

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VIRGINIA RACING COMMISSION

March 17th, 2010

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:34 a.m.

COMMISSION MEMBERS:

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

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth (By telephone)

## I N D E X

1			
2	1.	Approval of the minutes of the regular meeting of February 17, 2010	3
3			
4	2.	Commissioners Comments	3
5	3.	Committee Reports	
6	a.	Breeders Fund Subcommittee recommendation	3
7	4.	Executive Secretary's Report	
8	a.	March Hours of Simulcast Operation Request	19
9	b.	Strawberry Hill Progress	28
10	c.	2009 VRC Annual Report	73
11	d.	Timeliness of March source market fee payments	75
12	e.	Licensing Hours - Thoroughbred Meet - Furlough Day	76
13	5.	Deputy Executive Secretary's Report	
14	a.	Approval of the Final Amendments to Chapter 60 (Sections 70 and 120)	81
15	b.	Approval of the Final Amendments to Chapter 110 (Sections 100, 180 and 190)	
16	c.	Approval of the Final Amendments to Chapter 140 (Section 60)	
17	5.	Stakeholders	
18	a.	Approval of Thoroughbred Horsemen's Agreement	105
19	b.	Requests for 2010 Standardbred Race Days	
20	i.	Presentation from Colonial Downs	113
21	ii.	Response, if any, from VHHA	117
22	iii.	Response, if any, from General Public	
23	c.	XpressBet, Greg Scoggins - From Incorporated to Limited Liability Corporation	44
24	d.	AmTote, Michael Fuchek - From Magna Entertainment to MID	
25	7.	Public Participation	153
	8.	Set next meeting -- April 28, 2010	154
	9.	Closed meeting	155
	10.	Adjournment	157

1 MARCH 17, 2010

2 MR. BURNETT: Welcome to our St. Patrick's Day  
3 special meeting at its usual, normal time.

4 The first item on the agenda, the minutes of  
5 our meeting in February. I've noted a couple of  
6 minor typographical errors already for our executive  
7 secretary's benefit. They're not substantive.  
8 Anybody else have any changes or comments?

9 MR. HARRISON: Amy is on speaker.

10 MR. BURNETT: We have Ms. Dilworth on speaker  
11 with us.

12 All right. Is there a motion on the minutes?

13 MR. SIEGEL: So move.

14 MR. REYNOLDS: Second.

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

16 All in favor indicate by saying aye.

17 Note: (Aye.)

18 MR. BURNETT: Motion carries unanimously.

19 Commissioner comments, any folks have comments  
20 to make? I think it might be to our benefit to pass  
21 over this since we have a fairly long agenda here.

22 We'll move on to committee reports. The first  
23 being the Breeders Fund Subcommittee recommendation.  
24 If I might comment a little bit on that and get us  
25 all in the same ballpark.

1 I understand that we don't really have a  
2 Breeders Fund Committee. We have a Breeders Fund --  
3 a standing Breeders Fund Advisory Panel of which  
4 Mr. Brown is chair. That panel has two  
5 subcommittees, they're under one name, one for VHHA  
6 matters and one for thoroughbred matters.

7 What we have before us today is a  
8 recommendation from the Thoroughbred Subcommittee  
9 that has to my knowledge not been run through the  
10 Standing Breeders Fund Advisory Panel. I don't  
11 particularly have any problem with that, but I'm not  
12 chair of that panel. I want to see if Mr. Brown  
13 would have any comment on it.

14 MR. BROWN: Well, I'd like to review it. I  
15 mean, as far as recommendations, that's something --  
16 you know, that's more your --

17 MR. BURNETT: We're going to talk about the  
18 recommendation next. I just -- as I see that group  
19 you chair, it's essentially thoroughbred and harness  
20 horsemen and if there were an issue that affected  
21 both, I would think you would want it to go through  
22 your committee or your panel.

23 MR. BROWN: Right.

24 MR. BURNETT: If it's only the thoroughbred  
25 group, it seems like it's a waste of your time to

1 hear it to twice.

2 MR. BROWN: Right. I agree.

3 MR. BURNETT: And I just want to make sure you  
4 agree.

5 All right. Well, I don't see Glenn. Dave, do  
6 you want to go through what the recommendations are  
7 for the Breeders Fund? Does that make sense? I'm  
8 aware of the motion, but I think it might be helpful  
9 for the rest of the Commission to understand what  
10 the discussion has been.

11 MR. LERMOND: Sure. I'd be happy to.

12 The committee met primarily over the phone the  
13 other day because of travel constraints, but  
14 basically knowing that there was a million dollars  
15 available for 2010, the committee agreed to the  
16 following.

17 First, there's going to be an owners' bonus.  
18 It's going to differ from the 100 percent bonus that  
19 was paid last year. It will be a 60 percent bonus,  
20 but it will be paid to all finishing positions not just  
21 the winner. Some people weren't too happy about  
22 just paying the winner last year, and it wasn't an  
23 unanimous decision, but it was the consensus. So  
24 that's what we went with. This year we're going --  
25 it'll be a straight 60 percent bonus for all

1 finishing positions. There will be no per race cap,  
2 but there will be a cap on this and one other  
3 program.

4 The other program is a 20 percent purse  
5 supplement to restricted races. These are races  
6 that are written for only Virginia-bred horses. The  
7 60 percent bonus is different in that that's races  
8 that are open to any horse that can enter.

9 Together with the 60 percent bonus and the 25  
10 percent purse supplement, we're estimating it's  
11 going to cost about 500,000, but we're going to cap  
12 it at 550. The hope is it will last throughout the  
13 whole meet. Last year we had a cap on the 100  
14 percent bonus, and it actually did not come into  
15 play. We're hoping it'll work out to the number  
16 that we have capped.

17 The third one was a contribution to the purses  
18 for Virginia-bred stake races. There will be six  
19 Virginia-bred stake races run at Colonial Downs,  
20 because of funding constraints, the committee agreed  
21 to contribute 120,000 towards these races. The  
22 purse account, I guess, will fund the balance of  
23 180,000.

24 We didn't want to leave out the breeders.  
25 We've got a new plan for the breeders this year, and

1 it's a 10 percent breeders bonus. It would apply to  
2 the same races run at Colonial Downs, the open  
3 company races that are not restricted and the  
4 breeder would get 10 percent of what the owner of  
5 the horse will receive. These amounts will probably  
6 be paid this fall as more money becomes available.

7 The final item was our traditional year-end  
8 breeder stallion awards. The estimated cost is  
9 290,000. Usually the amount of the breeder and  
10 stallion awards is basically what's left, to put it  
11 simply, but we believe that the 290 will be about  
12 the number that we'll be looking at.

13 I do want to say that a lot of thought went  
14 into this. The VTA and the VAHBPA had a separate  
15 meeting before the subcommittee meeting. A lot of  
16 good ideas were thrown out there, and I think, you  
17 know, a lot of work went into this. With the money  
18 available, we think this is or the committee thought  
19 that this was the best way to spend the money in  
20 2010.

21 MR. BURNETT: Dave, just to make sure I  
22 understand how this money might move around. Can I  
23 give you a hypothetical to make sure I understand  
24 how it's paid?

25 MR. PETRAMALO: May I interject before you get

1 to that?

2 MR. BURNETT: Please.

3 MR. PETRAMALO: Glenn is here now, but I  
4 think, Dave, that the 60 percent was payable through  
5 four, not through the whole finishing field.

6 MR. LERMOND: That's correct. Thank you.

7 MR. PETRAMALO: I'm sorry. I didn't mean to  
8 interrupt, Peter, I just wanted to get that --

9 MR. BURNETT: No, because I'm going to offer a  
10 motion here shortly so it ought to be reflective of  
11 what the agreement is or what the recommendation is,  
12 and it's one through four.

13 MR. PETRAMALO: Right. And the 25 percent  
14 purse supplement is the second element.

15 MR. BURNETT: But the purse supplement is not  
16 limited to one through four?

17 MR. PETRAMALO: No, no. Straight purse.

18 MR. BURNETT: Straight supplement all the way  
19 through.

20 MR. PETRAMALO: Twenty-five percent.

21 MR. BURNETT: Let's take a race that has a  
22 \$10,000 pot, and for simplicity's sake, assume the  
23 winner gets 60 percent --

24 MR. PETRAMALO: Right.

25 MR. BURNETT: -- and the usual distribution.



1           So a Virginia-bred horse wins that race.  
2           They'll be -- 60 percent of the \$10,000 will be put  
3           into the purse account for it to be distributed to  
4           the various places such that now the pot for this  
5           race is \$16,000; is that right? 10,000 from the  
6           purse fund and 60 percent of that added to it to be  
7           paid to the first four horses?

8           MR. LERMOND: Only if they were all  
9           Virginia-bred.

10          MR. PETTY: Theoretically.

11          MR. PETRAMALO: I think it's easier if you  
12          take an individual horse.

13          MR. BURNETT: Yeah.

14          MR. PETRAMALO: So I win the race. I get  
15          60 percent of 10,000, which is --

16          MR. BURNETT: As the winner's share.

17          MR. PETRAMALO: -- 6,000.

18          MR. BURNETT: Right.

19          MR. PETRAMALO: And on top of that, I get  
20          another 3,600.

21          MR. BURNETT: \$3,600.

22          MR. PETRAMALO: Right.

23          MR. BURNETT: Sixty percent -- of whatever you  
24          are paid, you get 60 percent of?

25          MR. PETRAMALO: Right.

1 MR. BURNETT: Now, you bred the horse. The 10  
2 percent award that you're going to get at the end of  
3 the year is based on what?

4 MR. PETRAMALO: It's not an end of the year  
5 award. It's 10 percent for winning that race.

6 MR. BURNETT: I understand that, but I  
7 understood Dave to say that it was going to be paid  
8 later because --

9 MR. PETRAMALO: Right. Later.

10 MR. BURNETT: It's not No. 4 here, No. 3.

11 MR. PETRAMALO: So I'm getting 10 percent of  
12 3,600.

13 MR. BURNETT: Or 10 percent of the 36 --

14 MR. PETRAMALO: No. Ten percent of 3,600.

15 MR. BURNETT: Three hundred sixty more dollars  
16 you're going to get --

17 MR. PETRAMALO: Right.

18 MR. PETTY: It's really 66 percent.

19 MR. BURNETT: Right. So for the owner/breeder  
20 who finishes first through fourth, it's 66 percent.

21 MR. PETTY: Theoretically, yeah.

22 MR. PETRAMALO: Right.

23 MR. BURNETT: And does the ten percent award  
24 pay down through sixth places or one through four?

25 MR. PETRAMALO: One through four.

1 MR. BURNETT: That's also one through four.

2 MR. PETTY: It follows the 60 percent bonus.

3 MR. BURNETT: Right.

4 MR. PETTY: It's triggered off of that.

5 All right. Have I got everybody all confused?

6 Do we have any other --

7 MR. MILLER: Mr. Chairman --

8 MR. BURNETT: Yes.

9 MR. MILLER: -- I have a basic question.

10 The estimated funds for a payout of  
11 one million, estimated on what?

12 MR. LERMOND: We do an estimation based on the  
13 projected handle at the racetrack and the SWFs and  
14 also -- this year we also get to estimate the  
15 account wagering contribution for the first time.

16 MR. MILLER: And that estimate is based on  
17 past years taking into consideration the trends?

18 MR. LERMOND: Yes, sir. Yes.

19 MR. MILLER: And you're comfortable -- I mean,  
20 everyone seems comfortable with that?

21 MR. LERMOND: I tend to be conservative when I  
22 make these estimates. We're figuring on a 20  
23 percent decline at the SWFs and ADW. It's the same  
24 as last year.

25 MR. MILLER: Well, without going through the

1           particulars of this and figuring out the formula, it  
2           doesn't matter, I guess, because if you don't have  
3           the one million somewhere, something is just not  
4           paid. Is that right?

5           MR. BURNETT: That's No. 4. The year-end  
6           Breeders Fund ends up being the slush fund, so to  
7           speak.

8           MR. MILLER: But you have less in that slush  
9           fund.

10          MR. BURNETT: Then it will be distributed --  
11          that's all that will be left. The breeders get the  
12          short end of the stick in the end. That's really  
13          the way it's designed. Is that fair? Glenn is  
14          nodding.

15          MR. PETTY: Unfortunately, that is fair.

16          MR. HARRISON: Let the record show.

17          MR. PETTY: Unfortunately, that is correct.

18          Commissioner Miller, just FYI. Dave ran an  
19          estimate and I ran an estimate independent of one  
20          another and I came up with a million one and he came  
21          up with the more conservative million, and we took  
22          his million, but we -- as it turns out afterwards,  
23          he kind of used the same methodology. I just  
24          used -- instead of last year's ADW numbers, I used  
25          January's, and I took the year-to-year. I came up

1 with about a hundred grand better, but I think that  
2 million is very fair.

3 MR. LERMOND: I hope Glenn's right.

4 MR. BURNETT: Sure. The breeders hope Glenn  
5 is right.

6 MR. PETTY: Right.

7 MR. BURNETT: I don't recall discussing it at  
8 one of the meetings I was at, but has there ever  
9 been and has there been any discussion of a reserve  
10 fund of any sort that you pay out a million even if  
11 you get a million one, and you kick the 100,000 into  
12 next year? Has there been any discussion of that?  
13 Is there any reason to think about doing things that  
14 way?

15 MR. PETTY: There is one. Not so many years  
16 ago, it was \$200,000, which we cleaned out with the  
17 100% Bonus.

18 MR. BURNETT: Right.

19 MR. PETTY: And we built it back up to a  
20 paltry 53,000, so we do have a little. This all  
21 includes retaining our little 53,000. So we'd like  
22 to --

23 MR. BURNETT: No cap and keep the 53 in place?

24 MR. PETTY: You know, if we were wrong and  
25 there was a bunch more money left at the end of the

1 year, would we like to build it up some more, sure.  
2 Let's keep our fingers crossed. I think March is  
3 going to be telling for us when we're sitting here  
4 next month, where the handle is.

5 MR. BURNETT: But in terms of my motion and  
6 what we're approving, the way I have it worded here  
7 is that you're going to pay it all out other than  
8 the \$53,000 reserve fund. If you have more than  
9 290, you're going to pay out more than 290. If  
10 that's your intention, that's for us to approve or  
11 not approve, but if you're telling us, no, we want  
12 to pay 290 even if we have 350 and we'll put 60 in  
13 the reserve fund, I think we ought to know that.

14 MR. PETTY: I would suggest that you amend  
15 your motion to make that flexible.

16 MR. BURNETT: That's the way it is now.

17 MR. PETTY: You may want to pay out 310 and  
18 hold back 40 extra depending on the math. We've  
19 always sort of at the end of the year picked a  
20 number, you know. Dave says why don't we pay the  
21 breeders "X," and I say how about we pay the  
22 breeders "Y", and we meet in the middle and set a  
23 reserve fund. That's how we've typically done it.  
24 I assume that this motion would reflect that same  
25 process.

1 MR. BURNETT: Yeah. I guess I'm trying to  
2 figure out how to go about that. I wonder just  
3 simply suggesting that -- if the number is  
4 substantially different than \$290,000, that perhaps  
5 you can come back to us and tell us what your plan  
6 is.

7 MR. PETTY: You know, that would be --

8 MR. BURNETT: You would have time to do that,  
9 I expect.

10 MR. PETTY: Well, you do. We do have time to  
11 do it. So that's a logical approach to come back  
12 and say here's what we have, here's what we propose  
13 to pay. If it's okay with you guys, it's okay with  
14 me.

15 MR. LERMOND: Yep.

16 MR. PETTY: Then everybody knows what we're up  
17 to and it's all transparent and everybody is happy.  
18 We typically haven't had enough money at the end to  
19 worry about it much. It hasn't been a very sexy  
20 story when you're dividing up the crumbs at the end.

21 MR. BURNETT: We might get a few breeders come  
22 down to one of our fall meetings and argue in favor  
23 of a larger distribution.

24 MR. PETTY: Yes.

25 MR. BURNETT: It's hard to say.

1 MR. PETTY: It would be nice. That would be  
2 good.

3 MR. BURNETT: Do we have any other questions?  
4 Dave?

5 MR. LERMOND: Just to let you know. When I  
6 came up with the million dollar estimate, that  
7 included about \$65,000 leftover as a cushion at the  
8 end of 2010.

9 MR. BURNETT: On top of the 53?

10 MR. LERMOND: The 53, and then making sure  
11 that I had 53 or a little bit better. You know, as  
12 Glenn said, in years past --

13 MR. BURNETT: Fifty-three plus 65, or is it  
14 65?

15 MR. LERMOND: It's going to end up being 65.

16 MR. BURNETT: That's what I needed to know.

17 MR. MILLER: What was left at the end of 2009?

18 MR. LERMOND: There was 53 leftover at the end  
19 of 2009. I'm projecting there's about \$65,000  
20 leftover at the end of 2010. If the handle should  
21 go lower than 20 percent, that could help us still  
22 maintain the plan that we wanted to follow.

23 MR. BURNETT: Any other discussion?

24 Questions? Let me take a crack at a motion here.

25 I move that the distribution of the



1 approximately one million dollars available to the  
2 thoroughbred horsemen for the Virginia Breeders Fund  
3 for 2010 be as follows. Until exhausted, \$550,000  
4 for a 60 percent bonus paid to Virginia-bred horses  
5 that finish first through fourth running in open  
6 company at Colonial Downs and a 25 percent purse  
7 supplement for races run at Colonial Downs  
8 restricted to Virginia-bred horses.

9 Second, \$120,000 towards six Virginia-bred  
10 stake races to be run at Colonial Downs with the  
11 remainder of those purses to be charged to the purse  
12 account.

13 Third, a 10 percent award paid to breeders of  
14 Virginia-bred horses that finish first through  
15 fourth in open company at Colonial Downs at an  
16 estimated cost of \$48,000.

17 Finally, the remaining funds currently  
18 estimated to be approximately 290,000 to be paid in  
19 a traditional year-end breeders award as we've done  
20 in the past.

21 In the event that there is a substantial  
22 difference in the amount of money remaining at the  
23 end of the year, a difference from the 290,000  
24 that's estimated, the subcommittee will come back to  
25 us with a recommendation as to how much of that fund

1 should be attributed to breeders.

2 MR. BROWN: I'd like to second that.

3 MR. BURNETT: Mr. Brown seconds. Is there any  
4 discussion now?

5 MR. PETTY: Mr. Chairman?

6 MR. BURNETT: Please.

7 MR. PETTY: I believe you might want to add  
8 the word registered in front of Virginia-bred, and  
9 on the first three items you might want to say  
10 Virginia-bred and Virginia-sired because  
11 Virginia-sireds are eligible, but I don't think  
12 they've been folded into the definition of  
13 Virginia-bred. So for the 60 to 25 in the stakes,  
14 Virginia-sireds are also eligible.

15 MR. BURNETT: Let me add the Petty amendment  
16 to my --

17 MR. PETTY: And I think the word registered  
18 just keeps us all out of the soup.

19 MR. BURNETT: To reflect that any place that I  
20 have referred to Virginia-bred horse or conditioned  
21 race, that Virginia-bred shall mean that the horse  
22 be Virginia-bred as is traditionally understood in  
23 the industry or Virginia-sired, and in either case  
24 registered with the Virginia Thoroughbred  
25 Association.

1 Do we have a second to the amended motion?

2 MR. BROWN: I will second it.

3 MR. BURNETT: Mr. Brown seconds the amended  
4 motion. Any further discussion now? None.

5 All right. All in favor of the motion, please  
6 indicate by saying aye.

7 Note: (Aye.)

8 MR. BURNETT: The motion carries unanimously.

9 I would comment to my fellow commissioners, my  
10 sense is that more work has gone into this year's  
11 effort to distribute this fund than in any of the  
12 prior years, and I commend all the parties for  
13 taking the time that they did. I think it was a  
14 tug-of-war in some respects among various interested  
15 parties. I think this is a very fair outcome.

16 I know a lot of people would like to have --  
17 the rules never change, and it would be understood  
18 by everybody every year to be exactly the same as it  
19 was last year. That is not the landscape that horse  
20 racing is operating in these days. I think that  
21 folks have done the best they can to make sure that  
22 it's a fair distribution, and I thank them for their  
23 efforts.

24 Executive secretary's report. Mr. Harrison?

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

1           The first item I have is the March hours of  
2 simulcast. The track completed for the first time  
3 the VRC form that we worked on, and so I want to  
4 give credit where credit is due here. Jeff Wingrove  
5 had a lot of input here and his wizardry with Excel  
6 populates the spreadsheet on the form. Thank you,  
7 Jeff.

8           MR. BURNETT: That's at Tab 3?

9           MR. HARRISON: Tab 3, yeah.

10          MR. BURNETT: It's worth looking at, fellow  
11 commissioners, because it's a -- it is a good piece  
12 of work, and it incorporates the percentages that we  
13 discussed at our last meeting.

14          MR. HARRISON: It does.

15          So Colonial Downs completed the form and  
16 e-mailed it to us at the VRC. It was then  
17 distributed to the commissioners for their comments  
18 and input. We received some of those. The  
19 executive secretary signed off on it. It was  
20 returned to the track and they went forward with it,  
21 but essentially what they're asking for is an  
22 extension of their Sunday hours at four of the SWFs  
23 and extending their Monday hours at three of those  
24 SWFs and also reopening the Indian River, Hampton,  
25 and Hull Street SWFs on Tuesdays.

