours, we assume that you're capable of  
16 picking the hours. I mean, we all have an incentive  
17 to pick the hours when the bettor is there.

18 I sometimes worry -- and our legislative  
19 wizard to my left can help with this, but I just  
20 worry sometimes that when a legislator asks, what  
21 are y'all doing down there? Did you know that this  
22 happened in my jurisdiction? Did you know about  
23 that? I think the Commission always wants to be in  
24 a position of being aware of all the details. So we  
25 can say, yeah, we knew about that. Here's the

1 reason. We give them the Jeanna Bouzek speech, and  
2 then we're done.

3 MR. REYNOLDS: You asked for that for future  
4 changes?

5 MR. HARRISON: Yes.

6 MR. REYNOLDS: It sounds like we got a deal.

7 MR. BURNETT: I think so. We just need to  
8 find that mark as to what -- the difference between  
9 nitpicking and material and where that line is. I'm  
10 very confident we can find it. I just made a  
11 suggestion on how we do it.

12 MR. BOUZEK: Because it will change monthly  
13 with the new tracks coming in --

14 MR. BURNETT: That's right.

15 MR. BOUZEK: -- and hopefully new agreements.

16 MR. BURNETT: Right. And boycotts ending.

17 Frank is going to take care of that.

18 MR. PETRAMALO: Yes.

19 MR. BURNETT: Thank you.

20 MR. MILLER: I would just like to point out  
21 that the legislative wizard is two to your left, not  
22 one.

23 MR. BURNETT: I did say to my left and just  
24 let you guys pick.

25 All right.

1 MR. HARRISON: Mr. Chairman?

2 MR. BURNETT: I'm sorry.

3 MR. HARRISON: One clarification, please.

4 The request from the racetrack was for hours  
5 for the month of January.

6 MR. BURNETT: Yes.

7 MR. HARRISON: In your approval, you granted  
8 it until we hear from you again. So I just think  
9 that needs to be --

10 MR. BURNETT: I'm sorry. We can do a little  
11 better, couldn't we? Or I could do a little better.  
12 Sorry.

13 What's the pleasure of the racetrack?

14 MR. WEINBERG: Well, as I understood where we  
15 were going, we were talking about changes. So if  
16 these hours sort of fit for February as well and  
17 there was no change, I would presume you would not  
18 expect us to come back and say, "Can we continue?"

19 MR. BURNETT: I think that our approval should  
20 be, and we perhaps should have a motion on this,  
21 that the schedule as proposed be in place hence  
22 forth, and that should the track decide to modify  
23 those in a material way, that we'll hear from the  
24 track prior to that taking place.

25 MR. SIEGEL: One last question. This is

1 January 20th. Did this take place on January the  
2 4th and you're operating under those hours now? So  
3 you're two-thirds through what you're asking us to  
4 look at. If you look at February at our next  
5 meeting, you would have been two-thirds past that.  
6 Can we think about doing this perhaps 30 days -- can  
7 we talk about March in February, or is it too soon?  
8 I mean, I don't know enough about your site.

9 MR. STEWART: I guess we could. I mean, this  
10 one obviously got twisted up, but in the future, we  
11 certainly would ask for your approval and not act  
12 prior to getting it.

13 MR. SIEGEL: Well, in February, you would be  
14 in the same position you are now.

15 MR. STEWART: Right. I guess what I'm saying  
16 is we intend to basically continue with these hours,  
17 unless prior to the February meeting we feel it's in  
18 our best interest to change it.

19 MR. SIEGEL: So this would carry forward as  
20 presented here in February as well?

21 MR. STEWART: Correct. Unless --

22 MR. BURNETT: And March if nothing else is  
23 said or done.

24 MR. SIEGEL: So in the future, though, if you  
25 really want to change the hours, you'll try to get

1 ahead of it --

2 MR. STEWART: Right.

3 MR. SIEGEL: -- so that we'll see it before  
4 it's already gone into effect.

5 MR. STEWART: Yes.

6 MR. BURNETT: We have a two-tier ability in  
7 this particular situation; that is, they can come  
8 directly to the Commission or if they feel that  
9 there's some emergent nature to do something, they  
10 can go to the executive secretary who can grant it  
11 up until the next meeting.

12 MR. SIEGEL: I'm still in my training program  
13 here.

14 MR. BURNETT: Excellent questions.

15 All right. Would we be comfortable with a  
16 motion? I will move what I just said if you all  
17 make me not repeat it.

18 MR. BROWN: Second.

19 MR. BURNETT: We have a second from Mr. Brown.  
20 All in favor indicate by saying aye.

21 Note: (Aye.)

22 MR. BURNETT: The schedule is in place hence  
23 forth.

24 Can we move to the next one? Request from  
25 Colonial Downs for 2010 thoroughbred race days. We

1 have presentations from various folks. Is the VTA  
2 not represented here today?

3 MR. PETRAMALO: Glenn sends his regrets. He  
4 had to go out of town on a family matter.

5 MR. BURNETT: I didn't know whether maybe he  
6 sent a surrogate.

7 MR. PETRAMALO: No. I spoke to him yesterday.  
8 He asked that I advise you.

9 MR. BURNETT: For what it's worth, I got an  
10 e-mail from Glenn and he supports the race days as  
11 set forth in the proposed contract between the  
12 horsemen and the racetrack. I don't want to suggest  
13 that he weighed in on the contract itself. If I  
14 understood his e-mail -- Frank, I think you might  
15 have gotten a copy of that.

16 MR. PETRAMALO: No, I didn't.

17 MR. BURNETT: You didn't. He just said he  
18 supported 40 days. That's all he said.

19 Let's move to the presentation from Colonial  
20 Downs.

21 MR. WEINBERG: Okay. Thank you.

22 You have received Colonial Downs race day  
23 request. It reflects a 30-day request for the  
24 thoroughbred meet. Upon the approval of a new  
25 thoroughbred agreement, Colonial Downs is prepared

1 to amend that request to 40 days. Given where we  
2 are today, our request remains at 30 days.

3 The rationale for that request I think is well  
4 stated in our race day request. There are themes  
5 that many of you have heard over prior years of  
6 quality versus quantity, looking to maintain average  
7 daily purses in a time when handle is declining by  
8 12 percent from where it was this time last year.

9 Really without belaboring those themes, we are  
10 happy to respond to any questions the Commission has  
11 about the 30-day request. We're also happy to  
12 review with the Commission the provisions in the  
13 amendment, which I realize you have just received,  
14 and defer to you on your pleasure there. In that  
15 contract, you will see an agreement among the  
16 parties to request 40 days for 2010 and 11, and at  
17 least 40 days for 2012.

18 MR. BURNETT: And to add a little bit more  
19 detail to your request, just so I'm sure of it, the  
20 30 days that you propose today is May 29th, opening  
21 day, through Wednesday, July 7th. I'm reading from  
22 your letter dated December 1st, 2009.

23 MR. WEINBERG: That's correct.

24 MR. BURNETT: Thank you.

25 Mr. Petramalo?

1 MR. PETRAMALO: We have pending before you a  
2 proposal for 40 days starting on May 29th and going  
3 through July 21st, I believe. The reasons for it  
4 are set forth in our written submission. I think we  
5 also supplemented that submission in responding to  
6 certain representations of the track, but as Jim  
7 mentioned, the issue of race days has been resolved  
8 between the parties in the form of a new contract.  
9 If that contract is approved by the Racing  
10 Commission, the issue between us goes away.

11 MR. BURNETT: I note that both the track and  
12 the horsemen are proposing that we start on  
13 May 29th. I have two concerns that I'd like to hear  
14 your thoughts on. One is the potential of the turf  
15 course not being mature for racing by the 29th of  
16 May. I know that's been a subject that's come up  
17 almost every year when we've discussed starting  
18 dates. There's been various thoughts on that.

19 The other one I'm not sure has come up that  
20 often. I think it's been referenced a time or two.  
21 To the extent that we have a significant number of  
22 our population on the backstretch that bring  
23 children and families as part of their summer  
24 vacation from school and the like to help or to be  
25 here and not help for that matter, what impact might



1 moving back a week have given that a lot of schools  
2 don't finish up until the first week of June or the  
3 end of June? My daughter typically doesn't finish  
4 school in Loudon County until the 15th of June  
5 roughly.

6 I worry in a competitive environment to get a  
7 full stable of horses that those two items could  
8 conspire against us to be 10 percent short, 15  
9 percent short. I'd rather address it now and think  
10 about it than wished we thought about it after the  
11 fact.

