VIRGINIA RACING COMMISSION

November 17th, 2009

10700 Horsemen’s Road

New Kent, VA 23124

Commencing at 9:39 a.m.

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

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

ATTORNEY GENERAL'S OFFICE:
Amy K. Dilworth
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MR. BURNETT: Good morning. I apologize for the slightly late start.

While it's not on the agenda, our first order of business is to welcome Stuart Siegel, to my right, as our new commissioner appointed by the governor, I think, last week.

MR. SIEGEL: Last week.

MR. BURNETT: And Mr. Siegel is well-known to most folks that are from Richmond and some of the rest of us, in particular for his service to the state already as chairman of the State Lottery Board and his commitment to VCU and other boards here in the Richmond area. We feel very privileged to have him with us and feel confident that all those problems that we've been unable to solve will now be solvable, but no pressure.

MR. SIEGEL: Not at all.

MR. BURNETT: And with that, welcome. We look forward to working with you, Stuart.

MR. SIEGEL: Thank you.

MR. BURNETT: The first order of business is the meeting minutes. Any comments or changes? I have one. At the bottom of page 1, it indicates that the motion was approved unanimously.
I don't think there had been a motion prior to that. At first I thought that referred to Commissioner Brown's motion, which appears on top of the next page, but I think that's covered in the second paragraph. So I think we can -- I suggest to you that we simply delete the motion was approved unanimously.

Any other observations?

MR. BROWN: Other than that, I move to approve.

MR. BURNETT: It's been moved that they be approved, the minutes be approved. Is there a second?

MR. REYNOLDS: Second.

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

Note: (Aye.)

MR. BURNETT: The motion carries unanimously.

The next item of business are commissioners comments. Fellow commissioners, do you have any comments?

Mr. Brown?

MR. BROWN: Yes, sir.

First off, I'd like to say I spent more time down here at this race meet this past year than I've
ever had. I must commend everybody on a fine job
done as far as the security went. Dr. Harden's crew
did a whale of a job. I was a little disappointed
in the caliber of some of the drivers we had, but I
think the judges did a nice job policing them.
Overall I thought the horses I saw looked fairly
decent, so I was kind of happy with that, but
overall I thought it went off very well from what I
saw and heard. So a job well done.

MR. BURNETT: I've been hearing exactly the
same thing. I understand the backstretch went very
smoothly, and that's all about good management and
the team that we're looking at right here. So we
thank all of you.

MR. BROWN: Good job.

MR. BURNETT: Any other comments?

I'd make a few more about the industry as I
did last time, but it would be the same down in the
dumps type of comments. I think we all know some of
the difficulties we're all experiencing, and I don't
think we need to comment further on that.

MR. PETRAMALO: We could argue Zenyatta versus
Rachel Alexandra.

MR. BURNETT: Now, that would be a good
argument. You just go ahead and get that match up
set up here for us. That might get a little boost right here for Virginia if you could take care of that for us, Frank.

MR. PETRAMALO: Did you see the Breeders' Cup Classic? I mean, that was tremendous.

MR. BROWN: Oh, she put on a whale of a show.

MR. PETRAMALO: It was incredible.

MR. BROWN: To do what she did against who she did it against.

MR. BURNETT: Amazing.

MR. PETRAMALO: And the horse that ran second, of course, won the Virginia Derby.

MR. BURNETT: There you are.

MR. PETRAMALO: Gio Ponti.

MR. BURNETT: All right. Committee reports. Do we have any committees to report today, folks?

No.

Okay. Executive secretary's report.

Mr. Harrison?

MR. HARRISON: Thank you.

I just want to draw everyone's attention to an event that occurred in the corporate world. Last week, Churchill Downs, the parent company of TwinSpires and, of course, the major participant in the TrackNet Media tracks, they announced the
purchase of YouBet. So that's going to be -- it's going to create a force to be reckoned with in the industry with respect to issues relating to source market fees, of course, and host market fees and taking signals and exporters versus importers. So that should probably take two or three months to finalize, but at that point they'll be a serious -- a more serious player than they already are. It'll just be interesting to watch and meaningful to see how it plays out.

MR. BURNETT: Mr. Harrison, we have heard from some of our stakeholders already that the Churchill conglomerate is a 900-pound guerilla in many respects, and they've had to take some efforts in many fronts to try and level the playing field. Do you have any comment on whether that aggravates that circumstance or could it in some odd way help us? What is the impact on Virginia?

MR. HARRISON: In an odd way, it could help us, but it's more worrisome, I think, than not because they do like to brandish their power. Having said that, they are a racing company, which I feel good about. I don't imagine them doing anything that would jeopardize the industry in any racing jurisdiction, even here in Virginia. So I
like what I've been hearing from Robert Evans, their CEO.

Everything seems like it falls back to the racetrack and the racing. I'm willing to give them the benefit of the doubt at this point, but I know they can be very tough with respect to negotiating, and so it's kind of a double edged sword.

MR. BURNETT: Well, let me touch on the racing company piece. You know, Penn National got its name from a racetrack in Grantville, Pennsylvania. Mr. Carlino, who was the CEO and his family had owned it for a very long time, and when they bought Charles Town and were in the process of getting slot machines, they came to the horsemen at Charles Town and said, "We just want to make sure you understand that we are a racing company, and we are seeking some gaming for supplemental income." That was year one.

Year two, when he came back, we just want you to understand we're a gaming company, and we just have some racing here that we're supporting. So I liken that a little bit to Churchill, because if I'm not mistaken, aren't they in a big way in favor of slots in Kentucky?

MR. HARRISON: Oh, sure. And all their
neighboring states -- it's similar to Virginia in that respect. All their neighboring states have slots. The purses are increasing in those states. So Kentucky racing, believe it or not, is in jeopardy.

MR. PETRAMALO: Bear in mind, too, that the other two major tracks they own, Calder and Fairgrounds, have slots already.

MR. HARRISON: Right.

MR. PETRAMALO: I would not be sanguine in saying that Churchill is a racing company. Evans comes from Silicon Valley. Some say he doesn't know which end bites and which end kicks, but I wouldn't say that. It's -- you know, I would be concerned.

MR. STEWART: Well, for what it's worth, it seems to me -- to paraphrase what Vic was saying, it falls back to the racetrack. Another way of saying it, it falls back to their racetrack.

MR. BURNETT: There you are.

I think they're all in favor of racing as long as everybody is adopting the fees that they've decided are fair and if they don't happen to work for you, well, you've got some fixing to do is sort of my sense. I'm sure that's not helpful coming out of the box trying to work out negotiations with
them, but I would guess that there's going to be a little rough sledding coming here once they get full control of YouBet.

I continue to hope that there would be some way that the industry as a whole could recognize or come up with a formula that would balance importing versus exporting states and that somehow those of us that import signal six, eight, nine, ten months out of the year would not end up being bankrupted or held hostage in one form of another by virtue of the fact that host fees keep raising for the benefit of those that are exporting. They sort of flow to the same group of people in some ways, but depending on what kind of state you're in, you either are on the receiving end of the sword or behind it. I'm not sure what the answer is going to be.

