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
I N D E X

1. Election of Chairman for 2010

2. Election of Vice Chairman for 2010

3. Approval of the minutes of the regular meeting
   of December 16, 2009

4. Commissioners Comments

3. Committee Reports—None

4. Executive Secretary's Report
   a. Horse Slaughter Issues
   b. Recent ARCI Approved Rules
   c. Next VRIG Meeting Date

5. Stakeholders
   a. OTB/SWF January Hours of Operation Request
   b. Request from Colonial Downs for 2010
      Thoroughbred Race Days
      i. Presentation from Colonial Downs
      ii. Presentation from VaHBPA
      iii. Response from VTA
      iv. Response from General Public

6. Public Participation

7. Set next meeting -- February 17, 2010

8. Adjournment

9. Appeal hearing on the matter of Mark Gray
MR. BURNETT: We're a little late starting this morning. I apologize. We let our security man get the doors open for the public. We don't want to exclude anybody from this fine meeting. We have such large crowds.

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

Gentlemen, any thoughts one way or the other?

MR. BROWN: I would make a suggestion.

MR. BURNETT: Would that be a motion?

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

MR. SIEGEL: And vice chair as well.

MR. BROWN: And vice chair as well.

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

MR. BROWN: Yes, sir.

MR. REYNOLDS: Second.

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

All in favor?

Note: (Aye.)

MR. BURNETT: All right. That's done. Thank
y'all.

MR. PETRAMALO: Congratulations.

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

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

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

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

MR. HARRISON: Okay.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

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

MR. BURNETT: Do we need an and between Brown
and passed?

MR. MILLER: The motion was seconded.

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

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

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

MR. BROWN: Are you going to omit rousing?

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

MR. HARRISON: Spirited.

MR. BURNETT: Whatever you like.

Any further observations with regard to the minutes?

Is there a motion?

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

MR. BROWN: Second.

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

All in favor indicate by saying aye.

Note: (Aye.)
MR. BURNETT: All right. Go into commissioners comments.

Fellow commissioners, any comments about anything at this point?

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

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

As the bill is currently proposed, 50 percent of that amount or 41 million dollars roughly would go to the state and 40 percent of that, roughly 32
or 33 million dollars would go -- 34 million, I think, would go to the licensee, leaving approximately 8.2 million dollars to be divided among horsemen for purses and other stakeholders.

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

MR. PETRAMALO: Right.

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

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

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

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

MR. BURNETT: No, more the division. Have I
characterized the division accurately as you all understand the bill?

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

MR. BURNETT: That's right.

MR. PETRAMALO: Identical.

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

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

Thank you. I just wanted to put that out there, that's it there. I don't know if anybody
wants to comment on the bill itself, but I have not
heard anyone suggest that it will receive treatment
any differently from what it received last year, for
what's that's worth.

Any other comments?

Committee reports, we have none.

Executive secretary's report. Mr. Harrison?

MR. HARRISON: Thank you, Mr. Chairman.

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

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

Well, it's not the state of New York. The New
York Racing and Wagering Board is not acting on
anything relating to horse slaughter at this time, but NYRA has. NYRA that owns and -- operates at least Aqueduct, Belmont, and Saratoga, they came up with a policy on their own, but it's not mandated by the state. So there are a couple of inaccuracies in there.

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

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

I also included an article written last year by a Ray Paulick of Blood Horse, because in this article by Ray Paulick, he lists many of the steering groups, the NTRA, the Breeders Cup, Jockey Club, Keeneland, Magna, the NHBPA, and it's interesting that some of these organizations are
willing to step up to the plate and take a stand, one way or the other, and others are non-committal, because it's very complex issue, the whole issue of the expiration of a horse's life and how you deal with the ramifications of that.

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

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

MR. HARRISON: Where?

MR. BURNETT: In New York or --

MR. HARRISON: In New York --

MR. SIEGEL: Or anywhere.

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

MR. SIEGEL: The Commission would?

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

MR. SIEGEL: In this particular case.
MR. HARRISON: Yeah. The Racing Commission in New York is not looking at this issue at the moment.

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

MR. PETRAMALO: No. No.

MR. SIEGEL: You're saying no?

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

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

MR. BURNETT: Well, depending on the state.

MR. HARRISON: Right.

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

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

MR. BURNETT: Right.

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

MR. WEINBERG: Or the Commission adopting regulations.