1           It's a nice change. I'm glad to see it. I  
2 always like to see the extension of operating hours,  
3 but I would ask that you approve their request.

4           MR. BURNETT: May I ask a question here, a  
5 couple of questions? One is in the percentage  
6 lines, if you look at the labeling at the top,  
7 you've got a minus -- I have a vertical minus there  
8 over --

9           MR. HARRISON: A plus and a minus.

10          MR. BURNETT: -- a plus. When you get to the  
11 bottom, neither shows. And so either we're in what  
12 Ian is comfortable with in the accounting world, if  
13 they're aren't parentheses around it, it's positive,  
14 and if there is, it's negative. If we're going to  
15 do it that way, I think it ought to indicate that up  
16 above. I think it would be easier for the amateurs  
17 among us to just look at a plus -- a plus or a minus  
18 in front of the percentage if that's doable.

19          MR. HARRISON: Sure.

20          MR. BURNETT: Jeff is nodding his head, so  
21 that's good.

22          MR. HARRISON: We discussed that. It  
23 calculates cumulatively, so it would reflect the  
24 change -- the percentage change. It gets esoteric  
25 because of the plus and the minus.

1 MR. BURNETT: We want to avoid that. I guess  
2 what I'd like to know is what the percentage change  
3 is over the last approved arrangement, not what it's  
4 been -- not the sum of 19 different approvals over  
5 the prior year.

6 MR. HARRISON: Right. This -- well, the data  
7 that's in here now is the template. So any change  
8 that's coming in the -- say they make a change for  
9 April, it'll show the change from what you see right  
10 in front of you now.

11 MR. BURNETT: So if there is no change, it  
12 will be the zero percent?

13 MR. HARRISON: That's right.

14 MR. BURNETT: Otherwise, if there is a change,  
15 it would be up or down?

16 MR. HARRISON: Right.

17 MR. BURNETT: Okay. I guess one of my  
18 questions is, how do you get a hundred percent  
19 change?

20 MR. HARRISON: That's another philosophical  
21 question, because if they don't have any operating  
22 hours on a single day and then suppose they open for  
23 one hour, well, that's a hundred percent change. It  
24 went from zero to one. If they open for 12 hours,  
25 that's a hundred percent change. Anyway, I just

1 wanted to --

2 MR. BURNETT: Well, okay. Is it not  
3 essentially -- okay. I guess I can see the  
4 difficulty. I think we're interested in knowing  
5 what the change and number of hours of operation is.

6 MR. HARRISON: Right. Total number of hours.

7 MR. BURNETT: Right. When you do it by the  
8 day, you end up with that hundred percent  
9 arrangement, but over the course of a week, it might  
10 be a different -- it might be different.

11 Okay. I wonder -- I don't want to intrude on  
12 what's already a very good product, but it would be  
13 nice if there was perhaps a summary on the entire  
14 week. In other words, this change is going to move  
15 Scott County's hours of operation up 12 percent for  
16 the week or something like that.

17 MR. HARRISON: Sure.

18 MR. BURNETT: I think it would be helpful.

19 MR. HARRISON: We'll continue to work on it.

20 MR. BURNETT: That is exactly what we're  
21 looking for. It's terrific, Jeff.

22 MR. WINGROVE: Thank you.

23 MR. BURNETT: I think it really helps a lot.

24 MR. MILLER: Mr. Chairman?

25 MR. BURNETT: Yes.

1 MR. MILLER: Taking that into consideration,  
2 what is the 16.7 percent on Sunday? What does that  
3 represent, 12 to what? 16.7 percent plus? Minus?

4 MR. HARRISON: Plus.

5 MR. MILLER: From where?

6 MR. HARRISON: From the current -- if you look  
7 at the -- the first column there is what is current,  
8 the current hours of operation, and then what is  
9 proposed.

10 MR. MILLER: It's going from 72 hours to 84  
11 hours?

12 MR. HARRISON: It's 16 percent.

13 MR. MILLER: And the 72 hours was from the  
14 last month?

15 MR. HARRISON: Right. It's February to March.

16 So we would ask for approval of Colonial  
17 Downs' request to change their hours of operation at  
18 the SWFs in March.

19 MR. BURNETT: To summarize that, just to see  
20 if I can read this form, we're up a total of 16.7  
21 percent in hours on Sunday. Those hours change at  
22 the various facilities. We're up 33.3 percent hours  
23 of operation on Monday and we're up a  
24 hundred percent of hours on Tuesday because they  
25 were all closed before, and those hours -- those



1 percentages are actually spread over several  
2 facilities, which appear to be shown in pink on the  
3 chart, on those three days.

4 MR. HARRISON: That's correct.

5 MR. BURNETT: Am I reading it correctly?

6 MR. HARRISON: Yes.

7 MR. BURNETT: Does it make sense to everybody?

8 MR. MILLER: I have one other question.

9 MR. BURNETT: Yes, sir.

10 MR. MILLER: I just want to understand this.

11 When you look at Tuesday and you look at Indian  
12 River, it's currently closed and you propose 24  
13 hours, right?

14 MR. HARRISON: No. Well, that's military  
15 time, from 12 until 12.

16 MR. MILLER: Okay. And then it's carried over  
17 to the next column, but what does that mean there?  
18 What does 2400 mean in the white un-highlighted  
19 column for Indian River?

20 MR. HARRISON: On Tuesday?

21 MR. MILLER: Yeah, Tuesday. What does that  
22 mean? The others that are closed are a zero.

23 That's closed 2400 hours, 2400 hours, what's that?

24 MR. HARRISON: Right. It reflects the  
25 difference, but since it's a difference coming from

1 a day that was closed to reflect the entire 24-hour  
2 period.

3 MR. MILLER: In other words, that was open  
4 before and now it's --

5 MR. HARRISON: It was closed and now it's  
6 going to be open. So it reflects an addition, but  
7 the actual number of hours that it will be operating  
8 is 12. So it doesn't pick up on that 24. That's  
9 for reference only. It's the hours that are  
10 highlighted in pink that sum up at the bottom of the  
11 spreadsheet. It's twelve additional hours each day.

12 MR. BURNETT: Is the second box in the white  
13 column the one that --

14 MR. HARRISON: We could zero that out. That  
15 would make it clearer.

16 MR. BURNETT: Is it not redundant? It's  
17 saying the same thing that's over there on the  
18 yellow column, right?

19 MR. HARRISON: Right.

20 MR. BURNETT: If it just didn't have that, if  
21 you could just put an "X" through there or  
22 something, then you can look at what's in the pink  
23 there?

24 MR. WINGROVE: I could make that change.

25 MR. BURNETT: Because it would lead you to

1 believe that that is in hours, not a time.

2 MR. HARRISON: Sure.

3 MR. BURNETT: Do you see what I'm saying?

4 MR. HARRISON: Yes.

5 MR. BURNETT: We want to add some character to  
6 that.

7 MR. HARRISON: We want that.

8 MR. BURNETT: Thank you, Commissioner Miller.

9 MR. REYNOLDS: It would be a lot better to  
10 look at a weekly total.

11 MR. BURNETT: I think they agreed to -- that  
12 Jeff could do that.

13 MR. WINGROVE: One other comment. That 2400  
14 in that box is so it will calculate the percentage  
15 change. So from here forward, we'll hide it. It  
16 won't have that. It'll have whatever the current  
17 was and whatever the change is.

18 MR. BURNETT: Is that going to handicap you in  
19 terms of telling us the percentage?

20 MR. WINGROVE: If I take that 24 out, yes, but  
21 I could draw a line through it or what have you.

22 MR. BURNETT: Great. If you could just find  
23 some find way to help us ignore that, because you  
24 can see how confused we get by this.

25 MR. PETRAMALO: Only the lawyers are confused.

1 Everybody else understands it.

2 MR. BURNETT: It's completely clear to  
3 everybody else, right?

4 Thank you for your hard work on this.  
5 Hopefully the work will pay off into streamlining  
6 future approvals and seeing how things are going.  
7 It's terrific. Thank you.

8 Anything else on this subject?

9 MR. BROWN: Do we need to make a motion?

10 MR. BURNETT: Yeah, we do.

11 Are you moving this, Mr. Brown?

12 MR. BROWN: Yeah, I'll move it.

13 MR. BURNETT: Do we have a second?

14 MR. REYNOLDS: Second.

15 MR. BURNETT: It's been moved and seconded  
16 that we approve this form or the change -- that we  
17 approve the changes to the simulcast schedule at the  
18 various OTBs as presented. All in favor indicate by  
19 saying aye.

20 Note: (Aye.)

21 MR. BURNETT: I understand that there's going  
22 to be a few changes made to this form and it will be  
23 brought back next time. Thank you.

24 Next item?

25 MR. HARRISON: The next item is the update on

1 the Strawberry Hill progress. As you know, they had  
2 applied for a limited license for pari-mutuel  
3 wagering for their March 15th event. I was going to  
4 speak to our progress with that effort and I was  
5 going to speak to the cooperation that we were  
6 receiving and I was thinking that in April we were  
7 going to ask for your approval on that, but on  
8 Monday, we received a message from the state fair  
9 folks saying that they were withdrawing their  
10 application for the limited license.

11 MR. SIEGEL: What's the reason for that? Do  
12 you know?

13 MR. HARRISON: The stated reason was one that  
14 related to finances. They felt when they did their  
15 projections that their costs, including the  
16 licensing cost of the individuals would make it a  
17 risky proposition for them with respect to breaking  
18 even or making a profit.

19 MR. MILLER: Did you say March 15th event?

20 MR. HARRISON: May.

21 MR. MILLER: You said March.

22 MR. HARRISON: I missed it.

23 MR. MILLER: Mr. Chairman, I have a question.  
24 So the Strawberry Hill race in years past has not  
25 had pari-mutuel wagering?

1 MR. HARRISON: Correct.

2 MR. MILLER: So this year it was proposed to  
3 have pari-mutuel wagering?

4 MR. HARRISON: That's right.

5 MR. MILLER: The status as of now is it's  
6 going to go forward as a Strawberry Hill race here  
7 without pari-mutuel betting?

8 MR. HARRISON: That's correct.

9 MR. PETRAMALO: May I comment on this?

10 MR. BURNETT: Please.

11 MR. PETRAMALO: The Strawberry Hill races, if  
12 you've never been to them, are very popular.  
13 Depending on the weather, they get as many as 25,000  
14 people out here. They asked for our cooperation --  
15 the VHBPA's cooperation this year because they  
16 wanted to institute pari-mutuel wagering on live  
17 races, and we agreed to help them. More  
18 importantly, we agreed to help them financially.

19 As you probably know, the horsemen get eight  
20 percent on all the live handle during horse racing.  
21 We agreed to help them with this project. We agreed  
22 to give them our eight percent. This is a  
23 charitable organization after all. It's a  
24 501(c)(3), the state fair and the races. So we were  
25 helping them through the process, and I was

1 surprised when I learned the other day from the  
2 director that they were withdrawing the application.

3 And one of the reasons I was told was because  
4 of the costs including the licensing costs. They  
5 didn't think they could afford to pay for a license  
6 for a parking lot attendant or a popcorn vendor, et  
7 cetera. I was disappointed because I thought it  
8 would be a good experiment. My suggestion is that  
9 perhaps in the future if this comes up, you can give  
10 some consideration to either waiving that fee or  
11 somehow dealing with it at least to get them started  
12 on the process.

13 It seems unfortunate to give up on 25,000  
14 people who are potential repeat customers of the  
15 racetrack, particularly to the extent we're talking  
16 about steeplechase racing because we run  
17 steeplechase races at Colonial Downs, but we're more  
18 than happy to work with the races as well as the  
19 Commission in trying to get around the financing  
20 problems.

21 MR. MILLER: Mr. Chairman?

22 MR. BURNETT: Please.

23 MR. MILLER: I hate to take everybody's time,  
24 but I need to understand this whole operation  
25 regarding the Strawberry Hill races.

1           When they hold the races here, they have to --  
2           they sponsor the race and they take the profits and  
3           they rent from Colonial Downs. Is that how --

4           MR. STEWART: Historically, we've rented them  
5           the facility. That's correct.

6           MR. MILLER: You rent it to them. So they  
7           have to be the licensee to run the race.

8           MR. BURNETT: They don't even need to get a  
9           license, I don't think, do they?

10          MR. MILLER: No. I mean, if they wanted to  
11          have pari-mutuel wagering.

12          MR. STEWART: There's several ways it could be  
13          done. We talked about all of them. We could have  
14          been the licensee. That's one possibility.

15          MR. MILLER: That's what I'm trying to get at.  
16          They could still be the sponsor -- I mean, they  
17          could still get their money, I guess, from being the  
18          historic presenter of Strawberry Hill races through  
19          Colonial Downs, couldn't they? They could work out  
20          an arrangement, a business arrangement, and have the  
21          race under your license, couldn't they?

22          MR. STEWART: They certainly could. The issue  
23          remains the same, though. The issue that they  
24          tripped over was that the vast majority of the  
25          people that work here for them in the parking lot,



1 all throughout the facility are volunteers. They're  
2 people that are not paid.

3 However, the Racing Commission's position is  
4 that all of those people need a license. There's  
5 approximately \$6,500 in licensing fees that  
6 Mr. Roberts communicated to me. That's a number  
7 that's the stumbling block. Sure. I guess --

8 MR. MILLER: I was going to inquire further,  
9 but if we're talking about \$6,500, it's not worth  
10 the time of the people in this room for us to even  
11 discuss it. That's nothing.

12 MR. SIEGEL: Was there a compromise that could  
13 have been reached or was there a discussion of one  
14 to the 6,500? To your point, could there have been  
15 a reduced fee since it's only a one day meet? It's  
16 not as if they're going to be licensed for the  
17 entire 45 days or whatever.

18 MR. HARRISON: It came up during our meetings,  
19 and I believe that the actual number is closer to  
20 3,000. They have to pay about 3,000 anyway for the  
21 required participants. I think that the 3,200 was  
22 the amount for the parking attendants and the  
23 vendors and things like that.

24 Be that as it may, they requested that we  
25 waive the fee, the license fees, and à la the

1 three-day pass that we came up with, but they were  
2 experimenting this year with Colonial Downs for the  
3 Colonial Turf Cup, the 4th of July, and the Virginia  
4 Derby. Our view was that Colonial Downs' meet is a  
5 40-day meet and we're making an exception for these  
6 three days, and it's an experiment. We're going to  
7 see how that goes this year.

8 The Strawberry Hill meet is a one-day affair.  
9 There's nothing to reconcile that one day with. So  
10 we thought it prudent that, okay, this is a limited  
11 license. These are the folks that we license. This  
12 is a highly regulated industry here in Virginia, and  
13 this year -- this first year, this is what we're  
14 going to -- this is how we're going to process those  
15 licensees.

16 We would consider after this first year  
17 working out some sort of a compromise, but that's  
18 the reasoning why we went this route.

19 MR. MILLER: Okay. I need to ask another  
20 question. If they didn't use their volunteers and  
21 they used your people, people that have -- when a  
22 person buys this license, when they're licensed,  
23 it's an annual license. It's for every day of the  
24 year, isn't it?

25 MR. STEWART: It is.

1 MR. MILLER: So you could have your licensees  
2 here and just charge that as part of the rent,  
3 couldn't you?

4 MR. SIEGEL: They would pay them. They're not  
5 volunteers.

6 MR. STEWART: Precisely.

7 MR. SIEGEL: You might have to spend more than  
8 the cost of licensing to pay them.

9 MR. MILLER: Well, does this race -- if you've  
10 got 25,000 people, surely they get a lump of money  
11 from admissions, don't they?

12 MR. PETRAMALO: They charge admissions, sure.

13 MR. BURNETT: How much are admissions? Ten  
14 bucks?

15 MS. BOUZEK: A 125 a car load.

16 MR. BURNETT: So what's the gross take?

17 You guys are all laughing at 10 bucks. I came  
18 up with \$250,000, and then I look at \$2,500 in  
19 licensing fees. Okay. Licensing fees is a one  
20 percent item. And so if they make twice that, then  
21 it's a half percent item.

22 MR. MILLER: Even if they have to pay people,  
23 they're not going to pay that much.

24 MR. BURNETT: You know, we're guessing at  
25 their budget.

1 MR. PETRAMALO: Right.

2 MR. SIEGEL: Well, Vic, you stated earlier  
3 that their stated reason was --

4 MR. HARRISON: That's right.

5 MR. SIEGEL: -- but maybe there are other  
6 things --

7 MR. HARRISON: That's highly possible.

8 MR. SIEGEL: -- that are behind the scenes  
9 here.

10 MR. BURNETT: Well --

11 MR. STEWART: That's the only reason that's  
12 ever been communicated to me.

13 MR. BURNETT: One issue that I heard out there  
14 was this political contribution restriction on some  
15 members of the board of directors, some difficulties  
16 that that might pose for them. I would favor given  
17 the nature of this particular endeavor that if there  
18 were a way for them to be excused from that  
19 particular requirement, that would be nice.

20 You've got a bunch of civic leaders. It's  
21 naive for us to think that they're not politically  
22 connected in one way or another. They don't  
23 routinely make some level of contribution to -- you  
24 know, if they're really good at it, they would  
25 contribute to both sides of the race so they can say

1 they supported the winner, whoever wins, and now  
2 they're under this prohibition. I understood that  
3 there were some folks that that was going to be a  
4 problem for. If that's an issue, I'd like to see us  
5 address this sooner rather than later so that it  
6 doesn't get in the way next year. I don't see a one  
7 day charitable event race or charity running a race  
8 with pari-mutuel wagering is somehow poisoning  
9 Virginia racing and the morals thereof.

10 MR. SIEGEL: Is this something that Colonial  
11 Downs wants to do, or are you providing them some  
12 service?

13 MR. STEWART: Well, our point of view is that  
14 it will be difficult. We believe that there will  
15 not be a large handle on the live racing product.  
16 On the other hand, you know, we've been wrong  
17 before. If somebody would like to try it, we're  
18 happy to facilitate that.

19 MR. SIEGEL: There's very little risk at  
20 trying it once, I think. The numbers aren't that  
21 big.

22 MR. STEWART: I agree. As long as it's not an  
23 expense to us, we're happy to help anybody else who  
24 wants to do it.

25 MR. BURNETT: Mr. Brown?

1 MR. BROWN: As far as in the past, what is --  
2 isn't there wagering amongst patrons?

3 MR. PETTY: Allegedly.

4 MR. SIEGEL: There is.

5 MR. PETRAMALO: That might be true, but it  
6 would be wrong.

7 MR. BROWN: I agree.

8 MR. PETRAMALO: Sure. I mean, I've been to  
9 steeplechase races all over and everybody kind of --

10 MR. SIEGEL: Has a pool.

11 MR. PETRAMALO: Sure. Now, I don't think  
12 there are bookies here. At some steeplechase races,  
13 there are bookies, but I've never seen a bookie at  
14 Strawberry Hill.

15 MR. SIEGEL: They bet among their friends.

16 MR. PETRAMALO: Yes.

17 MR. SIEGEL: Every tailgate has a pool.

18 MR. PETRAMALO: Exactly.

19 MR. SIEGEL: Maybe not every tailgate, but  
20 lots of them.

21 MR. BROWN: Even if Colonial Downs jumped into  
22 the mix, so to speak, and decided to use their  
23 license to do it, somebody has got to be out here  
24 kind of policing, making sure that -- you know,  
25 there's not this so-called bets getting booked.

1 MR. PETRAMALO: Well, I wouldn't think that so  
2 much is the problem. When Strawberry Hill -- the  
3 Strawberry Hill people talked to me about it, I  
4 said, well, gee, that sounds like a great idea, but  
5 how are you going to facilitate 25,000 people  
6 betting? I mean, you got tote machines in the  
7 grandstand, but you got people all over the track.  
8 There was some talk about using portable devices, et  
9 cetera.

10 The bottom line is getting the facility to the  
11 patrons I think is the problem. If there was some  
12 way to get it -- for example, at some racetracks  
13 they have little portable machines where a person  
14 goes around and writes it, something like that would  
15 probably work. It may undercut some of the private  
16 tailgate pooling, but probably not much.

17 MR. HARRISON: Commissioner Brown, it's my  
18 understanding that there will be wagering on that  
19 day on the simulcast races including the Preakness.  
20 Is that still correct?

21 MR. STEWART: Yes.

22 MR. HARRISON: So we thought that this year  
23 would be a very good trial to see how the wagering  
24 actually goes and maybe they can make a better  
25 assessment for next year's Strawberry Hill event as

1 to whether or not it's going to be profitable.

2 MR. BURNETT: I think we've got a little  
3 evidence already on what happens with steeplechase  
4 wagering. To remind everybody, our per capita  
5 wagering at Colonial Downs generally over the last  
6 ten years, correct me if I'm wrong, is 75 to \$85 for  
7 the live meet. Ten years ago, maybe it was closer  
8 to a hundred at some racetracks, and in the OTBs, it  
9 runs 250 to 300.

10 When you have very large populations of  
11 inexperienced bettors at a racetrack, it drops  
12 precipitously. I would -- my best guess is you're  
13 lucky to get \$15 as a per cap with the Strawberry  
14 Hill races. And maybe even -- it might be lower  
15 than ten. It might be in the single digits. The  
16 reason I say that is because we've had some  
17 experience with the fair here during the harness  
18 meet and those numbers per cap plummeted as a result  
19 of that, because of the volume and then the \$2  
20 bettors.