Can you help us on when you might next need to be engaging in negotiations with these folks? Is that going to be for licensure in the coming year?

MR. STEWART: Well, negotiations with TrackNet are ongoing through the Mid-Atlantic Cooperative.

MR. BURNETT: Which has its own issues right now.

What about YouBet, they'll have to review their license for this coming year, right?
MR. PETRAMALO: Yeah. Everybody is up for renewal come January.

MR. BURNETT: Right.

MR. WEINBERG: Yeah. I mean, at the next commission meeting, we'll be having the licensing proceedings, I would imagine.

MR. BURNETT: Will Churchill be in control of YouBet by that time?

MR. HARRISON: No.

MR. WEINBERG: They expect to close the first or second quarter.

MR. BURNETT: So you want to see if you can negotiate a 10-year contract with them?

MR. PETRAMALO: Well, you know, the issue seems to me to -- in its clearest form, it would manifest itself with the relicensing of TVG and TwinSpires, both of whom have source market contracts that expire at the end of this year. What that means is when they come in here in January for their January through December license, they will then have to commit to paying the new statutory 10%/1% rates. That's when, you know, the rubber meets the road, what they're going to do at that point.

The other companies have a slightly different
position because they have extant contracts with us that go on for another few years under a formula that differs, of course, from the statutory rate. That seems to me to suggest that they may want to talk to us about how to resolve the apparent divergence between their contract and what the statute calls for, but the other guys have got no argument, TwinSpires and TVG.

MR. BURNETT: Help me with this a little bit. In your view, the new statute will trump the net leftovers to the Virginia formula that we have historically had such that pressures from YouBet, Churchill, TrackNet Media with regard to source market fees and the like or host fees will not simply be passed on such that Virginia's share of the pie is that smaller.

MR. WEINBERG: That's correct.

MR. PETRAMALO: Yes.

MR. WEINBERG: I mean, for licensing purposes -- if I may add a nuance to Frank's observation. For licensing purposes, all of the licensees have to acknowledge they're bound by the new statute.

MR. BURNETT: Sure.

MR. WEINBERG: Those with existing contracts
have a discussion with the horsemen and Colonial Downs saying not withstanding what the statute says, you still owe us a net.

MR. PETRAMALO: The difference.

MR. BURNETT: Right.

MR. PETRAMALO: It's not a frivolous argument on their point. I wouldn't concede much more beyond that, but it's an argument.

MR. BURNETT: I guess my concern in terms of the ongoing consistency of our product and of racing is that a number of these groups have not shown any shyness about boycotting, and that can be devastating depending on the tracks and the particulars, and I just hope there's some way we can avoid just a cutoff of almost all of our economically important signals.

MR. WEINBERG: But they've already done it, let's be clear.

MR. BURNETT: Well, not all of them. I'm saying they've demonstrated that they're willing to do that and if you add a few more by virtue of their acquisitions, at some point they're much less.

MR. STEWART: It's kind of two pieces to the puzzle. They've boycotted taking our signal from our live product.
MS. PETTICOLAS: Right.

MR. STEWART: In terms of putting a signal into the parlors, that negotiation is handled through the Mid-Atlantic Purchasing Co-Op. So far we have a contract that's still in effect, though, we're in a dispute with -- the co-op is in a dispute with TrackNet, and right now we're not taking the Churchill or the Fairgrounds meet in our OTBs.

MR. PETRAMALO: Are you taking Hollywood Park?

MR. STEWART: Yes.

MR. BURNETT: Frank is happy now.

MR. PETRAMALO: Well, no. That's part of TrackNet, too.

MR. STEWART: Well, none of the other Mid-Atlantic Cooperative members are taking that signal either.

MR. BURNETT: Right. I mean, that's the free market, I guess, but it's -- you're the folks that characterized them as a 900-pound guerilla, and I'm not inclined to disagree with you. Following that forward, if they just start -- whether it's not taking it or they withdrawing, you know, Jeanna's work is cut out for her in the OTBs. The idea is to have good product for Virginia citizens to go bet on so that we can have good handle and have good
racing, et cetera, et cetera. This is spiraling in a direction that I hope we can change.

Any other questions on this issue of Mr. Lermond or any of our stakeholders?

MR. HARRISON: It's a significant event that we are watching.

MR. BURNETT: All right. What else, Mr. Harrison?

MR. HARRISON: We're entering the winter days, the short days, and the VRC staff will be endeavoring to review all of our rules, and then recommend proposed changes to those, so that will play out over the next several months. I just wanted to inform everyone of that.

We have a Virginia Racing Improvement Group meeting subsequent to this one. I hope many of you can stay. I think we're going to have some folks trickling in over the next hour or so to participate in that, and that's about it.

I'll turn it over to Dave. He'll discuss the rule amendment.

MR. LERMOND: Thank you, Mr. Harrison. Good morning, Mr. Chairman, commissioners.

MR. BURNETT: Good morning.

MR. LERMOND: At the last monthly meeting,
you'll recall that you voted to adopt the amendments to 11VAC10-60-15, which is the fee schedule for permit holders to the proposed stage in the normal regulatory process.

Once that occurred that put that regulatory action into the next proposed stage. The first thing that happens in the proposed stage is its reviewed by Office of the Attorney General. Upon completing her review, Ms. Dilworth informed us that this action is exempt from the Administrative Process Act. I think there were three different code sections that gave us the exemption. So as a result, we can go ahead on a much faster basis to get these fees effective.

Given Ms. Dilworth's advice, now what I would like for you to do today is to go ahead and adopt this fee schedule as a final exempt action. To give you a little background, the original action was -- we had done away with the fee schedule and replaced it with some verbiage. We thought maybe at the time that was a good way to go.

Colonial Downs had some concerns about it. Basically, they thought maybe it might capture some additional people that were not required to be licensed before, and in addition, when the
Department of Planning & Budget had their first glance at this action, the analyst said to me, we would kind of like to see you go back to the fee schedule. We think it's clearer. It's -- you know, it wasn't broken. Why fix it? Based on those two things, we decided that we would go back and dig out the old fee schedule and just make some changes to it.

Generally, the thought was we were going to increase the fees from $10 a year to $50 a year. We did want to make some exceptions. The first was any employee of the unlimited licensee would only be charged a yearly fee of $25. In addition to that, we felt that the grooms and hot walkers given their financial status that $50 may be a little too much for them, so we decided to give them a break and only charge them $25.

And then just -- when we were going through the fee schedule, we also looked at the harness side of it. As Mr. Brown can concur, there's a lot of individuals in harness that will be an owner, trainer, and a driver. So with this new fee schedule, that person would have to pay $50 for each one of those licenses. I contacted some other states, and I found that a few of the states, Ohio,
New Jersey, there was maybe one other, that would
cut the harness side a break and they would charge
one fee for the trainer/driver, and then another $50
for the owner's license. We thought that was a fair
thing to do, and so we incorporated that into the
changes to the fee schedule.