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

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

I just raise that as a hypothetical. It's very difficult. Some horses that come off the racetrack are in such a condition from a soundness standpoint and from a mental stability standpoint, that they are a danger to anything other than an experienced handler of horses. They can oh so
easily get into the hands of someone that doesn't
know what they're holding, and they can inflict
significant human injury on a moment's notice, in a
heartbeat. That's just a philosophical question if
everybody is playing by the rules and how you go
about it all.

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

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

MS. RICHARDS: Well, I live in Clarke County,
which butts up to West Virginia, and we're having a
very serious problem. The good news is because we're a very small county, we can experiment and we're coming up with a county policy because this is very much in our face right now.

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

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

MS. RICHARDS: The only successful places so far have been those with slot money that have built actual facilities to take a horse and hold it until
they can deal with it in some manner --

MR. SIEGEL: Right.

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

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

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

MR. BURNETT: That's it.

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

MR. BURNETT: That's just thoroughbred. We haven't added the standardbred population to it or the quarter horse population to it.
MR. BROWN: I mean, it's huge. People are giving horses away and can't give them away.

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

Do you have any thoughts, Doc?

DR. HARDEN: Thank you.

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

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

Unwanted horses has become a huge issue nationwide. The wild horse population out west, out there on the plains, that's a huge problem. They need to round those up and contain the numbers. A lot of animal rights groups are very much
interfering with land management insofar as how to
maintain them healthily. They're trying to stop any
control of the wild horses. The population is going
to become such that they're now going to be subject
to disease and starvation and all the other forms of
death, which are probably worse than a humane
slaughter.

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

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

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

You know, to me it all turns on how you define
euthanizing and humane treatment. As you said,
nature does things to animals that if at the hand of
a human being would be characterized as inhumane.
So it is a thorny issue, and anything that you can do as we go forward to keep us abreast of choices, solutions, problems, different things, different ways of trying to get our arms around this problem, we would greatly appreciate it.

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

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

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

MR. BURNETT: RCI rules.

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

There are four of them here. The first one relates to realtime transaction monitoring. This is
a wagering monitoring system that's been in and out of the news for the past few years. Actually, ever since the programmer from Autotote was able to get into the pari-mutuel pools and manipulate them with respect to the pick six wager that happened on Breeders Cup Day in 2002, there's been a call for an independent, outside auditor to monitor the wagering activity in realtime.

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

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

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

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

MR. HARRISON: The next item falls under the
heading of racing secretary, and it relates to jockey weights. So the recommendation was that a notice shall be included in the daily racing program that all jockeys will carry approximately three pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in the required weighing out procedures. Additionally, with the stewards' approval, jockeys may weigh in with an additional three pounds for inclement weather gear.

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

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

MR. HARRISON: Right.

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

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

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

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

MR. HARRISON: Steve Barham.

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

MR. HARRISON: Right.

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

MR. HARRISON: Okay. I'll get back to that.
That was not intentional.

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

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

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

As a segway into asking the horsemen to comment, I understand from Robin Richards that the
National HBPA is very keen on jockey fees being reflective of local practice and local control and I wanted to, one, confirm that, and two, ask if this suggestion under Rule G that you just read of having owners and jockeys present an agreement to the Commission 30 days prior to the start of a race meet is something that the HBPA and the VHBPA for that matter would think might make sense for us here.

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

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

As it stands, I haven't looked at this in a while, but the -- my impression is that the jockey fees here at Colonial are probably slightly lower
than the suggested one. The last time I looked we
had a policy, jockeys were paid 10 percent of the
winning purse -- 10 percent for winning, five
percent for second, five percent for third, and then
there were set amounts for unplaced finishes
dependent on the size of the purse in that race.

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

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

MR. BURNETT: Well, let me make sure I am
reading this correctly. I don't read this rule as
RCI dictating anything. What I read it as -- it's
almost a three-step process, but the first step is
the owners and jockeys before a particular meet
even, whether it's -- whether it's the same state in
the same year, but before a meet should present a schedule and to me it can't get a whole lot more local than that or more focused on the jockeys that actually ride there. And in the absence of that happening, that the Commission should take into account local conditions and total purses that are paid to the facility and that they should use this default as a guideline.

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

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

MR. PETRAMALO: Well, I think the problem with the guidelines is that the guidelines tend to be regarded as the model. So if I'm representing the Jockey Guild and the HBPA offers five percent, and I
say, well, wait a minute. The national standard is
seven percent. Why in the world would I agree toive percent? That's the problem.