21 Also, we had the experience in Morven Park in  
22 Leesburg 10 or 15 years ago. They brought in the  
23 boards. They set up a tent for wagering and  
24 everything else. I think I still have one of the  
25 first tickets bet at that event, and I recall it was



1 probably \$15 was the per cap. So that's pretty  
2 tough for a racetrack to take their usual percentage  
3 and turn it into anything. So I can understand  
4 certainly why from a business perspective it doesn't  
5 make a whole lot of sense. They're going to make  
6 their money on the gate is where they're going to  
7 make their money. The operator is going to get  
8 killed is my guess in terms of a financial return.

9 MR. WEINBERG: Not that --

10 MR. BURNETT: Go ahead.

11 MR. WEINBERG: I didn't want to get too hung  
12 up on this, but the other aspect we haven't talked  
13 about is risk allocation. I mean, we're looking at  
14 this and from a lawyer's perspective, the  
15 understanding was use our license, but you're going  
16 to run the whole race, you're responsible -- you  
17 know, if anything goes wrong out there on that  
18 track, with all due respect, they're going to look  
19 to Colonial Downs. You're not going --

20 MR. BURNETT: Of course.

21 MR. WEINBERG: -- to go to the state fair.  
22 That played a role in how we went about structuring  
23 this as well.

24 MR. MILLER: In the event they are interested  
25 in pursuing this next year or whenever, we still

1 have that underlying issue you spoke of.

2 MR. BURNETT: Yes.

3 MR. MILLER: Political contribution  
4 prohibition. Could we have our counsel look into  
5 that in the meantime to see if there is any possible  
6 way to accept people who may be operating a facility  
7 for one -- you know, the board of directors or a  
8 group that's involved?

9 MR. PETRAMALO: What's the issue? I don't  
10 understand that.

11 MR. WEINBERG: Here's what --

12 MR. LERMOND: It appears in the code.

13 MR. WEINBERG: It's in the code. A limited  
14 licensee, no person to whom a limited license has  
15 been issued nor any officer, director, partner or  
16 spouse or immediate family member thereof.

17 MR. PETRAMALO: I'm sorry to interrupt you. I  
18 wasn't following that.

19 MR. MILLER: Well, I think Amy, if she's  
20 listening --

21 MR. PETRAMALO: No. I understand.

22 MR. MILLER: -- she gets my point, to see if  
23 there is any way, but it doesn't sound like there  
24 would be.

25 MR. PETRAMALO: Right.

1           MR. WEINBERG: It's pretty broad. Now one  
2 could argue under citizens united whether that  
3 has --

4           MR. MILLER: Except if they were to go forward  
5 with the suggestion of an arrangement to use  
6 Colonial Downs' license, but then the other issue is  
7 somebody is going to have ensure the safety and  
8 somebody is going to have to bear the legal  
9 responsibility for things that occur on the track.  
10 Is it going to be the lessee or the lessor, so on  
11 and so forth? So that's another ball of worms or  
12 whatever the expression is.

13           MR. BURNETT: I can't imagine if there were a  
14 united support for it in the industry, if you said  
15 any limited license its duration is not more than  
16 three days, this section shall not apply, that  
17 anybody is going to get very excited about it. It's  
18 just going to go sailing through in detail in the  
19 legislature, I guess that's what we have to do.

20           MR. MILLER: We might want to look into that.

21           MR. WEINBERG: And to add to that, it might be  
22 even easier if you said the entities are not for  
23 profit.

24           MR. BURNETT: Sure. Sure.

25           MR. MILLER: Amy, did you get that? I guess

1 she did.

2 MR. BURNETT: I hope so.

3 And, Vic, would you be sure to --

4 MS. DILWORTH: Do you need me to comment?

5 MR. BURNETT: No. We just wanted -- we needed  
6 to know you were there.

7 MS. DILWORTH: Okay. I'm here.

8 MR. BURNETT: Great. Thanks.

9 Are we ready to go on to the next subject?

10 MR. HARRISON: I would like to cede the floor  
11 to Greg Scoggins. He has time constraints. He has  
12 to leave here at eleven.

13 MR. BURNETT: I'm sorry. I had not ignored  
14 him. I thought we were going to finish your report  
15 and then go to Greg, but that's fine. We're  
16 prepared for Mr. Scoggins.

17 MR. PETRAMALO: I ignored him.

18 MR. SCOGGINS: Don't upset me.

19 MR. BURNETT: This is, to be clear, Item 6-C,  
20 XpressBet from incorporated to a limited liability  
21 corporation. I think we're about to get a lesson in  
22 legal form, I think.

23 MR. SCOGGINS: Greg Scoggins with XpressBet  
24 and Magna Entertainment, and to my right is Michael  
25 Fuchek, who is the general counsel for AmTote

1 International.

2 MR. BURNETT: Welcome.

3 MR. FUCHEK: Thank you.

4 MR. SCOGGINS: First off, I need to begin with  
5 apologies. I apologize for being the guy closest to  
6 the track who's late, and I apologize for being the  
7 guy who's probably going to leave the meeting the  
8 earliest. Unfortunately, I don't have the ability  
9 to tell the pilot of my plane to wait for me.  
10 They'll go on without me. So I appreciate you're  
11 indulgence as we go through this.

12 What I have -- what we have done is prepared a  
13 slide presentation to help walk you through the  
14 process and hopefully answer some of the questions  
15 you have, and then obviously after the conclusion of  
16 the presentation, everyone is free to ask whatever  
17 questions they may have. So if I may, I'm going to  
18 go back here to my computer where it's hooked up to  
19 the television screen, and you guys can watch the  
20 presentation.

21 As we do this transition to the screen, if  
22 anybody can help me figure out how to turn it on.  
23 As all of you know, it's not a secret at all. As we  
24 all know, Magna Entertainment filed for Chapter 11  
25 protection along with several subsidiaries back

1 about a year ago, and we have been working through a  
2 process for how to get MEC out of that process and  
3 reorganized and restructured in a way that allows it  
4 and the various subsidiaries to move forward. So  
5 today I'm here to make a presentation with respect  
6 to the two entities who are licensed here in  
7 Virginia, XpressBet, and AmTote International.

8 So a bit of background, XpressBet, Inc., is a  
9 wholly-owned subsidiary of Magna Entertainment Corp,  
10 and AmTote International, Inc., through a  
11 wholly-owned subsidiary of MEC is an indirect  
12 wholly-owned subsidiary of Magna Entertainment Corp  
13 as well.

14 On March 5th, MEC filed along with several  
15 subsidiaries for Chapter 11 protection in order to  
16 re-work some of the debt structure that it has, and  
17 it's pending before the U.S. Bankruptcy Court in  
18 Delaware. It includes a number of subsidiaries,  
19 many of which you know, Santa Anita Park, Gulfstream  
20 Park, the Maryland Jockey Club tracks, et cetera.

21 It also includes AmTote International as the  
22 corporate parent of three different AmTote related  
23 entities. It does not include, however, XpressBet.  
24 XpressBet has been operating outside of the Chapter  
25 11 process. It is not one of the debtors in the

1 Chapter 11 proceedings.

2 There are a couple of AmTote subsidiaries, if  
3 you will, AmTote Canada, Inc. and AmTote  
4 Australasia, which are not -- were not filed -- did  
5 not file under Chapter 11 as well. They're just  
6 direct subsidiaries under AmTote International.

7 MR. FUCHEK: That's correct.

8 MR. SCOGGINS: Since the filing date, MEC and  
9 the various debtor entities as well as the  
10 non-debtor entities have been continuing to operate  
11 in the ordinary course. We have a financing  
12 position in place that have allowed those operations  
13 to continue. We're paying our bills as they're due  
14 and dealing with the various issues that come up  
15 over the course of the process.

16 One of those issues has always been, how are  
17 we going to restructure things, what are we going to  
18 do with our various assets, and how are we going to  
19 come out and emerge from bankruptcy stronger than we  
20 went into bankruptcy. There's been a lot of toing  
21 and froing, a lot of deadlines that have been  
22 targeted and missed. Finally, in January, MEC and  
23 MID as corporate parents -- controlling shareholder,  
24 if you will, which is MI Developments, Inc., which  
25 is an entity that is ultimately controlled by Frank

1 Stronach, who is the chairman of not only MID but  
2 also MEC.

3 It and the unsecured creditors committee,  
4 which is a part of the Chapter 11, and several  
5 various affiliates of MEC and MID reached a  
6 settlement related to a number of claims that  
7 ultimately resulted in a plan that has been  
8 submitted to the bankruptcy court in hopes of having  
9 that plan approved next month so that we can emerge  
10 from bankruptcy with the structure that I'm about to  
11 highlight.

12 The unsecured creditors committee had assessed  
13 some charges against MID relative to its loans  
14 because it is the largest secured creditor of MEC  
15 and stood to gain or stood to place at risk the  
16 various unsecured creditors if all of their secured  
17 debt had been satisfied. So they had filed claims  
18 against MID and MEC in an effort to try and push MID  
19 into a different position so that the creditors, the  
20 unsecured creditors could increase what they were  
21 going to take from the settlement.

22 In resolution of this dispute, MID agreed to  
23 pay 75 million dollars to the unsecured creditors  
24 who are deemed eligible -- have eligible unsecured  
25 creditor claims. They also agreed to apportion



1 various proceeds from sales that are currently in  
2 process. Thistledown has agreed to a sale, and the  
3 bankruptcy court has agreed to it. That process is  
4 continuing on and that sale and the sale of Lone  
5 Star Park are -- and the sale of Maryland Jockey  
6 Club properties are ongoing. And so the agreement  
7 was that to the extent those sales are consummated,  
8 then there would be a various apportionment of the  
9 proceeds. In some cases, the first "X" million  
10 dollars goes to MID and the balance goes to the  
11 unsecured creditors and vice versa.

12 As it relates to MEC, the plan of  
13 reorganization contemplates that MID in satisfaction  
14 of its secured debt will take back several entities.  
15 Los Angeles Turf Club, Pacific Racing, which  
16 operates Golden Gate Fields outside of San  
17 Francisco, Gulfstream Park, XpressBet, and AmTote  
18 International.

19 The plan is that -- excuse me. The plan was  
20 filed in mid-February, last month. It is going  
21 through the process of -- that is the bankruptcy  
22 process. I won't belabor the points there, but  
23 ultimately MEC's stock will be cancelled. It will  
24 cease to exist as an entity.

25 In the process of the reorganization plan,

1 those subsidiaries that are pending sales, Lone Star  
2 Park, Thistledown, Maryland Jockey Club, those will  
3 be transferred into operating trusts, which will  
4 continue to operate those facilities pending the  
5 resolution of the sales and the regulatory approvals  
6 that are necessary with those sales along with other  
7 conditions of closing.

8 The remaining subsidiaries, XpressBet, AmTote,  
9 et cetera, are to be transferred to a MID  
10 subsidiary. It'll be wholly-owned entity, and I'll  
11 show you a chart here in a minute that kind of lays  
12 it out.

13 The effective date of the plan is designed to  
14 be one that occurs once certain conditions have been  
15 met, and one of those conditions is that MID will  
16 obtain whatever or its affiliates will obtain  
17 whatever regulatory approvals that are necessary for  
18 it to take the ownership for these various assets,  
19 all of which that I described are obviously subject  
20 to regulatory approval or regulation.

21 So just as a summary of what the current  
22 ownership is as of today, we have Frank Stronach and  
23 Stronach Trust at the top. They collectively  
24 control 67.1 percent of the voting interests in MI  
25 Developments. MI Developments in turn owns or

1 controls 96 percent of the voting interests in MEC.  
2 There are public positions out here as well, but  
3 when you look at the voting interest allocation,  
4 this is how it breaks down.

5 Magna Entertainment owns a hundred percent of  
6 XpressBet and it owns a hundred percent of the  
7 subsidiary that is the wholly-owned corporate parent  
8 of AmTote International. So if you'll watch, when I  
9 hit this button, very little will change except that  
10 circle will go away and this circle will be named  
11 differently. So at the end of the day as the plan  
12 contemplates, MID -- or MEC will go away, and in its  
13 place will be a hundred percent owned and subsidiary  
14 of MID. So the public component to MEC's ownership  
15 will obviously go away as MIC goes away -- MEC goes  
16 away.

17 AmTote International, the debtor, will have  
18 its stock cancelled and reissued as apart of the  
19 bankruptcy process. It will be a reorganized AmTote  
20 International. That stock will go into a MID  
21 subsidiary. XpressBet, the ownership interest in  
22 XpressBet will go to the MID subsidiary, and you'll  
23 note that XpressBet has different initials at the  
24 end of the name. What that is is that for tax  
25 purposes, MID would like to convert XpressBet from a

1 corporation, which it is now, into a limited  
2 liability company. It will do that pursuant to  
3 Delaware laws and under Delaware law, there is  
4 effectively no change in the company. It's, in  
5 essence, a name change that has tax consequences.

6 MID -- currently XpressBet and AmTote have two  
7 directors and two officers who are officers of MEC.  
8 Those officers and directors will be removed as  
9 officers and directors of XpressBet and two MID  
10 appointed officers and directors, probably the same  
11 people, will be appointed as officers and directors  
12 of XpressBet. The same thing will happen with the  
13 officers as I just mentioned.

14 A key point that I want to make clear is the  
15 day-to-day management team at XpressBet will not  
16 change. The people who are conducting operations at  
17 XpressBet, Ron Luniewski, who's president, Gene  
18 Chabrier, Dan Newman, the various people whom you  
19 may know or may not know, they are remaining at  
20 XpressBet and will be responsible for the day-to-day  
21 operations. This is a structural change that  
22 happens at the highest level of the entity and  
23 should not affect the day-to-day operation.

24 Now, with respect to AmTote, as I mentioned,  
25 their stock will be cancelled and new stock will be

1 issued pursuant to the bankruptcy proceeding, and  
2 this is necessary because in order for AmTote to  
3 emerge and for MEC to emerge from bankruptcy free of  
4 any debt, it has to be free of its status as the  
5 pre-bankruptcy entity. It's the standard process in  
6 a Chapter 11 proceeding.

7 The stock of the reorganized AmTote will be  
8 transferred to this MID subsidiary. Again, there  
9 will be two existing directors of AmTote  
10 International who are currently MEC officers who  
11 will be removed and MID will appoint two people to  
12 serve as the new directors for AmTote International.  
13 The same with the officer position at AmTote  
14 international, and just like with XpressBet, there  
15 will be no change in the day-to-day operation. The  
16 same operating team and senior management team that  
17 is in place at AmTote will remain in place, so you  
18 should see no change whatsoever in how things are  
19 done at both of those entities.

20 So that concludes my part of the presentation.  
21 I'm happy to answer and Michael is here to answer  
22 any questions you all might have with respect to  
23 what's contemplated, and then I have an ask.

24 MR. BURNETT: Greg, from a tax standpoint, the  
25 corporation to LLC just allows the corporation --

1 the LLC's activity just flow through one onto the  
2 tax sheet or the return of the parent corporation?

3 MR. SCOGGINS: Speaking from a non-tax  
4 lawyer's perspective, that is my understanding. It  
5 provides tax advantages that you don't get when you  
6 own a corporation.

7 MR. BURNETT: How many directors do the two  
8 corporations that are having two each replace?  
9 There's the new AmTote and the new -- what is it,  
10 the new XpressBet? They're each going to get two  
11 new directors? How many directors do they have now?

12 MR. SCOGGINS: Two.

13 MR. FUCHEK: It actually has three.

14 MR. SCOGGINS: Oh, you do.

15 MR. FUCHEK: Steve Keech is the president, his  
16 director, and then the two Magna directors. Those  
17 are the two Greg is referring to.

18 MR. SCOGGINS: Right.

19 MR. BURNETT: I just -- I think from a  
20 regulator standpoint, we're looking for where the  
21 potential for disruption -- for weakening of  
22 financial strength, weakening of operational  
23 strength, anything that could be detrimental to  
24 Virginia racing. I'm not suggesting that I've heard  
25 any of that so far. I'm just saying that those are

1 the kinds of questions that I think we ought to be  
2 asking. If you're going to get all kinds of  
3 stronger, typically this is not something we would  
4 worry about. If you're going to get a lot weaker in  
5 operations or are having problems that would impact  
6 us in ways that we need to be watching, then it's  
7 something we ought to know.

8 There's a purpose to all of this and shedding  
9 an enormous amount of debt, I suspect, makes the new  
10 companies coming out of this process stronger or the  
11 whole process would not make any sense.

12 MR. SCOGGINS: Correct.

13 MR. BURNETT: Is there any -- I don't know  
14 anything about bankruptcy. Is there any Good  
15 Housekeeping Seal of Approval or any sort of  
16 analysis that is undertaken by the bankruptcy  
17 trustee or the bankruptcy court that could be  
18 helpful to us in predicting the quality of  
19 management, the health of the business going  
20 forward, financial help, anything out there that  
21 might help us that comes from that court?

22 MR. SCOGGINS: The process that will take  
23 place between now and the effective date is as  
24 follows. In connection with the filing of the plan,  
25 there is a disclosure statement that is to go to the

1 various holders of debt of MEC or any of the  
2 subsidiaries, and that disclosure is a description  
3 of here's -- it's almost like a Proxy Statement, if  
4 you will, that explains here is what our plan  
5 contemplates. There is -- that has been filed along  
6 with a plan. We are now in a position or in a  
7 situation where we are awaiting comments, we are  
8 awaiting objections or any concerns that might be  
9 expressed by those who have a stake in the outcome  
10 and status and the structure of the plan.

11 There is the possibility that the plan will be  
12 amended in response to those concerns. There is a  
13 possibility that the Court will say, I want you to  
14 amend it based on whatever concerns are voiced to  
15 her. There is also the need -- there are a series  
16 of exhibits that are, in essence, for purposes of  
17 like the trust entities and stuff that have yet to  
18 be filed. They are being worked on. They will be  
19 filed.

20 All these documents and the various objections  
21 and concerns will be filed with the Court. The  
22 Court is to be hearing the objections and ruling on  
23 whether the disclosure statement is sufficient late  
24 this month. I think maybe even next week. And then  
25 the Court is set to hear and approve whatever and



1 render a judgment on the ultimate plan in April, I  
2 believe April 20th is the target date.

3 So I guess to answer your question, there will  
4 be opportunities for people to speak to that issue.

5 MS. DILWORTH: Mr. Chairman?

6 MR. BURNETT: Yes, please.

7 MS. DILWORTH: May I ask a question?

8 MR. BURNETT: Yes. Go ahead.

9 MS. DILWORTH: I'm just wanting to know, is  
10 this the first plan that's been filed, Greg?

11 MR. SCOGGINS: Yes.

12 MR. BURNETT: I'm sensing a little bit of a  
13 potential chicken and the egg here, that we want to  
14 see the last plan before we say, yeah, okay. The  
15 Court wants to hear our okay before they issue the  
16 last plan. Am I --

17 MR. SCOGGINS: I'm not sure.

18 MS. DILWORTH: There's usually -- a plan of  
19 reorganization usually is amended. I mean, that's  
20 to be expected. I just didn't know if Greg had any  
21 insight as to how likely that would be. You're  
22 looking at a confirmation date in April?

23 MR. SCOGGINS: Yes. I do not have any insight  
24 to give relative to the likelihood or nature of any  
25 amendments that might be made at this point.

1 MR. BURNETT: And so the record is clear here  
2 today, what do you want of this Commission, one?  
3 And two, when do you want it?

4 MR. SCOGGINS: Okay. I'll work backwards.

5 MR. BURNETT: Okay.

6 MR. SCOGGINS: Assuming the target effective  
7 date, which currently is April 30th, is capable of  
8 being achieved, our goal, my goal, my charge is to  
9 obtain as many regulatory -- well, in order for that  
10 date to be achieved, MID needs all the various  
11 regulatory approvals that are necessary.

12 My obligation in getting that done is to bring  
13 this before the various regulatory boards. In fact,  
14 I'm getting on a plane later to have this same  
15 conversation with Oregon and I'll have the same  
16 conversation with California on Friday, is to give  
17 you the information that you need as soon as I  
18 obtain it that will allow you to do the due  
19 diligence that you need to satisfy yourself that the  
20 plan as currently contemplated or is ultimately  
21 amended is satisfactory to the Commonwealth of  
22 Virginia.

23 We will provide the names -- I have an idea --  
24 to go to a question that you had asked, a very good  
25 idea as to who the individuals will be, and I can

1 tell you that those folks have been involved in MEC  
2 related operations for several years. So I have no  
3 personal doubt in my mind that you will see little  
4 to no change, more little -- more no than little  
5 change in how XpressBet operates and what they do.

6 I mean, if the economy continues the way it is  
7 and we lose a big key bettor, then that's what's  
8 going to happen and we can't help that, but for  
9 purposes of management decisions and whatnot,  
10 historically it has been left to those at the senior  
11 management, day-to-day operations level, and I see  
12 no reason for that to change.

13 So my ask would be to the extent you're able  
14 to give it today or in April, some kind of  
15 conditional acknowledgment and approval that if this  
16 is the way it ends, and subject to clearance by  
17 Vic's team of the backgrounds of the people that we  
18 ultimately identify and the entity that ultimately  
19 is identified -- again, I have an idea of what it  
20 is, but I'm awaiting formal confirmation of that,  
21 that from your perspective it doesn't give you any  
22 heartburn.

