VIRGINIA RACING COMMISSION

July 15th, 2009

10700 Horsemen’s Road

New Kent, VA 23124

Commencing at 9:41 a.m.

COMMISSION MEMBERS:
Peter C. Burnett, Chairman
I. Clinton Miller, Vice Chair
David C. Reynolds
Mark T. Brown
William H. (Trip) Ferguson

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

Appeal Hearing on the matter of Owner/Trainer
Teresa Connelly

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MR. BURNETT: All right. We'll bring this meeting to order. Our first order of business today is the appeal of Teresa Connelly. We'll take that up before we go into our regular meeting.

For the benefit of my fellow commissioners, the status of that particular issue is Ms. Connelly had an offense that was heard by the stewards. The stewards imposed a penalty. Her counsel, Mr. Petramalo, on her behalf asked for a stay, and under our regulations, the stay is determined by the chairman of the Commission and is in effect no later than the following Commission meeting, that would be today, and it's a discretionary stay.

I granted the stay conditionally. The conditions of the stay were that Ms. Connelly not be permitted to enter horses either here or at any other racetrack between the time in which the stay was granted and today, at which time we would take up her appeal.

In the intervening few days from the time that I granted the stay until today, Ms. Connelly apparently has been able to get her affairs in order and get her horses transferred and, in fact, has returned to her home in Florida. I learned I think...
it was yesterday that again Mr. Petramalo on her behalf asked that the appeal be withdrawn, and the stay dissolved as moot.

Our rules provide that, one, an individual who has had a penalty filed or levied against him or her and has filed an appeal is required to attend the appeal. Secondly, it is discretionary on the part of this body as to whether or not we grant the withdrawal. We can say yes to the withdrawal and leave things as they were when the stewards initially entered their penalty, or we can deny the withdrawal and hear the case on whatever components of it we wish. That's the posture of it as it comes here today.

In fairness to Ms. Connelly, she was -- and I think her counsel was as well -- under the impression that this was not going to be heard today, and that she was safe to return to Florida, not worrying that anything further would be done by the Commission.

I have prior to the meeting today said that I have certain positions that I would like to share with you all on what I think we should do, but that I don't -- despite it being -- her having returned to Florida at her peril from a legal standpoint, I
think fundamental fairness would require that if she
wants to be heard, we try to find a way to
accommodate her, either at another meeting or by
phone or in person.

So what I would like to do at this time is
first hear from Mr. Petramalo based on my comments,
whether I missed anything in what -- in how I
described the posture and hear what Ms. Connelly's
position is with respect to our granting her request
to withdraw her appeal or denying her request. At
that point we would have a discussion and vote on
that issue, and depending on how that comes out, we
would go further or that would be the end of it in
terms of what we would do.

Mr. Petramalo?

MR. PETRAMALO: Let me start off by saying
Ms. Connelly returning to Florida was doing so on
the advice of counsel, perhaps counsel was
misguided, but I had assumed that when she withdrew
her appeal, that that would be the end of it.
Apparently, you have some question about that, but
let me just assure you she meant no disrespect to
the stewards or the Commission by returning to
Florida.

Basically, the suspension put her out of
business here in Virginia. So in her own interest, she said, "Can I go back to Florida," where she's from and where she has her farm. And I said, "Yes. I will file the request to withdraw your appeal and that will be the end of it." That's what I did. That's why she's not here.

But I would be very interested in hearing what thoughts you might have in mind with regard to this before I take some final position.

MR. BURNETT: Sure. Any questions so far?

MR. PETRAMALO: So should I notify my malpractice carrier at this point?

MR. BURNETT: I think that might be premature, Mr. Petramalo. We'll wait and see if it's a true cause of against you.

MS. RICHARDS: I trust you've memorized the number.

MR. BURNETT: Ms. Connelly's conduct -- again in fairness to her -- was conduct for which I'm sure she's truly sorry, for which she recognized her wrongdoing, and for which I think she is somewhat embarrassed. It basically arose out of her having a horse in a race that finished the race second, but was taken down by the stewards for interference in the stretch and placed eighth.
At the same time, as you all know, the winner also goes to the test barn, and a second horse is chosen at random. As it worked out on that day, her horse was the horse chosen to go to the test barn. The disqualification has no affect on the requirement of the horse to go to the test barn.

She apparently -- initially upon looking at the tapes from the apron or elsewhere disagreed with the stewards' assessment of her need -- her horse needing to be taken down and was upset to say the least, and proceeded to come to the backstretch and go to the test barn where her horse was, and demand that she be given possession of her horse, and be taken out of the barn prior to it being tested.

Apparently, the insistence was sufficient that the folks at the test barn thought there was going to be some physical violence if they didn't give up the horse, and they did. The horse was apparently taken back to its stall. Ms. Connelly cooled off, and brought the horse back sometime later. I'm not sure how many minutes later she brought the horse back. At that point, the test barn staff didn't think it was appropriate to test the barn -- test the horse, because any chain of custody had been broken.
The stewards had a hearing the following day. Ms. Connelly waived her right to counsel and proceeded to have the hearing. The stewards imposed a 45-day penalty to begin on the 5th of July, and it was from that imposition of penalty that she filed her request for a stay that I described earlier and that I acted on.

I favor our denying her request for withdrawal of the appeal because I think that the penalty could be improved for the benefit of both the image of racing and for Ms. Connelly herself. And so I would like to see this body deny her request to withdraw and to adjudicate, if you will, her appeal solely on the basis of the penalty that was imposed. And my recommendation on the penalty would be that it be increased from 45 days to 60 days, but with some conditions that could mitigate.

Those conditions would be that the first 30 days of that penalty would be served starting today through August 15th, and that the second 30 days would be served in -- starting on the first day of our meet in 2010 subject to, however, our waiving or suspending those 30 days on the condition that she successfully complete to our satisfaction an anger management course.
This conduct was such that I don't think anybody that was involved with it concluded other than this lady clearly had some problems controlling herself, and that she posed a potential danger at the gate and elsewhere during this tirade, and that the stewards in their many, many years of experience could not recall ever having heard of this happening before. I've never heard of it happening before. I think Mr. Brown has never heard of it happening before.

It goes to the core of the integrity of what we do, and I think it sends a bit of a message of deterrence to others, and I think at the same time it offers her an opportunity to come away with a penalty that is net days less than what she got from the stewards if she participates in this anger management course. That's the way I would approach it. That's why I favor retaining the case for the purpose of imposing penalty.

MR. MILLER: Retaining the field?

MR. BURNETT: Retaining the field, yes.

MR. PETRAMALO: Let me briefly respond. Your recitation of the facts was fair, and Ms. Connelly if she were here would not dispute that, but let me point out the following.
The very next day after this -- and this is reflected in the statements that you have in front of you, the very next day she went around to all of those folks and apologized for her conduct.

Secondly, Ms. Connelly has been coming here to Virginia for at least the last eight years. She brings anywhere from 10 to 20 horses up from Florida. She has a spotless record. She's never been disciplined for anything except a late scratch, a hundred dollar fine.

But that aside, I certainly -- I'm certain she wouldn't have any problem with having her right to be re-licensed here in Virginia contingent on her completing some sort of anger management course. I'm certain based on talking to her that that wouldn't be a problem, talking to her and her husband by the way, that wouldn't be a problem, but I do have some problems with the suspension that you outlined for the following reasons.

I certainly don't think that she would object to the 30-day suspension even if it were to start running today, but the problem is the second part; that is, the suspended 30 days that's dependent on completing anger management, because it's my understanding that that basically would put her from
now until next year in a suspended status in
Virginia, which puts her out of business completely.
She couldn't go anyplace.

MR. BURNETT: Not to interrupt you --

MR. PETRAMALO: No. Go ahead.

MR. BURNETT: It wasn't my intention to do
that.

MR. PETRAMALO: Okay.

MR. BURNETT: I thought the days -- and I've
seen this problem in other jurisdictions. Suspended
here; suspended everywhere.

MR. PETRAMALO: Maybe it could be done this
way. A 30-day suspension, which then, quote, cleans
up her record here in Virginia, but if she -- as a
condition to her coming back to Virginia to get
re-licensed, at that point she would have to show
that she completed an anger management course.

So if she comes back here next June, she
better have a certificate with her saying I
completed 30 hours at the -- wherever. That I think
would be acceptable, something like that.

MR. BURNETT: I'll say this. I don't have a
bit of problem with that, but I'm not sure it solves
your problem based on what I've seen in a couple
other jurisdictions. I've just seen these other
jurisdictions act a little strange about any kind of a condition of licensure until its granted, that she's out anywhere.

MR. PETRAMALO: But what I'm thinking of is as follows. Let's say she's suspended, and I have a different argument that I'll get to later, but let's say for purposes of your proposal that she were suspended today, July 15th through August 15th. At that point her suspension in Virginia is over with, and she's free to go to Delaware or New Jersey, et cetera, and race.

I don't think that is impacted by the fact that if she seeks to come back to Virginia and be re-licensed, to renew her license, at that point she has a condition. She has to show completion of an anger management course. That would be my understanding.

Now, the -- her problem is compounded without getting into too many complicated facts. By the fact that she not only is a trainer, but she is an owner, and she races in a number of states including New Jersey at Monmouth Park, not as a trainer, but as a owner and co-owner. So what you're doing with her license, even though it's because of something she did as a trainer, may very well in fact
disqualify her from having a horse run partially in
her name in other jurisdictions. It's for that
reason that I wanted to come up with some way that
ended her suspension here in Virginia as soon as
possible, so she would be free to do all of that.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

MR. MILLER: I have a question. What is the
maximum punishment that could be meted out to this
lady?

MR. PETRAMALO: That's solely within the
discretion of the stewards.

MR. MILLER: Well, I'll ask the stewards.

What is the maximum that we can do to her?

MR. LERMOND: Let me defer to Mr. Chalk.

MR. CHALK: We can suspend up to -- I think
it's 60 days and a $10,000 fine, then it goes to the
Commission for them to deem whatever penalty
necessary.

MS. DILWORTH: By the maximum penalty --

MR. MILLER: So whatever we deem necessary,
what is it we can deem necessary? What's the
maximum we can deem necessary?

MR. BURNETT: Ms. Dilworth?

MS. DILWORTH: The worst thing that could
happen to Ms. Connelly is she could have her permit revoked.

    MR. BROWN: Permanently.

    MR. BURNETT: I don't think we want to put her out of business.

    MR. MILLER: Now I'm going to follow-up my question by making a point. I don't know why we're talking about it. To me she got some punishment here, whatever it was, and she's willing to -- as Frank says, she will abide by the 45-day suspension, whatever. She wasn't fined anything, was she?

    MR. LERMOND: No, sir.

    MR. PETRAMALO: No.

    MR. MILLER: To me with the maximum that could be done to her, that's enough to hang over her head. And once she serves her suspension that was imposed here, that clears her and she can go to Florida or California, Nebraska, or wherever, and she can race her horses as an owner and trainer between now and next year. Knowing that if she comes back here next year and participates, common sense would tell me that she would have to have a little common sense to know that if she messed up in any way that, you know, she could suffer some severe consequences. To me that's enough to hang over someone's head.
MR. PETRAMALO: Let me say that what I was intending to do this morning and say this morning is almost exactly what you said. I was prepared to come in here this morning and based on my faulty but not negligent belief that the appeal would automatically be dismissed, that she's accepting the 45 days.

My only argument was going to be that instead of having the 45 days start today, that it start as of July 5th when the stewards originally ordered it, because the stay that commissioner -- that Chairman Burnett granted basically allowed her to stay on the grounds. She was not permitted to do her business. She was not permitted to train and, indeed, she couldn't race in New Jersey or any other state.

So I was going to argue that equity says start it on July 5th, but if worst comes to worst, of course, we'd be satisfied with starting today and running 45 days, and that would be the end of it. That was going to be my position until the chairman has made some suggestions, which again are -- we're amenable to, but I don't want to get Ms. Connelly in any position where between now and next year she's in limbo in terms of being able to do her business.

MR. MILLER: Well, I'm just suggesting that
she wouldn't be in limbo if she --

MR. PETRAMALO: No. I mean, under your proposal and my proposal, she wouldn't.

MR. MILLER: There would be no limbo to worry about, and other jurisdictions would know. I mean, other jurisdictions would see that she was suspended here for 45 days --

MR. PETRAMALO: For 45 days.