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

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

    MR. BURNETT: I'll make one last comment here.
To the extent that the Jockey Guild doesn't
represent jockeys as a whole and they're left with
sort of a mishmash arrangement of representation, I
think that augurs for there being some protection of
the individual who may be only coming down here
riding a few races in a meet that's not of great
duration, not a lot of organizing for it by jockeys
and other stakeholders. It's something that the
Commission ought to make sure that there are
reasonable parameters on, that we don't want
Virginia racing, for example, to have the
representation of gouging jockeys nor do we want
them to have the representation of owners getting
gouged by jockeys.

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

MR. HARRISON: I'll make it happen.

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

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

Any further comment on that subject?

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

MR. HARRISON: No. There was one more RCI
rule to discuss.

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

    MR. HARRISON: That was postmortem exams.

    MR. BURNETT: Right.

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

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

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

    So we basically have been operating under the
field necropsy clause that's recommended if time or
distance preclude transport to a veterinary
laboratory. Sometimes in a field necropsy, we'll
transport a horse to one of the state laboratories,
either in Warrenton or in Ivor and they will do it,
or on occasion we have performed field necropsies
here on the grounds.

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

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

DR. HARDEN: I'm not aware of anything
succinctly prepared like that. They have a lot of
guidelines that are in other areas of their policies
that you can infer or whatever, but I think their
guidelines are going to have words like humanely and
for the welfare of the horse, and things like that
that are very much subject to individual
interpretation.

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

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

MR. BURNETT: Thank you.

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

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

MR. HARRISON: That's right.

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

MR. HARRISON: That's right.

MR. BURNETT: Thank you.

Anything further on the ARCI approved rules?

MR. HARRISON: No.

MR. BURNETT: Okay. Now to item C.

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

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

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

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

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

MR. WEINBERG: I'd be happy to.

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

MR. BURNETT: If I might comment, and I would invite you to correct me if I'm wrong, Mr. Weinberg, but I think there may be some difference of viewpoint of whether the regulations contemplated a track coming to the Commission for changes in hours
versus changes in lists of tracks. I think from a regulatory, remedial, assert your jurisdiction type of viewpoint, the broader definition would be one that the Commission would say, yeah, that fits us, and the racetrack says leave us alone. Let us do our own business. We say no, no. It's in our definitions.

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

I think it's important that the Commission understand what's going on in the trenches with racing and looking at summaries at the end of a monthly meeting is of some benefit, but when Jeanna comes forward and says nobody is home on this date and this date and this date and to make this thing
work, we need to do this and that, I think it is
more information for this Commission to absorb and
understand what is happening in the racing
landscape.

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

Any comment or --

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

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

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

Candidly, I was going to raise this in a
letter just so that we could get on that same
conceptual path, but I think hours of operation were
addressed in the licensing process. You may recall
every time a license is issued, it says to the
extent that you deviate materially from the terms of
this license, you need Commission approval.

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

MR. STEWART: No. That's correct.

Historically, I think we've communicated from time
to time, and I don't know whether in this case it
was different. Maybe it was; maybe it wasn't.
We're happy to do whatever is reasonable. Like I
said, it's all a matter of degree.

MR. BURNETT: Yeah. I agree with that. I
think, you know, of the hours open, half an hour in
a day is a percentage point or two. A full day is
15 percent, if you will, or seven roughly. So in
the world of -- if you announced a drop in gross
sales of 15 percent, people at the stock market wake
up. If you announce a half percent change, big
deal. So I agree with you. I think perhaps a
little back and forth, whether by letter, talking
with Vic, or however you want to do it, let's just
agree on some reasonable parameters that we'll know
about and that we should weigh in on or be notified
of and other ones are, you know, rise to -- or lower
themselves to the level of nitpicking, which is not
where we want to be.

MR. WEINBERG: I agree.

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

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

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

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

MR. BOUZEK: Right. That's a copy of the 2008
schedule. What's in yellow we can't take because of TrackNet. What's in blue is not offered this year. So what we've done is we closed our sites at seven o'clock on Sundays and Mondays, because there's only one harness track running on Sunday nights now. Mountaineer is not running. Del Mar is not running. So we can't keep a site open for one track. And then all of our sites are closed on Tuesday now. We had three sites that were open, but they're closed now because the content is just not there.