12 MR. PETRAMALO: Well, the latter question is  
13 an interesting point. I hadn't thought about it  
14 before, but I can tell you that at least my  
15 experience on the backside here, trainers and  
16 exercise riders, et cetera, who bring family members  
17 are very flexible. We have kids coming and going  
18 all summer long out of this place. You'd be  
19 surprised the arrangements that are made when mom is  
20 going to Mountaineer to train a horse. The child is  
21 still here. Some of them wind up here by the way,  
22 but it works well.

23 It's certainly a consideration, but I would  
24 think from a horsemen's standpoint, the more  
25 important consideration is where can I go and win

1 with my horses to race. What we've experienced over  
2 the past two or three years, particularly by opening  
3 up the backside early, like mid-May, we've been able  
4 to pick up a substantial horse migration from  
5 Florida, because Tampa Bay Downs closes on Kentucky  
6 Derby Saturday, and the horsemen there have two  
7 weeks before they have to leave that track. Here is  
8 a nice venue for them to come. So I think our early  
9 opening here plays even better into the scenario  
10 with the horses coming from Florida.

11 With regard to the turf course, that, of  
12 course, is always a concern. We have Bermuda grass  
13 out there, which is dependent on hot weather for its  
14 rejuvenation. Last year we started on June 7th, a  
15 week later than the proposed start this year in  
16 2010. The turf course was in fine shape, but again  
17 it's the vagaries of nature.

18 I did speak to J. D., Dale Bowen, the  
19 ground -- the track manager, and he says he's  
20 confident that the turf course will be ready with  
21 his concoction of fertilizer that he's applied.  
22 It's J. D. Thomas.

23 MR. BURNETT: Does J. D. do a little grass  
24 dance out there in the middle of the night?

25 MR. PETRAMALO: He does a wonderful job, I'll

1 tell you that. It's a concern, but Tyler  
2 Picklesimer, the racing secretary, also keeps that  
3 in mind. So early on in the book, in the condition  
4 book, he'll throw in more dirt races just in case  
5 the turf isn't ready.

6 MR. BURNETT: Do I understand -- maybe I'm not  
7 doing my math right, but it looks to me that if  
8 there is a 5/29 start, someone could stay at Tampa  
9 for the two weeks after the Derby, get out on the  
10 last day, ship to Virginia, maybe walk one day, then  
11 they're out on the racetrack training.

12 MR. PETRAMALO: It's going to be tight, but  
13 that's possible. I say tight, because as you may  
14 remember, I think this came up at the last meeting,  
15 the Strawberry Hill steeplechase meet, which is  
16 usually in early April is moving here May 15th. So  
17 that's two weeks in between Strawberry Hill running  
18 on the course before the cushion is re-applied and  
19 the opening of the racetrack. It's going to be  
20 tight, but again track management assures us that  
21 it's doable. We're willing to take a shot.

22 MR. STEWART: I would echo everything that  
23 Frank just said. J. D. is very confident that the  
24 grass will be ready. I think there's significant  
25 advantages in running a week earlier. I like the

1 idea of moving Strawberry Hill closer to the race  
2 meet. There's 25,000 people out here who should be  
3 our customers. If you can make it closer to when  
4 they can come out and see us again, I think that's  
5 beneficial.

6 Historically, we've always done well on  
7 holidays. So now you're picking up a holiday  
8 weekend where I personally am looking to have, you  
9 know, five to 10,000 people out here on a holiday.  
10 So I think there's very beneficial. I mean, there  
11 is a risk that the grass might not be ready, but it  
12 might not have been ready on June 5th.

13 The one thing that I think is true is that  
14 over the last couple years, the number of horses  
15 that have participated on our dirt racing has  
16 actually increased. I mean, in my view, while it's  
17 not an ideal scenario if the grass isn't quite  
18 ready, I think it's a manageable scenario, and I  
19 think it's well worth the risk.

20 MR. MILLER: What would you do if it's not  
21 ready?

22 MR. STEWART: Well, I think what we would end  
23 up having to do is to have more dirt races. We  
24 certainly wouldn't be running 10 races a day.  
25 There's plenty of racetracks that don't run 10 races

1 a day.

2 MR. BOUZEK: I'd like to add that with  
3 Strawberry Hill not running in April, usually what  
4 J. D. has to do is wait until Strawberry Hill runs  
5 before he can take the top layer off and get  
6 started. Now that they won't be running in April,  
7 he can start that process earlier. He can start  
8 getting the grass ready earlier. So that's why he's  
9 confident that it'll be ready by May the 29th.

10 MR. BURNETT: Has anybody asked our friends at  
11 Tampa Bay and other tracks that might be coming here  
12 what their thoughts are? My guess is from a  
13 horsemen's standpoint they'd say, oh, yeah. I'll  
14 take my chances on the grass to start a week early  
15 so that I don't have to find a place for my horse  
16 for a week or walk them in the barn.

17 When does the barn area -- when will the barn  
18 area open?

19 MR. STEWART: It'll probably open the Monday  
20 after Strawberry Hill.

21 MR. BURNETT: Which is?

22 MR. PETRAMALO: The 17th.

23 MR. BURNETT: So it's not like you could walk  
24 for a week in the barn, show up a week early. My  
25 point being if you're leaving another racetrack on

1 the 10th of May and it doesn't open until the 17th  
2 here, you can't come here and be here and take care  
3 of your horse, even though you can't use the  
4 racetrack. So that horsemen has got to go find a  
5 home for a week. That is disruptive in my view for  
6 those horsemen.

7 So my guess is -- and it's just a guess, that  
8 the Tampa Bay folks are going to say, yeah, I can  
9 make that work. In fact, I would hope that there  
10 could be a little discussion with Tampa Bay if we  
11 get a lot of horsemen coming from there that it  
12 would -- the close there and the opening here would  
13 be not more than one shipping day apart so that  
14 there's no issue. That's the little pitch to those  
15 guys.

16 MR. PETRAMALO: I'm trying to think when we  
17 opened last year -- this past summer.

18 MR. STEWART: I think it was right about the  
19 same time.

20 MR. BOUZEK: It was the Sunday after the  
21 Preakness.

22 MR. PETRAMALO: I was going to say it was  
23 about the 13th or the 14th.

24 MR. BURNETT: And it worked.

25 MR. PETRAMALO: Yes, it worked.

1           MR. KELLEHER: We open the stable area about  
2 the same time every year, and we're already -- I  
3 talked to a couple people and I know Jack Kenney,  
4 who supervises back here for me, has received  
5 several calls from Tampa Bay people that have been  
6 coming. They don't seem to have any problem. We  
7 haven't been able to tell them exactly, but we've  
8 been giving them an idea.

9           MR. BURNETT: Right.

10          MR. KELLEHER: It doesn't seem to be a problem  
11 with them.

12          MR. BURNETT: We want them to enthuse and be  
13 confident.

14          MR. PETRAMALO: What we -- I got to put this  
15 in here.

16          MR. BURNETT: This is going to be good.

17          MR. PETRAMALO: What we uniformly hear from  
18 the Florida people is not so much the opening. They  
19 love it that we're opening early so they can come  
20 here, but they say, gee, can't we race 12 weeks  
21 instead of eight weeks?

22                 I say, well, it's a problem of money. We  
23 don't have enough money to do that. They love to  
24 come here, but once they come up from Florida, they  
25 love to have someplace they can sit and race before

1 having to go back to Florida for the fall race.

2 MR. BURNETT: Right. We would like that, too.  
3 We just got to find that money.

4 MR. SIEGEL: So what are the proposed dates?  
5 I'm confused. Behind this tab there's several  
6 versions.

7 MR. PETRAMALO: Commissioner Siegel, Colonial  
8 has proposed May 29th through July 7th.

9 MR. SIEGEL: Consistent with their letter of  
10 December 1st?

11 MR. WEINBERG: That's correct.

12 MR. PETRAMALO: We have proposed May 29th  
13 through July 21st, an extra two weeks, calendar  
14 weeks.

15 MR. SIEGEL: Okay.

16 MR. PETRAMALO: So that's the difference their  
17 30 days and our 40 days.

18 MR. SIEGEL: But you've come to an  
19 understanding on 40 days, as I understand it?

20 MR. WEINBERG: If we have a contract.

21 MR. BURNETT: Subject to our approving the  
22 contract between the parties.

23 MR. PETRAMALO: Commissioner Siegel,  
24 historically to comply with statutory requirements,  
25 we have entered into a horsemen's contract with



1 Colonial Downs. It covers a whole plethora of  
2 things, including race days, purses, et cetera.

3 In 2009, our contract was one year. In 2008,  
4 it was one year, but in prior years, the length of  
5 those contracts ran anywhere from two to four to  
6 five years. We have before you now --

7 MR. SIEGEL: A three-year deal at 40 days.

8 MR. PETRAMALO: A three-year deal.

9 MR. SIEGEL: Correct. I understand. Subject  
10 to approval.

11 MR. PETRAMALO: Right.

12 MR. SIEGEL: And those dates would be May 29th  
13 to --

14 MR. PETRAMALO: The 21st of July.

15 MR. SIEGEL: To July 21st.

16 And then the dark days and the hours were  
17 different as well?

18 MR. PETRAMALO: Yes.

19 MR. WEINBERG: But I believe we've agreed on  
20 the dark days and hours as set forth in the  
21 December 1 letter.

22 MR. PETRAMALO: Right.

23 MR. SIEGEL: I could use the December 1  
24 letter, add two weeks --

25 MR. PETRAMALO: Correct.

1 MR. SIEGEL: -- then I'd be on it.

2 MR. WEINBERG: That would be the agreed upon  
3 request.

4 MR. SIEGEL: Okay.

5 MR. WEINBERG: And not to get hung up in  
6 legalities, but so we're crystal clear, we haven't  
7 amended our request yet because the contract hasn't  
8 been approved yet.