MR. MILLER: -- for something, whatever it was, and so if she erred or her anger went awry somewhere else, she might get a more severe penalty there because of the 45-day suspension she got here.

By the way, has anyone ever attended anger management? What is anger management?

MR. PETRAMALO: I know they have courses.

MR. MILLER: Would anyone admit they've been to anger management? I would like to know the particulars of that, because I've seen people referred to anger management places all the time -- not all the time, but I've seen it suggested in court and the people that I know went, they're still as angry as ever. So I don't know.

MR. FERGUSON: That comes across to me as being a little judgmental, to make them attend something. If it were alcohol rehab or something,
we might have something to talk about, but I agree
with you on the anger management end of it. A lot
of people just go buy a six-pack of St. Pauli Girl
or something, you know.

MR. BURNETT: And that makes it better?

Let me respond.

MR. FERGUSON: I mean, why are we proactively
plea bargaining? That's seems to me what the VRC is
doing now. We're proactively entering a plea
bargain for this lady who's not asked for it. She
wants to withdraw an appeal. I mean, getting back
to real estate rezoning, if I go into rezoning or
something and I withdrawal my rezoning request or an
appeal, it ends it right there. So why do we have
to force an appeal when she's not asking for one?

MR. BURNETT: Well, there's two points here.
One, she managed through the granting of a stay.
The stewards opposed the stay. I could have said,
hey, you got your penalty, July 5th. Too bad. Get
out today. I thought that might have been a little
bit harsh on the horses, frankly, and on her husband
and her children.

Frank is a little bit mistaken about the stay
not permitting her to train. She could train her
horses. She could in the morning go out here and
train them all day long. There's nothing that stopped her from doing that. She could not enter horses to run if that's what --

MR. PETRAMALO: I don't believe that was her understanding. She didn't get on a horse after --

MR. BURNETT: The plain words of the stay are there to be seen. There's no prohibition about anything she wanted to do on the backstretch.

Regardless, through the use of the stay, she had managed the classic horseman's effort to reduce the penalty by filing a stay, because instead of being kicked out on July 5th and moving forward, she got to do her business. She got to transfer horses, sell horses, continue to participate here. And now on the 15th, she says, oh, I got my business done. I'm leaving. Jeez, let it start retroactively. That's one point.

The second point is this: If it were the kind of offense that someone thought about before they committed it, I wouldn't be so inclined to say let's get her into some anger management. What I take issue with and Commissioner Miller's thinking is that he thinks she's going to think. If she were a thinking person, this wouldn't have happened the first time. She reacted because she didn't have
control over her impulses, and I could date
Commissioner Miller a little bit from his
Commonwealth attorney's duties, but the modern
Commonwealth's attorneys frequently send folks to
Community Corrections for anger management.

They are spousal abusers. They are people
that get into fights at work, and draw criminal
charges. They are people that get high on drugs and
get into violent acts and the like. It is a broadly
accepted technique in the Virginia Criminal Justice
System to try and reduce impulsive outbursts, which
this was an example of.

So my thought was --

MR. FERGUSON: I have a question.

MR. BURNETT: Let me fast forward. She comes
back here next year. We haven't done anymore than
let her serve her penalty and she has another
outburst, and she hurts somebody. Are we going to
look back and say maybe we could have prevented
that? That's where I'm coming from. I'm trying to
be prudent and look forward and say I don't want to
look back and regret, and I don't see how eight or
ten weeks of an hour a week attending one of these
classes, which may well not do anything for her, but
it might if it's going to hurt her and imposes a
great penalty, and I agree with Frank, that we
should not knock out her ability to make a living.

    MR. FERGUSON: But she's agreed to accept the
results of the stewards' ruling, right?

    MR. PETRAMALO: Correct.

    MR. FERGUSON: Okay. That's a ruling. I
mean, it's done. It's already in place.

    MR. BURNETT: She's agreed to accept the
reduced result of the --

    MR. FERGUSON: No, the 45 days. She's agreed
to --

    MR. BURNETT: No, no. She didn't have to
leave on the 5th of July, Trip.

    MR. PETRAMALO: Well, let's address that,
because I think --

    MR. FERGUSON: From today.

    MR. PETRAMALO: -- with due respect, you're
being unfair. She is not Steve Asmussen or Todd
Pletcher who files an appeal, and they're busted for
a drug violation so they can go on training for
another three years, not in the least bit. As a
matter of fact, what she did was as soon as she was
advised by the stewards that she was going to be
suspended as of July 5th, the very next day she
arranged to transfer her horses to another trainer
and went before the stewards and got their approval to do it. She wasn't looking to scam the system here, not in the least bit. The only reason that she was looking for a stay was because she had to deal with some other horses, and she had to deal with child care and a house lease.

Now, if you want to say she's taking advantage of the system, well, sure, that's taking advantage of the system, but it's not Steve Asmussen or one of those folks that were caught cheating, right? This is a woman who lost her temper.

MR. BURNETT: That's fine. I agree with you. I'm saying we -- her penalty was softened by virtue of the stay. Now she wants to come back and characterize it as the same penalty. All I'm saying to my fellow commissioner is it's not the same penalty. For exactly the reasons you just articulated, her penalty would have been far more severe had it started on July 5th as the stewards imposed it in the absence of the stay.

MR. PETRAMALO: I don't agree with that at all.

MR. BURNETT: Well, did you advocate it? Why didn't you say let's do it? You made -- I got the letter here. Would you like for me to read all the
different things that were going to happen to her?


MR. FERGUSON: Can the 45 days start today?

MR. PETRAMALO: Yes.

MR. BURNETT: We can do anything we want.

MR. FERGUSON: When it starts is academic.

MR. BURNETT: Really?

MR. FERGUSON: Right?

MR. PETRAMALO: Well --

MR. FERGUSON: I mean, it can start today. Am I wrong or right?

MR. PETRAMALO: It's the difference -- it's a 10-day difference. You're right.

MR. FERGUSON: Right.

MR. PETRAMALO: It's basically academic.

MR. FERGUSON: But she has a 45-day penalty, plus the ten days that she hadn't been able to operate; is that correct?

MR. PETRAMALO: That's correct.

MR. FERGUSON: That's 55 days.

MR. PETRAMALO: That's correct.

MR. CHALK: She has been able to operate.

MR. FERGUSON: Excuse me?

MR. BURNETT: Mr. Chalk, let me hear from you, sir.
MR. CHALK: She has been able to operate because she was able to go on the backside and train the horses that she owned herself, was here every day. And with your stay that you gave her, it was stipulated she was allowed to go to the barn and take care of her horses and get rid of the horses that she didn't want to take home with her. That's the reason for the stay.

But me and Mr. Grove looked down one afternoon, on one of those horses that she had transferred to somebody else, she's down there talking to that trainer and the exercise person, the pony person, which was the trainer she transferred them to, giving them orders across the fence before and after the race.

So don't tell me she wasn't active. She was active. And when she found out -- the next race she had a horse in, me and Mr. Grove went downstairs, stood on the side, and she happened to spot us as she walked out the gate going to the paddock, which another horse was in, and she wheeled like this and went back in the grandstand and never appeared after that because she knew she was caught doing something she shouldn't have been doing. So don't tell me she wasn't doing something she shouldn't have.
MR. PETRAMALO: Wasn't that the horse she --

MR. CHALK: Her days, if you want to stay with
the 45, commences now on the 45, and if you want to
stipulate that she goes to anger management, that is
fine, but don't say she didn't work the system. She
did.

MR. PETRAMALO: Wasn't that the horse you
permitted her to run, though?

MR. CHALK: Her new trainer that was
transferred that she owned nothing of that horse --

MR. PETRAMALO: Right.

MR. CHALK: -- she was over there after her
days which should have been started and was granted
the stay and was leaning across the fence talking to
this trainer, who was the pony person.

MR. PETRAMALO: Right.

MR. CHALK: And I don't know what they were
talking about, but she shouldn't have been in the
grandstand because she was only allowed to be on the
backside.

MR. FERGUSON: All right. I have one
question. She was given a stay.

MR. PETRAMALO: Yes.

MR. FERGUSON: Okay.

MR. BURNETT: There were stipulations to it.
MR. FERGUSON: With a stipulation that -- the stipulations were?

MR. BURNETT: That she couldn't run any horses.

MR. FERGUSON: Couldn't don't anything?

MR. BURNETT: No, no, no. She could be on the backside and take care of her horses, but she couldn't enter or run any horses during that time.

MR. PETRAMALO: Here or anyplace.

MR. BURNETT: Here or anywhere else.

MR. FERGUSON: Did she enter or run her horses during that stay?

MR. CHALK: No, she didn't.

MR. FERGUSON: Okay. Then that's moot.

MR. CHALK: Because she -- the reason that the stay was granted by the chairman was so that she had time to sell some of these horses that she did not want to take back, but she was able to go on the backside acting.

MR. FERGUSON: Okay.

MR. CHALK: And most people that are suspended are not allowed on the grounds, period.

MR. FERGUSON: But she was allowed on the grounds by the stay, right?

MR. CHALK: Yes, just the backside.
MR. PETRAMALO: Are you telling me that a suspended trainer can't go into the grandstand? Since when?

MR. CHALK: That's right.

MS. RICHARDS: Yes.

MR. CHALK: You're not --

MR. BURNETT: You're not allowed in the trailer, period.

THE REPORTER: Everyone needs to speak one at a time. You're getting a little out of control here.

MR. FERGUSON: Okay. But given that, that muddy area of 10 days, she will accept the 45 days starting today?

MR. PETRAMALO: Yes.

MR. FERGUSON: Then we're done.

MR. PETRAMALO: Exactly.

MR. BURNETT: Well, you look at me like this. I'm saying we're not done with a lady that's got some anger management problems. We're not done. That's what I'm saying.

MR. REYNOLDS: What would you attribute to anger management? What does she have to do? What is the penalty?

MR. FERGUSON: Hang around with me for 50
days.

THE REPORTER: I'm sorry. I can't hear Commissioner Miller.

MR. MILLER: Did you not indicate that she would participate in whatever -- in an anger management program?

MR. PETRAMALO: Yes, I did say that.

MR. MILLER: She'll do that?

MR. PETRAMALO: Yes. We're done.

MR. MILLER: We're done.

MR. BURNETT: I thought we were, too.

MR. MILLER: So as a condition of withdrawing the appeal today, she will comply with the -- how many days from today?

MR. BURNETT: Thirty from today.

MR. MILLER: Thirty days from today, and she will attend an anger management seminar or whatever they call it?

MR. PETRAMALO: Yeah. That's fine.

MR. BURNETT: Complete an anger management course to our satisfaction, if you show up and not come back. It's a condition of licensure in the future --

MR. PETRAMALO: Correct.

MR. BURNETT: -- as we discussed.
MR. PETRAMALO: Yes.

MR. MILLER: So that's it, isn't it?

MR. HARRISON: Mr. Chairman?

MR. BURNETT: Mr. Harrison.

MR. HARRISON: I don't think you want to be put in a position of reducing, which it seems like you would by 15 days, the stewards initial ruling of 45 days.

MR. PETRAMALO: You can solve that easily by making it effective on July 5th. That gives her basically a 40-day penalty.

MS. DILWORTH: Mr. Chairman, I think we should read into the record your original grant of the stay.

MR. BURNETT: Please do if you have it in front of you.

MS. DILWORTH: The chairman ruled on July 2nd that the requested stay as to Ms. Connelly is granted on the following conditions.

The stay shall be in effect until the next commission meeting currently scheduled for July 15, 2009.

Number two, Ms. Connelly shall not be permitted to enter any horses at Colonial Downs or any other racetrack prior to July 15, 2009.
Number three, no horse owned in whole or in part by Ms. Connelly on or before the date of the alleged offense shall be entered to race at Colonial Downs or any other racetrack prior to July 15, 2009.

Number four, the appeal of Ms. Connelly's offense shall be scheduled and heard on July 15th, 2009.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes.

MR. MILLER: So if we suspend the 45 days retroactive to July the 5th, she attends the anger management course to our satisfaction, presents a certification therefrom as a condition to --

MR. PETRAMALO: Re-licensing.

MR. MILLER: -- relicensure, so why don't we leave off this part of Peter's proposal that tied into the next year. That wouldn't jeopardize her between now and next year's meet anywhere? I mean, she could -- after the 45-day suspension is over, she can do her thing as an owner and trainer, can she not?

MR. PETRAMALO: Yes.

MR. MILLER: Well, I move that that's what we do.