With that, if you have any other questions,
I'll be happy to answer them.

MR. PETRAMALO: How does that work on the
thoroughbred side when you've got people who are
licensed as owner/trainers?

MR. LERMOND: The owner/trainer would have to
pay $50 for each.

MR. PETRAMALO: So it would be $100?

MR. LERMOND: Yeah.

MR. BROWN: Mr. Chairman?

MR. BURNETT: Yes. Mr. Brown?

MR. BROWN: One quick question. I see down
here at the bottom, we have horse owner $50, and up
here we have corporate horse owner, you marked out.

MR. LERMOND: Right. Some of the ones that we
marked out, corporate horse owner, lease, I think
there was another one for partnership, those are all
going to fall under stable name.

So if someone had a partnership before this,
the individual members of the partnership would each have to be licensed, and then they would take out a partnership license for $25. This would also be in case of a lease and the owner corporate, so that those are all -- they're all going to fall under the stable name now. We're still going to capture those. It's just -- that's kind of the way --

MR. BROWN: So every individual in that stable is going to have to pay that $25 is what you're saying?

MR. LERMOND: That's correct.

MR. BROWN: Okay.

MR. BURNETT: Does the night watchmen and other now come under licensing administrative employee, or how does that work?

MR. LERMOND: That's correct. We felt that both of those would fit into one of these other categories. We really didn't want to go into other. I don't think we've ever really used it. We're more comfortable having those fit in, whether it's a vendor employee or an employee of the licensee. I think we can fit almost anybody into this schedule.

MR. BURNETT: There was an interest expressed on the part of the racetrack to have some input on this entire process. It seems to me today we're
learning that the process is changing dramatically,
and I don't want to deprive the track of the
opportunity to comment on the direction of this
effort. And if that catches you by surprise today
and you'd like to postpone it for one meeting, it
seems to me with the consent of my fellow
commissioners that that might make some sense giving
the fact that we don't have a meet pressing on us.
Is there any reason why -- and, again, maybe it's a
moot point, but if we want to postpone this a month
that we could? Is there going to be a hardship
anywhere for that to occur?

MR. LERMOND: If it's approved today, then it
will be printed in the Register on the 21st of
December, and it can go into effect as of January 1.
If it wasn't approved today, we would probably have
to wait until February 1 or some other time. Since
our license is a calendar year license, it just made
sense to go ahead and make this change and have it
effective as of January 1.

MR. BURNETT: Understood. Let's hear from the
racetrack as to what they're going to do.

MR. WEINBERG: I think when -- with respect to
these regulations, they're now in a very different
format than when we originally commented on them
back in April, but I think our concerns remain the same. They really fall in the nature of two concerns. First, we'd like to understand why we need to, in effect, in some instances two and a half times the fee. Are we -- is the Commission saying we need more revenue, in which case we'd like to understand and make sure that revenue stays in the industry rather than going back in the general fund.

Just for a frame of reference, if you took the current $10 fee and just increased it by the rate of inflation since 1996 when we first had any type of operation where the Commission first would have collected these fees, $10 adjusted for inflation over that period would be $14.13. So the $25 is far in excess of what an inflationary rate or an inflationary adjusted rate would be. That was our first concern.

Our second concern is we do think that there is a distinction between the type of employees that Colonial Downs has, and it really depends on what they have access to, but those that by the nature of their job have access to the back side or the racing animal, the jockey room, or the driver's room, totalizer room, the mutuel's room, or the money room deserve probably a higher level of scrutiny than
those who are sweeping the floor, working the
parking lots, playing hostesses. As a consequence,
there should be some distinction between the amount
of their permit fee. We would suggest that $15 be
appropriate for folks that don't have access to
those areas of the enclosure if, indeed, the
Commission is inclined to increase the fee to $25,
so that there would be a distinction between those
that for lack of a better term pose more of a threat
to the integrity of racing than those that don't.

MR. BURNETT: Can you give me some sense of
scale of this issue; that is, how many -- are we
talking about 30 employees times a $15 saving, or
are we talking 300 employees times a $15 saving?
I'm just trying to get a sense of how many folks who
would be in or be out. And to do the other side of
my question as well, it strikes me as a business
person the -- whether the fee is $15 or $25, isn't
perhaps as onerous as having to have these employees
fill out an application and have their backgrounds
checked in and of itself.

I mean, it seems to me not very many minutes
of a person of Jeanna's talent or anybody else spent
on each employee is going to eat up 10 or $15.

MR. WEINBERG: And you're anticipating my
second concern.

MR. BURNETT: Okay.

MR. WEINBERG: And I can give that to you now if that would be helpful. And that is on big days at the racetrack, such as Virginia Derby Day, where there is a hiring of a person for a day or two, you're exactly right. It would be nice to build into the regulations as we're re-visiting them the opportunity to have a day pass, where the screening process is more appropriate and like those who get a one day permit to race at the racetrack, a bartender who's here for Virginia Derby presents a driver's license, pays a reduced permit fee and is authorized to serve drinks in the grandstand. We'd like to see that as part of this fee schedule and have suggested some language to the staff.

MR. BURNETT: Well, let me ask a question of Mr. Lermond, if I may.

What you provided us today, Dave, is just the fee schedule? Is there more to the exempt action or regs that is a narrative that goes with it that you want to change, or are you leaving everything else exactly the same?

MR. LERMOND: We're going to leave everything the same. I believe in the previous section it
refers to the fee schedule. Someone could find out, A, if they need to be licensed and, B, what the cost would be.

MR. BURNETT: If this Commission wanted to adopt all or some of the suggestions that have been made by Mr. Weinberg, would they also be exempt as this fee schedule is, or is it only the fee schedule that is an exempt action? Would the other things have to go through the APA process?

MR. LERMOND: The suggestion that Mr. Weinberg gave us was actually in a different chapter. It was in Chapter 50. Normally, when you have a different chapter, they like you to have it as two separate actions. I combined two chapters one time three years ago, and I got severely slapped on the wrist by the Register.

I'd like to add a couple things. One is this all came about last fall. The governor directed all agencies, he wanted each agency to have one productive measure. We're required to have different performance measures, but they felt it was important that each agency come up with a productivity measure. The DMV used a similar one that we did, the cost of each license.

I've always felt -- I had felt, you know, we
spent a lot of money issuing these licenses, and I can tell you for the last five years all I've heard is, wow, 10 bucks. What a great deal. I can't believe it's this cheap in Virginia.

The first analysis with the fiscal year '07, the cost per license was $64 per license to issue. The following year I did another analysis, it went down to 58. We're still taking measures to cut these costs, and I believe we'll probably have them below 50 maybe by the following -- the next time I do this analysis after the next fiscal year.