23 I realize that there are huge conditions there  
24 and we have to do our best, and I will advise MID to  
25 do its best not to divert very much from this unless

1 it's an improvement from you all's perspective.

2 MR. MILLER: Mr. Chairman?

3 MR. BURNETT: Commissioner Miller?

4 MR. MILLER: So you won't -- we are to  
5 determine whether or not this reorganized entity or  
6 entities, whether they are suitable licensees to do  
7 business in Virginia?

8 MR. SCOGGINS: At the end of the day, the  
9 assessment is MID will not be doing business in  
10 Virginia. The MID subsidiary will not be doing  
11 business in Virginia, but at the end of the day,  
12 Virginia law requires the Racing Commission to  
13 determine that the various elements in the ownership  
14 chain are suitable for the Commonwealth of Virginia.

15 MR. MILLER: The licensees are the people that  
16 they deal with.

17 MR. SCOGGINS: That's right.

18 MR. MILLER: Okay. That's what you want from  
19 us.

20 I'm interested in one other thing, and that is  
21 has the issue of your contractual relationships  
22 within Virginia and the obligation that you have,  
23 has that been brought before the Court? Is the  
24 trustee considering the viability of you being able  
25 to meet your financial obligations here while all

1 this is taking place?

2 MR. SCOGGINS: Well, if I may remind you,  
3 XpressBet is not under the protection of the  
4 bankruptcy clerk because it did not file for Chapter  
5 11. It is a free standing, free operating entity.  
6 It's free to structure whatever agreements it needs  
7 to structure. It's currently in discussions with  
8 Colonial Downs for purposes of addressing the  
9 ongoing obligations here in the Commonwealth and  
10 with the horsemen ultimately.

11 MS. DILWORTH: Mr. Chairman?

12 MR. MILLER: Do we have before us now, is  
13 there any issue or is XpressBet behind on payments?  
14 Is XpressBet -- is there any problem as far as the  
15 Commission or Colonial Downs or anyone is concerned  
16 regarding XpressBet's obligations to meet their  
17 financial agreements here?

18 MR. SCOGGINS: I will answer first, if that's  
19 all right. There is arguably a dispute as it  
20 relates to a payment that was made in February and  
21 the extent to which it was made consistent with our  
22 interpretation of the complements of law, the  
23 contract, and other's interpretation, but it would  
24 be my expectation that that issue will be resolved  
25 in the ordinary course either, as I hoped, through a

1 contract that resolves that issue or regrettably  
2 through litigation, but I don't perceive litigation  
3 being the end result.

4 MR. MILLER: I don't need to be concerned with  
5 that as to this issue.

6 MR. SCOGGINS: That's for you to decide and,  
7 obviously, for Frank and others to comment on.

8 MR. MILLER: I just want to hear. I mean, if  
9 there is any, I would like to hear it today.

10 MR. SCOGGINS: Right.

11 MR. LERMOND: Greg, you said February. I  
12 think you meant January's payment.

13 MR. SCOGGINS: Well, we made it in February  
14 for January.

15 MR. BURNETT: Ms. Dilworth?

16 MS. DILWORTH: Yes.

17 MR. BURNETT: Did you have a comment or  
18 question?

19 MS. DILWORTH: Oh, my comment was that I think  
20 this is a Chapter 11 reorganization, right,  
21 Mr. Scoggins?

22 MR. SCOGGINS: Yes, it is.

23 MS. DILWORTH: There's no trustee in the case.

24 MR. SCOGGINS: That's right.

25 MS. DILWORTH: The reorganized debtor, the

1 debtor in possession at this point is the one who  
2 oversees the propriety of what happens in the case.  
3 There's no review by a Chapter 11 trustee. There's  
4 the U.S. trustee who keeps an eye on things, but I  
5 think Clint was possibly thinking that there was a  
6 Chapter 11 trustee, which there is not. And that's  
7 a good thing.

8 MR. BURNETT: That's a good segway into a  
9 question I have. We have very capable counsel.  
10 While we might informally express no particular  
11 concern today, I would not be comfortable passing on  
12 your request until we've had advice of counsel,  
13 although I'd like you to be able to go back to your  
14 people and say I don't think Virginia is going to be  
15 a problem, and I believe we won't be.

16 Subject to hearing from our capable counsel  
17 who may say to us, while we have looked at this, we  
18 think it would be prudent to get some outside  
19 specialized help, lawyers to look at this and advise  
20 our counsel and the Commission as to any number of  
21 questions that might come up that are beyond my  
22 imagination right now.

23 MS. DILWORTH: I might just remind the  
24 Commission that I have a fair amount of experience  
25 in bankruptcy reorganization, and I have actually

1 worked with Bob Gotshal, which is the law firm that  
2 represents the debtors in this case and have a lot  
3 of respect for them. I think that we won't have any  
4 problem keeping the communication lines open.

5 MR. BURNETT: Good. I think that information  
6 will be music to Mr. Scoggins' ears when he hears  
7 the rest of my question, which is whether or not his  
8 company is prepared to underwrite the cost of our  
9 going out to get outside counsel to help us should  
10 we need it to advise us appropriately on this. I  
11 don't pretend to know what our agreement or what the  
12 law is.

13 I would think in the future our licenses ought  
14 to provide that if somebody wants to come in and  
15 change their corporate form, they do so at their  
16 expense and our expense -- and that expense includes  
17 our expense for analyzing it during a license year.  
18 I don't know if that's applicable right now. I'm  
19 just asking the question because it may come up in  
20 other jurisdictions. You may know the answer.

21 MR. SCOGGINS: What I can say is, it's been  
22 awhile since I've looked at that particular section  
23 of the code, but I do recall that there is a certain  
24 level of responsibility that is imposed on a  
25 licensee to the extent they ask for any changes in



1 the structure. Obviously, we are prepared, and I  
2 think I can speak for MID, that it is prepared to  
3 incur those costs because that's what the law  
4 requires.

5 If there's anything that the Commission would  
6 like to see over and above that, the door is open,  
7 but I can't make a commitment at this point because  
8 I haven't had a chance to ask the people who would  
9 be making that decision.

10 MR. BURNETT: I'll go back to Ms. Dilworth's  
11 answer. She's very experienced in these matters,  
12 and it may be that she's going to be completely  
13 comfortable with what she looks at and we won't need  
14 to go spend any more money than we spend on her good  
15 efforts.

16 MR. SCOGGINS: It was music to my ears and I'm  
17 glad to hear that, you know, she's got the  
18 experience and familiarity with the Weil, Gotshal  
19 team.

20 MR. PETRAMALO: May I ask a question?

21 MR. BURNETT: Hold on a minute. Commissioner  
22 Reynolds had a question.

23 MR. REYNOLDS: Did we address this issue  
24 several years ago?

25 MR. BURNETT: With the estate planning, I

1 think, of the Jacobs Trust. I believe they  
2 contributed something towards our having specialized  
3 counsel help us.

4 MR. WEINBERG: We did, from Jacobs  
5 Entertainment.

6 MR. BURNETT: Right. Exactly. That may be  
7 what you're thinking of.

8 MR. REYNOLDS: It is.

9 MR. SCOGGINS: We'll take it under advisement  
10 as you hear judges say, even though I can't even  
11 come close to considering myself a judge.

12 MR. BURNETT: Mr. Petramalo?

13 MR. PETRAMALO: Yes. Getting back to  
14 Virginia's interest in account wagering, where does  
15 Magna's interests in TrackNet Media and HRTV fit  
16 within this bankruptcy scheme?

17 MR. SCOGGINS: That's a good point, Frank. I  
18 did not mention that, and I wasn't trying to hide  
19 the ball.

20 MR. PETRAMALO: I wasn't suggesting you were  
21 doing that.

22 MR. SCOGGINS: I know that. I know that. I  
23 know you better than that.

24 MR. BURNETT: Just a little lawyer to lawyer  
25 there.

1 MR. SCOGGINS: I did that -- I planned it for  
2 him to demonstrate that he is a very good lawyer.

3 MID, the subsidiary that MID will be creating  
4 to take the ownership interest of the entities I've  
5 mentioned will also be taking the 50 percent  
6 ownership interest that MEC currently has in  
7 TrackNet Media and HRTV.

8 MR. PETRAMALO: But they are not in the  
9 bankruptcy, per se?

10 MR. SCOGGINS: They are just like XpressBet.  
11 They are not debtors in the Chapter 11 process.

12 MR. BURNETT: Who again will be the entity  
13 that will end up taking the TrackNet interest and  
14 the HRTV interest?

15 MR. SCOGGINS: The MID subsidiary that --

16 MR. BURNETT: The new subsidiary --

17 MR. PETRAMALO: Just call it new corp.

18 MR. SCOGGINS: Again, that's an entity that  
19 I'm pretty comfortable knowing what it is, but  
20 awaiting final confirmation. As soon as I know it,  
21 I'll forward it on.

22 MR. BROWN: What are the projections as far as  
23 having this information?

24 MR. SCOGGINS: I wanted it before today.

25 MR. BROWN: What's the hold up?

1           MR. SCOGGINS: I wanted it a long time ago,  
2 but I will expect that I should know very shortly  
3 because I think the circumstances demand that we  
4 need to know shortly. I don't -- I can't expect a  
5 regulatory body to say yes to something they don't  
6 know enough about, and if MID wants to take over  
7 control by April 30th knowing that it's got its  
8 regulatory approval, it's got one more meeting left  
9 at most commissions to do that unless they agree to  
10 hold a special meeting, which I'm hopeful that we  
11 won't have to do that. I'm hopeful that they would  
12 agree if we have to do that, but I've been before  
13 enough commissions that I know that they don't  
14 necessarily feel a particular compunction to do so  
15 just because we ask them.

16           MR. BURNETT: All right. Any further  
17 questions of Mr. Scoggins?

18           MR. HARRISON: I have one.

19           MR. BURNETT: Vic?

20           MR. HARRISON: Along the lines of Frank's  
21 question, what's always upsetting to me when I read  
22 about racing entities, pari-mutuel entities entering  
23 into or coming out of bankruptcy proceedings is the  
24 settlements from one racetrack to the next and how  
25 it impacts bettors possibly. I know it's probably

1 not an AmTote issue, it's probably not an XpressBet  
2 issue, but it is a Magna issue. Can you comment on  
3 the resolution of any or the status of those issues?

4 MR. SCOGGINS: I'd be happy to. There were as  
5 apart -- as a result of the filing of Chapter 11,  
6 there were a number of claims filed. A substantial  
7 amount of dollars that were claimed in connection  
8 with settlements where there was some money room  
9 shifts that were owed to third parties because it  
10 got caught up in the bankruptcy time period, if you  
11 will.

12 There was an action filed by RGS and Elite  
13 Turf Club and Amwest and some other entities that  
14 have alleged that the money that is, in essence, the  
15 settlement funds is not the money of MEC or its  
16 various debtors. It is rather money held in trust  
17 and should be paid regardless of how the bankruptcy  
18 proceedings resolve because it is not money of the  
19 estate, property of the estate.

20 That is a contested case. MEC has disagreed  
21 with that. It has not yet been resolved. The last  
22 time I spoke with someone about the status of that,  
23 which was a few days ago, the hearing for that had  
24 not yet been scheduled. It's going to be a seminal  
25 decision for purposes of that.

1 I will say that in the past it is my  
2 understanding, whether it by resolution or court  
3 decision, there have been a couple of times when  
4 this issue came up in other contexts and it has not  
5 worked out well for the people who have the claims  
6 or it has resulted in some kind of settlement that  
7 may result in them getting less than a hundred cents  
8 on the dollar, but the particular judge that's  
9 handling this matter, now that she's got two  
10 racetrack related bankruptcy cases on her plate,  
11 this is the first racing related case that she's  
12 had.

13 MR. BURNETT: Any other questions?  
14 Stakeholders? Does the track -- Colonial Downs have  
15 anything to offer on this issue or any comment or  
16 questions?

17 MR. STEWART: I guess the two thoughts I have.  
18 One is I agree with Greg's assessment of the  
19 financial -- whatever it was, relationship with  
20 Colonial Downs. So that's fine. From our personal  
21 standpoint, I think we're -- AmTote owes us three or  
22 \$4,000, which I don't anticipate we will get, but  
23 outside of that, that's about it.

24 MR. FUCHEK: That was pre-petition?

25 MR. STEWART: Yes.

1 MR. BURNETT: So if I'm hearing correctly at  
2 least today based on the limited knowledge we have,  
3 the racetrack does not have any objection to this  
4 request?

5 MR. STEWART: No, we don't.

6 MR. BURNETT: And the horsemen, any comment,  
7 objection, approval, anything you want to put on the  
8 record today?

9 MR. PETRAMALO: We grudgingly have no  
10 objection.

11 MR. BURNETT: Typical thoroughbred horsemen.  
12 Charlie?

13 DR. DUNAVANT: No, no objection.

14 MR. BURNETT: And the nice, sweet harness  
15 horsemen.

16 All right. Any other questions from the  
17 Commission?

18 Mr. Scoggins, thank you. Mr. Fuchek, thank  
19 you for coming.

20 MR. FUCHEK: You're quite welcome.

21 MR. BURNETT: And I think -- does the  
22 Commission want to engage in any resolution that  
23 might help the process along?

24 MR. SCOGGINS: Informal comment, and believe  
25 me we will take it as such, to the extent that you

1 have any guidance as far as what you've seen today,  
2 if it gives you heartburn other than I want to know  
3 who these people are and I want to make sure they're  
4 good for Virginia, which I totally acknowledge is a  
5 critical assessment that you must make and that  
6 you're charged with making, if there's anything  
7 about the way it's being proposed as a structure  
8 that you would like to comment on, I would be more  
9 than happy to take it back to my folks because if we  
10 need to make a change and amend the plan  
11 accordingly, then obviously the earlier we know to  
12 do that, we will.

13 MR. BURNETT: I can't comment personally on  
14 the technicalities. I'll leave that to our capable  
15 counsel in terms of whether there's some structural  
16 issue that would be better handled one way or  
17 another, but from what I'm hearing, this  
18 commissioner doesn't have a problem with where this  
19 appears to be going. I don't know whether other  
20 commissioners would want to comment or not.

21 MR. REYNOLDS: I feel there might be something  
22 in timing. We may give you encouragement to tell  
23 your people that we're interested in getting  
24 information sooner than later, and that we're at a  
25 disadvantage if it's later.



1 MR. SCOGGINS: Thank you. I will relay that  
2 message again.

3 MR. BURNETT: I will echo that.

4 MR. SCOGGINS: I relayed that message earlier  
5 this week and hoped that it would be enough, but I  
6 will use whatever regulatory help and assistance in  
7 getting that information that I can use. I'm not  
8 too proud to say that.

9 MR. REYNOLDS: We're anxious to see it.

10 MR. SCOGGINS: I'm sorry?

11 MR. REYNOLDS: We're anxious to see it.

12 MR. BURNETT: We want adequate time for us to  
13 absorb what is an unusual and complicated matter for  
14 us.

15 Anything further?

16 Thank you.

17 MR. SCOGGINS: Thank you all.

18 MR. BURNETT: Good luck getting to your plane  
19 and enjoy the west coast.

20 MR. SCOGGINS: Thank you. I appreciate that.  
21 I appreciate again your indulgence in hearing me.  
22 It looks like my timing couldn't have been much  
23 better.

24 MR. BURNETT: We'll return to the secretary's  
25 report. I think where we left off, we were getting

1 ready to talk about the 2009 Virginia Racing  
2 Commission Annual Report.

3 MR. HARRISON: Yeah. I just wanted to draw  
4 everyone's attention to this. The code requires  
5 that by March 1st of every year we submit an annual  
6 report to the governor and the legislature. That's  
7 been done. It's posted on our website, and it's  
8 done in PowerPoint. So what you can do when you go  
9 to the website is click on read only, you'll be able  
10 to read it. And that's all. I just wanted to draw  
11 your attention to it.

12 MR. PETRAMALO: Let me just commend you for  
13 doing that, by the way. I think it's great to have  
14 those annual reports on the website because I always  
15 used to look all over my office and never find it.

16 MR. PETTY: Ditto.

17 MR. PETRAMALO: It's very nice to have them on  
18 the website.

19 MR. HARRISON: Great. It's nice to hear that.  
20 Credit really has to go to the whole team here,  
21 Dave, Joe, Dennis, Peggy, Doc, Kimberly and Marilyn.

22 MR. BURNETT: Thank you. It's nice to see  
23 that website being used. I think a lot of our folks  
24 that follow along with what the Commission does,  
25 nowadays that's their first instinct is to go to the

1 website and see what's going on. To have it not be  
2 stale and I noticed my chairman's message and about  
3 a month ago, I looked and it had all last year's  
4 dates on it for the thoroughbred meet and everything  
5 else, and we changed that. So I think continuing to  
6 focus on the website as a source of information and  
7 freshing every opportunity we can is a great idea,  
8 and I thank you for doing it.

9 MR. PETRAMALO: Yeah. I think the website is  
10 fine, but let me admit I've never read your message.

11 MR. BURNETT: You would surely make some  
12 changes, but don't bother.

13 MR. PETRAMALO: I mean, it's wonderful to have  
14 the transcripts available on-line. It's really  
15 helpful.

16 MR. BURNETT: All right. Item D, timeliness  
17 of the March source market fee payments.

18 MR. HARRISON: Yeah. We're happy to report  
19 that all of the five ADW providers complied with the  
20 statutory requirements of the source market fee  
21 legislation and by the 10th of the month, we had  
22 received confirmation of all those payments.

23 MR. BURNETT: May I just get a little bit more  
24 definition on that? I thought I heard there was  
25 some dispute on a payment. Do you mean as far as

1 the Commission and the one percent?

2 MR. HARRISON: All the February payments were  
3 done in compliance with the statute.

4 MR. BURNETT: The payments for January that  
5 were made in February.

6 MR. HARRISON: No. The payments for February  
7 activity were made by March 10th.

8 MR. BURNETT: Okay. And that included the  
9 monies to the horsemen, the monies to the track, the  
10 ten percent, the one percent, then the half percent?

11 MR. HARRISON: That's right.

12 MR. PETRAMALO: The horsemen haven't yet seen  
13 a check from YouBet. Everybody else we've received  
14 payment from, but not YouBet.

15 MR. HARRISON: We can provide you a copy.

16 MR. PETRAMALO: Well, it'll probably be in the  
17 office today or tomorrow.

18 MR. BURNETT: So the piece that's outstanding  
19 is from January?

20 MR. HARRISON: The January XpressBet payment.  
21 They paid, but under what they thought was their  
22 interpretation of the statute.

23 MR. BURNETT: All right. Can we move onto E?

24 MR. HARRISON: Yeah. E, licensing hours, our  
25 permit office hours for the 2010 thoroughbred meet.

1 We'll be open six days a week, closed only on  
2 Thursdays. Dennis is here. He's the director of  
3 operations, and so I thought he might make a couple  
4 of comments. Dennis?

5 MR. WEST: Well, as you can see, you should  
6 have a copy of the calendars. There has been one  
7 change. We were scheduled to be open on May 15th  
8 for the Strawberry Hill races, but since there's not  
9 going to be any pari-mutuel wagering on those races,  
10 we will be closed that day and be open on Monday the  
11 10th instead.

12 This year we are going to operate like Vic  
13 said six days, closed on Thursdays. That will be  
14 our dark day. We're going to have only one  
15 licensing employee in the office on Friday, which is  
16 a dark day. That's to handle any people that arrive  
17 that day or any stragglers that want to come in, and  
18 then we also have the office staff, the  
19 administrative staff that we can utilize to help us  
20 if we get really busy.

21 We are going to operate with one less P-14  
22 employee this year to try to reduce costs, so it'll  
23 be two P-14s and then Peggy and myself operating the  
24 licensing office with the help of Kimberly and  
25 Marilyn and anybody else we can grab if we get busy.

1 So that's pretty much it.

2 We plan to stay open for at least an hour  
3 after post time. However, those are closing times.  
4 We will stay here until all people that are in that  
5 race that day are licensed or they decide that  
6 they're not going to get a license. We'll be  
7 willing to stay around to make sure everybody is  
8 taken care of.

9 MR. BURNETT: Thank you.

10 Any questions of Mr. West? Appreciate that.  
11 Thank you. I particularly appreciate you sticking  
12 around for these guys that should get their licenses  
13 ahead of time. It's a nice service to just stay  
14 open for those who have been procrastinating to that  
15 level.

16 Anything further?

17 MR. HARRISON: Quick comment on the furlough  
18 day. The governor has targeted May 28th as the  
19 furlough day meaning that any state employee must  
20 stay home. You can't come to work. So they picked  
21 the day before the opening of the thoroughbred race  
22 meet, which is our busiest day the of year. And so  
23 we went back to the HR department, back to payroll,  
24 and they said okay, as long as you take your  
25 furlough day sometime during that pay period, which

1 begins May 25th to January 9th, then we'll be okay  
2 with that.

3 MR. BROWN: June 9th.

4 MR. HARRISON: What's that?

5 MR. BROWN: June 9th.

6 MR. HARRISON: June 9th. Yeah. Sorry.

7 So I just thought it was interesting that if  
8 you subtract out all the weekend days and all the  
9 holidays, the odds are 250, I think, to one that  
10 they would pick our single busiest day of the year,  
11 they would target that as a furlough day.

12 MR. BURNETT: Pardon my ignorance. Is a  
13 furlough day a way for the state to save money?  
14 They're not going to pay anybody that day?