MR. REYNOLDS: I second.
MR. BURNETT: All right. It's been moved and seconded. Any further discussion? All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Miller and seconded by Commissioner Reynolds. All were in favor. The motion carries.

MR. PETRAMALO: Let me make sure that I give her correct advice this time.

Her suspension runs from 45 days beginning on July 5th.

MR. MILLER: Correct.

MR. PETRAMALO: And that as a condition of her being re-licensed in Virginia in the future, she will have to present a -- some sort of proof, a certificate satisfactory to the Commission that she had attended successfully an anger management course.

MR. MILLER: Correct.

MR. BURNETT: Correct.

MR. PETRAMALO: AIG Insurance Company.

MR. HARRISON: Peter?

MR. BURNETT: Yes.

MR. HARRISON: Attended -- how did you phrase it, attended successfully?

MR. PETRAMALO: Yes.
MR. HARRISON: Is that the same as saying completed?

MR. FERGUSON: Completed.

MR. HARRISON: I think there's some wiggle room there.

MR. BURNETT: All I want is the discretion to hear what the -- that she passed the program.

MR. MILLER: Well, the one thing --

MR. BURNETT: Not that she went in and kicked everybody's butt and got kicked out of there.

MR. MILLER: The one thing I do -- they do get something to show that they completed it. It's just like attending a safe driving course.

MR. PETRAMALO: Safe driving course or doing community services for purposes of probation, they're standard forms for all that.

MR. MILLER: She'll have to present that prior to being re-licensed.

MR. BURNETT: We just want to see something more than a St. Pauli Girl certification.

MR. FERGUSON: I would think that she's totally embarrassed at this point and --

MR. PETRAMALO: She is.

MR. FERGUSON: -- she'll come back with a different attitude.
MR. BURNETT: Hope so. Hope so.

All right. That concludes our Teresa Connelly matter. We'll move into our regular meeting.

Approval of the minutes of the regular meeting of July -- June 17th, I'm sorry, at Tab 2. Have you all had a chance to look at those lengthy minutes?

MR. BROWN: That's what they are, lengthy.

MR. BURNETT: Any corrections, changes, comments?

MR. FERGUSON: I make a motion that we approve the minutes.

MR. BURNETT: It's been moved that we approve. Is there a second?

MR. REYNOLDS: Second.

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

NOTE: The motion is made by Commissioner Ferguson and seconded by Commissioner Reynolds. All were in favor. The motion carries.

MR. BURNETT: Next item, Commissioners Comments. Fellow commissioners, any comments?

Perhaps we've used up our comment section in our earlier endeavors. We'll move on.

Committee reports? Any reports from marketing
or other committees? Breeders?

MR. REYNOLDS: No money, no action.

MR. BURNETT: No money, no action from the marketing committee. It's a short report.

Executive secretary's report, Mr. Harrison?

MR. HARRISON: Thank you, Chairman Burnett.

With respect to the minutes, the transcripts of our monthly meetings are now available on-line on the VRC website. So you won't see seven pages of minutes any longer. You know, I can be a little more -- we can be a little more general in our presentation of the minutes. We will pay particular care to the agenda and to the minutes, but not quite so comprehensive with respect to the minutes since the actual transcript will be and are posted on-line. That puts more pressure on Melissa.

MR. PETRAMALO: Are they archived?


MR. PETRAMALO: Very good.

MR. BURNETT: The idea is to get them out there, you know, within a week or so, and I think they come to us electronically such that we can move them right over and post them on the website.

MR. PETRAMALO: That's an excellent idea.
MR. BURNETT: We had an inquiry from a Virginia racing fan that wanted to follow the meeting more closely or wanted to follow what went on sooner after the meeting than the minutes were available, and --

MR. PETRAMALO: Excellent idea.

MR. BURNETT: I think the statute provides that the minutes -- the actual transcript are our true minutes and that a summary is all right. I just would encourage fellow commissioners and myself to delve into those transcripts when there's an issue there of some importance.

Next item?

MR. HARRISON: The next item, I just want to give you a quick update on the 100% Virginia Bonus. Through the first 30 days of the meet, we've given away $337,000, which averages out a little over $11,000 per performance, $11,237. Multiplying that out over the last ten days, we should come in barring anything wild and unusual at about $450,000 for the program for this year.

MR. PETTY: Under budget.

MR. BURNETT: Under budget.

MR. HARRISON: Under budget.

MR. PETRAMALO: Well, let's spend it.
MR. BURNETT: Yeah. That's good news and bad news, right?

MR. PETTY: It'll go to somebody. It just moves.

MR. HARRISON: I wanted to make a quick comment on the legislation for 2010. Coming down through the Secretary of Commerce & Trade to the agencies, there's an August 28 deadline for getting any bills, proposals through my office to C&T up to the governor's office. I think one of the comments made in our working group meeting on June 25th is that perhaps this year we take a hiatus from legislative proposals, although I will make a comment that if we want to and we can do it in the next few weeks, take a look at last year's Omnibus Bill or some of those provisions in the Omnibus Bill, I wouldn't be too objectionable to that. I don't think it would take too much work.

I think the thrust of the hiatus -- legislative hiatus this year was more towards alternative gaming and things like that. I think the comments -- Peter, you made the comment I think at the meeting.

So anyway, I just wanted to throw that out there. There's about a five-week deadline on
getting anything through the governor's office.
That doesn't preclude you all from finding any
sponsor as you did last year with your legislation,
but if you want to re-visit the Omnibus Bill
provisions, I'm perfectly happy doing that.

MR. BURNETT: Let me add one comment to that.
Mr. Miller from his political background and our
capable lobbyists that are here know far better than
I do how this really plays out, but it's an
interesting situation where a lame duck governor and
the Secretary of Commerce & Trade are asking for
suggestions for an administration package that will
essentially be promoted presumably by the next
governor. It'll be all put together and ready to go
and sent down to the legislature, and all the
drafting and everything else, and then we get a new
governor and maybe the governor supports some of it,
all of it, who's to say.

I think it would be a good discussion for us
to have in the working group as to whether or not it
makes sense to put a lot of energy into that, or
whether we might be better off trying to figure out
some ways that we can get the new governor and
presumably his new Secretary of Commerce & Trade to
get the ground running on matters of importance to
us. I just think it's something we --

MR. FERGUSON: I spoke to Creigh Deeds last
week, and he's most supportive of everything we're
doing here.

MR. BURNETT: He knows counsel for Colonial
Downs fairly well, having worked with him and it
would just be wonderful if -- on that basis alone,
if he were our next governor regardless of the
politics, we know who we would be dealing with
there.

MR. PETRAMALO: We still have to have an
election, though, right?

MR. BURNETT: Oh, that's right.

MR. FERGUSON: Minor thing. We'll get over
that.

MR. BURNETT: Next item, Mr. Harrison?

MR. HARRISON: Okay. The Racing Summit
Working Group. We had the first meeting on
June 25th in Fredericksburg. It was attended by 11
of us, and the minutes of that meeting or the notes
of that meeting are about to be distributed to
everybody that's part of the original e-mail group,
which I think there's about 40 individuals on that
list.

I had created a document based on my own notes
of the meeting and we went back and forth with the
chairman on that, and then we got another set of
notes from Mr. Weinberg, and so I just have to
collate that and get it out to the group.

I did want to apologize. We left there --
some of us left there with the understanding on
June 25th that there would be a follow-up meeting
scheduled after this meeting today, and others of us
left that meeting with the understanding that a
meeting would be scheduled perhaps two weeks after
this meeting or two weeks prior to our next meeting,
just to keep them separate.

So I know that some of you are here today to
participate in such a meeting, and I believe we can
informally discuss a lot of issues that arose during
our June 25th meeting after this meeting today,
after this meeting concludes.

The issues -- the way the day played out, I
felt it was a productive first meeting. We
addressed the legislative and non-legislative ways
to expand the wagering handle here in Virginia to
promote racing, and we identified that we should
have the input of horse players, meaning bettors,
and that we perhaps should get some legislative
representation on the group to the extent that we
could. We also discussed the participation of the Farm Bureau perhaps, greater participation on their part on the removal of the need for a local referendum with respect to additional SWFs and alternative gaming, ADW versus AWFs -- SWFs, and the scheduling of additional meetings.

We also I believe finally settled on a name for the group, which would be the Virginia Racing Improvement Group. We took the word summit out of there, because we may never actually get to the summit. We may just simply have these working group meetings, and they may be productive enough.

Peter, do you want to comment on that?

MR. BURNETT: My thought was that to the extent we're trying to improve Virginia's posture, that we ought to say so, and I think from a political -- I'm looking at Chris and Jerry. I'm thinking that to the ears of a politician that it sounds like we're trying to do something good, and it might be a little bit helpful. That was the only thought to it really.

The summit issue, it's more than just planning for a single summit. I think this group has turned into a group that wants to take a very comprehensive look on how a non-alternative gaming racing program
that is not year-round can take its best hold in the marketplace, and how we can find a way to succeed against some pretty substantial odds. And it's going to take all of us working hard for more than just the preparation of a summit. I think it's going to be an ongoing effort, so that was the thinking behind it.

Jim, you might have some comment on that as well.

MR. WEINBERG: I think that's an accurate summary of our goal.

MR. HARRISON: Okay. So with respect to a follow-up meeting to today's discussion, logically I think that a late August date would be good with the end of the thoroughbred race meet and folks being on vacation in early August, I think that perhaps the final week of August would be the best date, but we can discuss that. I'll send out an e-mail and blast everybody with a couple of optional dates and locations.

The final two items I have are the approval of the amounts of the Breeders Fund contract with the VTA and with the VHHA. They are proposing no changes from last year's amounts. The administration of the Thoroughbred Breeders Fund is
approximately $190,000, and the administration of
the Harness Breeders Fund are $50,000 annually. The
parties are here if you wish to pepper them with
your questions, but I would recommend that you
approve the requested dollar amounts.

MR. BURNETT: One question, Mr. Harrison.

This April 2nd, 2009, memo from Mr. Dunavant is
requesting a payment of $12,500, that's consistent
with 25 percent of the 50,000?

MR. HARRISON: It is.

MR. BURNETT: Is that what it amounts to?

MR. HARRISON: Yes. Annualized it's $50,000.

MR. BURNETT: Why don't we take them one at a
time. Since I started with the one that's second on
the agenda, any questions, gentlemen, about the VHHA
contract? As I understand it, there's a request
that it be continued at $50,000 a year that it's
been at for some time.

MR. BROWN: I make a motion that we approve
it.

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

NOTE: The motion is made by Commissioner
Brown and seconded by Commissioner Burnett. All
were in favor. The motion carries.
MR. BURNETT: All right. That is approved.

Glen, I know you've been struggling pretty hard with the VTA budget and how to deal with some of the changes that have been going on in your organization driven by the market. Do you want to make any comment at all about your budget request prior to our discussing it and voting on it?

MR. PETTY: I would just say -- Glen Petty, Executive Director of the Virginia Thoroughbred Association. In theory, or I should say in a vacuum, I would like to reduce our contract by 15 percent to reflect the reduced amount on thoroughbred wagering. That would seem to be a logical approach to me and a way to, you know, share the pain that's going on.

Unfortunately, our financial viability is such that to do so at this particular time would add insult to injury in a financial way that I can -- if you want to know all the numbers and talk about all that, I'm happy to delve into it. So what I'm asking the Commission to do is bear with us and let us continue down the road we're going, and we'll continue to work to make the fund bigger and the pie bigger and we'll do what we can to pay our way.

But that's really all I can -- I mean I can --
our biggest fundraiser is off 70 percent. Our membership is down. It's the same -- we've got the same issue that everybody else has got. Since we have no wiggle room in our whole program to start with, we're probably looking at a 60 or $70,000 hole at the end of the year with the contract at the current amount. So if we reduce it, the hole is deeper and how do we get out of it, or if we survive it is a real issue.

MR. BURNETT: I have one question, Glen. Your primary fundraiser is the stallion auction, which I've participated in many times. It nets you $35,000. Is that after all of your staff expenses and advertising and everything else?

MR. PETTY: Yeah, that's exactly it. The unfortunate thing is that last -- in 2008, it netted us 115,000. I think in 2007, it was 125; the year before that, it was 150. We've gotten too good at what we do, and the stallion managers have realized that we're better used as an agency than as, you know, a charity. So they've figured out now instead of giving us seasons to sell and giving us all of the proceeds or half of the proceeds, they give us seasons to sell on a 10 percent commission.