In relation to the other states, I mean these fees are going to bring us pretty much in line with the exception of Pennsylvania and, of course, you may be familiar with West Virginia's low fee, I think it's $5 or $10, but this would bring us in line with most of the states. You know, the state doesn't want us to make money on issuing licenses, but they don't want us to lose money at the same time. The ideal situation would be a break even. So we're doing all we can to reduce our costs, but at the same time, these fees have been the same for 12 years, and we just feel that this is something that we wanted to do at this time.

MR. BURNETT: It strikes me that the
governor's office spells productivity F-E-E to take
a page out of Senator Potts' book.

Mr. Miller?

MR. MILLER: Mr. Chairman, I would ask Dave an
elementary question. Go through what you do -- if I
come in or John Doe comes in and I want a license
that's any of these things, what is it you do
regarding me? What's the first thing you do?

MR. LERMOND: We're going to find out what
type of application you're here for, whether it's an
owner, trainer, whether it's your first time or it's
a renewal application.

MR. MILLER: And then I tell you.

MR. LERMOND: You'll fill out the application,
you'll bring it up to the desk, the clerk will put
your information into the system.

MR. MILLER: Okay. When the clerk puts the
information into the system, what happens? Is there
a way in the system to check whether or not I've
been arrested in New Mexico for selling drugs?

MR. LERMOND: If you've done something in
another jurisdiction, if you're a bad guy, there may
be a flashing message that says, "Do not license
this guy," but the background checks, and we're
required to do those, are through fingerprints that
are taken by our staff.

MR. MILLER: You do a background check for every one of these things listed here, even a pony rider?

MR. LERMOND: Every five years, we take fingerprints for these people.

MR. BURNETT: Who pays for the fingerprints?

MR. LERMOND: The applicant.

MR. BURNETT: How much does that cost?

MR. LERMOND: Thirty-seven dollars. And that's just a wash for us. That's exactly what the state police charges us for each fingerprint.

MR. BURNETT: For the long-terms, if you will, the career types, we should add $7 per year to this fee as to what it's actually costing them; is that fair?

MR. LERMOND: That's fair.

MR. MILLER: And then after you do the background check or after you put it into the system, then what else do you do?

MR. LERMOND: We'll take their picture if they don't like the picture that they had the year before, and we'll issue them a badge.

MR. MILLER: You have the cost of taking a picture --
MR. LERMOND: Right.

MR. MILLER: -- the cost of creating a badge, the cost of the paper and printing --

MR. LERMOND: That's correct.

MR. MILLER: -- for whatever license that they get --

MR. LERMOND: Uh-huh.

MR. MILLER: -- and those are the things that you say are costing whatever it is?

MR. LERMOND: Correct. It's just basically the salaries of the people that are involved in the process and the materials that they use.

MR. MILLER: Okay. I'm just trying to picture in my mind why someone needs to be licensed to be a -- some of these things. It just seems to me to be so minor. I mean, why would they even need a license? Is it because the statute says that everyone that works on this site has to be licensed?

MR. LERMOND: Yes, sir. It's a reflection of what the statute says.

MR. MILLER: It's so general that, you know, if I'm Woody Guthrie working my way across the country and I come back home and I want to make enough to buy a few meals, go see a show, I understand you have a job opening. I could work
three or four days. I still have to be licensed under that statute.

MR. LERMOND: That's correct.

MR. MILLER: Okay.

MR. HARRISON: Mr. Chairman?

MR. BURNETT: Yes. Doc?

DR. HARDEN: There's also an element of certification in there. Anybody associated with, for instance, a pony rider or a farrier or a dentist, equine dentist, we have to verify that they've got the credentials and skills --

MR. MILLER: Oh, yeah. I understand that.

DR. HARDEN: -- for that job.

Now, somebody sweeping the parking lot, that's a different story, but everybody involved with racing has a credential area that we have to make certain --

MR. MILLER: What I was getting at, you know, is you have people that are not of that caliber, and I am a guy that -- my talent is sweeping the parking lot or shoveling horse manure, you know, but still I have to be licensed because of the statute.

MR. HARRISON: Peter, we'd happy to work on the day pass or the day license or the three-day license as you had proposed earlier. It's in a
different chapter, so we want to move forward with this one. Like I say, we're glad to work on that. We think it's a good idea. We're going to be looking at all of our rules over the winter, not to exclude that one for sure.

MR. MILLER: So you're saying it's under a different chapter?

MR. HARRISON: Yes.

MR. LERMOND: It's in the section for temporary employee, three or less days or whatever.

MR. STEWART: May I ask a question?

MR. BURNETT: Please.

MR. STEWART: In coming up with the $58, I assume that you took the salary of whoever the person was there and divided it by how many licenses you issued?

MR. LERMOND: I added up all of these total costs and divided it by the number of licenses that were issued. Roughly 4,000 licenses are issued each year.

MR. STEWART: But I assume that the salary of whoever that person is was part of the computation?

MR. LERMOND: It is, but in some cases, I didn't take a full salary. I think in Mr. Roney's case I may have taken 40 percent or 50 percent
because not all of his time -- he has to do the investigation part of it, but he certainly has other duties. I tried to apply it as fairly as I could because I wanted an accurate reflection of what it was costing us. I'm just as curious as the governor's office is.

MR. STEWART: Well, hypothetically, if you issued half as many licenses, would you still have that same person working there?

MR. BURNETT: The breaking points aren't at the same place. If you had twice as many, they might work a little harder, but you wouldn't need two.

MR. STEWART: You need one, though, right?

MR. BURNETT: You always need that one. And so the question is where is the breaking point where you start changing things.

MR. STEWART: Most of the time when you're looking at stuff like this, what you're looking at is marginal costs, what's the cost of the next license, and usually that wouldn't include the person that's going to be there whether you're issuing, you know, one license or ten licenses, but you still need that one person there.

So I would -- I have no idea what the numbers
are, but I'd be willing to guess that the marginal
cost of each additional license is substantially
less than $58.

MR. LERMOND: We're not going to get any
additional licenses by this action. We're still
going to probably have the same 4,000 licenses each
year, maybe less.

MR. BURNETT: One other thing that's missing
here is whether or not the original license fee
reflected the actual cost of doing it, whether that
was a winner or loser, whatever it was.

I wonder -- I got to say, you know, well, the
lawyers in the room all know that our -- we all get
excited with the Virginia State Bar when they want
to increase our dues by $25 to protect clients or
something like that, and everybody just goes crazy.
I've always been a little bit mystified by how easy
it is for us to charge people $300 an hour or $500
an hour, then yell like hell when you have to pay 25
bucks to the state under our regulatory system.

These numbers aren't that a big number, but
they're obviously generating a little controversy
here. And I would suggest that in spite of the fact
that it may be an inconvenience, and I'm not hearing
that it's more than that waiting a month, that we
let folks submit in writing what their thinking is about where this should go.

    Perhaps, Dave, you could provide to the track or others that are interested your analysis and how much each of these things cost, we can talk about it at the next meeting, and everybody has their chance to think about it and have their say, and we'll vote on it one way or the other. I'm suggesting that to fellow commissioners. If you want to move ahead today, that's fine, too.