9 MR. SIEGEL: Right. But the issues have been  
10 ironed out?

11 MR. WEINBERG: That's correct.

12 MR. PETRAMALO: Yes. Except with the -- this  
13 isn't an issue. It's just a question.

14 MR. BURNETT: Whoop.

15 MR. PETRAMALO: The date for the Turf Cup and  
16 the Derby, that changes, doesn't it?

17 MR. STEWART: No.

18 MR. PETRAMALO: What are those dates?

19 MR. WEINBERG: The Derby is Saturday,  
20 June 26th.

21 MR. PETRAMALO: June 26th. And the Turf Cup?

22 MR. WEINBERG: Is June 12th.

23 MR. STEWART: You're right, Frank.

24 MR. PETRAMALO: That's what I was --

25 MR. SIEGEL: So they are these dates?

1 MR. PETRAMALO: No, they're not.

2 MR. STEWART: No. The Derby is July the 17th  
3 assuming the contract is approved.

4 MR. PETRAMALO: Right.

5 MR. STEWART: And the Turf Cup is June the --

6 MR. WOOD: Nineteenth.

7 MR. STEWART: -- nineteenth.

8 MR. SIEGEL: It sure would be helpful if those  
9 things were so we can see them, at least for me.

10 MR. PETRAMALO: Right.

11 MR. WEINBERG: I understand and --

12 MR. SIEGEL: It just got done, I know.

13 MR. WEINBERG: Well, in an amended request, we  
14 would be make it crystal clear.

15 MR. SIEGEL: Okay.

16 MR. PETRAMALO: Now, the other thing to point  
17 out, Commissioner Siegel, a change from past  
18 practice is we used to not race on Wednesdays and  
19 Thursdays. Those were the dark days. This coming  
20 year that will change. The dark days will be  
21 Thursday and Friday. So we'll be racing on a  
22 Wednesday where in the past we had not, and we will  
23 not be racing on a Friday when in the past we have.

24 MR. SIEGEL: Okay.

25 MR. BURNETT: Could -- without upsetting any

1 contractural negotiations, could somebody explain to  
2 me why Wednesday is more desirable than Friday?

3 MR. STEWART: I'd be happy to.

4 You know, for years we've raced on Friday.  
5 When you look at it logically, you say to yourself,  
6 boy, that ought to be a great day to race.  
7 Everybody would want to come out here on a Friday  
8 afternoon. All I can tell you is that for 12 years,  
9 it's really never happened like that. One of the  
10 reasons I can tell you is I-64 out there. It's  
11 jammed pack. People just can't quite get here.

12 So, you know, historically we've run  
13 promotions on Fridays. Last year we ran a poker  
14 tournament every -- I don't know, every other Friday  
15 or something like that and, you know, it really has  
16 never -- it's never really justified the money we  
17 put into the promotions. It's -- you know, and I  
18 say to myself every year, it should work.

19 Well, it just doesn't is all I can tell you.  
20 I think we can do better on Wednesday. I think  
21 there's a void in the simulcasting calendar that we  
22 can fill. We do very well on Monday nights. We do  
23 very well on Tuesday nights. There's no reason to  
24 think that we wouldn't do real well on Wednesday  
25 nights. I think the financial benefit on Wednesday

1 night would outweigh whatever few hundred extra  
2 people we might be able to attract on Friday night.

3 MR. PETRAMALO: I think the Friday signal sale  
4 is not particularly good.

5 MR. STEWART: Friday is pretty weak.

6 MR. BURNETT: Again, that's why I am reluctant  
7 to substitute my judgment for yours because you have  
8 better judgment on it. You know what's going on.  
9 You're closer to the subject, but it does raise the  
10 issue of why open on a Friday night. Isn't the 29th  
11 a Friday?

12 MR. PETRAMALO: No, it's Saturday.

13 MR. BURNETT: I thought I heard Friday  
14 earlier. I think I-64 is going to be a little busy  
15 on that particular Friday, more so maybe than  
16 others.

17 Anything further in terms of presentation on  
18 days? If I can summarize, and I would invite our  
19 stakeholders to jump in if I mischaracterize  
20 something.

21 The horsemen and the racetrack, I think,  
22 jointly would prefer that we defer this decision of  
23 days for another month to give us time to review the  
24 contract such that the contract and the days could  
25 be approved and signed in one meeting.

1           The Commission has historically been delayed,  
2           if you will, in setting days. We try each year to  
3           try and commit to a date when days will be set and  
4           for lots of reasons, which include horsemen  
5           negotiating contracts of which I was guilty when I  
6           was doing it in Frank's place at some level, this  
7           seems to be more the rule than the exception, what  
8           we're presented with here today.

9           So we're faced with setting days, which I  
10          understand from a legal perspective now that a  
11          submission has been made. We're at liberty to  
12          modify it. We can -- we have the authority and  
13          jurisdiction, et cetera, to set days today if we  
14          wish to do that and look at the contract in a month,  
15          or -- and we can set those days in conformity with  
16          what's been requested or we can set those days at  
17          another number that we choose, or we can defer until  
18          the next meeting to set days. That is the  
19          landscape, as I understand it, of what's in front of  
20          us today.

21                 MR. PETRAMALO: Let me ask this. Would it be  
22                 helpful in resolving that question for us to quickly  
23                 go through the contract and explain to you what is  
24                 in it and how it differs from prior contracts?  
25                 We're prepared -- Jim and I are prepared to do that,

1 to explain what's in the new contract, how it  
2 changes, just for whatever help it may be in  
3 informing you before you make your decision as to  
4 how you want to proceed.

5 MR. BURNETT: Well, maybe I should first ask  
6 whether we are in agreement with respect to  
7 approving the contract today. My informal straw  
8 poll earlier on was that it's not on the docket, and  
9 we're not prepared to approve that contract. I  
10 don't necessarily -- I'm not suggesting that Frank  
11 is urging that, just that there might be some  
12 benefit to understanding the terms as it relates to  
13 what we're trying to do with days.

14 MR. MILLER: Mr. Chairman?

15 MR. BURNETT: Yes.

16 MR. MILLER: I'm not in a position really to  
17 vote to approve or disapprove the contract today,  
18 but I would -- I do like Frank's suggestion because  
19 I would like to know for my benefit what the  
20 contract contains that makes such a difference  
21 between the 30-day and the 40-day meet. Since both  
22 parties seem to agree on a 40-day meet within the  
23 confines of the contract, I would like to know  
24 what -- I would like for Frank to point out to us  
25 what is in that contract that is so magnificent --

1 MR. PETRAMALO: To be flip, dollars.

2 MR. MILLER: -- that, you know, the 10-day  
3 variation is so important because we did commit to  
4 set the racing days today. And as I understand it,  
5 it's important to set those racing -- to set the  
6 time period as soon as possible for the benefit of  
7 going out in --

8 MR. PETRAMALO: Yes.

9 MR. MILLER: -- securing the mounts to  
10 participate in the meet. So I would like for Frank  
11 to follow through with his suggestion. That's just  
12 my opinion.

13 MR. PETRAMALO: I could probably do that in  
14 five minutes, and I think I can at least from our  
15 perspective clearly point to what we think was the  
16 turning point that got us to an agreement on 40  
17 days.

18 MR. BURNETT: Let me act like a federal court  
19 judge and say if you can do it in half that amount  
20 of time, go for it. Two and a half minutes.