So while the gross, for example, continues to
rise, we're now running a stallion auction that's pushing a $400,000 gross number, but our net continues to shrink because of various market factors, and because these guys have figured out I don't need to give them something. They're pretty good at selling seasons I can't sell, and I'll just give them a little. The minimum now is $400 per transaction, but we probably spend $30,000 in advertising this thing. So we're in the process of re-inventing it again. Long story short.

MR. BURNETT: Well, my thought was for six months of effort to come up with $35,000 strikes me in some respect as a waste of time.

MR. PETTY: Yes.

MR. BURNETT: That said, eliminating that program, besides the impact on the breeders who have patronized it for so long, would also impact some loyal and longtime employees of your organization, correct?

MR. PETTY: No question.

MR. BURNETT: So it's just not parting with the 35,000, it's also saying goodbye to some people that rely on that income to support their families.

MR. PETTY: It was 25 -- I'd say in any given year, it's 25. As low as 25 and as high as 40
percent of our overall budget. Of course, we've made cuts everywhere we can with the exception of staffing, and I think after the meet I'm going to have to change that as well. I'm trying -- we're trying to keep the folks that work for us eating, you know, but there's a point where math is math.

MR. BURNETT: Right.

MR. PETTY: So everybody here in the room is singing the same song, just with different numbers and different issues.

MR. BURNETT: Any questions of Mr. Petty or anything -- any questions of Mr. Harrison with respect to this issue, gentlemen?

MR. PETTY: I would add one thing. I'll speak to it at the point of the meeting -- during public participation, but I wanted to tell you about something that's going on in the region.

I was at a meeting in Delaware Park last Tuesday. I'm now at the point that Mark McDermott, who is the Executive Director for the Pennsylvania Thoroughbred Breeders, now seems to enjoy telling me that he submits his budget in total to the Racing Commission, and they write him a check for it. I think he enjoys that jab, knowing that we don't enjoy that luxury and couldn't, you know. We
can't afford it even if we did, but it's just kind
of comical that Pennsylvania and other states
continue to -- now realize that and razz us a little
bit about it.

MR. BROWN: Correct me if I'm wrong, didn't
they have some sort of glitch show up this past week
that they might lose a lot of that money?

MR. PETTY: Yeah. They're now having a debate
over the definition of certain alternative gaming
dollars, and who gets what first and how things are
funded. They've got issues of their own, believe
me. They're just different issues.

MR. PETRAMALO: I think that the $200 million
horse industry development fund, the state is now
looking to take back a hundred million. What a
surprise.

MR. BURNETT: They had an excellent precedent
in West Virginia before they ever got started.

MR. PETRAMALO: Exactly. They want to keep
their rest areas open.

MR. BURNETT: When you tie in with a
politician, you know, be careful.

All right. If there are no further questions,
do we have a motion to approve the requested budget?

MR. BROWN: I'll make a motion that we approve
the budget for the Virginia Thoroughbred Association.

MR. BURNETT: The chair seconds. Any further discussion? All in favor indicate by saying aye.

NOTE: The motion is made by Commissioner Brown and seconded by Commissioner Burnett. All were in favor. The motion carries.

MR. BURNETT: Come now to the stakeholders. Colonial Downs update on the 2009 Thoroughbred Meet.

MR. WEINBERG: Mr. Stewart will deliver the report.

MR. BURNETT: Thank you.

MR. STEWART: Good morning.

MR. BURNETT: Good morning.

MR. STEWART: We've completed 30 days of racing so far, and the overall results have been pretty good. Through Monday, attendance is up a little over three percent; live handle is up slightly. Wagering at the track on other races around the country is up 16 percent. Horses per race are averaging 8.8 versus 7.9 last year. We've run more races. Races are up -- we had 14 more races in the first 30 days this year versus the first 30 days last year.

Purses are down. Purses on the run rate, if
you include the Derby and the Oaks, is about $185,000 a day versus 209 a day, and sale of our signal is down 36 percent.

As you know, TrackNet Media is boycotting our meet. After seeing the results of the June VRC meeting, YouBet joined in the boycott. The impact of these actions is a little difficult to gauge as overall wagering in the country was down 17 percent in June, but simplistically their actions may account for a 19 percent reduction. This represents money that could have been wagered on Colonial Downs, that was probably wagered on other tracks instead.

While much was made at the last meeting that the parties attempt to gain potential leverage in negotiations, there's no question as to which party is actually exerting leverage in this situation. The actions of YouBet and TrackNet are obviously in response to the new account wagering law which went into effect July 1st.

Over the last several months, I've attempted to explain the gravity of the situation, that Colonial Downs and the horsemen faced in dealing with an oligopoly such as TrackNet Media. The issue is both complex and simple at the same time. I
believe I failed due to my effort to concentrate on trying to explain the complexity of the issue as opposed to focusing on the simplicity of the issue. Therefore, today I'm going to spend a couple minutes focusing on the simplicity of the issue.

The simplicity of the issue is this. Account wagering generates significant amounts of revenue. Is it in the best interest of Virginia racing that the vast majority of that revenue created by Virginians, wagering in Virginia to benefit tracks and horsemen in other states or to benefit tracks and horsemen in Virginia? The revenue from the money wagered is going to go to someone.

You might know that the representatives of TrackNet last month were not arguing that they needed the lower rates in order to meet their rising operating costs. In fact, with their internet model, they can add revenue without adding significant cost.

They said the increase in host fees was driven by the horsemen's desire to receive more revenue. What they didn't say or at least didn't say very loudly was that the TrackNet Media tracks split the increased revenue with the horsemen. The horsemen get more, so the TrackNet Media tracks get more, and
Virginia gets less.

Now, I've talked a lot about TrackNet Media over the last several months, but who are they and why do they need more money? Why are their needs more important than Virginia's needs? So let's explore this for a minute.

I've said many times that TrackNet is a joint venture between Churchill Downs and Magna, but today I think it would be helpful to drill down a bit further. Let's look at the individual tracks that are benefiting from this increase in revenue starting with Churchill Downs. Churchill Downs is home to the Kentucky Derby, the most famous horse race in the world. They have a very real chance in the near future of getting slot machines to support their racing operation in Kentucky. Do they need the money more than we do?

Churchill Downs also owns the Fairgrounds racetrack in New Orleans, which has slot machines. Even with slot machines, does the Fairgrounds need the money more than we do? Churchill Downs owns Calder racetrack outside of Miami. Calder is approved for slot machines. It's currently building a casino. Instead of supporting Virginia racing, should we help to pay for their casino?
Churchill also owns Arlington Park Racetrack in Chicago. The third largest city in the United States with over 90 million people in the metro area. Do they need the money?

Now let's turn to Magna. Obviously, they are bankrupt, and they do need the money. However, should we pay for it? Let's look at their assets. Gulfstream Park has slot machines. Remington Park has slot machines. Lone Star Park is in Dallas, the fourth largest metro area in the country with over six million people. Santa Anita is one of the most famous tracks in the country. Thistle Downs is about to get slot machines. Should we take less so these tracks can have more?

Then there's Maryland. We're all aware of the problems and missed opportunities involved in that situation. Is Maryland more important than Virginia?

There are also some TrackNet tracks not affiliated with either Churchill or Magna, such as Oaklawn Park and Hoosier, both of which have slot machines. Are they more deserving?

The final analysis, the money generated from account wagering by Virginia is going to go to someone. It's not going to be eaten up by operating
costs. Clearly, the TrackNet Media tracks have far more sources of funds than we do. Their model of raising host fees is essentially predatory. They will continue to erode our revenue.

In order for racing to survive and prosper in Virginia, the playing field has to be level. We have to have a model that secures the future for Virginia, and that is exactly what the new account wagering law is designed to do.

MR. BURNETT: Any questions, gentlemen?

MR. PETRAMALO: I would like to join in those remarks, but add a practical concern. Because of the boycott, we are suffering not only monetarily, but perhaps in the long run we may suffer from horses not coming here.

Let me explain the following. We have probably more horses from the State of Florida here than we've had in the past. We have a lot of horses from the State of Kentucky. We have horses from our neighbors in Maryland. It's not an exaggeration to say that not a day goes by that a trainer or owner doesn't come in this building and say, "How come I can't watch races in Florida when my horses are running at Colonial Downs?" The same thing in -- the same thing in Maryland. And I have to explain
to them, well, here's the story. And after they
roll their eyes for the fifth time, I say, "Go get
an account with TVG," because that's the only way
you can watch racing in Virginia if you're in one of
those big states that supplies us all the horse
races. It's really hurting us with the horsemen who
want to come and race here.

MR. FERGUSON: Is this a classic corner
drugstore versus the Walgreens and the CVS? You
can't compete because you're the locally owned
drugstore?

MS. RICHARDS: No.

MR. WEINBERG: I think it's more complicated
than that.

MR. FERGUSON: We just don't have the
horsepower to do it.

MR. STEWART: Well, they own the supply chain
is essentially what happens.

MR. PETRAMALO: That said, I think the law
creates some equipoise. To look at it crassly,
you've got the leverage now because they're
boycotting our signal, and it's going to cost the
horsemen's purse account, as well as Colonial,
substantial dollars, but come January 1st, where
there's going to be in my opinion no doubt that if
those folks want to be re-licensed to do business in the Commonwealth of Virginia, they're going to have to start paying 10 percent in a source market fee, and one percent into the Breeders Fund, and a half percent to the Racing Commission. Then we're going to have the leverage because believe me, they're going to come back and say, well, you know, we can't really do it at this price. We've faced that before, and we've resolved it before.

If you recall, we had a company doing business here called AmericaTab, which ultimately was purchased by TwinSpires. They were doing business without a license, and we got together with them and tried to negotiate a contract, and we finally got one, but their pitch to us was the same pitch that you heard last month from Scott Daruty and TrackNet. Gee, we have to pay high fees to get this premium content. He was talking about paying Santa Anita eight or nine percent or Gulfstream or something like that. He didn't tell you that they only paid three or five percent to the vast majority of the run of the mill tracks.

But AmericaTab came to us with that problem. What we did was basically negotiate two rates with them. They paid us a source market fee at one rate
for the premium content that they had to pay extra
for, and they paid us a higher rate for the run of
the mill content that they didn't have to pay
premium for. We went forward in our YouBet
litigation that ultimately was resolved, and we
resolved that on the same basis. We looked at their
economics. They looked at our economics. We said,
okay, here's where we come out on that. That's what
we did.

Now, what we have now with regard to TrackNet
is a statutory commandment that gives us the
opportunity to say, well, here's the starting point.
You folks have got a lot more leverage because you
control content and distribution that we don't, but
we have a law saying if you want to do business in
Virginia, this is what it's going to cost us.

So come January, if I were a smart aleck, I
would say that it's payback time, but I'm not going
to say that. In January, we will -- in my opinion,
we will have the upper hand and we're going to have
to come to some sort of solution. We tried to
broker a solution for this meet. Both Ian and I
were on the phone with Scott Daruty trying to come
up with a solution, and they didn't want -- they
didn't want to solve anything for this summer. They
said no, no, no, no. We want a long-term deal.

Obviously, you couldn't do something like that within a matter of days. So they said, okay, we won't take your signal. They got their friends -- in my opinion, their friends at YouBet to do the same thing. And that's how the boycott came about.

MR. FERGUSON: Is that legal, Frank?

MR. PETRAMALO: I don't know.

MR. FERGUSON: Is it legal to --

MR. PETRAMALO: The only thing I know about anti-trust is I'm a defendant in an anti-trust lawsuit, so I don't know.

MR. BURNETT: Let me ask a question. You've got to start with two assumptions. One, assume that none of these major national ADW providers, the licensees that we have now, are willing to do business in Virginia at 11 and a half percent. Just assume that. If that's what they've got to pay, they'll take a pass and move out of Virginia. They'll say forget the Virginia market.

MR. PETRAMALO: Uh-huh.

MR. BURNETT: And assume that the legal answer to this rebate question on the 10 percent to the track is yes, you can give a rebate. Let's assume that the legal eagles look at that and say yup, you
can do that. How are we in any different position
than where we were before we passed the statute?
Because it seems to me the statute we had before,
you either worked out a deal at a number that both
parties could agree to or the ADW provider hit the
bricks because he didn't have a license.