We're finding that our customers are waiting for the other days to come. Scott County we closed on Sundays altogether because, you know, we had 12 people coming in there. It just wasn't feasible. The thought process is we -- you know, we talk a lot to our customers. We're only going to come two days, and Sunday wasn't the day, then we're not losing that customer. They're coming two other days.

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

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

MR. HARRISON: Commissioner Siegel, to your
point, I did make the request in writing to the racetrack that for future such requests that they include the schedule as it is and the schedule that they are requesting.

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

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

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

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

MR. STEWART: It's probably less than that, because the only -- we closed like three Tuesdays out of the eight. So that's probably in itself maybe three percent, three or four percent. The
rest of it might be another point or two.

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

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

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

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

    So to be fair to the customer, we like to post what the hours are going to be because you don't want somebody driving up from North Carolina to find that you closed because you didn't have any
customers. We're trying to provide customer service and --

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

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

I sometimes worry -- and our legislative wizard to my left can help with this, but I just worry sometimes that when a legislator asks, what are y'all doing down there? Did you know that this happened in my jurisdiction? Did you know about that? I think the Commission always wants to be in a position of being aware of all the details. So we can say, yeah, we knew about that. Here's the
reason. We give them the Jeanna Bouzek speech, and then we're done.

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

    MR. HARRISON: Yes.

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

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

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

    MR. BURNETT: That's right.

    MR. BOUZEK: -- and hopefully new agreements.

    MR. BURNETT: Right. And boycotts ending. Frank is going to take care of that.

    MR. PETRAMALO: Yes.

    MR. BURNETT: Thank you.

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

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

    All right.
MR. HARRISON: Mr. Chairman?

MR. BURNETT: I'm sorry.

MR. HARRISON: One clarification, please.

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

MR. BURNETT: Yes.

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

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

What's the pleasure of the racetrack?

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

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

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

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

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

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

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

MR. STEWART: Correct. Unless --

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

MR. SIEGEL: So in the future, though, if you really want to change the hours, you'll try to get
ahead of it --

MR. STEWART: Right.

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

MR. STEWART: Yes.

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

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

MR. BURNETT: Excellent questions.

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

MR. BROWN: Second.

MR. BURNETT: We have a second from Mr. Brown.

All in favor indicate by saying aye.

Note: (Aye.)

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

Can we move to the next one? Request from Colonial Downs for 2010 thoroughbred race days. We
have presentations from various folks. Is the VTA not represented here today?

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

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

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

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

MR. PETRAMALO: No, I didn't.

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

Let's move to the presentation from Colonial Downs.

MR. WEINBERG: Okay. Thank you.

You have received Colonial Downs race day request. It reflects a 30-day request for the thoroughbred meet. Upon the approval of a new thoroughbred agreement, Colonial Downs is prepared
to amend that request to 40 days. Given where we are today, our request remains at 30 days.

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

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

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

MR. WEINBERG: That's correct.

MR. BURNETT: Thank you.

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

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

The other one I'm not sure has come up that often. I think it's been referenced a time or two. To the extent that we have a significant number of our population on the backstretch that bring children and families as part of their summer vacation from school and the like to help or to be here and not help for that matter, what impact might
moving back a week have given that a lot of schools don't finish up until the first week of June or the end of June? My daughter typically doesn't finish school in Loudon County until the 15th of June roughly.

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

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

It's certainly a consideration, but I would think from a horsemen's standpoint, the more important consideration is where can I go and win
with my horses to race. What we've experienced over
the past two or three years, particularly by opening
up the backside early, like mid-May, we've been able
to pick up a substantial horse migration from
Florida, because Tampa Bay Downs closes on Kentucky
Derby Saturday, and the horsemen there have two
weeks before they have to leave that track. Here is
a nice venue for them to come. So I think our early
opening here plays even better into the scenario
with the horses coming from Florida.

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

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

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

MR. PETRAMALO: He does a wonderful job, I'll
tell you that. It's a concern, but Tyler Picklesimer, the racing secretary, also keeps that in mind. So early on in the book, in the condition book, he'll throw in more dirt races just in case the turf isn't ready.

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

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

MR. STEWART: I would echo everything that Frank just said. J. D. is very confident that the grass will be ready. I think there's significant advantages in running a week earlier. I like the
idea of moving Strawberry Hill closer to the race meet. There's 25,000 people out here who should be our customers. If you can make it closer to when they can come out and see us again, I think that's beneficial.