    MR. MILLER: Could I ask one other question before we take up your suggestion?

    MR. BURNETT: Please.

    MR. MILLER: Of all these things listed here, Ian, how many -- does the track pay a lot of these?

    MR. STEWART: No. We do not pay any of those. We made that decision years ago. After the first meet, we got a bill for $30,000 or something like that.

    MR. MILLER: So each pony rider, each person, that's up to them, and they're expected to pay for it out of their pay and so forth. So really the track doesn't pay any of these on behalf of anyone.

    MR. STEWART: Actually, we pay it on behalf of one person. We have a rule that anybody that
invests more than 20 million dollars in our business, we will pay their license.

MS. DILWORTH: Mr. Chairman?

MR. PETRAMALO: Good to know.

MR. MILLER: Good to know, yeah.

MR. PETRAMALO: May I ask two questions?

MR. BURNETT: Do you have any questions?

MS. DILWORTH: No, I'll say -- go ahead, Frank.

MR. PETRAMALO: Following up on the early one, the current license fee for a trainer in thoroughbred is $10 and an owner is $10.

MR. LERMOND: That's correct.

MR. PETRAMALO: Is a person currently licensed as an owner/trainer, does that person pay $20?

MR. LERMOND: Yes.

MR. PETRAMALO: So what you're proposing isn't a change other than the amount?

MR. LERMOND: For the thoroughbred, yes.

MR. PETRAMALO: So instead of $20, they'll be paying $100.

MR. LERMOND: In the case of harness where there's an owner, trainer, driver.

MR. PETRAMALO: No. I understand that.

MR. LERMOND: Correct.
MR. PETRAMALO: The second question is of the
4,000 licenses that you've issued, ballpark what
percentage are simply renewals as opposed to new
ones.

MR. LERMOND: I'm not sure.

MR. PETRAMALO: The reason I was asking is is
the process to renew any less expensive than the
process when somebody comes in the door for the
first time?

MR. LERMOND: For us?

MR. PETRAMALO: Yeah.

MR. LERMOND: No, it isn't. The only
additional fee is the $37. As I said before, that's
just a wash with the state. That's exactly what
they charge us.

MR. PETRAMALO: For example, I renew my
owner's license. So I send in my $10 or this year
$50, do you go and do a background check on me
again?

MR. LERMOND: No, only if it's been five years
or more.

MR. PETRAMALO: All right. So I had my prints
five years ago, I paid the 37 bucks and the $10, and
you went through the whole process that made up this
average of $58 a license, but for the following --
for the subsequent four years, all I did was send in my money and you did basically nothing except send me a license, correct?

MR. LERMOND: Correct.

MS. RICHARDS: Do you not also honor other states for their fingerprints?

MR. LERMOND: We did start that this year. It's something that for whatever reason we hadn't done in the past, where someone had fingerprints in another jurisdiction, we'll honor those as long as that jurisdiction fills out the appropriate form and sends it to us. People have been happy with that.

MS. RICHARDS: It's part of the national compact, right?

MR. LERMOND: And also if you're a compact member, you also -- you don't have to pay the fingerprint fee in each jurisdiction. It's part of what you pay to be a member, I believe.

MR. BURNETT: What's the -- you know, when you put Frank's in there to renew him and the screen starts flashing, isn't that a current background check of some sort that's automatically happening?

MR. LERMOND: It is. And that's really through RCI because they've got a database --

MR. BURNETT: All right. So it goes back to
that database. So it's just a question of whether he's done something funny in another jurisdiction because before it was put into our own industry database, not NCIC; is that right?

MR. LERMOND: And we pay a fee here to be part of that RCI database.

MR. BURNETT: And I assume that's included in your --

MR. LERMOND: Yes, sir.

MR. BURNETT: -- list of costs?

MR. MILLER: Mr. Chairman, now getting back to your suggestion.

MR. BURNETT: Yes, sir. Mr. Miller?

MR. MILLER: If I may make a comment on that, but first I have some questions.

MR. BURNETT: Please.

MR. MILLER: Your licenses, if I come in and get a license in June, is that just for the balance of the calendar year, or does it run from June to June for me?

MR. LERMOND: It's for the balance of the calendar year.

MR. MILLER: So everything is based on the calendar year.

Okay. If we were to not vote on this, if you
don't get this into the Register to go into effect January 1, what happens to the -- for the month of January? Let's say it doesn't go into effect until February 1, would it cause any great harm come January 1st to have an unlicensed period?

MR. LERMOND: Most of the people that would be affected -- in other words, most of the people that would re-apply in January would be the OTB employees of Colonial Downs, because all of their licenses are going to expire December 31st. The people that are going to participate in horse racing, correct me if I'm wrong, probably won't apply until March or April or May.

MR. MILLER: But if we haven't acted on this, when they come in in January for renewal, what would you have to charge?

MR. LERMOND: We'd have to charge them $10.

MR. MILLER: Ten dollars for the whole year. Therefore, they would get out of paying it. That's the only thing that kind of -- you know, that raises a question about not getting this into effect by January 1 is some people would be able to take advantage during the month of January to get a lower --

MR. BURNETT: Right. Of the 4,000 licenses,
how many of them are in this category of OTB employees roughly? Five hundred?

  MR. LERMOND: Jeanna, do you know offhand?

  MS. BOUZEK: Six hundred.

  MR. STEWART: Can't be that much.

  MR. LERMOND: OTB employees that would renew in January.

  MS. BOUZEK: We all renew in January. It's not just OTB employees. It's all of us at the track.

  MR. BURNETT: So about 15 percent of the total. We got one person saying 15 percent, and the other one saying it's got to be less. It's not more than 15 percent. Fifteen percent or less.

  MR. PETRAMALO: We know approximately 2,000 are thoroughbred owners and trainers of the 4,000.

  MR. BURNETT: Well --

  MR. PETRAMALO: That's how many we carry on our list as actively licensed by the Racing Commission.

  MR. BURNETT: I just want to see if I can get the scale of this thing. Let's just say they're all administrative employees for the most part, a $15 increase times 600 people. If I'm not mistaken, we're talking about $900 here. Lawyers, have we
spent that already just talking?

MR. PETRAMALO: I think it depends on the lawyer.

MR. BURNETT: In your case, only half an hour.

MR. MILLER: Mr. Chairman, in light of that, because of the questions raised, I think we shouldn't push through on this today. I mean, if they want more opportunity to examine it, I think they ought to be given that opportunity. It's not -- if that's the kind of figures we're talking about, it won't do any irreparable harm to defer this for at least our next meeting in my opinion. That's just my opinion. I realize in this day and age that for every opinion, there's three different ones readily available.

MR. BURNETT: Can we label this the Virginia Racing Commission's contribution to the stimulus of Colonial Downs' employees for next year?

MS. DILWORTH: Mr. Chairman, if I just might add.

MR. BURNETT: Yes, ma'am.