In this case, the -- what my assumption is, 11
and a half percent is the equivalent of not having a
license. If I've got to pay 11 and half percent, I
might as well not have a license. How are we
really -- what progress have we made there? I know
it's a fallback to a certain extent to say, well,
look, you know, we'll help you out, but if you
can't -- if we can't come to a deal, it's 11 and a
half percent, but that's not much fallback if they
say, 11 and a half, we're going home. Then we've
just shot ourself in the foot, haven't we?

MR. STEWART: I think the part you have to
focus on is the vast majority of the host fees from
racetracks other than TrackNet Media is three
percent. Basically, we get about 11 percent in our
current deals, so it's not the 11 percent that's the
problem. The problem is the other racetracks that I
just enumerated all want -- instead of three
percent, they want nine percent. Next year they're
going to want ten, or the year after that, they'll want 11.

MR. BURNETT: I understand that. But there's a reason that y'all pay 12 or 15 percent for the Kentucky Derby, and there's a reason that nobody wants to bet on East Podunk nothing thoroughbred horses from someplace out in Kansas. There's a reason that Arlington Park is a valuable signal because the betting public likes it. Isn't that free market in a sense? I'm not trying to take sides so much here, but just say they can be a guerilla because everybody wants them.

MR. STEWART: They're a guerilla because there's 20 of them.

MR. WEINBERG: I mean, in my personal view, it's a three-way conversation, and the dialogue has gotten skewed by one party under the current structure. There are the tracks and the horsemen who set the host fees, they're the intermediaries for the national ADW providers, pure -- not to segregate them, but TVG and YouBet don't have affiliated tracks with them, and there are importing states like us.

Under the current arrangement, it all worked while the three were playing together, but the
horsemen and the tracks over here have said we want
more of the pie. And under the current system, they
can take more of the pie unilaterally, and we, the
third party, bear the brunt of every dollar they
take. We take one less dollar.

The parties in the middle say, "We don't care
who we pay it to. It's all the same to us." And
until you bring those parties in the middle into the
correspondence, I don't think you're going to resolve
what's going to happen to an importing state like
us.

MR. PETRAMALO: I don't think that's quite
accurate. You're being too objective there, because
parties one and parties two are in effect the same
as Ian pointed out.

MR. WEINBERG: Right. Well, that's how it's
been corrupted in my view. Manipulate is a strong
word, but if you took our existing formula and you
saw, well, how can we take from the importing state
and move more chips to our side of the table. They
figured out a way. Let's raise the host fees. That
will do it.

So unless we want a place at the table, the
only way we're going to get there is to statutorily
impose a source market fee or statutorily impose a
maximum host fee, which is what California does. I mean, it's the same issue. Two different approaches, but it yields the same result.

MR. BURNETT: Where I get a little wrapped around the axle is it's the importing state, exporting state. I think if we had 70 or 80 days of racing a year, at least that end of the table would be saying something very different about these host fees. They would want -- they would find a way to defend the increased host fee because they're getting half of them, and it's because they are in our environment, such a small piece of the overall pie that the horsemen don't focus on the host fee piece of it because the other fees are so much more important to our existence. Does that make sense?

MR. WEINBERG: I don't dispute that if you're in an exporting state, sure. And I'm a horsemen, absolutely. The racetrack is getting free rides on the horsemen's advocacy.

MR. BURNETT: On some level. Really, to me the problem is we have lumped year-round programs into the same pot and methods of negotiation as part-time live racing programs, essentially importing states, and the importing state comes out the loser under those fee structures because they're
so heavily weighted towards paying the expenses of the racetrack and purses.

I'm not saying -- it just seems that's the reality. I just don't know what the solution is.

We've got two very talented lawyers sitting behind you in this discussion. Don't look back now, Greg.

MR. PETRAMALO: Were you talking about Greg?

MR. SCOGGINS: I was saying the same thing.

MR. BURNETT: Listen, I don't want to put you on the spot, but if either one of you want to jump into this conversation, I think for me it's very educational for us to have these discussions because every time we have even the same discussion, I learn something and it's helpful to figure all this out in trying to work towards Virginia's solution to this problem.

MR. SCOGGINS: I've got a couple of points that relate to the TrackNet comment as well as XpressBet. So given that I might be a little bit more lengthy because of those two subjects, I would defer to Mr. Perini so he doesn't have to wait for my comments to end.

MR. PERINI: I'm Dan Perini. I'm with YouBet.com.

I think the first point I would like to
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address is not exactly to your question, but related
to some of the discussion that came up earlier, and
it has to do with YouBet's actions with Colonial's
signal following the last meeting. I would just
like to clarify that our treatment of the Colonial
signal has nothing to do with TrackNet's actions in
this regard or what happened at the last Racing
Commission meeting.

As you all know, ultimately we decided to stop
offering the Colonial signal to our customers. We
are loathe to do that, but felt that in this case we
simply didn't have any other good alternative in
light of all the circumstances.

Regarding your specific question, there's been
a lot of comments here I can address, but I'm not
sure that it's going to be that productive to go
through them point by point. I'm not sure what the
best solution is in the long run. We certainly feel
that -- you know, we resolved this from YouBet's
perspective in the short run when we, you know,
entered into our contract. Apparently, that's
become an issue as well.

We are in somewhat a different position than
TrackNet and are even in a different position than
TVG in certain respects. We have neither a
racetack or a cable outlet with which to help us in
our position. So I probably would let Greg speak a
little bit more to the TrackNet situation. That
seems to be the highlight of the discussion.

MR. PETRAMALO: Well, let me ask you a
question. You said not taking the signal or cutting
out the signal had nothing to do with TrackNet or
the last meeting. Why aren't you taking the signal?
Why isn't YouBet taking the signal?

MR. PERINI: Well --

MR. PETRAMALO: It's a simple answer.

MR. PERINI: Yeah. I think it's rather
obvious. I mean, we entered into a multi-year
contract with yourself --

MR. PETRAMALO: Correct. Another year to go
until 2010.

MR. PERINI: Yeah. And there's been an effort
to subvert that by going to the legislature without
any prior discussion with us to try to eviscerate
that contract despite that we entered into a
settlement agreement and a contract. So it's
difficult for us to engage in a partnership with a
track and distribute their signal under those
circumstances.

MR. PETRAMALO: Well, you've got a contract
that takes you through 2010, and you have certain
obligations under that contract, as do we. Why
don't you rest on your contract rights and say,
well --

MR. PERINI: We intend to, but it's been made
clear to us that there will be an effort in the --
you know, by the other side to not live with that
contract. So are you willing to live under the
terms of that contract through 2010?

MR. PETRAMALO: Certainly through 2009.

MR. PERINI: But not through 2010.

MR. PETRAMALO: Well, in 2010 you've got a
statute that --

MR. PERINI: You're answering my question for
me.

MR. PETRAMALO: No, I don't think so.

MR. BURNETT: But isn't there something that
is a bit -- you know, when I partner with somebody
in an endeavor and he or she gives me his word that
we're going to do it this way, and then that other
party goes out and finds a way to subvert the
contract, do I want to do business with you or with
that person anymore?

In other words, it's a different story from
where I sit in everyday business, and maybe there
are reasons for there to be exceptions here, that in
the integrity of two parties shaking hands on a deal
that at a minimum you should say, yeah, we had to go
put this statute in place because we needed it for
this and that, but a deal is a deal, and our deal is
good with you until it's over as we originally
intended it.

And if the legislature says we can't do that,
that we've got to charge you the full ten percent,
then I guess we've got to do it and, you know,
you've got to understand we're looking at the
long-term when we pass the statute. But to the
extent that that's not the case, hey, our deal
stands just the way it always was through the end of
the contract, then we'll talk about whether it goes
up or not.

I'm troubled by that. That a deal is a deal.
When I shake hands with somebody, I intend to keep
my end of the deal and it strikes me that on this
contract basis, you haven't done that.

MR. PETRAMALO: Whoa. Wait a minute. How do
you say that?

MR. STEWART: Let's talk about who subverted
what.

MR. BURNETT: It's double breaches.
MR. PETRAMALO: Tell me how we're not living up not to our contract.

MR. BURNETT: Have you agreed that the terms of the contract between you and any ADW providers should remain the same regardless of the statute through the termination of the contract you entered into, the deal you shook hands on? Let's just assume --

MR. STEWART: The very same people have --


MR. STEWART: -- found a way to subvert the contract.

MR. BURNETT: Excuse me. Excuse me, sir. I'm going to dismiss you from this meeting if you don't attend to the --

MR. STEWART: Excuse me.

MR. BURNETT: Thank you.

Would you answer the question, please? I'll give you a chance, Ian, but just hold on.

MR. PETRAMALO: Yes.

MR. BURNETT: There may have been other breaches, which Ian is about to tell us about. I want to know whether you guys have been willing to keep your end of the bargain throughout regardless of the statute.
MR. PETRAMALO: The answer is yes, but I don't want to be cute because the contract between the horsemen and YouBet simply says we divide half. So we aren't party to the contract that you are talking about.

With that aside, I would agree with you, that there is -- there is a serious concern going forward that -- well, I've stated this to Scott Daruty among others. I think I said it publicly. There's an interesting questioning; that is, on January 1st in my opinion YouBet is statutorily required to pay 10 percent, one percent, and a half percent under the new law. I don't think there's any doubt about that, but at the same time they have a very strong argument to come back to say, well, wait a minute. It's true we have to pay this state imposed fee, but we have a contract with you. So you owe us the difference between ten percent and what our contract calls for, eight and a half percent. That's where we are.

MR. BURNETT: Okay. So this is consistent with your view that you can rebate, that --

MR. PETRAMALO: Of course.

MR. BURNETT: -- you can make this contract have the same terms through its termination at such
time as you might go forward and renegotiate a new
contract?

MR. PETRAMALO: Absolutely. And that's what I
told the Commission last time. Account wagering
money comes to Colonial Downs, and it comes to the
horsemen. Last year the horsemen got -- oh, about
1.2 or 1.3 million dollars. We chose to take all of
that money and put it in the purse account. We're
not obligated in any way to do that. We could have
taken 300,000 and gone out and bought marketing --
use it as marketing, et cetera.

MR. BURNETT: Sure. Sure.

MR. PETRAMALO: We can use the money anyway we
want. So if we get our five percent share of the
ten percent and decide that, well, we want to pay
YouBet to do some promotional work, fine. I don't
see any problem with that, but what I'm suggesting
is come January 1st because of the extant contract
that is out there with YouBet and the statutory
requirement, the parties are going to have to sit
down and work out their differences, and what I
suggested before may be one way of fixing it. We
now have this two-tier contract with YouBet, where
they had to pay a little more for premium tracks.
We gave them a break on the source market fee. It's
MR. BURNETT: I'm a little bit lost, and I think Ian is going to give me the answer to this, but I'm a little bit lost as to why there's any need for any renegotiation. If a deal is a deal and you shook hands on it, why aren't you just saying, because we do have the ability to rebate, the numbers are going to stay the same YouBet or whoever until the end of your contract? You're going to pay exactly the same amount you've always paid. Assuming there's been no other issues out there, why is there a need to negotiate?

MR. PETRAMALO: Well, because they're going to be automatically giving us five percent, the horsemen, or they're going to give us a combined ten percent, and they're going to want some of it back.

MR. BURNETT: You have the right to rebate, but that formula is already set. It's nothing to negotiate. Assuming it's seven percent, that they're paying seven percent, why aren't you just saying your rebate is three percent, end of discussion?

MR. PETRAMALO: They're not paying a set source market fee. It's a source market fee that's net of variables. One of the variables is what my
good friend Ian keeps pointing to, the rising host
fees. That's a variable.

MR. BURNETT: That's what you say needs to be
negotiated is how to deal with this rising fee,
that's what kicks in the need to negotiate?

MR. PETRAMALO: That would be one of the major
points that needs to be negotiated, yes.

MR. BURNETT: I understand your point. Ian,
please. Go ahead.

MR. STEWART: I think the problem is we cannot
maintain the status quo. The status quo changed
when the host fees started increasing. Once the
host fees increased, our share went down. They took
more. So who didn't live up to the contract?
They're the ones that changed the host fees, not me.
I don't control them.

MR. BURNETT: Again, I'm not arguing with you.
I just want to understand the position. Your view
is that they control the host fees --

MR. PETRAMALO: Absolutely.

MR. BURNETT: -- and that they increased them
in violation of at least the spirit of the contract,
if not the letter of it, which you in turn use as a
justification to say, okay, you guys want to change
the terms. We've got a basis for changing the
terms, too. We need to re-negotiate this thing. Is that a fair way of looking at it?