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

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

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

MR. STEWART: Well, I think what we would end up having to do is to have more dirt races. We certainly wouldn't be running 10 races a day. There's plenty of racetracks that don't run 10 races
MR. BOUZEK: I'd like to add that with Strawberry Hill not running in April, usually what J. D. has to do is wait until Strawberry Hill runs before he can take the top layer off and get started. Now that they won't be running in April, he can start that process earlier. He can start getting the grass ready earlier. So that's why he's confident that it'll be ready by May the 29th.

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

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

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

MR. BURNETT: Which is?

MR. PETRAMALO: The 17th.

MR. BURNETT: So it's not like you could walk for a week in the barn, show up a week early. My point being if you're leaving another racetrack on
the 10th of May and it doesn't open until the 17th here, you can't come here and be here and take care of your horse, even though you can't use the racetrack. So that horsemen has got to go find a home for a week. That is disruptive in my view for those horsemen.

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

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

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

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

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

MR. BURNETT: And it worked.

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

MR. BURNETT: Right.

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

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

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

MR. BURNETT: This is going to be good.

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

I say, well, it's a problem of money. We don't have enough money to do that. They love to come here, but once they come up from Florida, they love to have someplace they can sit and race before
having to go back to Florida for the fall race.

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

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

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

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

MR. WEINBERG: That's correct.

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

MR. SIEGEL: Okay.

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

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

MR. WEINBERG: If we have a contract.

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

MR. PETRAMALO: Commissioner Siegel,
historically to comply with statutory requirements,
we have entered into a horsemen's contract with
Colonial Downs. It covers a whole plethora of things, including race days, purses, et cetera.

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

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

MR. PETRAMALO: A three-year deal.

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

MR. PETRAMALO: Right.

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

MR. PETRAMALO: The 21st of July.

MR. SIEGEL: To July 21st.

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

MR. PETRAMALO: Yes.

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

MR. PETRAMALO: Right.

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

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

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

MR. SIEGEL: Okay.

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

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

MR. WEINBERG: That's correct.

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

MR. BURNETT: Whoop.

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

MR. STEWART: No.

MR. PETRAMALO: What are those dates?

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

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

MR. WEINBERG: Is June 12th.

MR. STEWART: You're right, Frank.

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

MR. SIEGEL: So they are these dates?
MR. PETRAMALO: No, they're not.

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

MR. PETRAMALO: Right.

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

MR. WOOD: Nineteenth.

MR. STEWART: -- nineteenth.

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

MR. PETRAMALO: Right.

MR. WEINBERG: I understand and --

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

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

MR. SIEGEL: Okay.

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

MR. SIEGEL: Okay.

MR. BURNETT: Could -- without upsetting any
contractual negotiations, could somebody explain to me why Wednesday is more desirable than Friday?

MR. STEWART: I'd be happy to.

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

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

Well, it just doesn't is all I can tell you. I think we can do better on Wednesday. I think there's a void in the simulcasting calendar that we can fill. We do very well on Monday nights. We do very well on Tuesday nights. There's no reason to think that we wouldn't do real well on Wednesday nights. I think the financial benefit on Wednesday
night would outweigh whatever few hundred extra
people we might be able to attract on Friday night.

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

MR. STEWART: Friday is pretty weak.

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

MR. PETRAMALO: No, it's Saturday.

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

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

The horsemen and the racetrack, I think,
jointly would prefer that we defer this decision of
days for another month to give us time to review the
contract such that the contract and the days could
be approved and signed in one meeting.
The Commission has historically been delayed, if you will, in setting days. We try each year to try and commit to a date when days will be set and for lots of reasons, which include horsemen negotiating contracts of which I was guilty when I was doing it in Frank's place at some level, this seems to be more the rule than the exception, what we're presented with here today.

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

MR. PETRAMALO: Let me ask this. Would it be helpful in resolving that question for us to quickly go through the contract and explain to you what is in it and how it differs from prior contracts? We're prepared -- Jim and I are prepared to do that,
to explain what's in the new contract, how it changes, just for whatever help it may be in informing you before you make your decision as to how you want to proceed.

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

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

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

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

MR. PETRAMALO: Yes.