MS. DILWORTH: There is an exception in the statute for the permit requirement, and I don't know to what extent the Commission has exercised its discretion to waive the permit requirement in the
past, but the statute says the Commission may waive
the permit requirement for any person who possesses
a valid permit or license to participate in the
conduct of horse racing in another racing
jurisdiction and participates in horse racing in
Virginia on nine consecutive racing dates.

MR. BURNETT: So that would work for an
employee in another state getting a day pass, but it
won't help with the parking lot sweeper or the host
on Derby Day. Am I hearing that correctly? Is
everybody hearing that the same way? You would have
to have a license in another state as a basis for
our exercising our discretion to waive it.

MS. DILWORTH: Yes.

MR. WEINBERG: That was the Pat Day Amendment.

MR. LERMOND: That's correct.

MR. BURNETT: All right. Do we need a motion
to defer?

MR. MILLER: Well, I move that we defer
action -- I mean, will this help you all if we do
that? I mean, do you all have more to add, or are
you going to try to seek more information or --

MR. WEINBERG: I think we're going to try to
respond to the questions that we got asked today of
quantifying what is the differential between those
who we're suggesting pay 15 and those who pay 25 and what it means. I think that would be helpful for the Commission to have.

MR. MILLER: Okay. Then I move that we defer this to the next meeting.

MR. BURNETT: Do we get a second?

MR. BROWN: I'll second it.

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

All indicate by saying aye.

Note: (Aye.)

MR. BURNETT: Motion carries.

I assume, Jim, that in addition you'll provide us your thoughts on day passes and we can see if the day pass legislation can also be exempt. We may have to move on a separate track somehow because we don't want your other wrist slapped, but I think it seems to make a lot of sense.

MR. LERMOND: We may be able to put the temporary employee right on the fee schedule. I'll have to defer to Amy.

MR. BURNETT: But I'm not sure if that solves the issue of --

MR. LERMOND: Twenty-five versus 15.

MR. BURNETT: Or the duration of the pass. In other words, if you want to go through all that
background and licensing. It isn't just -- if we said a day person, five bucks. They've still got to fill out the application, still got to get fingerprinted, all these things they have to do --

MR. RONEY: No, not fingerprints.

MS. BOUZEK: No fingerprints.

MR. BURNETT: No fingerprints. I would just like to have some sense of what someone has to do to be permitted to sweep the parking lot one day of the year. Let's get a balance there for whatever we're doing in terms of our efforts and what they're paying and what the risk to racing is for that function to go either unlicensed or low license or low investigated. That's my thing. I just want to be clear about that.

All right. Anything further on this particular subject? We did a good job beating that to death, didn't we?

MR. REYNOLDS: Yeah.

MR. BURNETT: Stakeholders, Colonial Downs review of the 2009 harness meet.

MR. STEWART: Okay.

MR. BURNETT: Mr. Stewart?

MR. STEWART: Jim's got a little handout here that I'll refer to as we go along.
We completed our 2009 harness meet with the Day of Champions held on Breeders' Cup Day. We had a 36-day meet. Attendance averaged 367 people per day. This is down from last year's average of 509 per day and the 613 per day average in 2007. However, in 2008 and 2007, the New Kent County Fair was held during the harness meet. So if you take the fair days out of the calculation, the average attendance in '08 was 363 and in '07 it was 457.

Now, if you further take out Breeders' Cup Day, which in 2009 represented 10 percent of the total attendance for the meet, the attendance comparisons are 338 in 2009, 341 in 2008, and 440 in 2007. For example, on Tuesdays this year, the average attendance was 160, and on Wednesday it was 207. If you factor out the horsemen and the other people who got in for free, less than half of those actually paid to attend.

The per capita wagering on live races was a little over $56 this year versus about $49 in '08 and $48 in '07. However, a more realistic comparison is to once again factor out the New Kent County Fair from the figures. After doing that, it's $56 versus $66 in '08 and $63 in '07.

The per capita simulcast wagering at the
track, which is people at the track wagering on other races around the country, was $23 this year versus about $22 in '08, and $22.60 in '07. Once again if you factor out the fair and the Breeders' Cup, which tends to distort the results, the comparison is $19 in '09 versus $28 in '08, and a little over $25 in '07.

Our out-of-state handle was down as well. This year we averaged about $72,000 per day versus 106,000 in '08, and 119,000 in '07. It's down 46 percent from the peak of 133,000 in '06. The decline of 32 percent from '08 to '09 was due primarily to two factors that I personally would rate as equally responsible. First, there's the overall decline in wagering nationwide due to the economy, and then there's the continued boycott of our signal by TrackNet.

We ran 373 --

MR. BURNETT: Can I stop you there, Ian, just to ask you a question on this previous line? Am I right that you're down about 40% at -- on out-of-state handle per day between '08 and '09, '08 was 105,000 and 71,000 in '09? So I'm thinking that's about -- maybe it's a little less than that, 30 to 35 percent, something like that.
So you're saying national wagering generally is down 17 percent or so and that the boycott cost us an equal amount?

MR. STEWART: That's my --

MR. BURNETT: Roughly 15, 18 percent each.

MR. STEWART: That's my analysis, yes.

MR. BURNETT: Okay. Thank you.

MR. STEWART: We ran 373 races this year in 36 days versus 376 races in 34 days last year. We had a couple more days and a couple fewer races. Our purses averaged $47,000 a day. Last year they averaged $64,000 a day. That's a decline of 26 percent. The Day of Champions is for Virginia-bred horses. If you dig a little deeper and take the Day of Champions out of the numbers, you get a more accurate reflection of what's happening on a daily basis. In 2009, without the Day of Champions, our daily purse was a little over 38,000, 38,594, versus 51,100 a year ago. Our average horses per race was 8.3 in '09 versus 8.6 in '08.

As you can see, statistically there's virtually no good news here. The truth is if you look at the last ten years, it's kind of hard to see any significant progress at all. We are running
essentially the same meet for smaller purses in front of fewer fans. While we have economized and operated more efficiently, our revenue has continued to fall as well. So our loss per day for a harness race in 2009 was approximately $19,000. In 2001, it was $17,000.

Now, I don't think this reflects a lack of effort on anyone's part. We have seen harness tracks without alternative gaming stop racing or go out of business such as Rosecroft, Jackson up in Michigan, and Saginaw. Others are barely hanging on such as the Ohio tracks as they pray for slot machines. The new harness tracks have opened or reopened such as Chester Downs, Running Aces, Vernon Downs, they all have alternative gaming. Other tracks have been given a new lease on life from other forms of gaming such as the Meadows and Yonkers.

The year over year comparisons that I just reviewed with you evidence that we are in an era with a steadily shrinking handle pie. It is unrealistic for any of the stakeholders in this state to expect to retain the status quo in absolute dollar terms. To maintain your absolute amount of dollars of a shrinking pie actually means increasing
your relative share at the expense of another shareholder. The horsemen's share is obviously represented by the money set aside for purses, which varies by handle. It is also represented by the money spent on live racing, which has remained absolutely the same or increased.