15 MR. HARRISON: That's right.

16 MR. BURNETT: In other words, thank you  
17 employees for giving us one day of your pay a year  
18 to keep your job and keep the state budget where it  
19 needs to be?

20 MR. HARRISON: That's right.

21 MR. LERMOND: You don't have to work that day,  
22 but they're not paying you.

23 MR. BURNETT: You're not allowed to work.

24 MR. LERMOND: Right.

25 MR. REYNOLDS: Are you looking for a day?

1 MR. BURNETT: Yeah. I want a furlough week  
2 with pay by the way.

3 All right. Deputy secretary's report, please.

4 MR. LERMOND: That's sounds too formal.

5 Really, what I want to do --

6 MR. BURNETT: Vic, do we have your report?

7 MR. HARRISON: Yes. Thank you.

8 MR. LERMOND: What I'd like to do today is  
9 present the commissioners with some proposed  
10 amendments to our regulations, hopefully for their  
11 approval.

12 All of these rules are exempt from the normal  
13 APA process pursuant to paragraph A(18) of Section  
14 2.2-4002, because they are technical rules  
15 regulating actual live horse racing at race meetings  
16 licensed by the Commission. The good thing about  
17 exempt rules is that they will be -- I will be able  
18 to have them effective before the race meet starts  
19 for the thoroughbred meet this year.

20 With that said, just because they're exempt,  
21 the staff feels that it's still important for us to  
22 explain these amendments to the commissioners and  
23 the interested parties and address any concerns or  
24 questions that anyone might have. So as I'm going  
25 through these, if anyone has a question or concern,



1 please stop me and we'll address it in that  
2 particular section.

3 The way the register -- the regulations likes  
4 it is if we have each chapter as a separate  
5 regulatory action. So each chapter may have a  
6 couple sections that we're going to amend, but after  
7 I get through that chapter, I would like a motion if  
8 you feel it appropriate to make these amendments  
9 final.

10 MR. BURNETT: So you're going to start with  
11 Chapter 60.

12 MR. LERMOND: We'll start with Chapter 60.  
13 The first section is VAC 10-60-70. Trainer. At the  
14 bottom of your page, this is Tab 5 of your packets,  
15 there's a paragraph E, suspension.

16 The first sentence originally read, "All  
17 horses in the charge of a trainer whose permit is  
18 suspended for more than 10 days or revoked shall not  
19 be allowed to race." Well, even if the trainer was  
20 suspended for one day, he wouldn't be allowed to  
21 race his horse, and that's really covered up in  
22 paragraph A at the top.

23 I think the intent of that was to invoke a  
24 rule, which is maybe referred to as the paper  
25 trainer rule, and the theory behind it is in the old

1 days if a big named trainer was suspended for a long  
2 period of time, 30 to 60, 90 days, they would  
3 transfer all the horses that they were in care of to  
4 their brother or some relative, and they would still  
5 continue to train these horses. They would still  
6 continue to benefit financially from the activity.

7 So what they came up with, and this was a RCI  
8 model rule, which said that -- and RCI used 14 days  
9 as their benchmark. They said if a trainer is  
10 suspended for more than 14 days, he must transfer  
11 all these horses to another legitimate trainer, not  
12 just some way to get around the rule, but another  
13 licensed trainer.

14 The problem with the ten days is that if a  
15 trainer has a class B violation, even if it's his  
16 first offense, that's a 15-day suspension. You're  
17 basically putting the guy out of business almost.  
18 If he follows what he's supposed to do and transfers  
19 all these horses out to other trainers and it's  
20 legitimate, it's going to be hard for him to get  
21 that business back.

22 Now, you know, if it's a class -- a category  
23 eight penalty, we think this should take effect, but  
24 we just feel that a first offense for a class B  
25 is -- to have him disband his whole stable is just

1 too much.

2 I was at a stewards roundtable meeting at  
3 Delaware Park this fall. There was a lot of  
4 representation there from the jurisdictions in this  
5 area and everyone felt the same way about it, and  
6 the thought was that RCI was going to change their  
7 rule from 14 to 30 days. I found out last week from  
8 the chairman of the model rules committee that that  
9 was the intent, but when they -- everyone got into  
10 the room and started to discuss it, everybody wasn't  
11 sure if 15 was the right number or 30 was the right  
12 number. So the model rules just said we're not  
13 going to put a number of days in there, and it's  
14 basically left up to each jurisdiction as to when  
15 this rule will kick in. I think our preference is  
16 to actually have a number in the regulation rather  
17 than just leaving it up to the stewards or whoever  
18 would make that decision.

19 So the second sentence now will read, "When a  
20 trainer's permit is suspended for 30 or more days or  
21 revoked, it shall be the responsibility of the  
22 owners of the horses to designate in writing to the  
23 stewards to whom the responsibilities for training  
24 the horses shall be transferred."

25 At that point the stewards can look at the

1 transfer and determine if it's a legitimate transfer  
2 to a real trainer or if they're just transferring it  
3 to their brother or their wife, and that's where the  
4 language comes in. They may withhold approval of a  
5 transfer of horses to another trainer if they  
6 believe the transfer of the horses to another  
7 trainer would in any way circumvent the intent of  
8 the ruling of the Commission.

9 So we feel that it's an important rule, but we  
10 think that ten -- to trigger this action, a 10-day  
11 suspension is just a little bit too much. This has  
12 been endorsed by our stewards and judges, as well as  
13 Dr. Harden. I don't believe Colonial Downs or the  
14 horsemen have any objections to this rule.

15 MR. BURNETT: Question, Dave.

16 MR. LERMOND: Sure.

17 MR. BURNETT: Were we to go along with this  
18 recommendation and somebody gets suspended, a  
19 trainer gets suspended for 15 days, he still has to  
20 find a trainer to enter the horses under his care.  
21 We're back to the old shadow rule.

22 MR. LERMOND: That's right. And that's the  
23 first step. If he wants to enter those horses --

24 MR. BURNETT: So the care and supervision of a  
25 person holding a permit from the Commission as a

1           trainer, is a suspended or revoked person -- is a  
2           suspended person holding a permit or is it a term of  
3           art that he's not holding one?

4           MR. LERMOND: I would think we would be  
5           holding it for them until they were reinstated,  
6           but --

7           MR. BURNETT: It might be worth considering  
8           holding a permit in good standing or some language  
9           to that effect so there's no confusion that, hey,  
10          down there below, you know, I'm revoked or I'm  
11          suspended, but I've still got a permit here. It's  
12          just suspended for the moment, but --

13          MR. LERMOND: That's an excellent suggestion.  
14          We'll insert that language in paragraph A.

15          MR. BURNETT: But the policy issue that's in  
16          front of us here really is one of -- what we want to  
17          do with respect to continued care and supervision of  
18          horses by a trainer who has been suspended for less  
19          than 30 days. We know what we're to do if it's more  
20          than 30 days. He's got to move the horses. If he  
21          gets popped for 20 or 25 days, we're saying, I  
22          think, that it's okay for him to suddenly become the  
23          foreman and have his foreman become the trainer and  
24          business as usual goes on, which the problem I have  
25          with that is that it's the cost of doing business.

1 So if you get popped, it's light stuff. So what?  
2 That's not the kind of thing we want to be  
3 endorsing.

4 So one of my questions would be if we're going  
5 to go along with this, it seems to me a revoked or  
6 suspended trainer should be off the grounds, no  
7 communication with whoever is training those horses.  
8 Out. You're on the bend. Not to transfer your  
9 horses. You can find somebody to come in and take  
10 care of them, take care of your customers and all  
11 that, fine, but you don't get to sit on the balcony  
12 and train the horses through the guy that's sitting  
13 next to you is the way I see it. The penalty has  
14 got to be a penalty, not just a penalty of a couple  
15 bucks.

16 MR. PETRAMALO: I thought that was the  
17 practice now, if your license is suspended or your  
18 permit --

19 MR. LERMOND: I believe that's the policy,  
20 whether it's --

21 MR. PETRAMALO: I don't think they allow you  
22 on the backside with a suspended license.

23 MR. BURNETT: They're not supposed to.  
24 Mr. Roney?

25 MR. RONEY: Mr. Chairman?

1 MR. BURNETT: Mr. Enforcement.

2 MR. RONEY: We let -- if anybody is suspended,  
3 we will let security know and we'll let the stable  
4 gate know. As far as taking the actual permit, we  
5 don't actually take possession of the permit.

6 MR. SIEGEL: But is the suspended party  
7 allowed past that gate?

8 MR. RONEY: Well, probably, yes. It probably  
9 happens. They probably do.

10 MR. SIEGEL: There's your answer because --

11 MR. RONEY: If somebody is suspended for three  
12 days or four days and they're living on the  
13 backside, you know, you can't really throw them out  
14 from being back there. So suspended means they just  
15 aren't allowed to participate.

16 MR. LERMOND: I think that's the biggest --

17 MR. RONEY: I think that's something we need  
18 to take a serious look at.

19 MR. LERMOND: I think that's the biggest  
20 penalty is they're not allowed to enter those horses  
21 in a race and they're not entitled to a ten percent  
22 of any of the winnings, but Chairman Burnett's point  
23 is well-taken because that trainer is still going to  
24 charge those owners the daily training fee, I would  
25 imagine, for those days.

1 MR. SIEGEL: And he has a shill that steps in  
2 for him, who's a buddy of his who trains the horses  
3 down shed row.

4 MR. LERMOND: And helps him out for this.

5 MR. SIEGEL: Yeah.

6 MR. BURNETT: He might still see that ten  
7 percent.

8 MR. SIEGEL: Absolutely. These guys, you  
9 know, they're friends. It's easy to cover for a guy  
10 for a few days, but I think that it really does need  
11 to be more enforcement, more risk if you are  
12 suspended. Put some teeth in it, if you will.

13 MR. PETRAMALO: How often do trainers get  
14 days? It's very rare.

15 MR. LERMOND: It's very rare that it happens  
16 here.

17 MR. BURNETT: So why are we changing the  
18 penalty? Just hammer them. If they're going to --  
19 if they're not getting them, then it's got to be a  
20 pretty bad offense for someone to get 10 days, and  
21 they ought to pay a penalty.

22 MR. LERMOND: I guess one of the concerns is  
23 that if you got a big trainer like Hamilton Smith or  
24 Ferris Allen that control a huge number of horses  
25 and you're going to make him disband his stable



1           because he was suspended for 15 days and that's more  
2           than the ten, there's probably not enough trainers  
3           around here to pick up that business.  It's probably  
4           going to ultimately affect the entries into the  
5           races or it could.  I know that --

6           MR. BURNETT:  Now, we're balancing our  
7           integrity with our business.

8           MR. LERMOND:  Too big to fail.

9           MR. MILLER:  Mr. Chairman?

10          MR. BURNETT:  Yes, sir.

11          MR. MILLER:  Why couldn't you remedy the  
12          situation by if you have a severe violation, severe  
13          enough to suspend a trainer's license to do that,  
14          but some of these other things if you've been  
15          suspended for one day or two days or three days, why  
16          not do away with suspending his ability to train a  
17          horse and hitting him with a huge monetary fine?

18                 I mean, what I'm getting at is in reality,  
19          they're still training them through subterfuge.  
20          They're still training the horse.  The feeling I  
21          seem to get from folks is that there are certain  
22          offenses where you don't want to have the trainer  
23          completely out of the picture and have to transfer  
24          the training ability to another trainer.  So in  
25          those instances, why suspend this trainer?  Let

1 him -- you know, we admit upfront they're still out  
2 training the horse, but hit them with a very high  
3 monetary fine. It seems to me that would be more of  
4 an incentive to behave than hitting him with a  
5 smaller fine and suspending him for two days or  
6 three days when they know that they're going to  
7 continue training the horse through the  
8 brother-in-law.

9 MR. LERMOND: I would have to look at our  
10 regulations, but my first thought is that the  
11 penalties that are in my medication section are  
12 based on RCI's guidelines. There's three different  
13 categories, category A, B, and C. A being the  
14 worst, the drugs that are the most likely to affect  
15 the outcome of a horse. The drugs that are not FDA  
16 approved. If anybody -- even a first offense for  
17 that, they're looking at a minimum one year  
18 suspension so this is going to come into play for  
19 them. The tricky part is category B. I mean, I  
20 think we're bound by what we have.

21 MR. MILLER: I'm not talking about doing away  
22 with a one year suspension. I'm talking about one  
23 or two days.

24 MR. LERMOND: When we get to that, I don't  
25 think -- it's either 15 or 30.

1 MR. MILLER: Fifteen or 30 what?

2 MR. LERMOND: Day suspensions.

3 MR. MILLER: Well, why are we talking about  
4 one or two days?

5 MR. LERMOND: Well, we're really not. We're  
6 concerned that the number ten is more than 15. So  
7 if somebody gets a 15-day suspension, all this is  
8 going to kick in.

9 MR. MILLER: Let him go back to square one.

10 MR. PETRAMALO: The most likely cause for a  
11 suspension is a medication violation. What Dave is  
12 saying is that for certain medication violations,  
13 it's automatic 15 days. It could have been a  
14 harmless error in the administration. You gave too  
15 much of phenylbutazone with something else too close  
16 to the race. Fifteen days puts him out of business  
17 under the 10-day rule. That's what Dave is talking  
18 about.

19 For the most part, other types of violations  
20 usually don't result in suspensions. Medication  
21 violations are just about the only time a trainer  
22 gets disciplined anyway. So the notion that a one  
23 or a two-day suspension is common is just not true.

24 MR. MILLER: Well, I'm just trying to get away  
25 from the idea that we would have a such thing as a

1 one or two or three-day suspension.

2 MR. PETRAMALO: That happens for jockeys,  
3 basically.

4 MR. LERMOND: Right.

5 MR. BURNETT: If you have a 15-day suspension  
6 under the new rule, the guy down shed row enters all  
7 the horses, the trainer apparently is allowed to  
8 come onto -- in the curtilage, do his thing every  
9 day, and send his bills to his clients and business  
10 goes on as usual.

11 MR. LERMOND: No. The horses under his care  
12 are not allowed to race during the time he's  
13 suspended.

14 MR. BURNETT: They're not under his care.

15 MR. LERMOND: Well, the stewards are going to  
16 know he's just transferring it to the guy down the  
17 road, down shed row.

18 MR. BURNETT: But that's okay under the old  
19 rule.

20 MR. LERMOND: No. This is a way to  
21 circumvent -- oh, you're saying within --

22 MR. BURNETT: No. You want to move -- you  
23 want to enlarge the shadow zone to 29 days or less  
24 and say the stewards get control of really having a  
25 true penalty and removing these horses at 30 and up,

1 right? But under that, what I'm hearing is, hey,  
2 it's an inconvenience.

3 I mean, what is the penalty of this 15 days if  
4 the guy can still get on the curtilage, can still  
5 bill his clients, can still train his horses, and  
6 can still get his purses, and he has a buddy down  
7 shed row train him? What is the penalty of that 15  
8 days? How does that become a deterrent?

9 MR. LERMOND: We're going to know that he  
10 transferred those horses to that trainer down shed  
11 row, and we're not going to allow it.

12 MR. BURNETT: He doesn't have to transfer  
13 them. I'm talking 15 days.

14 MR. LERMOND: All transfers have to be  
15 approved by the stewards whether it's 15 or how many  
16 days.

17 MR. BURNETT: He doesn't have to transfer them  
18 here, does he?

19 MR. LERMOND: If he's the licensed trainer --  
20 it says any -- all horses in the charge of a trainer  
21 that are suspended are not allowed to race. That's  
22 the first sentence. That has no time period at all.

23 MR. SIEGEL: He can give those to another  
24 trainer.

25 MR. LERMOND: He could, but we're probably

1 going to catch him.

2 MR. SIEGEL: Probably doesn't necessarily mean  
3 you have the power to.

4 MR. LERMOND: I mean, this is a big debate  
5 that's gone on for years. There are some people  
6 that say trainers --

7 MR. BURNETT: Hold on a minute. Let me make  
8 my point to you.

9 MR. LERMOND: Okay.

10 MR. BURNETT: Under 30 or more days, you put  
11 all this supervision by the stewards in there. Any  
12 lawyer is going to look at that and say you must  
13 have intended by your regulations that if it's less  
14 than 30 days, the stewards don't have that  
15 discretion. Otherwise, why would there be a  
16 distinction?

17 So if you want to include the transfer, then  
18 you're right back to where you were before. You're  
19 right back to your 10 days. If you're going to  
20 supervise a transfer, are you going to require a  
21 transfer at 15 days? You're saying no, we don't  
22 want to require a transfer at 15 days to a stranger.  
23 That's the point of all this, correct?

24 Therefore, he can use a shadow trainer because  
25 the stewards aren't interested in making him do a

1 true transfer. That's what you're telling us. You  
2 don't want to do a true transfer for less than 30  
3 days. So he's put in a position of either not  
4 entering his horses at all or if he wants to enter  
5 them having his shadow trainer do it. What am I  
6 missing on that?

7 MR. LERMOND: Your point -- that's why we  
8 changed the first sentence to read what we did  
9 because it made it sound like if it wasn't more than  
10 10 days that you could still race, right?

11 MR. BURNETT: Right. But I'm saying for the  
12 penalty you can't race them if he wants to keep  
13 them, but he can have a shadow trainer enter them?

14 MR. SIEGEL: He can't race them in his own  
15 name, but he can race them in someone else's name.

16 MR. BURNETT: Right.

17 MR. LERMOND: Whether the guy -- the stewards  
18 are still going to look for a paper trainer.  
19 They're not going to just not care because it's 15  
20 days and not 30.

21 MR. BURNETT: Where does it say that?

22 MR. LERMOND: Well, I think -- and there's  
23 other places in here where it says you can't train  
24 under another name or falsify --

25 MR. PETRAMALO: But I think your underlying

1 assumption isn't correct or shouldn't be correct,  
2 because at every racetrack in the country where a  
3 trainer is suspended, he is not permitted on the  
4 grounds or even in the grandstand. That should be  
5 the rule here. If Ferris Allen, a good friend, were  
6 to get --

7 MR. BURNETT: A good trainer and an honest  
8 guy.

9 MR. PETRAMALO: A fine trainer. We're out  
10 here every morning drinking coffee at six o'clock,  
11 if he were to get suspended, he shouldn't be  
12 permitted to walk back in that stable area, period.

13 MR. BURNETT: Or use a cell phone. No  
14 communication. Out. Now what happens to his  
15 horses?

16 MR. PETRAMALO: Now, what happens to the  
17 horses is, you know, his horses can remain in his  
18 stalls, but some other trainer is going to have to  
19 be responsible for training them as well as entering  
20 them. So let's say Ham Smith is in the next barn.  
21 If Ham were willing to do it, he would have  
22 responsibility for those horses and for the 10-day  
23 period or whatever, the horses would be running in  
24 Ham Smith's name.

25 Now, that doesn't answer the financial



1 question as to whose being paid, but it would seem  
2 to me the reasonable thing is to require that not  
3 only is the trainer not permitted on the grounds,  
4 but he's not permitted to charge for training that,  
5 in fact, he's not doing. That's the way to deal  
6 with the problem. Now, that's a far different  
7 situation than saying, okay, you're out for more  
8 than 30 days. You've got to transfer those horses.

9 MR. BURNETT: Sure it is. The stable remains  
10 intact under the supervision of somebody else --

11 MR. PETRAMALO: Yeah.

12 MR. BURNETT: -- but what I'm hearing from a  
13 steward is there's some unwritten rule that the  
14 stewards or maybe it's written someplace else in  
15 these regulations that, well, we're not really going  
16 to allow that transfer or, you know, we're going to  
17 think about whether we're going to let Ham Smith  
18 take those horses over. I think -- you know, if  
19 nothing else, we need to be absolutely clear what  
20 the rule is. Every horsemen and the commissioner  
21 are entitled to know that.

22 I'm not saying I necessarily disagree with  
23 what you're saying, leave the stable intact, remove  
24 communication and remove the financial benefit or  
25 remuneration and that may be an appropriate penalty

1 for under 30 days, but I sure would like to have it  
2 be clear and I sure want it clear with our  
3 enforcement people that that permit is turned in and  
4 that guy doesn't get past that gate. Pat has got  
5 something to say to that.

6 MR. KELLEHER: That's what I would ask. In  
7 those situations, that the permit is turned in. It  
8 makes it easier for the people at the gate. If  
9 somebody doesn't have, you know, a permit and, in  
10 fact, is a good permit when they're checking, you  
11 know, licenses -- using Ham Smith or whatever in and  
12 out of the stable all the time. Well, they know Ham  
13 Smith, but we push that they do show their badge.

14 Well, if somebody doesn't have their badge,  
15 it's going to be a red light that we know maybe he  
16 had it taken, either the paperwork didn't get to the  
17 stable gate, you know, there has been some  
18 communication problem, but it's the first red flag.  
19 That would be helpful there at that first point to  
20 not allow that person back into the back. As for  
21 somebody living on the backside, the trainers, that  
22 only pertains to harness, not thoroughbred.  
23 Harness -- thoroughbred trainers and assistant  
24 trainers are not allowed to live on the backside.

25 So that part of the thoroughbred, the fact

1 that he's living there -- he's living there and, you  
2 know, his license has been suspended, that won't be  
3 a problem because he's not allowed to live back  
4 there anyways. So just to take that license  
5 physically, if the office takes it, then it's a red  
6 flag for us. We can look into it further at the  
7 gate, move to the side, get the other horses in and  
8 have somebody check to see if it is.