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

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

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

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

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

MR. PETRAMALO: Okay. First of all, unlike
the last two contracts, this is for three years. So
we've settled our disagreements for three years.
Over the three years, it calls -- I want to
emphasize this. The parties agree to in 2010
request 40 days, in 2011 request 40 days, and in
2012 request at least 40 days. That gives us some
flexibility down the road for us to argue with the
track that things have turned around, and we ought
to be racing more.

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

MR. BROWN: Excuse me, Frank.

MR. PETRAMALO: Yes.

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

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

With regard to the stakes purses, they'll stay
pretty much the same except with the Virginia Derby.
Colonial has agreed to reduce the Virginia Derby
purse from 750,000 to 600,000, which means 150,000 goes into the purse account for use in the run of the mill races.

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

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

Now, here's the other dollar amount issue that in my judgment influenced the track's flexibility with regard to moving from 30 to 40 days. We have agreed -- we have agreed to a different revenue sharing formula at three off-track betting sites.
They are Scott County, Brunswick, and Vinton, where the handle has been declining and the margins have been shrinking for Colonial.

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

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

There's one other related matter, and that is with the OTB that's at Martinsville. If the handle in 2010 drops below seven and three quarter million dollars, then that 50/50 formula can also be used by Colonial at that site. So that to me is a substantial economic advantage that the track is
getting from this. On one hand, we're getting a
little more money from the signal and on the other
hand, they're doing a lot better on those three
OTBs.

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

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

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

In going forward in years, 2011 and 2012,
Colonial again commits to spend $50,000 each year on
backstretch improvements.

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

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

MR. MILLER: Mr. Chairman?

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

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

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

MR. MILLER: It was so good, I didn't notice.

You mentioned statutory -- this off-track betting --

MR. PETRAMALO: Yes.

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

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

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

MR. MILLER: Mr. Chairman, also everyone agrees that this proposed horsemen's agreement or
contract that you're proposing, that we got it by
e-mail yesterday, that that binds the parties just
to request --

MR. PETRAMALO: Yes.

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

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

MR. MILLER: No.

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

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

MR. BURNETT: Certainly.

MR. MILLER: -- then I'll let the others ask.
I don't like to be taking up so much time, but let me ask you an unfair question. Who is getting the shaft in this contract, if anybody? I mean, you're speaking for the horsemen.

MR. PETRAMALO: Yes.

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

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

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

MR. PETRAMALO: In my opinion?

MR. MILLER: Yeah.

MR. PETRAMALO: No one. I don't think anyone is getting shafted. It's a fair and reasonable compromise. Am I completed happy? No. If you asked Ian Stewart if he's completely happy, I'm sure he's going to say no. It's a compromise. But I think it's a fair compromise that takes into account the economic reality of where we are at this time in racing in Virginia.
MR. SIEGEL: So it's safe to say you're in a heated agreement.

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

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

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

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

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

MR. MILLER: Is that all right for him --
MR. BURNETT: If it's helpful to the Commission, I would be delighted to hear it.

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

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

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

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

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

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

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

MR. PETRAMALO: Right.

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

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

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

MR. WEINBERG: One could argue that the horsemen took the shaft on that issue. I would just offer a slightly different perspective. When you tie that into race days, it is much like what we did last year, but the Commission offered the horsemen the opportunity to buy additional race days. In essence, they're taking what would have been theirs on a fixed fee and saying, look, we'll share some
that on an evened out basis to buy more race days. That's one way to look at it. That's why they're so intertwined.

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

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

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

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

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

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

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

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

So I'm really interested in that piece because
something has to give here.

MR. PETRAMALO: Did you look at the numbers?

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

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

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

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

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

MR. PETRAMALO: Yes. Yes. The 2009 handle at the OTBs dropped almost -- this is thoroughbred handle now, dropped almost 18 percent or about 21 million dollars. At the same time the handle on-line to the ADWs was up 37 percent, going up approximately 12 million dollars, 12 or 13 million dollars. So there's -- there is a migration. Now, obviously, the economy factors into the wagering, but there is a clear migration to on-line wagering.
MR. BURNETT: Hence, you're supporting my argument that I am looking forward to -- whether it be in our improvement meeting or whether it be in the contract, some vigorous exploration and attempts to take advantage of that phenomena.

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

MR. WEINBERG: Do you want just 30 seconds?

MR. BURNETT: Thirty seconds.

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

MR. BURNETT: I did see that.

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

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

MR. REYNOLDS: What's still being negotiated?

MR. PETRAMALO: Nothing.