21 MR. PETRAMALO: But as a lawyer when I say  
22 five minutes, you know that means 10 minutes.

23 MR. BURNETT: Right. But you've already  
24 wasted 15 seconds of your time.

25 MR. PETRAMALO: Okay. First of all, unlike



1 the last two contracts, this is for three years. So  
2 we've settled our disagreements for three years.  
3 Over the three years, it calls -- I want to  
4 emphasize this. The parties agree to in 2010  
5 request 40 days, in 2011 request 40 days, and in  
6 2012 request at least 40 days. That gives us some  
7 flexibility down the road for us to argue with the  
8 track that things have turned around, and we ought  
9 to be racing more.

10 Secondly, and this is very important, the HBPA  
11 has agreed to provide the gap funding for the next  
12 three years. That's the difference between our cash  
13 flow and the money we're spending on purses.

14 MR. BROWN: Excuse me, Frank.

15 MR. PETRAMALO: Yes.

16 MR. BROWN: For Mr. Siegel's -- just for his  
17 information, they did supply the gap funding this  
18 year also.

19 MR. PETRAMALO: We borrowed two million  
20 dollars. We borrowed two million dollars from the  
21 Virginia Commerce Bank, and by the way, it was paid  
22 back by the end of the year.

23 With regard to the stakes purses, they'll stay  
24 pretty much the same except with the Virginia Derby.  
25 Colonial has agreed to reduce the Virginia Derby

1           purse from 750,000 to 600,000, which means 150,000  
2           goes into the purse account for use in the run of  
3           the mill races.

4                       Now we get into the dollar issue. We sell our  
5           signal to racetracks and on-line wagering companies  
6           during that 40 days, and we split the revenue with  
7           Colonial. In the past, before we split that  
8           revenue, 21 percent came off the top as Colonial's  
9           expense. It was a set 21 percent. In this new  
10          contract, we've agreed that it will be actual  
11          expenses capped at an annual \$55,000.

12                      Let me give you an example. This past year in  
13          2009, the expenses that came off the top, I think,  
14          were roughly \$157,000. Under the new contract, if  
15          it had been into effect, that would have been capped  
16          at 55,000 and the remaining 102,000 would fall to  
17          the bottom line to split. That's a major -- a  
18          significant and major change, because that 21  
19          percent number has been in there with one slight  
20          modification since 2000.

21                      Now, here's the other dollar amount issue that  
22          in my judgment influenced the track's flexibility  
23          with regard to moving from 30 to 40 days. We have  
24          agreed -- we have agreed to a different revenue  
25          sharing formula at three off-track betting sites.

1 They are Scott County, Brunswick, and Vinton, where  
2 the handle has been declining and the margins have  
3 been shrinking for Colonial.

4 In the past by contract and statute, we got  
5 anywhere from four and a half percent to five  
6 percent of all of the handle. We have agreed for  
7 the life of this contract to modify that so that  
8 what we're willing to do now is share with Colonial  
9 the EBITDA, the cash flow before taxes and  
10 depreciation and amortization. That benefits  
11 Colonial because four and a half percent is more  
12 than sharing 50/50 if you look at the numbers in  
13 2009.

14 However, we have a snap back provision which  
15 says that 50/50 sharing goes away if certain targets  
16 are met in 2010 and 2011. Roughly, if the handle at  
17 those locations goes back to where it was in 2008,  
18 then we snap back to four and a half or five  
19 percent, not the 50/50.

20 There's one other related matter, and that is  
21 with the OTB that's at Martinsville. If the handle  
22 in 2010 drops below seven and three quarter million  
23 dollars, then that 50/50 formula can also be used by  
24 Colonial at that site. So that to me is a  
25 substantial economic advantage that the track is

1 getting from this. On one hand, we're getting a  
2 little more money from the signal and on the other  
3 hand, they're doing a lot better on those three  
4 OTBs.

5 The other changes in the bargaining agreement  
6 are what I would call terms and conditions. When we  
7 get to see the condition book, which contains the  
8 proposed races say for the first 20 days of the  
9 month, so we have an opportunity to weigh in on the  
10 length of the races, the purses, and things of that  
11 sort.

12 And then we reached agreement with regard to  
13 races that are restricted to Virginia-breds. Again,  
14 not a sea change, but just a tinkering with formulas  
15 that we've used in the past.

16 With respect to backstretch improvements, this  
17 year Colonial has agreed to complete on the  
18 remaining seven barns the installation of concrete  
19 pads that go below the manure bins. There are two  
20 at each barn. This helps considerably not only with  
21 hauling away the manure, but also with the draining  
22 between the barns. When it rains hard, it can get  
23 pretty swampy back there. That helps.

24 In going forward in years, 2011 and 2012,  
25 Colonial again commits to spend \$50,000 each year on

1 backstretch improvements.

2 And then finally and, of course, this -- as  
3 you know, this is probably -- this was probably the  
4 most contentious issue because it was the smallest  
5 issue, and that is the furnishing of a sky suite for  
6 the use of the horsemen. We reached agreement on  
7 that. We get a sky suite every day of the meet  
8 except Saturdays, and we get it on Saturdays if the  
9 suite is not sold the prior Wednesday. Great things  
10 are made from little matters like this. And also  
11 horsemen get more clearly defined access to other  
12 areas of the grandstand, the Jockey Club and the  
13 Turf Club.

14 That for the most part is a quick summary of  
15 what's in the contract. For the most -- the  
16 contract is probably 45 to 50 pages long. Most of  
17 it is hasn't changed in the last ten years, same  
18 stuff, but what you have from me are the highlights  
19 of the changes.

20 MR. MILLER: Mr. Chairman?

21 MR. BURNETT: You'll note that my stop watch  
22 broke during that speech.

23 MR. PETRAMALO: Did I go beyond two and half  
24 minutes?

25 MR. BURNETT: Two minutes and 45 seconds. No

1 biggie.

2 MR. MILLER: It was so good, I didn't notice.  
3 You mentioned statutory -- this off-track  
4 betting --

5 MR. PETRAMALO: Yes.

6 MR. MILLER: -- division. Do you need a  
7 statutory change?

8 MR. PETRAMALO: No. Without getting too  
9 arcane, the statute currently says that the share at  
10 the OTBs is a sliding five, six, seven percent.  
11 Eight or so years ago, we agreed to rebate some of  
12 that to Colonial to help them build out the OTB  
13 system. As a result, they opened up four or five  
14 new locations. What we're doing now is just  
15 modifying that.

16 MR. BURNETT: That statute says the money has  
17 to be deposited into an account. It doesn't say  
18 what you have to do with it thereafter. We  
19 convinced the prior Commission that rebating was  
20 okay. I think maybe the attorney general's office  
21 picked up on that with respect to the ADW rate as  
22 well. They only said it has to be collected. It  
23 doesn't say how it's to be spent.

24 MR. MILLER: Mr. Chairman, also everyone  
25 agrees that this proposed horsemen's agreement or

1 contract that you're proposing, that we got it by  
2 e-mail yesterday, that that binds the parties just  
3 to request --

4 MR. PETRAMALO: Yes.

5 MR. MILLER: -- 40 days. Realizing we can set  
6 it at 15, 60 or, you know, whatever number the  
7 Commission thinks would be appropriate.

8 MR. PETRAMALO: Right. We -- am I  
9 interrupting?

10 MR. MILLER: No.

11 MR. PETRAMALO: We've addressed what I think  
12 to be your concern in the past when we've had  
13 contract -- particularly when we had contracts that  
14 changed things significantly. Our position to the  
15 Commission was, this is what the parties are  
16 agreeing to. It's not binding you to say award 40  
17 days. All we're saying is Colonial and the horsemen  
18 will come here in 2010 and request 40 days, and in  
19 2011 request 40 days. You may well say, no, 40 days  
20 is not enough or 40 days is too much. You have the  
21 right of approval doing that.

22 MR. MILLER: Mr. Chairman, one more  
23 question --

24 MR. BURNETT: Certainly.

25 MR. MILLER: -- then I'll let the others ask.

1 I don't like to be taking up so much time, but let  
2 me ask you an unfair question. Who is getting the  
3 shaft in this contract, if anybody? I mean, you're  
4 speaking for the horsemen.

5 MR. PETRAMALO: Yes.

6 MR. MILLER: Colonial Downs is speaking for  
7 the licensee. The breeders, Glenn Petty apparently  
8 has indicated that --

9 MR. PETRAMALO: He doesn't have any dog in the  
10 fight with regard to the contract.

11 MR. MILLER: Okay. Anyone with a dog in the  
12 fight, who -- I mean, well, even if someone doesn't  
13 have a dog in the fight, who gets hurt by what you  
14 all are agreeing to? Disregard the race days, just  
15 the other terms of the contract.