9 MR. PETRAMALO: That's the practice, by the  
10 way, that's followed with regard to grooms and hot  
11 walkers, et cetera. When they get suspended for,  
12 you know, drug possession or something of that sort,  
13 their license is pulled and they move off the  
14 backside and they're not permitted back on until we  
15 fix them up, they get their permit back, and then  
16 they come back in.

17 MR. BURNETT: These regs apply to all breeds,  
18 right?

19 MR. LERMOND: Right.

20 MR. SIEGEL: Mr. Chairman, would it be  
21 appropriate to ask Dave to come back next month  
22 after putting some teeth into that and clarify it  
23 because I don't think we're going to settle that  
24 particular issue?

25 MR. LERMOND: I can try real quick. If it

1 doesn't work --

2 MR. BURNETT: Here's my suggestion. I think  
3 there's so many issues on this that maybe it  
4 would -- you know, when I saw this coming, I  
5 suggested it go through the rules committee first.  
6 You do have a rules committee. I think maybe --  
7 what I don't want to do is handicap the coming meet  
8 anymore than it has to be. I don't know how much  
9 time we have left to get things in place, whatever  
10 the final outcome is, but it would be good if either  
11 by phone or in person we get a rules committee  
12 together and get through some of this. Would that  
13 make y'all more comfortable?

14 MR. SIEGEL: Yeah. I don't think you're going  
15 to settle it today.

16 MR. BURNETT: I suggest that we do that. What  
17 are the comments of the other commissioners?

18 MR. MILLER: I would like to look into Frank's  
19 suggestion because his suggestion is pretty clear.

20 MR. BURNETT: Yes.

21 MR. MILLER: If that's what goes on at most  
22 major tracks, that's what we ought to look at.

23 MR. BURNETT: Well, there was a trainer in New  
24 York that was suspended for -- I believe Mr. Dutrow,  
25 if I'm not mistaken. He was instructed just exactly

1 as the way Frank laid it out, and he was caught  
2 using a cell phone training his horses. They added  
3 another 25 days. I forget what it was.

4 MR. PETRAMALO: Well, if you want a committee  
5 meeting, we can work with Dave and get one together  
6 real quick.

7 MR. BURNETT: I think that would be a good  
8 approach.

9 MR. LERMOND: Am I on the right track, though,  
10 if I was to add to the first sentence, shall not be  
11 allowed to race or allowed access to the grounds,  
12 communication with the trainer whose now in care of  
13 these horses and cannot benefit financially? I  
14 mean, are those the three areas that we want to put  
15 a stop to?

16 MR. PETRAMALO: I think the easiest thing to  
17 do is say not be permitted on the grounds or  
18 otherwise participate in the training of the horse.

19 MR. SIEGEL: That's more or less the same --  
20 different words say the same thing that Dave said.

21 MR. BURNETT: What I would add to that for the  
22 benefit of Mr. Roney and Pat is to be able to upon  
23 request get cell phone records, financial records,  
24 anything else that pertain to those horses. If  
25 you've been suspended, you're going to provide those

1 records to any investigator that wants to know  
2 what's been going on. So the guy doesn't know or  
3 think, oh, well, that's what I'll do. I'll just  
4 have his check go to my wife, whatever it is.

5 We need to make sure that everybody knows that  
6 when our investigators decide they want to find out,  
7 they have to do it or the guy is going to be out of  
8 racing, one or the other.

9 MR. SIEGEL: Let's move ahead.

10 MR. BURNETT: Shall we take them all as a  
11 group then and the rules committee --

12 MR. LERMOND: I'll go ahead and hold off on  
13 this chapter then rather than --

14 MR. BURNETT: I think we ought to look at all  
15 the chapters together on the rules committee is what  
16 makes sense to me.

17 MR. MILLER: Before we go, there's a typo on  
18 Chapter 110, 110-100, in that first paragraph,  
19 you've got to correct that. Do you see what I'm  
20 saying? There's something missing there.

21 MR. LERMOND: The rest would be trainer.

22 MR. BURNETT: Trainer is missing at the end of  
23 that.

24 MR. LERMOND: I had it crossed through first.

25 MR. MILLER: I see it. Sorry. Never mind.

1 MR. LERMOND: Can we go through the other two  
2 chapters and see if there's -- if you feel they're  
3 okay to approve today or if they need to go through  
4 the rules committee?

5 MR. MILLER: I suggest we consider them all at  
6 one time.

7 MR. BURNETT: That's what I would do. Take  
8 them all as a group to the rules committee and bring  
9 them back as a group is what I suggest. I don't  
10 know how they're going to interplay with each other,  
11 unless others want to forge ahead today.

12 MR. SIEGEL: I think we should do it all at  
13 once.

14 MR. BURNETT: Do it all at once.

15 MR. LERMOND: Dr. Harden is going to have some  
16 changes to the medication chapter at the next  
17 meeting. I was trying to break it up by doing these  
18 this month and those next month.

19 MR. PETRAMALO: I was going to ask about that  
20 because we had been talking to doctor --

21 MR. LERMOND: He's in Alaska right now, and  
22 it's better that he explain it.

23 MR. PETRAMALO: Oh, he's at the -- that's  
24 right.

25 MR. BURNETT: Mush. Mush.

1 MR. MILLER: Maybe he should come to this  
2 rules committee meeting.

3 MR. BURNETT: Yeah. Schedule it so that he  
4 can be involved with that. We'll pick up his as  
5 well. That might bring some efficiency. I think to  
6 the extent that any members of the Commission are  
7 involved in that rules effort, it's going to make it  
8 go faster when it gets back here so we're not really  
9 functioning as a committee here. We're listening to  
10 a recommendation.

11 MR. HARRISON: Can we just take a minute or  
12 two and have Dave just run through the remaining? I  
13 mean, really I think the first item, the one that we  
14 just finished discussing was the most complicated  
15 one. The others are really pretty simple,  
16 especially two of them, which I think is half of the  
17 remaining --

18 MR. BURNETT: What is the urgency to do this  
19 today?

20 MR. HARRISON: Just to take the load off for  
21 the rules meeting and then the next VRC meeting.

22 MR. BURNETT: I'd rather be patient and let it  
23 go to the committee myself. I'll concede to my --  
24 I've got an absolutely to my left. How are we doing  
25 on my right?



1 MR. SIEGEL: I agree with you, Mr. Chair.

2 MR. BURNETT: We want to do them all together.

3 Next item. Approval of the Thoroughbred  
4 Horsemen's Agreement. That's Tab 6.

5 Gentlemen, for what it's worth, most of what  
6 is in this request for approval was considered at  
7 our last meeting. There are a few changes,  
8 important changes, but few in number. I'll just ask  
9 Vic to tell us about those, and we can move forward  
10 from there.

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

12 In the first paragraph of my report, I deleted  
13 a lot of the superfluous language that I had in  
14 there, editorializing, and got right to the point.

15 Our recommendation was -- in the prior staff  
16 report was to approve the thoroughbred horsemen's  
17 contract after we were satisfied that the  
18 relationship between the amended and restated EZ  
19 Horseplay Agreement was addressed. We had some  
20 issues and concerns there.

21 Well, the parties have deleted both references  
22 in the thoroughbred report to the EZ Horseplay  
23 agreement, and so the changes to this report really  
24 were deletions. I deleted the two paragraphs that  
25 related to the effectiveness of the ADW contract,

1 which I believe we'll get to next month at our next  
2 month's hearing -- next month's VRC meeting, reduced  
3 the language in the first paragraph.

4 In section four of our report, I added the  
5 piece relative to the EBITDA calculations for Scott,  
6 Vinton, and Brunswick SWFs. It was discussed at the  
7 last meeting. It just -- we neglected to enter it  
8 into the verbiage here. So that's here. It's just  
9 a little clearer. No change in our assessment of  
10 this provision, just added some language, included  
11 the pros here, what Ian had provided us with respect  
12 to a table, explaining the calculations.

13 And then under recommendations, we just  
14 strengthened our request there that information  
15 provided to the VHBPA also be provided to the VRC.  
16 We're asking that language to that effect be added  
17 to this thoroughbred agreement or maybe just put in  
18 a separate section that says any references herein  
19 to information provided to the VHBPA will also be  
20 supplied to the VRC. And that's it. The  
21 recommendation is still to approve.

22 MR. BURNETT: I didn't mean to deprive the  
23 racetrack of going first in presenting any changes  
24 or updates to what this agreement is. I know you  
25 may have some comments. I apologize. I'll let you

1 go first.

2 MR. WEINBERG: No, not at all. I think this  
3 was very efficient. I was just going to report we  
4 have deleted the references to the EZ Horseplay  
5 agreement as Mr. Harrison suggested, and we've gone  
6 ahead and added the language that was actually  
7 contained in the staff report in the two sections  
8 that were requested. I think they were sections  
9 4(C)(1) and 3(C) as well. Sorry.

10 In 3(C), we added the reference that the -- as  
11 we talked about at the last meeting, the Commission  
12 statutorily has had authority and we put that in the  
13 agreement, and in Section 4(C)(1), the calculation  
14 of EBITDA, we've added the language, will provide  
15 that to the Commission as well subject to the  
16 Commission treating it as an exemption from the  
17 Freedom of Information Act and added that language  
18 throughout that paragraph. We'll provide a copy to  
19 the Commission as long as it's exempt from FOIA.

20 So we believe the agreement as we've addressed  
21 all the issues that had been raised by the  
22 Commission and would ask for the Commission's  
23 approval at this time.

24 MR. BURNETT: Any comment from the  
25 thoroughbred horsemen?

1 MR. PETRAMALO: No, I agree with Jim.

2 MR. BURNETT: Everything all right, Frank?

3 MR. PETRAMALO: Yes.

4 MR. STEWART: It's St. Patrick's Day.

5 MR. BURNETT: Oh, it is St. Patrick's Day.

6 Frank started early this morning.

7 MR. PETRAMALO: Well, if you insist.

8 MR. BURNETT: No, I don't.

9 MR. HARRISON: Mr. Chairman?

10 MR. BURNETT: Yes, sir.

11 MR. HARRISON: I know we're on a path here,  
12 but there's one section in here that's complicated,  
13 and I would just like an explanation from either Jim  
14 or Ian. This is under -- on page 7 of the report.

15 MR. BURNETT: What's the section number?

16 MR. HARRISON: It's 4(C)(4). It relates to  
17 the EBITDA calculation expiring at the later of  
18 seven years from opening date of such effected SWF  
19 and the expiration of the agreement. It was just  
20 something that even our genius minds at the VRC  
21 couldn't get our arms around.

22 MR. PETRAMALO: What's the citation again?

23 MR. BURNETT: It's the section --

24 MR. PETRAMALO: Give me the section number  
25 because my pagination --

1 MR. BURNETT: Administration of accounts,  
2 paragraph four.

3 MR. HARRISON: C(4).

4 MR. PETRAMALO: 4(C)(4). Okay. I'm getting  
5 there.

6 MR. HARRISON: The one that begins as of  
7 midnight December 31st, it's really just the --  
8 maybe it's a minor point, and it seemed like it was,  
9 but if you could explain in English the timing  
10 aspects of the seven years versus the expiration of  
11 the agreement.

12 MR. BURNETT: This is a three-year agreement,  
13 and where does the seven years fall?

14 MR. WEINBERG: We just agreed that seven  
15 years -- that that would be the term of the  
16 discount, if I recall. If you remember, the reason  
17 this provision is so complicated, we can toggle back  
18 and forth between the 50 percent EBITDA sharing  
19 unless we hit handle numbers, in which case it goes  
20 back to the way it was under the old agreement.

21 MR. BURNETT: Right.

22 MR. WEINBERG: What I believe this is saying  
23 is at the end of seven years, we're back on a level  
24 playing field, but it had to reflect all those  
25 different permutations. If we're at 50/50, it

1 expires. If we have to flip back so that we're back  
2 on schedule B, it expires.

3 MR. PETRAMALO: Yes.

4 MR. STEWART: Schedule B used to have a longer  
5 termination.

6 MR. PETRAMALO: Correct.

7 MR. WEINBERG: I'm sorry. The change from  
8 where it was was that deal was for the length of the  
9 license for 20 years.

10 MR. BURNETT: The one that I was involved in  
11 the negotiation of?

12 MR. WEINBERG: Right. This brings it to a  
13 seven year finite.

14 MR. BURNETT: Period.

15 MR. PETRAMALO: Yes.

16 MR. BURNETT: And what is the relationship  
17 between seven years and this agreement, the  
18 expiration of this agreement? It's got to be close,  
19 isn't it?

20 MR. WEINBERG: Yeah, it is pretty close.

21 MR. BURNETT: We may be talking months.

22 MR. STEWART: Right. It's pretty close.

23 MR. HARRISON: All right.

24 MR. BURNETT: My only comment is that under  
25 your recommendations, the lawyers in this room don't

1 know what you're talking about when you say COV. If  
2 you'll say Virginia Code please, we would appreciate  
3 that. If you want to really see the correct way to  
4 say, it's in Mr. Weinberg's agreement.

5 MR. WEINBERG: Three years of law school, you  
6 learn that.

7 MR. BURNETT: Some don't get it in that period  
8 of time.

9 Any questions of any of the stakeholders or  
10 Mr. Harrison about this agreement?

11 Do we have a motion?

12 MR. SIEGEL: So move.

13 MR. REYNOLDS: Second.

14 MR. BURNETT: It's been moved and seconded  
15 that we approve the Thoroughbred Horsemen's  
16 Agreement as presented today. Any further  
17 discussion? Seeing none. All in favor indicate by  
18 saying aye.

19 Note: (Aye.)

20 MR. BURNETT: The motion passes unanimously.  
21 The agreement is approved. Thank you.

22 MR. WEINBERG: Thank you.

23 MR. PETRAMALO: So as a housekeeping matter  
24 then, the contract that we had previously executed,  
25 we will revoke our signatures and have the new

1 revised contract signed by the parties. Robin is  
2 off foaling horses this morning -- foaling mares  
3 this morning, so she is not here to sign it.

4 MR. BURNETT: I confess. I didn't look  
5 closely enough to see whether the intention was to  
6 have this contract be executed nunc pro tunc to  
7 January 1.

8 MR. PETRAMALO: Yeah, it's effective January  
9 1.

10 MR. WEINBERG: It is.

11 MR. BURNETT: Okay. So as a housekeeping  
12 matter, you guys will take care of securing the  
13 signatures?

14 MR. WEINBERG: Yes.

15 MR. BURNETT: And the temporary agreements  
16 that were in place are going to cease to exist, and  
17 this will be the binding agreement back to  
18 January 1?

19 MR. WEINBERG: That's correct.

20 MR. PETRAMALO: Correct.

21 MR. BURNETT: Next item, request for 2010  
22 standardbred race days. Mr. Dunavant?

23 DR. DUNAVANT: Yes, sir.

24 MR. BURNETT: I guess I need to wait on your  
25 response. We'll hear first from Colonial Downs.



1 I'm sorry. I started to my left.

2 MR. STEWART: Okay. We'd like to go through  
3 and summarize. We filed two different requests over  
4 the last couple months. Our amended request is for  
5 21 days of standardbred racing for 2010 for the  
6 period Friday, September 17th, ending on Tuesday,  
7 October 19th.

8 In 2009, we raced 36 days, from September 8th  
9 through November 7th. The proposed schedule for  
10 2010 would be Saturday, Sunday, Monday, and Tuesday,  
11 racing four days a week. Friday, September 17th  
12 would be the exception. That is the opening day of  
13 the New Kent County Fair, which will be returning to  
14 Colonial Downs for 2010. The post time proposed is  
15 one o'clock on all days except Saturday, which is at  
16 seven.

17 We're requesting the race days for 2010 based  
18 upon our projections of the total amount to be  
19 available for purses of approximately 1.4 million.  
20 I should note that includes \$190,000 that we project  
21 to be the current account wagering money -- current  
22 year account wagering money. However, as we go on,  
23 the harness association has not committed to  
24 spending that money as of yet.

25 The 21 days represents a change from the 30

1 days we originally requested because at that time  
2 the full results and assessments of the 2009 meet  
3 were not complete by December 1st when the original  
4 date request had to be submitted. At this time we  
5 have a much better idea of what purse funds will be  
6 available than we did at the time the dates were  
7 submitted. There were some other issues at that  
8 time talking with the harness horse association  
9 about that had not been resolved.

10 In setting the dates for the 2010 meet,  
11 obviously it's important to look at the results of  
12 the 2009 meet. We've gone through that in detail,  
13 so I'm not going to run back through those numbers.  
14 I will point out that standard -- that harness  
15 racing was not a profitable operation for Colonial  
16 Downs. In '09, we lost about \$19,000 a day.

17 The history is as you've seen -- we've seen  
18 harness racing tracks without alternative gaming  
19 either stop racing or go out of business, such as  
20 what's happened at Rosecroft, Jackson, and Saginaw,  
21 Michigan. Several are barely hanging on, such as  
22 the Ohio tracks, and the ones -- the new ones that  
23 have come on-line such as Chester, Running Aces,  
24 Vernon Downs, and Tioga, all have other forms of  
25 gaming to support them. Therefore, we're proposing

1 to open the grandstand only on Saturdays and  
2 Sundays. It really makes no sense to open that huge  
3 facility for just a few people during the week.

4 When you're looking at the '09 meet -- and  
5 we've gone through the numbers from a quantitative  
6 standpoint. From a qualitative standpoint, in  
7 December we heard a number of comments from racing  
8 commissioners, VRC staff, and representatives of the  
9 harness association, which show -- really raised  
10 some questions about the quality of the 2009 meet.  
11 Those comments reflected basically that the key to  
12 improving the quality of racing from 2009 is  
13 increasing the purse level.

14 It's important to understand in 2009 when you  
15 look at the average purse per day, it's distorted  
16 substantially really because of the large amount of  
17 money spent on the Day of Champions. If you take  
18 the Day of Champions out of the equation, in 2009 we  
19 ran for \$38,594 a day, on every day. So 35 days of  
20 that meet we ran for \$38,000 and on the 36th day, we  
21 ran for \$442,000.

22 If you look back to the 2008 meet and sort of  
23 do the same calculation, what you find is that on  
24 all the other days we ran for \$48,070. So between  
25 2008 and 2009, our purse on everyday except the Day

1 of Champions went from \$48,070 in 2008 to \$38,594 in  
2 2009, which is down about 20 percent.

3 As Dr. Harden noted in his testimony, 2008 was  
4 considered one of our best meets. So, therefore, in  
5 making this request, we're setting the purse level  
6 for all the other days except for the Day of  
7 Champions at the same level as to 2009. We believe  
8 that, as I said, there will be approximately a  
9 million four available. If you take out the Day of  
10 Champions, \$442,000, which Colonial Downs is very  
11 supportive of, we think that the key to viability is  
12 to create events and that's one of the best ways to  
13 do it. So we're very supportive of the Day of  
14 Champions. If you just basically do the math,  
15 however, to take the purse level back to the 2008  
16 meet, it comes to 20 days plus one day for the Day  
17 of Champions.

18 Now, as I noted in my letter, the harness  
19 horse association has informed us that they have an  
20 additional source of purse funds as they have  
21 accumulated the money that they have gotten from  
22 account wagering over the years. At this point,  
23 however, they have not been willing to say exactly  
24 how much they want to spend on the -- of that money  
25 they want to spend on the 2010 meet.

1           So without that information, I can only make  
2           the race day request based on the amount of money  
3           that I know is available. However, to the extent  
4           that the harness horse association would like to  
5           make more money available, we're certainly willing  
6           to consider more race days. Our point is that those  
7           race days should be -- in our opinion should be  
8           awarded based on the 2008 purse level of \$48,000 a  
9           day.

10           So, for example, if you want to run 28 days,  
11           it will be 27 days at \$48,000, plus the Day of  
12           Champions at \$442,000. That comes to a total of  
13           about a \$1,740,000, which would mean that in order  
14           to sustain that purse level, the harness horse  
15           association would have to make available  
16           approximately \$350,000 of their accumulated account  
17           wagering money.

18           MR. BURNETT: Any questions of Mr. Stewart at  
19           this point? Why don't we hear from Dr. Dunavant.

20           DR. DUNAVANT: Yes, sir.

21           In December, Colonial Downs requested 30 days  
22           at a \$40,000 a day purse level and made the  
23           statement the same that they do here, that that  
24           would attract quality horses in the competitive  
25           Mid-Atlantic region. We agreed with that.

1           At the December VRC meeting, which I was  
2           unable to attend, comments were made by a very good  
3           friend of mine, Dr. Harden. He was a classmate and  
4           we've been great friends for 45 years. Some  
5           statements were made that I take as a personal  
6           affront and disagree with, and I would like to go  
7           over some of those things.

8           One of the first things, they commented on a  
9           whip rule that was changed in the middle of the  
10          meet. RCI recommended in the summer that the  
11          standardbred whip rule be changed to both hands  
12          being in the hand holds the whole race, and the VHHA  
13          informed this race commission that we would like to  
14          implement that rule prior to this meet starting.

15          Well, one of our judges really didn't  
16          understand that much about driving harness horses  
17          and thought that would be dangerous, so we didn't.  
18          Consequently, as the meet started, we had just one  
19          or two drivers that were using a whip excessively,  
20          they were fined, and weekly we had a horsemen's  
21          meeting with the judges.