MR. STEWART: All I'm saying is if the issue is who didn't live up to the terms of the contract, who subverted the contract, I would submit that the folks that raised the host fees subverted the contract.

MR. BURNETT: That's the point I want to understand as to where this is going.

MR. PERINI: I have difficulty understanding how YouBet raised the host fees.

MR. STEWART: No.

MR. PETRAMALO: No. You're the good guy in this.

MR. BURNETT: You're in the middle.

MR. PETRAMALO: You're the good guy.

MR. BURNETT: You probably didn't know it, but you're the good guy.

MR. PERINI: Is that on the transcript?

MR. BURNETT: Let's defer to Glen for a second. He wants to offer something.

MR. PETTY: Two points as I sit here and listen to this. First is that going back to Ian's simplicity/complexity argument, because of the legal complexities, we lost the simplicity. In fact,
YouBet is an ally in this fight because of the -- in
the TrackNet Media situation. They're sort of an
ally of ours because they're having the same.

But more -- but I wanted to more importantly
address, when we talk about where this legislation
came from or what motivated it, let us not lose
track of the fact that the Breeders Fund was a
player in that process. YouBet can do business in
Virginia, as can TVG, as can TwinSpires, as can
Colonial Downs because we passed pari-mutuel
wagering that has the mandate to promote, sustain,
and grow the native horse industry. The way we do
that in Virginia is through the Breeders Fund.

We've conducted over a hundred million dollars
of account deposit wagering or advanced deposit
wagering in Virginia without compensating the
Breeders Fund. I understand that YouBet probably
doesn't want to pay the Breeders Fund, and that TVG
and XpressBet and everybody else doesn't, but again
we are re-dividing the pie. So I understand that.

But the reason they can do business here in
the first place is to promote, sustain, and grow the
industry, and we're watching all this wagering move
from the traditional format to ADW, and we're being
left behind. And in spite of what you see on these
walls, you know, the breeding industry in this fabulously traditional state is dying while we're coming up with new ways to promote wagering, but it has to compensate the fund. It has to.

No one was coming to the table. I stood in front of this board. You guys heard me give this speech for five years. How are we going to fix this? Nobody had an answer. TVG didn't have an answer. Colonial didn't have an answer. The HBPA didn't have it. I didn't have an answer. YouBet didn't. No one had an answer.

So part of this bill -- I just want to make sure everybody remembers that, whether or not it was an attempt by whatever party to circumvent whatever contract, I can't speak to, but I can tell you there was a lot of people and a lot of votes in the General Assembly and a lot of support for this bill because it compensated the people who promote, sustain, and grow the industry.

I know that's another complicating factor, but I just want to make sure that's on the record, and everybody understands that's part of what happened here.

MR. BURNETT: To make it even simpler, it just put the one percent on every bet in Virginia, as
opposed to just some of the bets in Virginia.

MR. PETTY: And I'm sure no one wants to pay it. I understand that. If I were in their shoes, I wouldn't want to pay it either.

MR. BURNETT: Yes, ma'am, Jeanna.

MS. BOUZEK: Jeanna Bouzek, Vice President of Operations for Colonial Downs. Everybody else got to talk about their piece of the pie. Nobody has said anything about the OTBs. I just would like to state how account wagering has affected the OTBs.

Colonial Downs had a huge marketing campaign with EZ Horseplay so that we could say, you know, we want people coming to the OTB, and Dave and I have had this conversation before, why do we send people to account wagering, because they can't be in a site all the time. They're on vacation. They're in the office. They're home sick. So we did this huge campaign where if you can't be, you know, in our sites, you can wager.

Well, a day doesn't go by that I don't have a customer hanging up on me or screaming at me when I'm on site because EZ Horseplay now doesn't have these -- you know. So I've got to do the same thing he does and say, well, when you're not here, go to TVG. Well, guess what? Those guys aren't coming
back to the OTBs, and that's why the numbers are as low as they are in the OTBs.

So account wagering has hurt -- this dispute has hurt OTBs also, so I just wanted to put my piece of the pie in there.

MR. BURNETT: Thank you.

MR. PETTY: It's an important piece.

MR. BURNETT: It is.

MS. BOUZEK: That's what's keeping the horse racing alive, you know. It's becoming very hard.

MR. BURNETT: It has.

MS. BOUZEK: And every day someone hangs up on me.

Mr. Scoggins, just go ahead and put this all together for us so we can understand it.

MR. SCOGGINS: Greg Scoggins on behalf of XpressBet and MEC. In response to your question, I don't know that I can. I guess I'd like to start out with a few remarks because in some respects, I see this appropriately so from the perspective of folks in Virginia as a venting session, and I understand where they're coming from.

Three or four years ago, the horsemen's groups started communicating with one another about ways in
which to ensure that horsemen receive their fair share of the pari-mutuel dollar. I was at a meeting in Chicago five years ago I think it was. Frank, I don't know if you were at that meeting or not, but there were members of the HBPA there, TOC, THA, and others, and they were at the beginning stages of discussing the upside down business model that had grown from the simulcasting market. Not just ADW, but off-track wagering and inner-track wagering.

At that time, certainly from my perspective, I saw the train coming in the sense that you're going to have this discrepancy, this disparity between those states, which at the time were California, Florida, Kentucky, Maryland, where they have a lot of racing, very popular, a lot of people want to bet on it, and those horsemen rightfully so wanted to ensure that to the extent people are betting on their signal that they're getting their fair share. They're getting what they need to ensure that they can continue racing in their states. And I understand and totally recognize that as a valid concern from their perspective.

On the flip side, there are the states like Virginia, and to some extent Illinois even though it has year-round racing, and other states, Ohio where
their product is not as popular, and they have to
deliver on what they can bring and that they were
going to get hurt by the decision of those states
that were what we call export states charging higher
host fees.

Fast forward three or four years, MEC got into
the account wagering business for a couple of
reasons. One, it's a growing business. It's a
growing segment of the industry. Two, the tracks
also recognize that the model is upside down. And
if you read articles from Fred Pope and others,
there was a recognition that the simulcast business
model was upside down. The tracks also at every
jurisdiction, but certainly in those that had more
leverage because of the popularity, recognized that
they're paying or receiving too little, particularly
from certain segments of the business of the
industry.

At the time those segments were identified
as -- by MEC as being proper targets of trying to
get a more fair rate that recognized the reduced
cost associated with distributing a signal were ADWs
and the rebates, the rebate houses. Their ability
to provide a signal, Ian has said this, I agree with
much of what he said. The cost of producing and
disseminating wagering product through an ADW is
cheaper due to the absence of bricks and mortars and
things of that nature, and payroll and whatnot, and
the ability through the economies of scale to
distribute their wagering opportunities over a
larger population.

MEC recognized -- and this is before TrackNet.
This was a MEC issue. That because of those
economies of scale and because of the harm that
rebate companies were doing to drive bettors out of
the U.S. and through these rebate shops, which
that's a discussion for another day, that there
needed to be an adjustment in the pricing.

So we started increasing rates to companies
like YouBet and to those like AmericaTab at the time
and XpressBet. Not to TVG, primarily because
XpressBet and TVG were in a fight over content. One
didn't want to take the other for various reasons.
If you want me to, I can go into that greater, but
it was a longstanding dispute that ultimately
resolved, I'd say, this year as a result of a number
of contractual situations changing.

MEC increased their rates for Santa Anita, et
cetera, to three, four, five percent. More than in
the past to be sure, but not to the heights of what
we're seeing today. And I don't think Ian would
challenge me on this, the other thing that MEC did
was it recognized that there are costs associated
with brick and mortar wagering, and there are
operations such as EZ Horseplay, I think it was
Colonial PhoneBet at the time, Philadelphia Park, a
state-based regional business, where there wasn't a
national competition for access to that signal.

Therefore, they would offer the -- what we
call the brick and mortar rate, which were lower,
three or four percent on average for the content
including Santa Anita, and charge a higher rate,
four, five percent, for that content through a
national ADW provider, but Colonial Downs received a
benefit through its EZ Horseplay of the same rates
that it was paying at the OTBs and at the track.
That was the MEC model pre-TrackNet, pre-THG.

I am a little fuzzy on the details relative to
what happened immediately after TrackNet, but
TrackNet was formed not too far before the
horsemen -- their discussions started to mature.
There were various efforts to move into the ADW
market in a pre-pricing structure. Ultimately, last
spring I think it was, Frank, early in the spring,
maybe it was at the end of 2007, where the
thoroughbred horsemen's group came together, and they proposed a one-third, one-third, one-third model.

Whereby, they thought a fair allocation of ADW, the first area that they have focused on or they focused on was ADW, that the fair distribution of handle was one-third to the horsemen, one-third to the tracks, and one-third to the ADW provider. If you're looking at a 20 percent takeout, which is kind of the industry average, that means roughly six to seven percent to each of those three groups.

There was some discussion that took place between TrackNet and THG and within the MEC community within tracks as to how that one-third to the horsemen and that one-third to the track was to be divvied up, how much of that was to be host fees to the tracks and the horsemen that were running the race, and how much of that was to be used for source market fees. The export track horsemen and the export tracks -- and I would say to a large extent the export horsemen in export states like Florida and California, they said we want more of that one-third than what you're giving. Some I think even advocated or were willing to advocate that they did not support source market fees at all. That
discussion evolved.

I would probably believe that to some extent that was a function of input from Frank Petramalo and from Bob Reeves from Ohio. And that's to their -- I'm saying that to their credit. They were the small state tracks trying to let everybody understand the bigger picture of import versus export states. I'm sure Frank and Ian can clarify any points if I misstate them. I certainly do so unintentionally.

We were at about a three, four, five percent rate for the MEC tracks. Subject to or pursuant to the discussions that THG had with not only us but other tracks, those rates jumped two, three, four percent, and TrackNet's rates went. There was a yearlong fight between THG and the Churchill Downs folks over what that should be, and because the horsemen exercised their rights under the Interstate Horse Racing Act to cut off a track's ability to send its signal to other jurisdictions in order to create a leverage point to try to get to the track to understand that they needed to charge more for their rates, they needed to give more to the horsemen, et cetera and so forth. So that fight waged on for the year, last year. Unfortunately,
folks like Frank Petramalo found themselves as defendants in lawsuits because it was not a pretty fight.

At the end of the day, the allocation formula kind of settled out such that the better tracks were commanding six, seven, eight percent. I believe NYRA is at eight and a half percent for the ADW, and I will not hesitate to say that NYRA is not a member of TrackNet. NYRA is a highly sought after signal. They run Aqueduct. They run Saratoga, one of the prime summer meets in the country. They are not a member of TrackNet. They are not negotiated -- TrackNet does not negotiate on their behalf, and they came out with one of the highest rates early on.

Keeneland is not a member of TrackNet. They're a very highly sought after signal in the springs and the fall. Del Mar, another prime summer meet, is not a member of TrackNet to my knowledge.

Tampa Bay Downs, a small track that runs in the wintertime through the efforts of their horsemen. I think they're charging seven percent to the ADWs.

Now, let's be clear. I'm talking about ADWs, not necessarily brick and mortar. There are differences. There was a recognition on the part of
people -- (phone rings) I hope that's not me. My apologies.

There is a recognition on the part of several tracks that there is a different cost of doing business out of brick and mortar sites versus non-brick and mortar. So the rates are going up, not just through TrackNet sites, not through TrackNet tracks, but throughout the industry. And that's part of the recognition on the part of host tracks and host horsemen, and they feel that's necessary.

I think we are at a tipping point. I think maybe one could even argue that the host tracks and host horsemen have gone too far. I certainly have been a party to discussions within our organization where that subject has been brought up, and I think it has forced tracks and horsemen and states that are import states like Virginia to take action to try and level the playing field and respect for their own state.

Those discussions have taken place in Colorado. They've taken place in Oregon, New York -- even New York, Kentucky, elsewhere where they have said we've got to figure out or we'd like to look at ways in which the tracks in our
jurisdictions can be protected from too much money leaving the state.

That being said, there is not a state for which I am aware other than the State of Idaho that mandates a source market fee of the size as Virginia. Quite frankly, even Virginia is higher when you take into account the Breeders Fund fee than Idaho. It's among the highest in the state -- amount the highest in the country.

MR. PETRAMALO: What about California?