16 MR. PETRAMALO: In my opinion?

17 MR. MILLER: Yeah.

18 MR. PETRAMALO: No one. I don't think anyone  
19 is getting shafted. It's a fair and reasonable  
20 compromise. Am I completely happy? No. If you  
21 asked Ian Stewart if he's completely happy, I'm sure  
22 he's going to say no. It's a compromise. But I  
23 think it's a fair compromise that takes into account  
24 the economic reality of where we are at this time in  
25 racing in Virginia.



1 MR. SIEGEL: So it's safe to say you're in a  
2 heated agreement.

3 MR. WEINBERG: Right. That's exactly right.

4 MR. PETRAMALO: Yes. We're in a heated  
5 agreement.

6 MR. MILLER: Mr. Chairman, what I'm trying to  
7 get to is, I'm trying to see what my concern should  
8 be regarding the contract. I'm concerned with the  
9 racing -- I'm concerned about having appropriate  
10 days of racing to benefit the racing industry in  
11 Virginia and to do our -- meet our great challenge  
12 of promoting the equine industry and so on and so  
13 forth.

14 I also need to be concerned about whether the  
15 Commission gets enough revenue to oversee the  
16 operation, and apparently this had no affect on  
17 that. So beyond the racing days and that, Frank,  
18 tell me what I should be concerned about in the  
19 contract -- I mean, as a commissioner? I mean, why  
20 should that contract affect my decision relating to  
21 race days in any way, shape, or form?

22 MR. STEWART: I was going to say, if it's  
23 helpful, I'd be happy to explain our rationale for  
24 signing the contract.

25 MR. MILLER: Is that all right for him --

1 MR. BURNETT: If it's helpful to the  
2 Commission, I would be delighted to hear it.

3 MR. REYNOLDS: You've got 10 minutes, too.

4 MR. STEWART: I don't think I'll need that  
5 much.

6 The horsemen have certain areas that are of  
7 concern, and I wouldn't presume upon me to speak for  
8 Frank, but it seems to me that from our standpoint,  
9 we're looking at two things that we're basically  
10 trading off.

11 One, our OTBs and these particular areas are  
12 under financial pressure -- they're under extreme  
13 financial pressure. I think long term that  
14 pressure -- in my opinion, I could be wrong. I  
15 think that pressure will only increase.

16 On the other side of the equation, you got  
17 race days. I've spoken in front of the Commission  
18 for numerous years advocating a smaller meet.  
19 Obviously, this contract does not call for that. So  
20 basically from our standpoint, from my personal  
21 standpoint, I would rather be in a position where I  
22 had a better handle on the financial stability of  
23 the OTBs and take my chances on managing the 40-day  
24 race meet, as opposed to theoretically getting a  
25 shorter race meet and taking my chances on trying to

1 manage the financial stability of the OTBs. So  
2 that's my trade off.

3 MR. REYNOLDS: I have a question related to  
4 what Clint was asking. That is under the signal  
5 sales, you said last year if it had been in effect,  
6 the cap would have taken -- would have kicked in and  
7 you would have got a lot of this money.

8 MR. STEWART: We would have split -- we would  
9 have got about \$50,000 less.

10 MR. PETRAMALO: Right.

11 MR. STEWART: Frank would have gotten 50,000  
12 more.

13 MR. WEINBERG: So if you were measuring the  
14 shaft on an issue by issue basis, on that issue we  
15 did take the shaft on that issue.

16 MR. REYNOLDS: Okay. And then the three  
17 OTBs --

18 MR. WEINBERG: One could argue that the  
19 horsemen took the shaft on that issue. I would just  
20 offer a slightly different perspective. When you  
21 tie that into race days, it is much like what we did  
22 last year, but the Commission offered the horsemen  
23 the opportunity to buy additional race days. In  
24 essence, they're taking what would have been theirs  
25 on a fixed fee and saying, look, we'll share some

1 that on an evened out basis to buy more race days.  
2 That's one way to look at it. That's why they're so  
3 intertwined.

4 MR. BURNETT: Is it fair to say that you could  
5 be -- without this agreement, you could come to the  
6 Commission in a month, six months, ten months and  
7 say you know what, we decided to close three OTBs.  
8 We have to close them because based on what we have  
9 to pay the horsemen under the contract, we can't  
10 make this work. We don't have the option of paying  
11 a little bit to the horsemen. So it's close or  
12 close. That's our choice. Thereby, the horsemen  
13 lose that amount of money towards purses, and  
14 therefore, in some respects shot themselves in the  
15 foot by not undertaking this kind of reduction and  
16 sharing --

17 MR. WEINBERG: I'm sorry. I would footnote  
18 that and say the Commission loses that revenue, too,  
19 right?

20 MR. BURNETT: That doesn't bother our  
21 executive secretary a bit, does it?

22 MR. WEINBERG: Because all the stakeholders  
23 are, as you point out, taking from a gross amount of  
24 handle, not the bottom line of profitability.

25 MR. BURNETT: Sure.

1           MR. WEINBERG: So you're right. If trends  
2 continue, I think that's where we could find  
3 ourselves.

4           MR. STEWART: Yeah. I mean, obviously that's  
5 not anybody's goal and objective. We don't want to  
6 engage in that sort of negotiation unless it's  
7 absolutely forced upon us.

8           MR. BURNETT: Well, if you thought that the  
9 OTBs were going to be wildly successful and the four  
10 and a half percent to the horsemen was a pittance  
11 based on the gross you were taking in, then it would  
12 make sense for you to leave things the way they are  
13 and that's the deal they made. You're in these  
14 negotiations because it's a choice of cutting costs  
15 or closing, and the horsemen have an opportunity to  
16 contribute to that dynamic, if you will, which in my  
17 way of thinking makes the ADW piece that much more  
18 important.

19           I will be looking in that contract to see  
20 what -- I know this was touched on, but to see how  
21 fullsome and vigorous an effort the horsemen and the  
22 track are contemplating on making up for that, you  
23 know, pressure on OTBs, as Ian describes it,  
24 downward pressure being offset by ADW increases.

25           So I'm really interested in that piece because

1 something has to give here.

2 MR. PETRAMALO: Did you look at the numbers?

3 MR. BURNETT: No. I got the contract  
4 yesterday, Frank.

5 MR. PETRAMALO: No, no. I'm sorry. I'm  
6 jumping too far ahead. This is not in the contract.  
7 There's nothing of substance in the contract with  
8 regard to ADW, but what -- I got some numbers here  
9 that I think the Commission might be interested in  
10 to see where the handle is going.

11 MR. BURNETT: I've seen some of those numbers.

12 MR. PETRAMALO: Well, don't hold me to these  
13 numbers exactly, but it seemed to me that -- let me  
14 get the right numbers.

15 MS. RICHARDS: Here. Is this what you're  
16 looking for?

17 MR. PETRAMALO: Yes. Yes. The 2009 handle at  
18 the OTBs dropped almost -- this is thoroughbred  
19 handle now, dropped almost 18 percent or about  
20 21 million dollars. At the same time the handle  
21 on-line to the ADWs was up 37 percent, going up  
22 approximately 12 million dollars, 12 or 13 million  
23 dollars. So there's -- there is a migration. Now,  
24 obviously, the economy factors into the wagering,  
25 but there is a clear migration to on-line wagering.

1 MR. BURNETT: Hence, you're supporting my  
2 argument that I am looking forward to -- whether it  
3 be in our improvement meeting or whether it be in  
4 the contract, some vigorous exploration and attempts  
5 to take advantage of that phenomena.

6 So do we have other -- yes, sir. Go ahead.

7 MR. WEINBERG: Do you want just 30 seconds?

8 MR. BURNETT: Thirty seconds.

9 MR. WEINBERG: The contract just memorializes  
10 arrangements for implementing a strategy. It does  
11 not discuss an ADW strategy. So you will see  
12 references to shared ownership and the cost expense  
13 of touch screens and kiosks --

14 MR. BURNETT: I did see that.

15 MR. WEINBERG: -- but it's not going to lay  
16 out a strategy.

17 MR. BURNETT: Okay. Any other questions about  
18 the relationship between the contract and days, any  
19 other matter?

20 MR. REYNOLDS: What's still being negotiated?

21 MR. PETRAMALO: Nothing.

22 MR. REYNOLDS: Nothing.

23 MR. PETRAMALO: We have reached agreement on  
24 an amendment to the EZ Horseplay agreement between  
25 Colonial Downs and the HBPA. That also requires

1 agreement from the harness horsemen. I'm not sure  
2 where it stands on -- where that stands. That has  
3 to do with the operation of Colonial Downs' ADW  
4 company and our respective share in that.

5 MR. BURNETT: All right. We have before us a  
6 setting of race days, and we have -- while it hasn't  
7 been made formally, I think I understand from the  
8 stakeholders that they would prefer that we move it.