22          I am the president of the VHHA and also the  
23          horsemen's representative during our live meet, and  
24          in our discussion I brought up that, you know, the  
25          way to handle this, let's implement this as a house

1 rule and we did, and it went forward very  
2 satisfactorily.

3 As far as the 2008 meet being our best meet  
4 and 2009 being our worst, Dr. Harden made that  
5 comment and he was under a lot of pressure. We had  
6 some people on the backside that were disgruntled.  
7 The biggest complaint that I get from the horsemen,  
8 some of them came here very short of funds, and it  
9 takes about a week longer to get their purse in  
10 Virginia than any other state they race in due to  
11 the testing procedure of going to Iowa. Well, they  
12 hit on Dr. Harden like that was his call, and he  
13 took a lot of grief for that. It was not warranted,  
14 but I think the people bothered him with that a lot.

15 We basically had the same horses racing at  
16 Colonial Downs in 2009 as we did in 2008. From my  
17 perspective, we had very good racing, excellent  
18 quality. We had basically full fields. I think  
19 they note here that we -- that we had a decline in  
20 horses per race from 8.6 to 8.3. That's less than a  
21 half a horse, and most racetracks in this country  
22 only race eight to a harness horse field.

23 We lowered the four-year-old mare trotting  
24 record in 2009. We attracted an Hambletonian winner  
25 and a trotting horse of the year to our big race,

1 and that big race was won by a Virginia-bred that  
2 had raced in our stakes program. Overall, I think  
3 99 percent of the races, there were three or four or  
4 five horses approaching the finish line together,  
5 and it was very good racing.

6 Now, maybe the horses weren't worth as much as  
7 the horses that race in New Jersey and New York and  
8 Delaware. We cannot attract those horses. Those  
9 racetracks that are supplemented by the casinos are  
10 all racing in excess of \$125,000 a day. There is no  
11 way that we can attract Meadowlands, Yonkers, and  
12 Dover, Delaware horses.

13 Now, I brought some -- I'm fortunate enough to  
14 have some decent horses that I bring here every  
15 year, and they compete in New York and Pennsylvania  
16 and Delaware and do well, and they do well here. I  
17 consider them class horses. I took it kind of as an  
18 affront that we had a bunch of horses beat up. That  
19 did not happen.

20 Our standardbred horses are accustomed to  
21 racing as much as two and sometimes three heats a  
22 day. They're not like thoroughbred horses. We  
23 train them twice a week. I had three or four horses  
24 in my stable of 12 that raced twice a week and won  
25 back to back in that week, and they weren't beat up



1 at all. They came back and raced very well. I was  
2 not the only trainer that had horses that did that.  
3 So some of the comments that were made at that  
4 December meeting, they talk about a sense of malaise  
5 in the barnyard area and that the harness horsemen  
6 need to step up to the plate and try to present a  
7 proper product.

8 Our association in years past and in 2009 paid  
9 for two suites over there every Saturday and Sunday,  
10 went out and attracted corporate groups and let them  
11 come to that suite and eat and watch the races at no  
12 charge to them. The VHHA picked the fee, and we  
13 paid Colonial Downs. We also had another suite  
14 available on Saturdays and Sundays for horsemen and  
15 their guests no charge.

16 I personally never race on a weekend that I  
17 don't try and successfully bring people out to watch  
18 our harness meet. I'm extremely passionate about  
19 harness racing. Anybody that ever sets up behind  
20 one and feel what we have in our product, I've never  
21 had anybody that wasn't impressed. We can do a  
22 thing that they can't do with thoroughbred horses.  
23 None of you all can sit up on a thoroughbred horse  
24 and gallop around that racetrack, but I invite  
25 everyone of you to come out and sit behind my horse

1 and go around that racetrack. It's quite a thrill.

2 As far as the days are concerned, we agree  
3 that it's a million and four for purses. I don't  
4 know about the other figures. I do know the figure  
5 that Colonial presented, the \$442,350 that we race  
6 for on the Day of Champions. That figure is wrong  
7 by 86,350. We actually raced on the Day of  
8 Champions for \$356,000. Mr. Lermond and I went over  
9 that just the other day from the program that was  
10 there. I mean, they missed that figure by almost  
11 \$100,000 that we'll have available.

12 We figure -- we hate to go backwards on days,  
13 but the economic times are such, we've got to.  
14 We're requesting 28 days, which is \$50,000 a day for  
15 28 days, four days a week. We're reducing our meet  
16 by eight days, which is about 20 percent. We're  
17 down about 20 percent. We're requesting reducing  
18 our days by 20 percent, and we're taking two weeks  
19 off.

20 In my discussion with Colonial Downs, they  
21 said weeks are what helped them. The VHHA has  
22 always tried to help Colonial Downs in cutting their  
23 cost in putting on our meet. I think they're asking  
24 to race at seven o'clock just on Saturdays. We have  
25 no problem with post times so they don't have to use

1 the lights. Our horsemen are more than willing to  
2 bend over backwards and do whatever, but at 21 days,  
3 there's no way I can get horses to come down here to  
4 just race that short period of time. I'm worried  
5 about 28 days, but we have the money.

6 Now, we have set aside the account wagering  
7 money in the past to hold for a rainy day. Last  
8 year, we propped up our stakes program, which we  
9 feel like is important. We took some of that money  
10 and put \$130,000 in that. We put \$20,000 into our  
11 signature Patriot Trot, and we held up some other  
12 purses to the tune of \$15,000. So we essentially  
13 put 180,000 in last year. We're going to have  
14 approximately a half a million dollars for this  
15 year, and we will prop up the purse for 28 days.

16 I don't know what else to say other than I was  
17 really sorry I was not here in December to refute  
18 some of the things that was said. If we raced for  
19 \$20,000 a day or \$70,000 a day, we still would  
20 attract the same horses that come to Virginia to  
21 race. We race for more money than Maine, Michigan,  
22 Ohio, Maryland races for, and we put on a pretty  
23 good show, I think. That's basically why we're  
24 asking for 28 days. Four days week for seven weeks.

25 Now, another thing that I would like to state,

1 Colonial Downs is getting away from supporting the  
2 off-track betting parlor. We have classically done  
3 20 to 27 percent of the business in the off-track  
4 betting parlors. We're doing about 10 percent of  
5 the account deposit wagering. That's one reason we  
6 did not want to go with helping to finance these  
7 additional machines.

8 Now, we're taking a beating and as of  
9 yesterday, I have an account, an EZ Horseplay and a  
10 TVG account. You still cannot wager on the  
11 Mid-Atlantic races, which is the Meadowlands and  
12 Dover if you live in Virginia through TVG, and TVG  
13 is the biggest handler of account wagering in  
14 Virginia, but our harness horsemen cannot wager from  
15 Virginia through TVG on Meadowlands and Dover. I  
16 don't know why, and I can't get an answer why.

17 MR. BURNETT: Let me stop you right there.  
18 Would you get an answer why for us, Mr. Secretary?

19 MR. LERMOND: I can give it to you.

20 MR. HARRISON: Dave knows.

21 MR. LERMOND: The original TVG agreement with  
22 Colonial Downs and the horsemen had a side letter,  
23 and the side letter carved out certain tracks that  
24 TVG agreed not to show in Virginia. They're mainly  
25 tracks that were in this region, Dover Downs,

1 Meadowlands, Philly Park. I don't know -- I don't  
2 even know if the side letter still applies. I don't  
3 think it does. I think TVG just doesn't know.  
4 They're just so used to blacking those tracks out in  
5 Virginia, they probably just didn't realize. I  
6 talked to Charlie about it yesterday, and I guess we  
7 need to call TVG and let them know.

8 MR. BURNETT: Can we put some effort towards  
9 correcting that?

10 MR. LERMOND: Yes, sir.

11 DR. DUNAVANT: I mean, I can't come up with a  
12 figure on how much money that has cost my harness  
13 handle over the last couple of years, but they do  
14 the lion's share of the off-track -- of advance  
15 deposit wagering, and Meadowlands and Dover are my  
16 biggest handlers on all the others, and I'm not  
17 getting any play through TVG, and Meadowlands is  
18 shown live every night during the meet.

19 It's the only somebody that I see that's  
20 advertising for people to open up an account. You  
21 know, if I do a poll of people off the street here  
22 in Virginia, I won't find five -- find five out of a  
23 hundred that know we race harness racing at this  
24 racetrack. You know, I think I'm getting a bum wrap  
25 for some things that aren't our horsemen's fault.

1           At any rate, I respectfully request 28 days,  
2           four days a week for seven weeks, and I think you  
3           have that letter when it's beginning. We'll work  
4           with Colonial Downs anyway they want to on post  
5           times and days.

6           One other thing. Let me interrupt here again.  
7           It really galls me that when we're racing live, and  
8           in 2009 while we were racing live, we had several of  
9           the OTBs closed when we were racing live. I don't  
10          think that should be allowed. If we're racing live,  
11          I think they should be open and closed on a day when  
12          we're not racing live. That hurts my handle too.

13          Any questions, I'll be glad to entertain them.

14          MR. BURNETT: I have one question that may be  
15          helpful and it goes right to the heart of what I  
16          understand Colonial Downs' concern is, and it's this  
17          purse amount.

18          I understand that based on what Colonial knew  
19          earlier that they were estimating that there would  
20          be \$1,400,000 available for purses and they used  
21          that number to come up with the 21 days, and that --  
22          I don't want to put words in Ian's mouth, but that  
23          he was open minded to a longer meet if the money is  
24          there to prop the purses up, but he hadn't heard  
25          what that number was. The number that you just

1 represented to us is about 50 percent more than the  
2 340,000 that he said would be necessary.

3 I guess what I'm asking -- I know what I'm  
4 asking you is, are the harness horsemen willing to  
5 guarantee that there will be \$1,750,000 worth of  
6 purses over that 28 days.

7 DR. DUNAVANT: No. We're not talking about a  
8 million seven hundred. We're talking about a  
9 million four. Twenty-eight days at \$50,000 a day is  
10 a million four. That is what we've always  
11 advertised. We have always included our stakes  
12 money in that figure. And that's what we can --  
13 that will attract the horses that we can attract  
14 here.

15 MR. BURNETT: I understand that argument. I  
16 thought I understood you to say that you -- I  
17 thought that the million four that was referenced  
18 was available from traditional funds, and that you  
19 were adding that million four with your rainy day  
20 fund.

21 DR. DUNAVANT: Yes.

22 MR. BURNETT: Do I understand that?

23 DR. DUNAVANT: We will prop it up and make  
24 sure that it's a million four there.

25 MR. BURNETT: All right. I don't have a

1 calculator with me, but if your big day is 350 and  
2 you got a million four, you're going to be taking  
3 \$1,050,000, dividing it by 28 days, and there's your  
4 average purse. Is that fair?

5 DR. DUNAVANT: Well, you might as well say 27  
6 days because that last day we have eight races.

7 MR. BURNETT: That's your 350.

8 DR. DUNAVANT: Yeah.

9 MR. BURNETT: So divide 27 into the million  
10 fifty and that gives you whatever the amount would  
11 be?

12 DR. DUNAVANT: Yeah. In 2009, I'm not real  
13 good with figures, but we were fortunate to have  
14 some excess money, and we raced for about \$35,000 a  
15 day up until the last two weeks when the race  
16 secretary had held back, and then put some money on  
17 the tail end to keep people here from going to  
18 Florida sooner. And that's what we've always done.

19 I mean, at \$35,000 a day purses, we can  
20 attract -- that is still more money than they're  
21 racing for in Michigan, Maine, Ohio, and Maryland.

22 MR. BURNETT: If I'm doing my math correctly,  
23 that million fifty will get us someplace around  
24 \$38,000.

25 All right. Do we have any --



1 MR. STEWART: Can I make a couple comments?

2 MR. BURNETT: Absolutely. I was just going to  
3 see if we had any members of the public that would  
4 like to comment. I think I know the answer, but  
5 does anybody here want to pop up and offer anything?

6 All right. Any response? Go ahead, Ian.

7 MR. STEWART: A couple things. You mentioned  
8 that last day, the report I have from the horsemen's  
9 bookkeeper shows \$86,350 that's in a Virginia-bred  
10 column, that's in the total purse. It shows the  
11 total given away on that day was 442. So maybe I  
12 don't understand what the 86 is, but it was given to  
13 somebody.

14 I guess the heart of the matter is, as you  
15 point out, is how much money is going to be  
16 available for the 2010 meet, and what do you want --  
17 I think we have to avoid, in my opinion, looking at  
18 this as an overall because the Day of Champions'  
19 money is such a huge piece of it. What you really  
20 need to look at, in my opinion, is the rest of the  
21 days. How much are you going to run for the rest of  
22 the days?

23 If we're going to run for \$38,000 the rest of  
24 the days, we're going to run the same purse level  
25 that we ran last year. If that's acceptable, then

1 that's acceptable. But the comments that were  
2 raised in December would lead me to believe that  
3 that wasn't acceptable, that it didn't attract the  
4 quality of horses that we're looking for. So that's  
5 why I would encourage that we look to a higher purse  
6 level.

7 MR. BURNETT: Is it fair to say -- I think you  
8 both agree that the attraction of horses, that there  
9 are really two factors in attracting horses, the  
10 amount of the purses per day and how long the meet  
11 is. I mean, I don't know that we have those  
12 numbers, but I don't think there's a heavy ship in  
13 factor for the harness meet. So either of those two  
14 factors could have a major affect on -- it could  
15 have a major affect on whether or not you're going  
16 to get a barn full of horses or whether you're going  
17 to fill your fields, et cetera, et cetera. Is that  
18 fair, that those are the two principal factors in  
19 what brings horses?

20 MR. STEWART: Yeah. I think that's very  
21 logical.

22 MR. BURNETT: Mr. Brown, you're the harness  
23 expert. What do you have to say about all this?

24 MR. BROWN: First off, I'm going to start off  
25 with, as far as getting horses this year, I don't

1 think it's going to be a problem. You have  
2 Rockingham Park, which is closed. You have Michigan  
3 problems. Ohio is not racing for any money. A lot  
4 of guys will be going to Florida. That's number  
5 one.

6 Number two, the big bitch I had -- one of the  
7 bitches I had this past year as far as driver  
8 colony, I think that has to change totally. You're  
9 going to have so many more better drivers here this  
10 next year, better trainers here this next year,  
11 which I think in the long run is going to give you a  
12 better horse. Yes, they're going to be racing for a  
13 lower purse, I do agree. They're not going to get  
14 what they get at the Meadowlands or whatever, but  
15 they're not all Meadowlands horses. They're not all  
16 Chester horses.

17 As far as the condition of our horses this  
18 year, I do have to think Dr. Dunavant kind of  
19 stepped on his own toes a little bit. This year I  
20 did spend more time at Colonial Downs than any other  
21 year I've been here. My sister had a horse racing  
22 here. I came down and watched damn never every  
23 week.

24 The one thing I said to Dr. Harden every week  
25 when I came here, I said, "How are the horses

1 looking this year?" He says they're looking much  
2 better than they did last year. In 2008, yes, he  
3 did have some complaints and whatnot. He did kind  
4 of stay on top of that this year.

5 As far as the owner part of it, I've had  
6 owners express to me that if -- you know, it's not  
7 worth coming down for 21 -- 21 to 25 days. They  
8 just can't do it. There's a lot of people that  
9 just -- they won't make the effort to do it, not a  
10 special effort anyway. Will you find a stable going  
11 to Florida? Yes, I think they'll go. There's going  
12 to be some people that are going to say no, we're  
13 not going to come because we're not racing enough  
14 days.

15 MR. BURNETT: Mr. Harrison?

16 MR. HARRISON: The Day of Champions, is that  
17 purse level carved in stone? Is that untouchable,  
18 the Day of Champions purse level?

19 DR. DUNAVANT: You know, in years past, this  
20 past year and the year before, we raced our eight  
21 races for 35,000 added. It made \$280,000 from our  
22 purse fund, and we had to up it to 130. We got 150  
23 from the Racing Commission. We put 130 in from the  
24 account wagering money. We feel that that's our  
25 most important thing, maintaining our Virginia-bred

1 program.

2 Prior to that, in 2007 we raced two races for  
3 Virginia-breds that were over the age of four. We  
4 had a trot and a pace that went for \$20,000 each for  
5 four year olds and up that had been eligible as two-  
6 and three-year-old Virginia-breds. In 2008 that  
7 race didn't fill, so we raced for 35 added in our  
8 stakes and the same thing in 2009. We won't have a  
9 problem if we have to drop back to the \$30,000 level  
10 for our -- 30,000, the added money comes from our  
11 nominations and entry fees for that race, which  
12 amounts to like \$900 a horse. That won't be a  
13 problem, which would pick up an additional \$40,000.

14 We would like -- we have maintained this slush  
15 fund anticipating these rainy days for our stakes  
16 program, and we feel like we should keep some in  
17 reserve for the 2011 stakes program until this  
18 economy changes or something else happens.

19 Until I get the exact figures, I can't give  
20 Colonial Downs an answer and say how much money we  
21 will put in this year, but we will bring it up to  
22 what's necessary to a million four, which equates to  
23 50,000 a day counting our stakes program.

24 MR. LERMOND: The Day of Champions, 280,000,  
25 that is Breeders Fund money. The Breeders Fund

1 didn't have enough to cover the whole 280 last year,  
2 so Charlie put in 130 out of his ADW money that he's  
3 been sitting on to keep the day the same as it was  
4 the year before.

5 And the other thing I wanted to mention is  
6 that the million four is -- and Ian mentioned it in  
7 the beginning, that that's counting 196 of ADW money  
8 from Charlie, which has never been done in the past.  
9 Charlie has always just held it for, in his words, a  
10 rainy day.

11 MR. BURNETT: Apparently, he's got the  
12 umbrella up right now. It's raining.

13 DR. DUNAVANT: Yeah.

14 MR. LERMOND: Charlie will get about 250,000  
15 from source market fees for the year. He's got  
16 already 190 or whatever it is, plus whatever he's  
17 got right now that he's holding.

18 MR. BURNETT: All right. Anything further  
19 from any of the stakeholders?

20 MR. WEINBERG: I guess I can't resist the  
21 opportunity to speak. I'm sorry.

22 Just to make sure we're all clear on the  
23 facts, and I will try to speak to the facts. If we  
24 get some clarity on this Day of Champions, I mean,  
25 we are, I think, using the same numbers. If it is

1 442 for the Day of Champions, then the remainder of  
2 the days aren't 38, they're 35, which is less than  
3 where we were last year. I just think we need to be  
4 clear on the numbers we're talking about.

5 Two, I think it's important to realize there  
6 are a lot of different opinions about what happened  
7 last year. And I'm not trying to put Ms. Smith on  
8 the spot, but I also take her perspective to be  
9 somewhat impartial and just reading from the  
10 transcript of December, she identified herself, I'm  
11 the vice president of VHHA. We are very aware, very  
12 aware of Dr. Harden's comments and sentiments and  
13 agree. We had numerous discussions on the  
14 disappointments of the last meet. Sadly, I think a  
15 lot of that behavior we saw, the quality of racing  
16 that we saw, and certainly the quality of the driver  
17 colony that Mr. Brown has mentioned are more than  
18 likely a stout reflection of the purse funds.

19 So I think as we weighed the balance between  
20 purse monies and days, I wouldn't want to discount  
21 the purse money, which is perceived to be a  
22 significant draw as well.

23 She goes on to observe, we were not able to  
24 draw some of the larger stables where you can count  
25 on a better quality horse, better quality personnel

1 tending the horse and better support for the racing  
2 itself. She went on to encourage others to help  
3 identify solutions to those problems, but I just  
4 think it's important as we sit here in March to  
5 remember that those statements were made in  
6 December.

7 MR. BURNETT: Help me with this notion,  
8 whoever wants to jump in on this. What strikes --  
9 what sort of works against the purse piece of this  
10 making much difference is what I heard about big  
11 purses being up north, these \$125,000 a day purses.  
12 If that's what you're competing with, does it matter  
13 whether it's 20 or 50 or 60? The people that can  
14 run for 125 a day are going to run for 125 because  
15 that's where they're going to go. Everybody goes to  
16 the money. That's what we pitch all the time. And  
17 so -- I mean, it sort of puts us in a bind.

18 You want to get good people, but are we  
19 chasing the same people to come inside a bracket of  
20 some sort? They're all bracketed in there and  
21 they're all coming, and basically it's the racing  
22 secretary having a little bit more picking if the  
23 purses are a little higher, you know, of who gets  
24 what. I don't know exactly how we look at that.  
25 It's not like we've got to get just over the top of



1 Charles Town so that we can get their horses. I  
2 don't know an answer. I'm just posing it.

3 MR. WEINBERG: You asked how structured -- how  
4 segmented is the standardbred market, and we're not  
5 going to compete for the high end 125 a day stables.  
6 I mean, so the question is, is there a middle market  
7 that you segment between 35 a day and 48 a day? I  
8 think is the stark question before you.

9 DR. DUNAVANT: Let me say this. Ocean Downs  
10 races for 20,000 a day. That's Maryland. Ohio is  
11 racing for about 25,000 a day. Maine, less than  
12 that. Michigan about 22,000 a day. We almost  
13 double the stakes that we draw from at 35,000 a day.