MR. SCOGGINS: California's source market fee varies. I would have to go back and look at how that is, but they have the cap for ADWs, a host fee of 3.5 percent. So it's designed to try and balance the -- or strike the balance, but --

MR. PETRAMALO: But don't they have a host fee that at times is as high as 11 percent -- I mean, source market fee in California?

MR. SCOGGINS: I'm not in a position to debate that point.

MR. PETRAMALO: No. That was my understanding.

MR. SCOGGINS: That could very well be. I will say that in California, you have a market that is extremely high for all the ADWs. And to some
extent, it's a lost leader, but there's also the
issue that you have such volume in that state and a
four and a half, five and a half percent hub fee
rate, which is what is generally paid in the State
of California and that the ADWs walk away with after
paying the various fees they're required to pay,
that there is more economic justification for doing
that.

If that were the rate that ADWs had to take
across the country, they would not be able to do
business because the volume and the efficiency were
such that, yes, we do have to rely on host fees or
ADW fees that are higher in other states in order to
make up for losses we sustain in those states where
the fees are too high.

If you look at Virginia and you look at a 11
and a half percent source market fee and you look at
a 20 percent takeout, you're looking at eight and
half percent leftover. If I'm left with five to six
percent to the host track and you look at the
one-third model, it doesn't work because you're left
with eight and a half percent, minus the five
percent host fee, that's three and a half percent.
That's the lowest in the country. Without question,
it is the lowest in the country, and it's certainly
not one-third of 20 percent.

So at the end of the day, this effort on the part of Colonial Downs and the horsemen, which is understandable, I do not begrudge their efforts, but it has skewed the table so far in the direction that is out of step with where everybody else is going and where I think this industry needs to ultimately land, that it creates a real problem for this state and does put at risk the state's ability to promote, sustain, and grow its native industry because it's going to drive the economics probably in a worse direction than what they had hoped to achieve with the legislation that they enacted.

The points you made earlier, Chairman Burnett, we have had discussions with Colonial directly or indirectly or TrackNet has. We have -- I don't like to negotiate contracts in the public, but I think there is a certain level of candor that's required so that we all have the proper context.

We have proposed an arrangement very similar to what Mr. Petramalo has described that from his perspective -- and I know he's not speaking for Colonial, and he may not agree with my characterization of what we proposed, but that to keep the economic terms as it relates to XpressBet
the same throughout the course of its contract, which extends through the end of 2012, and we have been told that there is no interest in that.

Now, there are other elements to that arrangement as it relates to host fees and things of that nature. I can't comment to those, primarily because I don't know the details and I don't want to speak to that, but I don't believe that those rates -- I believe that the discussion on the rates are such that they are more favorable to Colonial Downs than they would be to a track other than Colonial Downs.

I will also say that as it relates to the current situation, XpressBet is not in violation of its agreement with Colonial Downs. We have a provision in our contract that says that we will make sure that MEC sells its content to Colonial Downs, its ADW, and I think -- is it just ADWs, Jim, or is it --

MR. STEWART: Just the ADW.

MR. SCOGGINS: We have arranged for that to happen. There was some delays. There was some frustrations as a result of those delays, I acknowledge that, but those are at rates that are lower than the national average, and we certainly
extended an offer that would have allowed Colonial
to go at a lower than the national average. I think
right now you may be at the national average.
That's for reasons that I don't need to belabor my
remarks any longer to discuss, but I do think that
there is a need to recognize that, yes, we have a
Virginia focus here, and it's appropriately so.

There is a broader discussion going on. There
is a broader dynamic going on that is having an
affect on Virginia because the way the national
market is shaking out. It's inevitable. It's
regrettable. I hope that we can bring things back
to a level of rationality that me as Greg Scoggins
would think to be a better scenario. I don't know
whether that will occur, but at the same time, I
think it is unfair for any party to be treated in a
way that -- I believe in win, win, wins, and I
believe that there is a win, win, lose here going
on.

I recognize that the Virginia folks disagree
with this, but I think that at the end of the day
given our experience and trying to resolve it in a
manner similar to what Frank described, given our
inability to solve that, it puts me -- and it makes
me concerned that this legislation is not going to
be used in the manner that it's been described as a
possibility. We have not reaped the benefits of
those suggestions, and I am concerned that you will
have a negative impact on racing. I think that at a
minimum you will see signals not available to ADW
customers, because it is unprofitable to offer NYRA
at 15 percent takeout, at an eight and a half
percent host fee, and a source fee of 11 and a half
percent. If you do the math, we've got to take
money out of our pocket to do that.

We did have a mechanism -- we do have a
mechanism in our agreement much the same way as what
was described in YouBet, although its processed in a
different way, where XpressBet shares some of the
pain of the higher host fee. We had a cap of a host
fee of "X" amount and as it exceeded that, each
of -- XpressBet and Colonial Downs shared that
amount. So there were provisions in there to
address the expanded sides of host fees.

So I know I have taken up a lot of the
Commission's time. I apologize for that. I wanted
to make sure that from TrackNet's and XpressBet's
position, though, that you understood, you know,
where we were coming from and what we were
responding to in the national and the state-based
realms.

MR. BURNETT: Let me ask you one question. The ADW providers that are linked to tracks, two of them are, your employer being one, to the extent that they have control over their host fees, they entered into an agreement with the good folks in Virginia and the host fee is "X". Just pick a number, five, and then as it goes along, it's like, oh, geez, sorry guys. I know we've got a formula, expenses have been high. We've got to move to six and a half on our host fee. Gee, guess what? That's a point and a half that comes out of your pocket, Virginia.

Why isn't it fair for them to say, you know, you haven't kept your end of the bargain. You haven't -- we had a handshake. We had a deal. You're not being a fair partner in this with us, and we because of that have the right to fight back. We don't have a lot of tools in a small state, but one of them is our legislature. Why from just a fairness standpoint is -- what's wrong with that argument on their part from your perspective?

MR. SCOGGINS: I don't challenge the logic behind the argument. It's the old act and react scenario. If something happens to you that makes
your economic condition less favorable, then it is
natural for someone to say, "I've got to figure out
a way to equalize that scenario."

Stepping aside from there, there are -- the
old tired phrase in this whole discussion, there are
complications as it relates to the agreement that
only lawyers can love, and that is XpressBet is the
contracting party with Colonial Downs. XpressBet
made certain requirement -- or has made certain
commitments as had Colonial Downs. XpressBet in our
judgment has met all of those commitments.

I recognize that XpressBet is affiliated with
a company that also owns racetracks and that has
caused -- due to factors that are not XpressBet.
XpressBet did not ask -- and believe me, XpressBet
if it were by itself and even internally said, "Why
are you guys raising rates so high? You're cutting
into our margins," because we're in situations,
whether it be in Virginia or California, where we're
not able to make the kind of margin that we need to
make.

And so there is pressure on XpressBet when the
host fees go high, and we do try to make our
concerns known to the track side of the discussion.
We're not asking Santa Anita to raise its rates to
what it is. Santa Anita in order to sell its signal to us is being required by its horsemen to sell it at that rate. If we ask our horsemen, "Horsemen, we want to sell Santa Anita to XpressBet and TVG at four percent," they're going to say, "Don't worry about selling it." And the Kentucky horsemen have done that, and the Florida horsemen have done that.

So, yes, there is a certain level of participation by the track side of MEC because it's not -- you know, tracks do benefit from the horsemen saying you have to take a certain fee, but the reality is is that XpressBet has not caused MEC to do that. In fact, XpressBet is better off if MEC didn't go to the seven percent from the rates that it was at before. That jump from four to seven was a function of the THG issues that ultimately resulted in that.

So from an XpressBet perspective, it has met its obligations and, yes, there may be an indirect subversion if someone wants to use that term, but I don't think it's any more problematic. I think it's less of a problem than Colonial Downs who is a direct partner to the arrangement saying, okay, now, XpressBet, we're going to try and create a situation that's going to totally turn upside down your
economic arrangement that we had, because we're
going to stick you not in a position where you're
going to have to take home four percent. You're
going to be taking home in some cases zero percent.
I think it's a matter of degrees rather than A
versus B.

MR. BURNETT: Thank you.

MR. PETRAMALO: Brief response.

MR. BURNETT: Mr. Weinberg was wanting to
respond next. Do you want to yield to him, or do
you want to go now?

MR. WEINBERG: I'll yield to Mr. Petramalo,
the articulate Mr. Petramalo.

MR. PETRAMALO: With regard to Greg's
representations about THG's role and what its
proposals were, let me just say that I disagree so
it's on the record.

Secondly, I understand his final remarks here,
but you have to simply respond by saying the same
guy, the same corporation owns Santa Anita and
XpressBet. So it's a little artificial to say, gee,
we at XpressBet don't like Santa Anita raising those
fees or Gulfstream. The same guy is taking all the
money in his pocket.

Third point, final point before Jim, Greg has
put much of the responsibility for the raise in host fees on the horsemen. That's not entirely correct. If responsibility -- prime responsibility has to be placed somewhere, it's on Churchill and the Churchill tracks. This is a little complicated, but let me explain it.

Greg was accurate when he said the THG, the national groups proposal was one-third to the tracks, one-third to the horsemen, one-third to the ADWs. It was Churchill, the Churchill side of TrackNet that rejected it. Churchill's position was we solved economics by raising host fees. I might say that the Magna side pretty much was in agreement with the horsemen that one-third, one-third, one-third made sense, but it was the Churchill folks who were holding off and wouldn't agree to any such thing.

Their response was we've got to raise the host fees. That was the impetus for raising host fees. Of course, the horsemen said, yeah, that makes sense to us. Let's raise the host fees. And if you're in an exporting state like California or Louisiana, you say yeah, there you go. But that's how that all came about.

But I agree with Greg that it's a complicated
problem, but at the same time, it seems to me that
it is one that is subject to resolution if you have
reasonable people who are willing to sit down and
come to some compromise, but let me suggest that
it's not helpful to that process for us to be
sitting here -- when I say us, I'm talking about
Virginia horsemen and Colonial Downs being subjects
of a boycott. That's not conducive to negotiations.
That's a problem.

MR. BURNETT: Mr. Weinberg -- or any
questions?

MR. REYNOLDS: Go ahead.

MR. WEINBERG: I was going to make some of the
same observations as Frank. I mean, I agree when we
talk about fairness, uniformity, those are -- sound
like very nice simple concepts that as we delve into
the unique circumstances of each ADW provider are
very difficult and more complex, I believe, than
just who's doing what to whom and who's being fair
to whom.

Greg is right. This is a little bit of a
venting session because I don't have the answers for
you, but it has been frustrating for Colonial to
talk to TwinSpires in November and say, look, if you
want to negotiate an extension of your ADW
agreement, we need to bring TrackNet into the
discussion as well, and be told that's not possible.
And then five months later, to see a coordinated
action where we -- basically, they're holding the
gun and all the bullets and saying, now we'll talk
to you.

You can talk about fairness. I think as
Mr. Daruty observed at the last meeting, it depends
where you sit. From our seat, we tried in our view
to reach a fair agreement and were basically told we
don't know each other. We can't talk to you in that
way, and told now they hold all the cards.

I think you asked about this paradigm. When
we talk about increasing host fees, there is an
implicit assumption there that we haven't really put
on the table and may not be able to talk about, but
that is host fees get split 50/50. The horsemen are
asking for an increase. Well, then the track gets a
free ride. If the track asks for an increase, the
horsemen get a free ride.

In the past Virginia has been asked to fix
that by saying, look, we, the ADW provider, whether
it be AmericaTab, YouBet, pick your ADW provider, we
have to pay this fee, this host fee over here so we
can't pay your source market fee. So we have
adjusted. We said, okay, on that track, you pay this source market fee. On that track, you pay this source market fee.

So the last time we were here, there was some concern about uniformity of treatment between the track, the horsemen, and the other ADW provider. I would suggest to you that that's impossible because they're all in a different position. If we try to apply a uniform rule to every ADW provider, the results are going to be unfair. So the ability to vary rates depending on fees has been critical to getting to where we are.

With that said, we need someone to stand up and say the pendulum has swung too far on host fees, and if it continues to swing this way, there's not going to be anything left for a state like Virginia because we're seeing a migration out of the SWFs to ADWs, unless we find a way to bring all the parties to focus on it.

So Mr. Scoggins sees a crisis that he thinks may hurt Virginia. From where we sit, we have the attention of people we didn't have before to talk about things we need to talk about.

MR. BURNETT: I guess -- I don't want to prolong this conversation. It's very helpful to me.
I wasn't expecting an answer or a solution. If it were achievable, I think we would have done it sooner.