9 If you folks want to know my opinion, I don't  
10 see the danger in our setting the days today. I  
11 have not heard anything about this contract today  
12 that gives me heartburn that we won't be approving  
13 it, either every single dot and "I" and "T" or maybe  
14 we'll have some questions, but I don't see us making  
15 substantial changes to an agreement that's been  
16 carefully worked out. It's cutting the shrinking  
17 pie with a very sharp knife is what it looks like to  
18 me, but I think we should set days today. That's  
19 just my opinion.

20 I'll go with what the Commission wants to do.  
21 I will set them 40 days starting May 29th and  
22 running through 7/21, and racing days that the  
23 parties agreed on. Go ahead and let them close  
24 Friday and see how that works.

25 Any other discussion or thoughts?



1 MR. BROWN: Mr. Chairman, do we have a window  
2 of opportunity to change that if things change over  
3 the next 30 days, say our opinion of the horsemen's  
4 agreement with the track?

5 MR. BURNETT: I think that can be part of  
6 someone's motion, yes, subject to ratification at  
7 our next meeting after approving the contract.

8 MR. BROWN: I think we should go in that  
9 direction.

10 MR. MILLER: Mr. Chairman?

11 MR. BURNETT: Yes.

12 MR. MILLER: I agree with your comments. I  
13 didn't get a chance to read all of this. It's a  
14 pretty long contract. As I say, we just got it. I  
15 just got it by e-mail yesterday. I appreciate  
16 Frank's input and Ian's input on the contract.  
17 That's what I was trying to get at is what in this  
18 contract would jump out to me to cause me concern  
19 about what y'all have agreed upon as the basis for  
20 the agreement on the 40 days. Nothing jumped.

21 So I'm comfortable today. I would -- I'd be  
22 comfortable today voting for the 40-day meet because  
23 I think we need to get this meet -- the days  
24 established quickly. Competition for horses I  
25 understand is great and we need to get out and get

1           our horses locked in, get our people locked in for  
2           the meet.

3           As I say, nothing jumps out at me that causes  
4           me concern about the contract. My only problem with  
5           it is I haven't had -- not that I read every word,  
6           but I do try to look at the substance of everything  
7           that we have to eventually vote on to see what the  
8           ramifications are. So I would -- I assume that was  
9           a motion that you made?

10          MR. BURNETT: I'm delighted to make it one.

11          MR. MILLER: Well, if he makes it a motion, I  
12          will second it. I would vote for 40 days so that we  
13          can get the 40 days in the pipeline today. So we  
14          have our 40-day meet set, and I'm comfortable  
15          that -- I don't believe I'm going to find anything  
16          that would cause me to have concern about what you  
17          all have agreed between yourselves, because I don't  
18          see anything -- from what you have explained,  
19          there's no points in there that cause me great  
20          concern as a commissioner.

21          Now, if I were one of you all, I might be a  
22          little concerned about what I've agreed to and I may  
23          go home and have buyer's or seller's remorse, but  
24          that's your problem. I don't see anything from my  
25          standpoint being a commissioner in trying to promote

1 the racing industry, so on and so forth, that causes  
2 me concern with the contract.

3 I do have one concern, and that is I wish --  
4 and I guess in a perfect world it would happen, if  
5 only this horsemen's agreement would have been  
6 agreed to earlier, if only it could have been gotten  
7 to the Commission at an earlier date, if only it  
8 would have been -- we would have had time to review  
9 it before today, we wouldn't have to take up all  
10 this time.

11 So I would second the motion. Go ahead with  
12 setting the 40 days today. I'm comfortable with it.  
13 I would suggest that if I were you all, I would be  
14 comfortable with it at this point also.

15 MR. BURNETT: Any further discussion?

16 I think I heard a friendly amendment from  
17 Mr. Brown, that we reserve the right to modify our  
18 day request -- our day award should we see that to  
19 be appropriate upon review of the contract at our  
20 next meeting. Do you have a problem with that?

21 MR. MILLER: That should make them even more  
22 comfortable.

23 MR. BURNETT: All right. All in favor  
24 indicate by saying aye.

25 Note: (Aye.)

1 MR. BURNETT: Motion carries. Days are  
2 awarded.

3 We need to move along so we can go into a  
4 closed meeting very briefly. Here's what I propose  
5 we do. Is there any member of the public that  
6 wishes to address us?

7 Seeing none, we'll move to the next item,  
8 which is setting the next meeting. Any problem with  
9 February 17th?

10 All right. February 17th is our next meeting.

11 We're going to go into a closed meeting and  
12 we'll come back out, adjourn this, and go into the  
13 appeal of Mr. Gray, who I understand is not coming.  
14 We'll deal with that, I think, fairly quickly. I  
15 hope that this closed meeting doesn't take more than  
16 15 or 20 minutes.

17 In accordance with the provisions of Virginia  
18 Code Section 2.2-3711, I move that the Commission  
19 convene a closed session for the purpose of  
20 discussion or consideration of prospective  
21 candidates for employment pursuant to Section  
22 2.2-3711 (A) (1). Can I have a second?

23 MR. BROWN: Second.

24 MR. BURNETT: Commissioner Brown seconds. All  
25 in favor indicate by saying aye.

1 Note: (Aye.)

2 MR. BURNETT: We're in closed session. Thank  
3 you.

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

7 MR. BURNETT: Back in session.

8 In accordance with Virginia Code Section  
9 2.2-3712 that to the best of each member's knowledge  
10 that only public business matters lawfully exempted  
11 from open meeting requirements under this chapter  
12 and only such business matters as were identified in  
13 the motion by which the closed meeting was convened  
14 were heard, discussed, or considered in this  
15 meeting. It's a roll call vote. I'll start to my  
16 left. Mr. Miller?

17 MR. MILLER: Aye.

18 MR. BURNETT: Mr. Reynolds?

19 MR. REYNOLDS: Aye.

20 MR. BURNETT: Mr. Brown?

21 MR. BROWN: Aye.

22 MR. BURNETT: Mr. Siegel?

23 MR. SIEGEL: Aye.

24 MR. BURNETT: The chair votes aye. That's  
25 unanimous. We finished that session.

1           The only thing we have left in this meeting is  
2 to go into adjournment and then to the stewards  
3 appeal or the appeal of the stewards' ruling,  
4 unless -- I see Mr. Weinberg here, there is anything  
5 further from the racetrack.

6           MR. WEINBERG: No.

7           MR. BURNETT: Great. Thank you.

8           From the horsemen --

9           MR. PETRAMALO: No.

10          MR. BURNETT: -- anything further?

11          Thank you.

12          We stand in adjournment and we'll now move to  
13 the appeal of -- I expressed to Vic in the presence  
14 of some of the commissioners that there's a couple  
15 items that I think would be beneficial for us to  
16 discuss or deal with.

17          One is it's been our practice when someone has  
18 filed an appeal not to require collection of the  
19 penalty or fine imposed by the stewards, even though  
20 our regulations require that we do so. That's what  
21 happened in this case. So we want to correct that  
22 in the future to be sure we collect the money from  
23 these individuals. If they prevail in their appeal,  
24 they'll get their money back, which might be some  
25 level of incentive for them to show up.

1           Secondly, because someone calls us and,  
2           quote/unquote, cancels after having requested that  
3           we postpone it for their convenience because they've  
4           been ill, and the good news is we did not bring a  
5           steward from California here to testify, that  
6           because they called and cancelled doesn't mean that  
7           we are not able to act on the appeal and review  
8           whatever penalty was imposed by the stewards and  
9           leave it the same or modify it.

10           This is a record appeal. I've read the record  
11           such as it is. It's about two pages. I personally  
12           have no reason to substitute my judgment for that of  
13           the stewards who saw the incident. It was the kind  
14           of incident that probably required eyesight versus a  
15           verbal description -- or a written description to be  
16           able to fully understand. Not only that, they were  
17           experienced eyes, not amateur eyes. So my view  
18           would be that we not overturn that. We can vote on  
19           that here in a moment.

20           My other thought is, offended is probably too  
21           strong of a word, but I think we are being toyed  
22           with to a certain extent or we're being treated in a  
23           very casual manner by this fellow who has challenged  
24           the judgment in any event of our stewards, and I  
25           think at some level it makes a mockery of our appeal

1 process when someone just sort of plays with it and  
2 ignores it.

3 So my thought is Mr. Gray is in the  
4 unfortunate position of being the example we use to  
5 say that we don't like that conduct. By way of  
6 example, I mean I think his fine gets increased. I  
7 don't like kicking horses anyway. If you're going  
8 to kick a horse and make those kinds of excuses  
9 about it, you're getting off lightly with \$200. I  
10 have two reasons to want to increase his fine.