14 MR. BURNETT: There's got to be something  
15 between 35 and 125? Yes? No? What do they do at  
16 Pompano?

17 DR. DUNAVANT: Pompano is racing around a  
18 hundred. They have slot machine monies.

19 MR. PETRAMALO: Slot machines.

20 DR. DUNAVANT: We're between a rock and a hard  
21 place, and the people that come here can't go to  
22 those big tracks. They don't have the class horses  
23 to do that. Now, I would like to have a track full  
24 of Meadowlands horses.

25 MR. BURNETT: Sure.

1 DR. DUNAVANT: We can't do that, and to say  
2 that it's not quality racing because they aren't  
3 \$100,000 horses is not so. If we get horses  
4 approaching that finish line together, the betting  
5 public doesn't care whether he's worth 5,000 or  
6 \$100,000. Classically, we have advertised for 2008,  
7 which they said was our best meet, at \$50,000 a day.  
8 We were fortunate enough to up it on the end, and  
9 the figures came out to like 64,000, but it worked  
10 out that way with the number of horses.

11 In my association meeting, my people wanted to  
12 propose that we don't race anymore than ten races a  
13 day and in overnight races limit the entries to  
14 eight horses. That way only three people don't get  
15 paid for racing. I don't know how that affects the  
16 wagering. Some people say it'll affect it because  
17 there's not as many horses in there, the only --  
18 besides us, I'm not positive of Indiana and the  
19 others, Meadowlands races up to ten wide. We have  
20 been racing up to ten wide here. Chester and Dover,  
21 eight.

22 MR. BURNETT: We're talking also of dollars  
23 per day as opposed to dollars per race. Has there  
24 been any discussions about running nine races a day?  
25 Do the horsemen look at that when they think about

1 where they're going? How many races a day are they  
2 running or do they look at their average purse per  
3 race?

4 DR. DUNAVANT: Last year our bottom purse was  
5 like \$2,500. Our \$3,000 claim was ran for \$2,500.  
6 Ohio, Michigan, they're racing for 1,500. Our  
7 bottom purse is like \$1,000 more than their bottom  
8 purse, and the people that come from there are  
9 racing for more money here at the figures we raced  
10 for last year and in previous years and will  
11 continue to come for that money.

12 MR. STEWART: There's a quote here in the  
13 transcript from Dr. Harden. He says, "To sum it up,  
14 one trainer told me rather rudely, he said, why do  
15 y'all have so many rules here when we're racing for  
16 2,000 bucks. It just seems to be the general  
17 attitude from many of the horsemen."

18 I think the issue is pretty clear. It's what  
19 do you want it to be. The problem isn't that the  
20 harness horsemen don't have the money. They've got  
21 quite a bit of money in the bank. It's what do you  
22 want it to be.

23 MR. BURNETT: If you leave the purse piece  
24 out, then the question becomes us looking into the  
25 crystal ball and saying what's the impact of reduced

1 days going to be or we will get a meet that has --  
2 that can't fill races because they aren't shipped  
3 in, and there's not enough people coming from the  
4 backside. I'm not predicting necessarily that will  
5 happen. I'm just saying at some level what do you  
6 want to be.

7 We want to be an organization in a state that  
8 has rules. I'm not interested in having us go to  
9 the bushes. If a horsemen wants to complain and  
10 think about racing the way they do at the  
11 fairgrounds behind where I grew up for a \$600 pot,  
12 yeah, there's a lot of funny stuff going on, and  
13 yeah, they don't have any rules. If they want to do  
14 it that way, that's fine. That's what they are.  
15 When they enter Virginia, they're not Colonial  
16 Downs, they're not a class operation. So I know  
17 apologize for rules. They may be complicated rules,  
18 rules we can't understand, but I think rules have a  
19 purpose. And if they don't, then get rid of them,  
20 but most of our rules have a purpose. It's all  
21 about integrity, so I don't apologize for rules.

22 DR. DUNAVANT: The one statement that I think  
23 they failed to overlook in Dr. Harden's comments is  
24 we had no horse breakdown, and we had no positive  
25 tests. Now, that's the veterinarian report. The

1 rest of his things were from his perspective.

2 I talked with him and I know some of the  
3 comments that some of the horse people made to him  
4 that were mad. We changed a couple rules during our  
5 meet. We changed the rule on how they entered the  
6 paddock and anytime you do that, you get disgruntled  
7 people and Dr. Harden, bless his heart, is going  
8 around to the stables and looking at horses and  
9 checking them, and he's the man that catches the  
10 brunt, he and I. I think he went a little overboard  
11 on some of his comments to the detriment of the  
12 VHHA.

13 And bless her heart, Katherine Smith is a  
14 lovely lady. I trained her horses, and I think she  
15 got caught off guard when he made those comments and  
16 didn't know what to do but to agree with him. I  
17 might be taking words out of her mouth, but I think  
18 that's what happened.

19 MR. BURNETT: Any questions or comments from  
20 fellow commissioners?

21 MR. BROWN: I make the motion we go for 28  
22 days --

23 MR. BURNETT: All right.

24 MR. BROWN: -- at 50,000 a day.

25 MR. BURNETT: Is that part of your motion at

1 50,000 a day?

2 MR. BROWN: Yes, sir. \$50,000 a day.

3 MR. BURNETT: Is there a second to that  
4 motion?

5 MR. MILLER: I'll second it.

6 MR. BURNETT: Mr. Miller seconds. Any  
7 discussion of that motion?

8 MR. MILLER: Well, I don't want to -- I just  
9 want to say that, you know, from what I heard,  
10 having the purse at approximately the same level as  
11 last year is not going to be as perspectivevely  
12 disastrous as if you had a 21-day meet and all of a  
13 sudden you didn't have the horses showing up at all,  
14 then you had four horse races or whatever. You  
15 know, I'm just taking the lesser of the evil in my  
16 opinion.

17 I say give it another try this season with the  
18 level we had last year at 28 days. Let's see how it  
19 transpires. As far as the people complaining about  
20 rules -- I'll just make the Churchill statement,  
21 without rules, you have havoc.

22 MR. BURNETT: I guess my comments are. I  
23 think there's a lot of value in the big event  
24 approach, but it's cold comfort for the every day  
25 horsemen who's the bread and butter and backbone of

1 making a program work. The guy that can come in to  
2 a big race and ship in, get a piece of it, go on  
3 away and is part of a big outfit, you know, more  
4 power to him if he's got that kind of a horse or  
5 she's got that kind of a horse, but I think when we  
6 look at trying to build more than just what happens  
7 here at Colonial Downs, but try and get horses bred  
8 in Virginia. I know it's a tough job. Trying to  
9 get more horses around Virginia and keep these --  
10 both the thoroughbred and the harness program alive,  
11 we've got to remember our own horsemen and what's  
12 going to keep them going. It's a real transient  
13 community to a certain extent.

14 I think I'll support the 28 days, but I would  
15 ask this of Doc Harden, Dr. Dunavant, and of our  
16 stewards and of our executive secretary, we need to  
17 come up with some metrics to look at what a meet  
18 really is. I mean, when I hear that no horse is  
19 broke down and there's no positive, that's  
20 meaningful. It's meaningful to the public. It's  
21 meaningful to the commissioners, to everybody.

22 To have somebody say, well, our horsemen, you  
23 know, they're a bunch of whiners or the quality of  
24 the driver was this or that, look at the impact that  
25 some comments -- some say hastily made, some say

1 they disagree with, look at the impact on how we  
2 feel about this meet. I think we ought to do better  
3 in terms of measuring and trying to find a way to  
4 speak to -- with precision to whether a meet works  
5 well.

6 The dollars, you know, they are what they are,  
7 and they're there to look at, but I'm not sure we  
8 know exactly what that mix is or we'll ever know how  
9 many dollars, the affected purses in terms of people  
10 coming to the meet at all, and also what the length  
11 of the meet will be to get people to come. We'll  
12 never know that exactly, but we know they're both in  
13 the mix. We just need to find some way to formulize  
14 that. I think that's important. Those are my  
15 comments.

16 MR. MILLER: Mr. Chairman, before we vote on  
17 the motion, you don't have any problem with the  
18 suggestion by Mr. Stewart that they don't open the  
19 full grandstand on certain days?

20 DR. DUNAVANT: No. We have no objection to  
21 that. Like I say, we've always been trying to work  
22 with them to lower their cost of putting on the  
23 meet.

24 MR. REYNOLDS: Mr. Chairman?

25 MR. BURNETT: Please.



1 MR. REYNOLDS: In your motion, you said 50?

2 MR. BROWN: \$50,000 a day.

3 MR. REYNOLDS: How is that broken down?

4 MR. STEWART: In order to have those funds,  
5 it's going to require several hundred thousand  
6 dollars of this account wagering money that I cannot  
7 compel them to use. I mean, if that's what you  
8 would like, I think part of the order has to be that  
9 they're going put some of this account wagering  
10 money in to support it.

11 MR. BURNETT: I don't know. Maybe  
12 Dr. Dunavant is going to put it out of his own  
13 funds. I don't know. All we want to know for sure  
14 is was we've done with gap funding and other things,  
15 that the money is there. He's made a representation  
16 he's got the money on hand. Dave should know that.

17 MR. BROWN: Do you want a signed document  
18 saying that the money is going --

19 DR. DUNAVANT: I mean, that's money that we  
20 have to use for purses.

21 MR. BURNETT: I understand, but you say you  
22 have the money or will have it.

23 DR. DUNAVANT: We should have half a million  
24 dollars, yes. We've got a quarter million in one  
25 account from last year that wasn't used, and I

1 forget what we approved. Mr. Woolnough is not here.  
2 He does my thing. In talking to Dave, we should  
3 have half a million dollars in ADW money for 2010.

4 MR. LERMOND: Mr. Stewart is saying he needs  
5 196,000 of that money to make a million four.

6 DR. DUNAVANT: Last year we put in 180.

7 MR. STEWART: That's what I'm asking. It may  
8 be more by the time you roll around to the --

9 MR. BURNETT: Maybe we should hear from -- and  
10 the order should reflect that you're willing to tap  
11 these resources, the rainy day fund, number one.  
12 And number two, if it appears there's any chance of  
13 the need for gap funding, that you address it the  
14 way the thoroughbred folks have in one form or  
15 another. I don't know what it's going to be, but  
16 that we ought to hear how we are going to address a  
17 shortfall if, indeed, one is on the horizon, any  
18 reasonable potential of one on the horizon.

19 I think everybody is cognizant if we're going  
20 to advertise 50,000 a day, let's put it out there.  
21 You want to be able to do that.

22 MR. STEWART: My only point is the funds that  
23 I control will not accumulate to 1.4 million  
24 dollars.

25 DR. DUNAVANT: Now --

1 MR. BURNETT: Understood.

2 DR. DUNAVANT: -- I have no control over what  
3 he does with the OTBs. That's where we're getting  
4 the majority of our funds. The fact that they are  
5 going to be closed on a day when we're live racing  
6 leaves a bit of a taste in my mouth.

7 MR. BURNETT: Let's ask Dave to, or whoever is  
8 appropriate to do it, to calculate what that number  
9 is and look at it. I mean, we're put between  
10 wanting to be open any time live racing is occurring  
11 in Virginia, but we also have to be cognizant of  
12 the -- when you got one bettor at a parlor and you  
13 got more staff than you got bettors, it's an issue.  
14 So let's look more closely at that. Again, same  
15 situation with judging horses. Let's see what we  
16 got and really look at and see what justifies what.

17 DR. DUNAVANT: I need some answers to this TVG  
18 thing, that I'm not getting play on Meadowlands and  
19 Dover Downs.

20 MR. LERMOND: Right now that's a business  
21 decision of TVG.

22 MR. BURNETT: Yeah. That's not attributable  
23 to Colonial Downs.

24 MR. PETRAMALO: What about the other ADWs? Do  
25 they carry it, YouBet?

1 MR. BURNETT: TVG is the big player.

2 MR. LERMOND: If TVG knew they could do it,  
3 I'd imagine they put it on.

4 MR. PETRAMALO: Can I ask a few questions?

5 MR. BURNETT: At this late date, certainly,  
6 Frank. You've been so quiet. We want to make sure  
7 you get your two cents in.

8 MR. PETRAMALO: You know, I'm always  
9 optimistic. It seems to me there's not an awful lot  
10 of difference in the positions here. Leaving aside  
11 the days, both parties agree that 1.4 million  
12 dollars reasonably should be available. Ian's -- as  
13 I understand what Ian said, 1.2 million comes from  
14 the normal source, live racing, but mostly OTBs.  
15 Two hundred comes from an expected contribution from  
16 the ADW money from the horsemen. That gets you to  
17 the 1.4. Charlie's numbers say the same thing.  
18 He's figuring on 1.4.

19 So it seems to me that's the way to start the  
20 1.4, and it may be that the way to formulate it is  
21 that the harness horsemen would be willing to make  
22 up the difference between the projected 1.2 and the  
23 needed 1.4 to fund 28 days at \$50,000 a day. Isn't  
24 that what we're talking about really?

25 MR. BROWN: That's it.

1 DR. DUNAVANT: And I have 250,000 in the bank.

2 MR. SIEGEL: I heard you say that you're going  
3 to warrant that you're going to have this money,  
4 however you get it, and if you are going to warrant  
5 that you're going to have this money, and I think we  
6 should accept that. The other point I was going to  
7 ask is if, in fact, Colonial Downs is setting the  
8 days within the 28 days that you will race and be  
9 dark and the times for post time, then why cannot  
10 Colonial Downs commit to have the OTBs open during  
11 those hours? Is that an issue?

12 MR. STEWART: Yeah. It's Mondays and  
13 Tuesdays. We're losing money on Mondays and  
14 Tuesdays in the OTBs.

15 MR. SIEGEL: But you're racing on those days,  
16 though?

17 MR. BURNETT: But the two don't necessarily go  
18 together.

19 MR. SIEGEL: I understand that, but is there  
20 not a way to merge them together?

21 MR. STEWART: Monday and Tuesday is  
22 traditionally the best simulcast market. If you try  
23 four days together, I guess we could race on  
24 Thursday and Friday.

25 MR. SIEGEL: You guys ought to try to work

1 that out.

2 DR. DUNAVANT: Classically, Tuesday is less  
3 thoroughbred racing and the harness does better on  
4 Tuesdays, but the OTBs are closed on Tuesday even  
5 when I'm racing live.

6 MR. SIEGEL: I would just try to encourage you  
7 to work it out.

8 MR. STEWART: We're losing money on Tuesday.

9 DR. DUNAVANT: Is that the only day y'all lose  
10 money?

11 MR. PETRAMALO: No disrespect intended, but  
12 this may be a red herring, because as I understand  
13 Ian's projections, the 1.2 million projection is  
14 based on his schedule of keeping those places  
15 closed.

16 MR. STEWART: Correct.

17 MR. PETRAMALO: If you open them up, hopefully  
18 things would even get better, but worst-case  
19 scenario not changing the schedule yields 1.2  
20 million.

21 MR. BURNETT: On that issue, things get  
22 better, meaning things get better for the  
23 horsemen --

24 MR. PETRAMALO: Correct.

25 MR. BURNETT: -- and worse for the racetrack.

1 MR. PETRAMALO: Well, sure, if it's a loss.

2 MR. STEWART: Under our new agreement, you  
3 would be participating in that.

4 MR. PETRAMALO: Which agreement is this?

5 MR. BURNETT: Kimosabe.

6 MR. STEWART: The one they approved about an  
7 hour ago.

8 MR. BURNETT: The one he hasn't signed off on,  
9 right?

10 Are we prepared to call a question? All in  
11 favor of awarding 28 days at \$50,000 a day indicate  
12 by saying aye.

13 Note: (Aye.)

14 MR. BURNETT: The motion carries. That's  
15 going to be put in the form of an order. We'll let  
16 you wrestle with the precise language of that with  
17 input from the folks that are here.

18 MR. MILLER: Are the days -- 28 days  
19 specified? We're going 28 days -- have you set --  
20 you had a proposed schedule?

21 MR. BURNETT: I believe they were the same  
22 except the last --

23 MR. SIEGEL: September 18th to November 6th,  
24 right?

25 DR. DUNAVANT: Yeah.

1 MR. BURNETT: September 18th to November 6th.

2 MR. SIEGEL: That's what it says.

3 DR. DUNAVANT: It should be the 17th. One day  
4 there corresponds with that fair thing. We were  
5 going to race a Friday and the same thing with the  
6 Breeders Cup Day.

7 MR. BURNETT: If you can't work that out,  
8 we'll see you next month on that.

9 DR. DUNAVANT: We can work that out. In here  
10 we had September the 7th through November -- no.

11 MR. SIEGEL: I'm just looking at your letter.

12 DR. DUNAVANT: The 17th through November the  
13 6th, I think, were the days.

14 MR. SIEGEL: He has the 18th in his letter.

15 MR. WEINBERG: I think we were going to start  
16 on that Friday, but you are correct, the letter does  
17 say the 18th.

18 MR. HARRISON: And the days of the week, the  
19 track is proposing Saturday through Tuesday, and the  
20 harness horsemen are proposing taking that Monday  
21 off and running Tuesday and Wednesday.

22 MR. MILLER: Mr. Chairman, let me suggest by  
23 our next meeting they come in with a definite  
24 schedule.

25 MR. BURNETT: Absolutely.



1 DR. DUNAVANT: We'll see if we can work  
2 something out on those days and when they're going  
3 to have the OTB closed.

4 MR. SIEGEL: I think you guys ought to try  
5 to -- at least get as far as you can down the road.  
6 If it's not perfect, it'll certainly be better than  
7 it is. Some compromise there would be in order.

8 MR. BURNETT: All right. Anybody from the  
9 public want to speak to us on any subject?

10 Our next meeting is April 21. We're going to  
11 have a closed session that will be relatively brief,  
12 but we'll not be making any report coming out of it.  
13 So for folks who want to stick around and watch us  
14 adjourn this meeting in two minutes, go ahead, when  
15 the meeting is done, but there's not going to be any  
16 news. We're just going to walk back in here and  
17 adjourn the meeting and go about our business.

18 MR. MILLER: Mr. Chairman, before we go into  
19 closed meeting, you had suggested maybe changing our  
20 regular meeting day because of some conflict that  
21 you may have.

22 MR. BURNETT: I had and I talked to Vic a  
23 little about it, and he prefers the end of the  
24 month, maybe moving it to the fourth Wednesday. I  
25 don't think I've got a problem with that. I wanted

1 to run it by folks informally because if we go  
2 through the summer, we're going to have Memorial  
3 Day, 4th of July, Labor Day, and I started wondering  
4 whether we're going to impact on folks attendance a  
5 little bit. It comes up close against a holiday and  
6 all. I just thought we'd chase that a little bit  
7 before we pin anybody down.

8 MR. MILLER: So everybody should be advised  
9 that you're thinking about the fourth week?

10 MR. BURNETT: Yeah. We're thinking about  
11 going to the fourth Wednesday of the month.

12 MR. SIEGEL: Mr. Chairman, I mentioned to you  
13 last month that I would be away next month and I  
14 will miss that meeting.

15 MR. BURNETT: Miss --

16 MR. SIEGEL: The next meeting. Yes, I  
17 mentioned it to you --

18 MR. BURNETT: Do we want to try the next --  
19 that's going to be two days before the Kentucky  
20 Derby.

21 MR. PETRAMALO: What date is that?

22 MR. BURNETT: It's the 28th, if I'm not  
23 mistaken, 4/28.

24 MR. PETRAMALO: That would be fine with me.

25 MR. SIEGEL: I'm gone that week. I'm sorry.

1 MR. BURNETT: You're gone the week before or  
2 the week after?

3 MR. SIEGEL: I'm sorry. The next meeting is  
4 scheduled for when?

5 MR. BURNETT: It's the 21st. That's when you  
6 said you wouldn't be here.

7 MR. SIEGEL: Yeah. Let me see something a  
8 second. You're talking about the 28th.

9 MR. BURNETT: You're welcome to have a  
10 two-week vacation.

11 MR. SIEGEL: No, I'm here. I thought you were  
12 saying the next day. I'm sorry.

13 MR. BURNETT: That following week. The next  
14 meeting 4/28, Wednesday 4/28.

15 MR. MILLER: We'll try it. If people see that  
16 a regular time --

17 MR. PETRAMALO: So it's April 28th.

18 MR. BURNETT: April 28th.

19 MR. PETRAMALO: Okay.

20 MR. MILLER: If people would be thinking about  
21 the fourth Wednesday of each month as a regular time  
22 and see how that may impact the rest of the year.

23 MR. BURNETT: There you are. Great. Great.

24 Pursuant to Virginia Code 2.2-3711(A)(7), I  
25 move the Commission convene a closed meeting for the

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

5 Do we have a second?

6 MR. SIEGEL: Second.

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

8 All in favor indicate by saying aye.

9 Note: (Aye.)

10 MR. BURNETT: We'll go into closed session.

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

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

22 It's a roll call vote.

23 Commissioner Miller?

24 MR. MILLER: Aye.

25 MR. BURNETT: Commissioner Brown?

1 MR. BROWN: Aye.

2 MR. BURNETT: Commissioner Siegel?

3 MR. SIEGEL: Aye.

4 MR. BURNETT: Commissioner Reynolds?

5 MR. REYNOLDS: Aye.

6 MR. BURNETT: Commissioner Burnett votes aye.

7 So other than that, we are adjourned. Thank

8 you.

9 Note: The proceedings concluded at 1:31 p.m.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on March 17th, 2010, New Kent, Virginia, at the time of the hearing herein.

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

Given under my hand this 26th day of March, 2010.

---

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011