Now, live racing does not generate a profit. This is not a situation unique to Colonial Downs, but is pervasive throughout the industry. We've discussed in the past how to possibly make live thoroughbred racing profitable through a boutique meet with major event days. Unfortunately, with respect to harness racing, I'm frankly at a loss as to how to make live harness racing profitable.

As I noted, the horsemen's purse money share of the pie is self-adjusting because it's based upon handle levels. As you can see from the commission reports, thoroughbred handle has declined 17 percent in '09 in the OTBs and harness handle has declined 20 percent. Recognizing the reality of the situation, thoroughbred days in '09 were essentially reduced from 45 to the financial equivalent of 35. Harness days in '09 grew from 34 to 36. Each additional race day increases in absolute terms the dollars spent on the expenses of live racing. We
believe it is now time for some proportionate reductions. To look at it another way, standardbred handle through October 31st represents 18 percent of the overall combined OTB, account wagering, and live handle. Yet, the cost of the harness meet represents 38 percent of the cost of the combined thoroughbred and harness meets. The cost of the harness meet is disproportionate to its proportionate share of the revenue.

Now, we're going to be talking about race days next month. It's not my goal this morning to discuss race days, but as we examine race days, Colonial Downs is looking at other possibilities to reduce costs. One thing we're considering would be to only open the grandstand on weekends. The savings in the cost of cleaning the building alone would be $1,800 per race day. There would also be savings in payroll and security costs. We will lay out a detailed plan for this in our race day request.

It is easy to say that the industry is changing. That really isn't news to anybody. The challenge is can we change the models we are operating under fast enough in such a way that we can survive the experience. We'll have some plans
for you to consider next month on that front.

That's kind of a segway into a little bit different topic, but on the same family, if you will. As you are well aware, last week Churchill Downs acquired YouBet.com, which they plan on combining with their existing TwinSpires account wagering platform. TwinSpires, as you may remember, also includes the old AmericaTab account wagering company, which Churchill acquired several years ago.

After this acquisition, Churchill Downs will control a little over 44 percent of the account wagering handle in Virginia based on the October numbers, and TrackNet will control virtually all of the premium content that ADW companies use in Virginia. In short, Churchill's market domination will continue to grow.

In December, the applications for account wagering licenses are due and they will be one of the primary topics at the December racing commission meeting. Back in August, I spent some time talking about account wagering and how it fit into the overall industry in Virginia. I would like to spend a few minutes revisiting this topic this morning. I realize that three of the commissioners have heard some of this before, but I think it's important for
those who have not heard to hear it this morning,
and I would also like to provide some updated
information.

So in looking at account wagering, the
fundamental question is this. What is the purpose
of account wagering? It's been stated many times
that the purpose of OTBs is to support live racing,
so I don't believe it's a stretch to conclude that
the purpose of account wagering is to support live
racing as well.

If account wagering -- if ADW companies are to
support live racing, then what is their fair share
of the handle to pay towards live racing. The
answer is between 11 and 11 and a half percent based
on today's cost structure. Let's review how I come
to this conclusion.

I think the easiest way to explain the
significance of this is to go back to the very
beginning. Suppose at the beginning, before there
was Colonial Downs, there were two companies that
wanted to conduct pari-mutuel wagering in Virginia.
One company wanted to build a series of buildings
where customers could go to wager with live tellers
as well as eat and drink while watching races on
television. For simplicity's sake, we'll call this
the OTB company.

The other company's business plan was to allow people to stay at home and wager on races on their computer while watching them on their computer or on their own television. For simplicity, we'll call this the ADW company.

So both companies submit their business plans to the racing commission, neither of which includes live racing in Virginia. They both realize live racing does not generate operating profits and is capital intensive. Since live racing is a pre-requisite for pari-mutuel wagering in Virginia, there is now a problem. Each company understands that live racing requires a huge capital investment and rarely is profitable. However, both companies want to execute their pari-mutuel wagering business plans because these are profitable. So both the ADW company and the OTB company will have to conduct live racing either separately or jointly together.

Now, given the large capital investment required, why build two tracks when you really only need one, so they move to the conducting live racing jointly model. At that point the question is, how much of the live racing cost should each company bear? One equitable answer would be to prorate the
cost based on handle.

Now, obviously, we can't go back to the beginning. However, I think the basic principles remain true today. Today there are five licensed account wagering companies and one OTB company. All of them are in the pari-mutuel wagering business. The question is, who is responsible for conducting and paying for live racing? It just so happens that historically the OTB company has to bear the cost of live racing. When account wagering, ADW handle was insignificant, perhaps that made some sense. However, we have reached the point where ADW handle is very significant and is growing all the time. Therefore, I think it stands to reason that the ADW companies should bear their proportionate share of the cost of the live racing facility and the live racing. So, how much is that?

In 2009, live thoroughbred racing had a net cost before pari-mutuel taxes and the Breeders' Fund 1 percent of approximately $933,000. While I don't have the final figures for November, I estimate that live standardbred racing for '09 had a net cost before pari-mutuel taxes and the Breeders' Fund 1 percent of approximately $660,000. The year-round operation and maintenance of the New Kent racing
facility has a net estimated '09 cost of about $2,042,000. In addition, the cost of the facility including periodic improvements spread over a number of years in the form of depreciation is another $1,250,000. This is a live -- total live racing cost of $4,885,000 annually before the pari-mutuel taxes and Breeders' Fund. This represents --

MR. BURNETT: What's that last number, Ian?
I'm sorry. Four million what?

MR. STEWART: $4,885,000 before pari-mutuel taxes and the Breeders' Fund and the purse fund. This represents the direct costs of these operations net of the revenue they generate. These costs do not include any of our general office and administrative costs, such as my salary, our accounting department, the money we pay Mr. Weinberg, or anything that is not directly part of the live racing operation.

MR. BURNETT: If you don't mind, just so I can stay with you on this. That facilities cost as you defined what you left out, give me an example of what you put in. Does the parking lot sweeper get included in there and the janitorial service and miscellaneous painting, that sort of thing?

MR. STEWART: All the repairs and maintenance
to the building.

MR. BURNETT: Okay.

MR. STEWART: Utility cost of the building, real estate taxes.

MR. MILLER: Insurance.

MR. STEWART: Insurance.

MR. BURNETT: That's 2,042,000?

MR. STEWART: Yes.

Now, live racing also requires purse money. The figures I just quoted include the purse money generated by the live racing operations, but that's only a small fraction of the total purse money required. In addition to the money included previously from the live operations, another $7,169,000 in purse funds was required from the OTBs and the account wagering companies in '09. This brings the total estimated cost of live racing in '09 before taxes and the Breeders' Fund to approximately $12,054,000 annually. If you prorate this amount based on '09 estimated total combined OTB and account wagering handle, it comes to 7.06% of handle.

Now, this brings us to pari-mutuel taxes. The total estimated pari-mutuel tax bill for 2009 is $3,597,000. This supports the racing commission,
provides incentives for the localities that allow pari-mutuel wagering. In my opinion, if there were no pari-mutuel taxes paid in Virginia, there would be no live racing in Virginia. With no live racing, there would be no pari-mutuel wagering.