MR. SCOGGINS: Then why did you ask?

MR. BURNETT: Because I wanted to hear your bias, Greg.

It seems like we are awfully close as an industry to this one-third, one-third, one-third that the horsemen came up with a long time ago. In some respects, what's gotten us off track is that these sort of disguised arrangements of a source market fee and who's getting what. I just wonder if we simply followed the money and said it doesn't matter what you get it from, but horsemen are only getting a third. It doesn't matter, racetrack, whether you're getting it or how you get it, you're only getting a third, and the ADW, you're getting a third, but it seems we perverted that system a little bit.

MR. WEINBERG: I would respectfully disagree.

MR. BURNETT: Okay.

MR. WEINBERG: It just reinterprets the debate, because within each of those groups, there are two parties. You're going to have the Virginia horsemen talking now to the California horsemen.
The California horsemen saying we should get, you know, four-fifths of that, and we're going to be talking to the California track. And they're going to say, well, of that seven percent, we think we should get six percent and your source market fee should be a percent. So the --

MR. BURNETT: You're saying it shifts the fight to among the horsemen, for example, and then tracks get dragged into it and the ADWs, so we're back to where we started.

MR. WEINBERG: Well, the ADWs are out of it, right?

MR. BURNETT: At that point.

MR. WEINBERG: At that point they've got their six and two-thirds and they're happy, but the horsemen and the tracks -- it removes them from the middle of the discussion that I described before, right?

MR. BURNETT: Right.

MR. WEINBERG: And maybe it opens the flow of the discussion in a little more direct way, but I don't think it addresses the fundamental problem, which is still who gets what and how we strike a fair balance.

MR. STEWART: The reality is if you were to
divorce XpressBet and TwinSpires from TrackNet Media and they were stand-alone ADW companies such as TVG and YouBet, they're basically kind of in the middle. You got one side, the racetracks that are selling them the signal. You have to buy the signal from them, and they're jacking up the price. You got big bad Colonial Downs over here that wants a big pile too, and they're sort of stuck in the middle.

Well, the way the model works now is the people that are selling the signal, their number is fixed. They won't take a penny less. Mr. Scoggin needs what he needs to keep the lights on, so we're left with what's leftover. And that's the model that I have a hard time accepting.

MR. BURNETT: And for whatever reason, that's the way all of these ADW contracts are structured, right? It's Colonial and the horsemen get what's leftover --

MR. PETRAMALO: Correct.

MR. BURNETT: -- to put it in a real simple fashion.

Mr. Reynolds?

MR. REYNOLDS: I have thoughts about -- I keep hearing the word fairness. To me this is really a basic business economic thing. The exporting states
have the product that people want and pay for and so
forth, and demand -- continue to demand more.
There's nothing fair about it.

And the states, the importing states don't
have that power, don't have that market strength
behind them, and this is going to keep going on.
It's complicated further by what you were just
talking about. There's three parties involved in
each one, and they're all -- they will all be
different or can be different.

MR. PETRAMALO: You know, Commissioner
Reynolds, it was working fairly well until a new
form of wagering, on-line wagering came about,
because while it's true we are a big importer, we
also export.

So what was going on between racetrack to
racetrack worked fairly well. We, in effect,
swapped signals. We'd sell our signal to Maryland
for three percent. They'd sell theirs to us for
three percent, and it was kind of equipoise because
all the money was staying in the horse industry, and
horsemen are peripatetic, you know. They go all
over. You can't just say you're a Virginia horsemen
because I race in Maryland, too. So it was working
fairly well.
The problem came about when you got an ADW that had nothing to do with the horse industry that was setting up there. That's what made everybody start thinking, well, does this economic model make any sense where an ADW is up there say paying three percent for a signal, and then keeping 17 percent, none of which went into the horse industry. That's what we really gave rise to the problem.

MR. SCOGGINS: That would be TVG, which was the initial operator.

MR. PETRAMALO: Yeah.

MR. SCOGGINS: And it goes back to some comments that Mr. Daruty made in terms of going through the history of how ADW evolved and MEC, and it goes back to my points about why MEC got in the game of ADW was because there was a view that three and a half percent, which was the standard rate that TVG was paying as a host fee was too small given their cost of operation and the inequities that it was creating for the producers of the show.

MR. BURNETT: Which also enabled rebating, which is a whole different issue and is more harmful.

MR. SCOGGINS: And to that extent, I agree with Frank in the sense that the three percent model
was working well with the domestic inner-track
exchange, but it created a real problem and an
opportunity for companies like off-shore and even
on -- you know, domestic rebate companies, because
it created this nice spread of money that they could
use to make money with themselves and attract
bettors to their operation, because they could give
a portion of the takeout back to their bettors. So
the net takeout that a bettor was putting a bet on
was less than 20 percent. It might have been 15.
It might have been 10 percent.

MR. BURNETT: And it wreaks havoc on
Virginia's operation.

MR. SCOGGINS: It drives handle out of the
U.S. pari-mutuel horse industry supporting
businesses. The ADWs, to the extent they're paying
the source market fees and host fees, obviously the
tracks and the OTBs, it was pushing the thing out of
the market.

So I would suggest that while the three
percent market was working well under the domestic
exchange, it was due for a change as well. I
believe there was some effort to look at the
simulcasting pricing market as well, not just in the
context of ADW, but in the broader context of all
MR. FERGUSON: That was a market correction?

MR. SCOGGINS: Yes, sir.

MR. FERGUSON: It was just a market correction.

MR. SCOGGINS: That's right.

MR. FERGUSON: I'd hate to say it, but I mean it looks like the Virginia horse racing business model is just not sustainable the way it's going.

MR. REYNOLDS: That's right.

MR. FERGUSON: To bring it down to the retail level again, this morning I stopped in Williamsburg. There's some doughnuts up there by the way for everybody. Went to go to the Ukrop's, who opened up just next door to a Farm Fresh. Well, the Ukrop's was closed. And so I go into the Farm Fresh. I said, "What happened to the Ukrop's?" They said, "We ran them out of town. Put their tail between their legs."

It's just a hard core fight with that business, you know, and to run Ukrop's out of town is pretty darn hard to do. They're a great Virginia business, but Farm Fresh just slaughtered them. I appreciate your business model because the way I see it, it gives more of a vertical integration of your
business.

MR. SCOGGINS: That's right.

MR. FERGUSON: It put Colonial Downs in a position where they have to go to the legislature now to get paid, and you have to impose a tax in other words to get paid.

MR. BURNETT: Or worse yet, Commissioner Ferguson, it puts them in a position to have to go to the legislature to get to a level bargaining field, where they can negotiate effectively --

MR. FERGUSON: Right. Right.

MR. BURNETT: -- let alone get paid, I think is what you were saying.

MR. FERGUSON: But like Greg said, they did what they had to do.

MR. BURNETT: I agree.

MR. FERGUSON: You pick your poison with the 11 and a half percent rate, and I think that has to shake out.

MR. SCOGGINS: And the sellers of the signal has demonstrated by some of the things that have happened through TrackNet, that may happen in a broader context, will they have the ability to respond likewise.

MR. FERGUSON: So this is an
informational-type meeting. There's really nothing we can do as a Commission at this point, is there?

MS. BOUZEK: No, but while all this is going on, customers who are unique customers are getting very frustrated with the industry, which I'm sure they have in the past, but it's at an all-time high. Just look at the numbers. I mean, we're now above the national average in how much we're doing at the OTBs, because our bettors are frustrated with the industry and what's going on.

MR. SCOGGINS: As an industry, we are very good at holding the gun in the wrong direction when we fire. It's usually back at ourselves.

MS. BOUZEK: They don't want to hear about all of this.

MR. FERGUSON: I mean, is the brick and mortar OTB model sustainable or even workable?

MR. SCOGGINS: I would suggest with the technology it's jeopardized.

MR. WEINBERG: And I think -- if we continue our discussion from the working group, that's precisely what we were talking about of how we adopt the model that maybe is a little more flexible, a broader distribution.

MR. FERGUSON: Sure.
MR. BURNETT: That's an excellent segway for us to move on. Commissioner Reynolds has another engagement that he has to move on to.

Note: Commissioner Reynolds departed from the hearing.

MR. BURNETT: We need to take care of items six and seven, and we do have a short closed meeting that we need to take care of. Is it folks pleasure to have -- can you wait around just a few minutes to discuss the working group when we come out of that session?

Any public participation? We've had a fair amount already.

MR. PETTY: Very briefly. Two things.

MR. BURNETT: It better be.

MR. PETTY: I was in a meeting last week at Delaware Park, which I've already referenced, the heads of Pennsylvania, New Jersey, New York, Maryland, and Virginia Breeders Associations, and the point of that I'll bore you with later, but it got me thinking that it might be something this Commission would consider is organizing a meeting of that nature, bring Delaware and West Virginia to the table, again we had trouble with that, of the Racing Commission to the point of sitting down and talk
about some regional -- just get some issues on the
table and start kicking around solutions. I don't
know if you'll solve the day-to-day distribution
puzzle, but we had this conversation and Vic and I
talked about it briefly.

I think it would be great if somebody, and why
not Virginia, take the lead on that because what we
really got out of that meeting was we should have
done this before, and we should do it more often.
I'll throw that out there.

The second thing I wanted to touch briefly is
I wanted to publicly thank Frank for displaying the
Virginia-bred champion posters. It turns out to be
a great gallery for them, and it reminds me of how
much even our shrinking industry can accomplish and
I want to point out one thing to sort of have it on
the record.

You look around the room here and you see this
group of horses. Researcher started in Charles
Town. He's now a graded stakes winner. He's
running in a $100,000 stake over the weekend.
Two-year-old champion Charitable Man was fourth in
the Belmont. Casanova Move has made a graded stakes
place. Winchester won the grade one Secretariat
stakes, you know, you can't find the right name and
the right race any better than that.

But on 4th of July weekend, something happened
and I don't know that it's ever happened before, and
I can't quite figure out how to research it, but I'm
still working on it. In the $300,000 Prioress
Stakes at Belmont Park, Virginia-breds finished
first and second. I know of no other time that a
Virginia-bred -- Virginia-breds have finished
one/two in a grade one stakes race.

I can think back to Secretariat and Riva Ridge
running one/two in the Marlboro Cup, and while they
were both owned and bred by the Meadow Stud of
Virginia, Riva Ridge was a Kentucky-bred. I can't
find in my 30 years of experience, and questionable
memory I will admit, where that happened and outside
of Florida-breds and Kentucky-breds, no other state
may have ever run one/two state bred in a grade one
stake.

So I just wanted to point that out that even
with all this other stuff going on in the room, we
still have the right ground and the right people,
and we still can produce a good horse.

MR. BURNETT: Absolutely.

MR. PETTY: Two good horses.

MR. BURNETT: Next meeting August 19th,
gentlemen, is that acceptable?

Let me make a motion for a closed meeting.

Pursuant to Virginia Code Section 2.2-3711(A)(7), I
move that the Commission convene a closed meeting
for the following purpose, consultation with legal
counsel employed or retained by a public body
regarding specific legal matters requiring the
 provision of legal advice by such counsel.

Is there a second?

MR. BROWN: Second.

MR. BURNETT: All in favor say aye.

NOTE: The motion is made by Commissioner
Miller and seconded by Commissioner Reynolds. All
were in favor. The motion carries.

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

MR. BURNETT: I hereby certify that pursuant
to Virginia Code Section 2.2-3712 that to the best
of each member's knowledge, one, only public
business matters lawfully exempted from open meeting
requirements under the Virginia Freedom of
Information Act and, two, only such public business
matters as were identified in the motion convening
the closed meeting were heard, discussed or
considered by the Commission in the closed meeting.

Roll call vote.

It's a roll call vote.  Mr. Brown?

MR. BROWN:  Aye.

MR. MILLER:  Aye.

MR. BURNETT:  Mr. Ferguson, do you have an aye?

MR. FERGUSON:  Aye.

MR. BURNETT:  The chair votes aye.  That concludes that matter.  Thank you very much.

Do we go right into working group?  I guess I should adjourn our meeting.  Is there a motion for adjournment?

MR. MILLER:  So move.


Note: The hearing concluded.
I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on July 15th, 2009, New Kent, Virginia, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the meeting and other incidents of the hearing herein.

Given under my hand this 22nd day of July, 2009.

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

My Commission expires:
March 31, 2011