MR. REYNOLDS: Nothing.

MR. PETRAMALO: We have reached agreement on an amendment to the EZ Horseplay agreement between Colonial Downs and the HBPA. That also requires
agreement from the harness horsemen. I'm not sure where it stands on -- where that stands. That has to do with the operation of Colonial Downs' ADW company and our respective share in that.

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

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

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

Any other discussion or thoughts?
MR. BROWN: Mr. Chairman, do we have a window of opportunity to change that if things change over the next 30 days, say our opinion of the horsemen's agreement with the track?

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

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

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

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

So I'm comfortable today. I would -- I'd be comfortable today voting for the 40-day meet because I think we need to get this meet -- the days established quickly. Competition for horses I understand is great and we need to get out and get
our horses locked in, get our people locked in for the meet.

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

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

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

Now, if I were one of you all, I might be a little concerned about what I've agreed to and I may go home and have buyer's or seller's remorse, but that's your problem. I don't see anything from my standpoint being a commissioner in trying to promote
the racing industry, so on and so forth, that causes me concern with the contract.

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

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

MR. BURNETT: Any further discussion?

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

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

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

Note: (Aye.)
MR. BURNETT: Motion carries. Days are awarded.

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

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

All right. February 17th is our next meeting. We're going to go into a closed meeting and we'll come back out, adjourn this, and go into the appeal of Mr. Gray, who I understand is not coming. We'll deal with that, I think, fairly quickly. I hope that this closed meeting doesn't take more than 15 or 20 minutes.

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

MR. BROWN: Second.

MR. BURNETT: Commissioner Brown seconds. All in favor indicate by saying aye.
Note: (Aye.)

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

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

MR. BURNETT: Back in session.

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

MR. MILLER: Aye.

MR. BURNETT: Mr. Reynolds?

MR. REYNOLDS: Aye.

MR. BURNETT: Mr. Brown?

MR. BROWN: Aye.

MR. BURNETT: Mr. Siegel?

MR. SIEGEL: Aye.

MR. BURNETT: The chair votes aye. That's unanimous. We finished that session.
The only thing we have left in this meeting is to go into adjournment and then to the stewards appeal or the appeal of the stewards' ruling, unless -- I see Mr. Weinberg here, there is anything further from the racetrack.

MR. WEINBERG: No.

MR. BURNETT: Great. Thank you.

From the horsemen --

MR. PETRAMALO: No.

MR. BURNETT: -- anything further?

Thank you.

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

One is it's been our practice when someone has filed an appeal not to require collection of the penalty or fine imposed by the stewards, even though our regulations require that we do so. That's what happened in this case. So we want to correct that in the future to be sure we collect the money from these individuals. If they prevail in their appeal, they'll get their money back, which might be some level of incentive for them to show up.
Secondly, because someone calls us and, quote/unquote, cancels after having requested that we postpone it for their convenience because they've been ill, and the good news is we did not bring a steward from California here to testify, that because they called and cancelled doesn't mean that we are not able to act on the appeal and review whatever penalty was imposed by the stewards and leave it the same or modify it.

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

My other thought is, offended is probably too strong of a word, but I think we are being toyed with to a certain extent or we're being treated in a very casual manner by this fellow who has challenged the judgment in any event of our stewards, and I think at some level it makes a mockery of our appeal
process when someone just sort of plays with it and ignores it.

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

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

MR. SIEGEL: What's the penalty again?

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

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

MR. BURNETT: Right.

MR. MILLER: Is that the maximum?

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

MR. BURNETT: No. I was just saying what was imposed --
MR. LERMOND: Right.

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

MR. LERMOND: They went with the minimum fine.

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

MR. BROWN: He got off very easy.

MR. MILLER: There are suspensions that need --

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

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

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

MR. BURNETT: But to be clear, if you suspend
him for three days commencing today, he can't enter
a horse today, tomorrow, or the next day anywhere,
but if he wasn't going to race anyway, those three
days doesn't matter, right?

MR. LERMOND: That's correct.

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

MR. BURNETT: I think you can.

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

MR. BROWN: That was this past year.

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

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

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

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

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

MR. LERMOND: That's correct.

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

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

MR. BURNETT: Fair enough. Fair enough.