11 Those are my thoughts. I share them with my  
12 fellow commissioners and hearing --

13 MR. SIEGEL: What's the penalty again?

14 MR. BURNETT: The penalty was \$200 for kicking  
15 the horse. He said his foot slipped off the peg,  
16 and that it was a defective design.

17 MR. SIEGEL: I read that. So there's no other  
18 penalty other than a \$200 fine?

19 MR. BURNETT: Right.

20 MR. MILLER: Is that the maximum?

21 MR. LERMOND: The minimum was \$200 fine, they  
22 could have also suspended him or they could have  
23 done both.

24 MR. BURNETT: No. I was just saying what was  
25 imposed --



1 MR. LERMOND: Right.

2 MR. BURNETT: -- but they're talking about the  
3 range it could have been.

4 MR. LERMOND: They went with the minimum fine.

5 MR. SIEGEL: It sounds like he got off easy to  
6 me.

7 MR. BROWN: He got off very easy.

8 MR. MILLER: There are suspensions that  
9 need --

10 THE REPORTER: I'm sorry, Mr. Miller. I can't  
11 hear you.

12 MR. MILLER: There are suspensions that take  
13 place during the meet, but I know that there are  
14 still suspensions that take place -- whether it's  
15 suspended for a period of time, whether there's a  
16 meet or not. I mean, can we suspend him from  
17 participating in the harness meet for 2010?

18 MR. LERMOND: If you suspend him say right now  
19 for three days, we'll put that in the RCI system and  
20 wherever he's racing, whether it's Pennsylvania or  
21 Delaware, they will reciprocate and also suspend him  
22 in that jurisdiction. You don't have to wait for  
23 him to come back to shut him out of business here.  
24 You can do it wherever else he's operating.

25 MR. BURNETT: But to be clear, if you suspend

1 him for three days commencing today, he can't enter  
2 a horse today, tomorrow, or the next day anywhere,  
3 but if he wasn't going to race anyway, those three  
4 days doesn't matter, right?

5 MR. LERMOND: That's correct.

6 MR. MILLER: But we can't suspend him for  
7 three days for -- for a three-day period during the  
8 2010 meet?

9 MR. BURNETT: I think you can.

10 MR. HARRISON: We had a thoroughbred incident  
11 a year ago where we did just that. She took her  
12 horse from the test barn, remember? And you said  
13 her days would apply to the next year's thoroughbred  
14 meet. I don't know if that's eventually what  
15 happened, but it was discussed.

16 MR. BROWN: That was this past year.

17 MR. BURNETT: It strikes me that another --  
18 and correct me if I'm wrong on this, if we impose a  
19 fine and say that he is suspended until the fine is  
20 paid in full and he recedes here, is he suspended  
21 until that money shows up here?

22 MR. LERMOND: Well, we would say that the  
23 money had to be here in 72 hours, and if it was not,  
24 at that point then we would notify the jurisdictions  
25 where he is racing and they would not allow him to

1 participate until the fine was paid here.

2 MR. BURNETT: Until you put it in the computer  
3 that you received the money?

4 MR. LERMOND: That it's been paid, correct.

5 MR. BURNETT: So he has 72 hours to get the  
6 money to us?

7 MR. LERMOND: That's correct.

8 MR. BURNETT: So just to use an example, if we  
9 impose a fine -- regardless of what it is, 200, 300,  
10 500, and he didn't have any money. He had to go  
11 hustling around to get it and it took him three days  
12 to get the money, he'd be suspended on day four when  
13 he dropped it in the mail and the post man would get  
14 it here and you open the mail, and there's the  
15 check. You choose whether to let the check clear  
16 first or go ahead and immediately post it, whatever  
17 your practice is, and at such time as you deemed  
18 that that was paid by whatever your standard is, you  
19 would type into the RCI system, "Paid. Suspension  
20 lifted." He'd be back in business.

21 MR. LERMOND: That's right. I think he would  
22 get 72 hours after he was notified of the fine, if  
23 it's not the same fine.

24 MR. BURNETT: Fair enough. Fair enough.

25 MR. SIEGEL: How do you communicate with him?

1 MR. RONEY: Mr. Chairman, may I address that?

2 MR. BURNETT: Please.

3 MR. RONEY: Mr. Chairman, I communicated with  
4 Mr. Gray by phone so he's pretty accessible by cell  
5 phone.

6 MR. PETRAMALO: Is he from Virginia?

7 MR. BURNETT: He is from Chester, Maryland, if  
8 I'm not mistaken.

9 MR. HARRISON: Joe, can you just describe how  
10 the phone call went this morning?

11 MR. RONEY: Mr. Gray left a voice mail message  
12 on my machine at six-thirty this morning saying that  
13 he had planned to attend, but his horse was colicky.  
14 He got a call from the barn, and therefore, had to  
15 go to the barn to take care of the horse who was  
16 colicky and would not be here and would send a  
17 check, drop a check in the mail to us.

18 So after whatever decision is made here today,  
19 I will certainly call Mr. Gray and inform him. I  
20 assume we would follow-up with a letter stating that  
21 the fine is blah, blah, blah, to be paid within 72  
22 hours or he will be suspended.

23 MR. SIEGEL: Suspended for?

24 MR. RONEY: Failure to make --

25 MR. SIEGEL: For what period?

1 MR. BURNETT: Until the fine is paid.

2 MR. RONEY: Until the fine is paid.

3 MR. SIEGEL: There's no penalty if he's not  
4 racing.

5 MR. BURNETT: That's right. Presumably,  
6 he's -- as most horsemen are, finding spots for  
7 their horses all the time, you know. It's just a  
8 matter of where he's going with his horses. I don't  
9 know what his home base is.

10 MR. SIEGEL: He's suspended for the next three  
11 days, he could just wait four days before he --

12 MR. BURNETT: That's right.

13 MR. PETRAMALO: Does he regularly race here,  
14 Joe?

15 MR. RONEY: Yes.

16 MR. PETRAMALO: So it's likely he would be  
17 coming back next fall.

18 MR. BURNETT: You know, my inclination would  
19 be to impose an increased fine and put a payment by  
20 a date certain. Let us pick the 72 hours. He gets  
21 a phone call notice and we say if -- the form of  
22 payment, cash or cashier's check, received in this  
23 office by this date, and if it's not, until it is  
24 you're suspended. That is where I would go with it.  
25 That way it's very clear we're not dropping checks

1 in the mail.

2 MR. SIEGEL: So it's not a three-day  
3 suspension, it's a long-term suspension until it's  
4 paid. I like that better.

5 MR. BURNETT: It's indefinite until he pays  
6 it.

7 MR. SIEGEL: There is some way by which he  
8 must pay it to race.

9 MS. DILWORTH: It bears pointing out that the  
10 procedure for withdrawing an appeal were not  
11 followed here.

12 MR. BURNETT: I'm sorry. That he didn't  
13 follow. Right.

14 MS. DILWORTH: For withdrawing the appeal,  
15 which is what he did this morning.

16 MR. MILLER: We're treating it as if he  
17 didn't.

18 MR. BURNETT: Exactly.  
19 Dennis?

20 MR. WEST: Mr. Chairman, when you enter  
21 something in RCI as far as the suspension, if he's  
22 racing in Pennsylvania, unless they check the RCI  
23 record, they're not going -- he's still going to  
24 race in Pennsylvania. If he's racing in West  
25 Virginia, Maryland, unless somebody -- unless we

1 call the jurisdiction, we know where he's racing,  
2 nobody is going to honor it unless they actually  
3 check the RCI.

4 MR. BURNETT: Well, with racing secretaries  
5 across the country, isn't it our practice and the  
6 practice of most jurisdictions that when someone  
7 enters, they check them in the computer?

8 MR. WEST: We do.

9 MR. BURNETT: Some do, some don't is what  
10 you're saying.

11 MR. WEST: Right. I mean, he may be already  
12 racing there. They may have already run the RCI  
13 record. They're not going to go back and run  
14 another record.

15 MR. BURNETT: Without re-enter is what you're  
16 saying.

17 MR. WEST: He starts the meet clean, and they  
18 just sort of leave it at that.

19 MR. LERMOND: We can call the judges in that  
20 jurisdiction and inform them that they have someone  
21 that's suspended that is currently participating,  
22 and they would take care of it just as we would if  
23 another jurisdiction calls us with the same  
24 information.

25 MR. BURNETT: Before we get too far into

1 resolving this, let's make sure from our counsel  
2 that we're satisfied that the appeal withdrawal  
3 process was not followed and that we have not  
4 permitted the appeal to be withdrawn and that we are  
5 undertaking a review of that stewards' decision now.  
6 That's what this process -- this hearing we're in  
7 right now is. Is there any reason that we can't do  
8 it that way?

9 MS. DILWORTH: If I recall the regulation  
10 correctly, an appeal must be withdrawn within 72  
11 hours of its filing by permission of the Commission  
12 only.

13 MR. SIEGEL: Prior to 72 hours.

14 MR. BURNETT: Right.

15 MS. DILWORTH: Within 72 hours of the time  
16 that it was filed.

17 MR. BURNETT: So once they file it, they have  
18 three days to change their mind. Is that what it  
19 amounts to?

20 MS. DILWORTH: But they have to -- it has to  
21 be by permission of the Commission.

22 MR. BURNETT: I just want to make sure we're  
23 maintaining our own process here.

24 MS. DILWORTH: Yeah, I know.

25 MR. BURNETT: It wasn't withdrawn, and it



1 requires, I know, the permission of the Commission  
2 to withdraw it, so here we are.

3 MR. MILLER: Mr. Chairman, if we're going  
4 forward with the hearing --

5 MR. BURNETT: We are.

6 MR. MILLER: -- we need to for the record get  
7 the steward to make the report of the violation  
8 because this is the hearing.

9 MR. BURNETT: Right.

10 MR. MILLER: We're having an appeal hearing,  
11 so we better have this a part of the record, the  
12 fact that he doesn't show on such and such a date.

13 MR. LERMOND: Mr. Miller, this was a harness  
14 meet. There were three judges, and none of them  
15 could be here. They're all -- one is in Florida,  
16 one is in California.

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

18 MR. PETRAMALO: You have the stewards' report.

19 MS. DILWORTH: That's your record.

20 MR. MILLER: Where is that?

21 MR. LERMOND: Tab 7 of your book.

22 MR. PETRAMALO: You have the stewards' report  
23 and the assessing of the fine. He's appealed that,  
24 has not shown up for the appeal. So, in effect,  
25 you're entering a default judgment, are you not?

1 MR. BURNETT: I think that's right. I think  
2 this is in the nature of ex parte proof.

3 MR. PETRAMALO: Well, you don't need it. The  
4 appeal record is before you. The appellant hasn't  
5 shown up to argue on his own behalf, so I would --

6 MR. MILLER: Make sure that the record notes  
7 that the appeal record is before us in our packets  
8 setting forth the violation, setting forth the  
9 ruling of the stewards, and just to be safe, I move  
10 that that be made a part of the record of this  
11 proceeding today.

12 MR. BURNETT: The chair seconds. All in favor  
13 indicate by saying aye.

14 Note: (Aye.)

15 MR. BURNETT: All right. So the items  
16 contained at Tab 7 in our packet, which are several,  
17 including the notice of the hearing, the stewards'  
18 hearing, the photograph and some handwritten notes  
19 and a handwritten appeal from Mr. Gray, what  
20 purports to be an appeal, notice of appeal, and  
21 notices to Mr. Gray of this hearing are all part of  
22 that packet.

23 MR. PETRAMALO: Have there been previous  
24 postponements of this hearing?

25 MR. BURNETT: Yes.

1 MR. MILLER: At his request.

2 MR. BURNETT: Yes, at the request of Mr. Gray.  
3 I would note that the notice of stewards hearing in  
4 the -- at the bottom of it, the box with fine of  
5 \$200 is checked to be paid within 72 hours. To my  
6 knowledge based on what I've been told by, I guess,  
7 Mr. Roney and Mr. Lermond, that that \$200 has not  
8 been paid as far as I know.

9 MR. LERMOND: The actual ruling is also in the  
10 packet.

11 MR. BURNETT: Thank you. The ruling itself.  
12 Thank you.

13 MR. LERMOND: Signed by all three.

14 MR. BURNETT: I think we're in a procedural  
15 posture to rule on this appeal at this point. Do we  
16 have a motion? If not, I'd be delighted to make  
17 one.

18 MR. SIEGEL: So move.

19 MR. BURNETT: Move to -- do you have a motion  
20 as to what penalty to impose?

21 MR. SIEGEL: Yes. A \$200 penalty must be paid  
22 within 72 hours or he's suspended until paid,  
23 correct? Is that what you said?

24 MR. BURNETT: We did. Would you accept a  
25 friendly amendment to increase that \$200 because of

1           what he has -- that's what he got from the stewards?  
2           He's put us through all this hoo-ha and said he's  
3           canceling and dropping his check in the mail.  
4           That's not my idea of how one complies with our  
5           rules. And when you don't show up to argue your  
6           case, sometimes it doesn't go as well as you had  
7           hoped. I would like to make that point to him.

8           MR. SIEGEL: Increasing it to?

9           MR. BURNETT: \$500. Since the 200 was the  
10          minimum for kicking the horse that day. My number  
11          is 500. I just think it ought to be increased.

12          MR. SIEGEL: Is there an appeal process that  
13          goes beyond this?

14          MR. BURNETT: Sure. He can go to the Circuit  
15          Court of the City of Richmond.

16          MR. PETRAMALO: This is the third time he  
17          hasn't show up?

18          MS. DILWORTH: Second.

19          MR. BURNETT: The second time he hasn't shown  
20          up. Right.

21          MR. BROWN: One time before. Let's see. It  
22          was on the calendar, I think, for December. Maybe  
23          it was November.

24          MS. DILWORTH: It happened in November.

25          MR. PETRAMALO: This is the third time. I was

1 looking forward to the hearing. That's why I was --

2 MR. BURNETT: So you've got to factor in there  
3 for disappointing Frank, too.

4 MR. SIEGEL: I don't have a problem with  
5 increasing it to that amount, but we haven't  
6 discussed it. I would leave it open for anyone  
7 else.

8 MR. BURNETT: Yeah. Sure.

9 MR. MILLER: Well, I hate to go against my  
10 chairman, but I have to say this. I will agree to  
11 increasing the fine but for a different reason,  
12 because to increase the fine based upon a person not  
13 carrying through with their rights of appeal -- when  
14 you're given the right of appeal, it's frowned upon  
15 to say the least.

16 A person should never be punished for  
17 exercising their rights. He had a right to appeal  
18 and he had a right to ask for a continuance. We  
19 didn't have to grant the continuances, but he had a  
20 right to do everything that he's done, but I would  
21 increase the fine from \$200 to \$300 for the  
22 following reason.

23 What he did according to the record is  
24 egregious to mistreat -- he mistreated his own horse  
25 in a race, and that's bad enough. The mistreatment

1 is not just a -- something that happened, oh, by the  
2 way, this is what happened. It was an act of  
3 cruelty toward the animal, and secondly, according  
4 to the record from his own admission, he doesn't  
5 seem to grasp the gravity of what he did. For that  
6 reason, I would increase the fine to \$300 rather  
7 than \$200.

8 MR. SIEGEL: I think that sends a signal, and  
9 I would accept that as a friendly amendment to my  
10 motion if it's okay with you, Mr. Chairman. Do I  
11 get a second?

12 MR. BURNETT: I would be delighted to second  
13 that motion with one comment, and that is only to  
14 clarify. I don't have a problem with someone  
15 exercising their rights and I don't want to punish  
16 him for exercising his rights. To the extent that I  
17 was punishing him for any procedural irregularity is  
18 that he didn't follow our procedures in terms of  
19 withdrawing his appeal. He set us up for it.

20 If Mr. McLaren had come from California at the  
21 cost of \$1,200, I would be asking the Commission to  
22 impose that \$1,200 on him. I think he's  
23 inconvenienced my fine colleagues and caused us to  
24 stay here later. That's where I was coming from.  
25 Let's go with your basis because I think it's good

1 and solid, and I agree with it.

2 MR. MILLER: Okay.

3 MR. BURNETT: All right. Any further  
4 discussion?

5 All in favor of a penalty of \$300 to be paid,  
6 let's put a -- in cash or certified check on or  
7 before what date? Today is --

8 MR. PETRAMALO: Today is the 20th.

9 MR. BURNETT: -- Wednesday the 20th. Does he  
10 get the weekend? We'll get give him until -- since  
11 this talks in hours, by 1:00 p.m. on Monday,  
12 January 25th. If it's not received by then, his  
13 license shall be suspended until it is. Is that  
14 fair?

15 I understand that Mr. Roney and Mr. West will  
16 check with the appropriate judges in the appropriate  
17 local jurisdictions to make sure they're aware of  
18 this to ruling.

19 All right. Anything further in this appeal?  
20 Thank y'all. Wisdom prevails.

21 Note: The hearing concluded at 12:42 p.m.

22

23

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## 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 January 20th, 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 27th day of January, 2010.

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Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011