MR. SIEGEL: How do you communicate with him?
MR. RONEY: Mr. Chairman, may I address that?
MR. BURNETT: Please.
MR. RONEY: Mr. Chairman, I communicated with Mr. Gray by phone so he's pretty accessible by cell phone.
MR. PETRAMALO: Is he from Virginia?
MR. BURNETT: He is from Chester, Maryland, if I'm not mistaken.
MR. HARRISON: Joe, can you just describe how the phone call went this morning?
MR. RONEY: Mr. Gray left a voice mail message on my machine at six-thirty this morning saying that he had planned to attend, but his horse was colicky. He got a call from the barn, and therefore, had to go to the barn to take care of the horse who was colicky and would not be here and would send a check, drop a check in the mail to us.
So after whatever decision is made here today, I will certainly call Mr. Gray and inform him. I assume we would follow-up with a letter stating that the fine is blah, blah, blah, to be paid within 72 hours or he will be suspended.
MR. SIEGEL: Suspended for?
MR. RONEY: Failure to make --
MR. SIEGEL: For what period?
MR. BURNETT: Until the fine is paid.

MR. RONEY: Until the fine is paid.

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

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

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

MR. BURNETT: That's right.

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

MR. RONEY: Yes.

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

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

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

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

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

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

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

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

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

MR. BURNETT: Exactly.

Dennis?

MR. WEST: Mr. Chairman, when you enter something in RCI as far as the suspension, if he's racing in Pennsylvania, unless they check the RCI record, they're not going -- he's still going to race in Pennsylvania. If he's racing in West Virginia, Maryland, unless somebody -- unless we
call the jurisdiction, we know where he's racing, nobody is going to honor it unless they actually check the RCI.

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

MR. WEST: We do.

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

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

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

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

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

MR. BURNETT: Before we get too far into
resolving this, let's make sure from our counsel that we're satisfied that the appeal withdrawal process was not followed and that we have not permitted the appeal to be withdrawn and that we are undertaking a review of that stewards' decision now. That's what this process -- this hearing we're in right now is. Is there any reason that we can't do it that way?

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

MR. SIEGEL: Prior to 72 hours.

MR. BURNETT: Right.

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

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

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

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

MS. DILWORTH: Yeah, I know.

MR. BURNETT: It wasn't withdrawn, and it
requires, I know, the permission of the Commission to withdraw it, so here we are.

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

MR. BURNETT: We are.

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

MR. BURNETT: Right.

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

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

MR. BURNETT: I'm not sure --

MR. PETRAMALO: You have the stewards' report.

MS. DILWORTH: That's your record.

MR. MILLER: Where is that?

MR. LERMOND: Tab 7 of your book.

MR. PETRAMALO: You have the stewards' report and the assessing of the fine. He's appealed that, has not shown up for the appeal. So, in effect, you're entering a default judgment, are you not?
MR. BURNETT: I think that's right. I think this is in the nature of ex parte proof.

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

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

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

Note: (Aye.)

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

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

MR. BURNETT: Yes.
MR. MILLER: At his request.

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

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

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

MR. LERMOND: Signed by all three.

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

MR. SIEGEL: So move.

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

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

MR. BURNETT: We did. Would you accept a
friendly amendment to increase that $200 because of
what he has -- that's what he got from the stewards?
He's put us through all this hoo-ha and said he's
canceling and dropping his check in the mail.
That's not my idea of how one complies with our
rules. And when you don't show up to argue your
case, sometimes it doesn't go as well as you had
hoped. I would like to make that point to him.

MR. SIEGEL: Increasing it to?

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

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

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

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

MS. DILWORTH: Second.

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

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

MS. DILWORTH: It happened in November.

MR. PETRAMALO: This is the third time. I was
looking forward to the hearing. That's why I was --

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

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

MR. BURNETT: Yeah. Sure.

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

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

What he did according to the record is egregious to mistreat -- he mistreated his own horse in a race, and that's bad enough. The mistreatment
is not just a -- something that happened, oh, by the way, this is what happened. It was an act of cruelty toward the animal, and secondly, according to the record from his own admission, he doesn't seem to grasp the gravity of what he did. For that reason, I would increase the fine to $300 rather than $200.

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

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

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

    MR. MILLER: Okay.

    MR. BURNETT: All right. Any further discussion?

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

    MR. PETRAMALO: Today is the 20th.

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

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

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

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

VIRGINIA:

COUNTY OF NEW KENT:

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

______________________________
Melissa H. Custis, RPR
Notary Public for the State of Virginia at Large

My Commission expires:
March 31, 2011

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