Of the total pari-mutuel tax bill, the OTBs paid 89 percent of it. The OTBs pay on the average 2.64 percent combined to the state, the locality, and New Kent County. While the statutory amount for the account wagering companies is only half a percent, there's no reason why they should be given preferential tax treatment. They are regulated by the VRC just like the OTBs and should, therefore, bear their proportional cost of regulation for both themselves and the live meets.

Unlike the OTB companies -- OTB company, the account wagering companies have not invested money in Virginia facilities; they don't employ Virginians other than XpressBet's Mr. Scoggins; and I have rarely seen any Virginia media advertising. There is no justification to give these account wagering companies preferential tax treatment given their lack of investment in Virginia. Fairness would say that they should pay their proportional share of the total pari-mutuel tax bill. If they did so,
everyone would pay a 2.11 percent rate. Currently, Colonial Downs subsidizes the account wagering companies pari-mutuel tax burden and the source market fee should reimburse Colonial Downs for this subsidy.

In addition, it's been determined that everyone should contribute equally one percent of handle to the Breeders' Fund. If you combine all of these amounts -- the cost of the live racing, taxes and the Breeders' Fund -- it comes to 10.17 percent of handle. The legislation requires a combined rate of 11 and a half percent be paid. A year ago, live racing costs were higher due to among other things, more thoroughbred race days with higher purses. The 11 and a half percent was probably very close to the actual cost last year when the law was passed and will very likely be close again in 2010 if live racing costs remain the same with handle continuing to fall.

Now, there's no question that 11 and a half percent is a significant amount of handle to pay for live racing in Virginia. However, that is basically what it currently costs. There's no reason why companies with account wagering business models should be treated any differently than companies
with OTB business models.

Now once upon a time, it was often that Colonial Downs had a monopoly in Virginia. I don't think anyone can say that today. Account wagering represents 28 percent of the total wagering in Virginia through October 31st. Now, in my view, it is time to recognize the reality of the situation in which we find ourselves. Live racing is expensive and the cost of it should be allocated fairly among the entities which benefit from it. I believe the legislation that was effective July 1st, 2009, and will govern the grant of licenses next month does exactly that.

MR. MILLER: Mr. Chairman?

MR. BURNETT: Yes, sir.

MR. MILLER: Could you provide that statement to Mr. Harrison so that we can then put it on-line and distribute it to -- or maybe not on-line, but actually make physical copies to provide for the members of the Commission? I mean, I would like to have it. I don't know whether they would or not.

MR. STEWART: Sure.

MR. MILLER: Could you do that?

MR. STEWART: Absolutely.

MR. BURNETT: Can I ask you a question or two?
MR. STEWART: Absolutely.

MR. BURNETT: I'm trying to get apples to apples here, and I know that's part of your analysis. First, just so I understand the trending, if you will, some of these costs are fixed costs essentially, I take it. So, for example, depreciation to cover your building costs, if through some miracle handle jumped -- I'm going to make it easy, it doubled. This 10.17 percent of handle, that wouldn't get cut in half necessarily, but it would get substantially reduced, would it not?

MR. STEWART: Yeah. If you were to -- it's the same ole story. If you were to hold live racing costs where they are and you were to increase handle.

MR. BURNETT: Right. That's what I'm talking about, but when you increase handle, there are some additional costs to deal with.

MR. STEWART: It adds more to the purse fund --

MR. BURNETT: Right.

MR. STEWART: -- how many days you race and things like that.

MR. BURNETT: That's a factor. Sure. And the
building might suffer more wear and tear, might require more maintenance, might require more people to do this or do that, whatever it is, to generate that handle. I just wanted to get a feel for that.

Using this number, what jumps at me and this may be an inappropriate conclusion here or I'm just not understanding the numbers, if we have a blended take-out rate, and I think this is where my problem is, of 20 percent. My question is -- and it's costing 10.17 percent to put on this whole show, where's the other 10 percent going?

Now, somebody has to pay your salary, obviously, and some of that, but there's got to be other -- either my number on that blended take-out is way too high, because we don't make that much money on the ADWs as we do on live wagering, or it strikes me there's a whole lot of money going someplace else that all -- from what you've just shown us are only half of what you take in. Where's the other half going?

MR. STEWART: The other half? Forty percent of that other half goes to signal fees to other racetracks.

MR. BURNETT: Okay. I'm just saying --

MR. STEWART: If you want --
MR. BURNETT: -- why isn't that in your calculation, signal fees to other racetracks?

MR. STEWART: That's not a live racing cost.

MR. BURNETT: Live racing only, okay.

MR. STEWART: Then you've got the expenses of running an OTB.

MR. BURNETT: All right.

MR. STEWART: So, I mean, there isn't anything left.

MR. WEINBERG: The Breeders' Fund is not in there.

MR. STEWART: Yeah. The Breeders' Fund is in there. The two big numbers you're missing, if you want to start from a 20 percent take-out on an OTB wager --

MR. BURNETT: Sure.

MR. STEWART: -- then 10 percent of it goes to pay for live racing, if you will, and then four percent goes to signal fees, and the other four, five, six percent is basically eaten up in operating costs.

MR. BURNETT: All the various operating costs that go with it, because you've already picked up the tax in there and all.

MR. STEWART: Yes.
MR. BURNETT:  Okay.

MR. MILLER:  When you say all the other operating costs, of what?

MR. STEWART:  Of the OTBs.  When I talk about operating costs in this analysis, I'm just talking about live racing.

MR. BURNETT:  Okay.  Did you consider any other models just to -- you know, devil's advocate, advocating against your own, have you -- for example, can the ADW folks make a credible argument that they shouldn't have to contribute on the same level or at all to live racing?

I'm sure they don't make the latter argument, but my sense is the ADW people would say, wow, you know, we pay a reasonable amount towards that, but you know, live racing is different, and for these reasons live racing should be -- the cost of it should be borne more by others than by our contribution.  We shouldn't pay a pro rata share, those kinds of arguments.  Have you -- if we had some people in the room who took issue with what you are saying and what's wrong with your formula and what you laid out here, what would they say and what would the basis of it be?

MR. STEWART:  I'm not sure.  I think a large
part of their argument is always that they have to pay large fees in signal fees to support live racing in other states, but that boils back down to the import/export discussion. So if you accept that argument, then basically what you come down to is that by virtue of Colonial Downs being first in building this racetrack, they get to take an inexpensive ride on our racetrack because I don't think there's anybody in this room that believes that without that racetrack out there, you would have account wagering in this state.

MR. PETRAMALO: That I think is the key point --

MS. RICHARDS: Right.

MR. PETRAMALO: -- that the ADW companies would contest. The premise of Ian's presentation was ADW companies only exist in Virginia because there is pari-mutuel racing which Colonial Downs has paid for and, therefore, you the ADW companies need to support that. They would reject that premise completely and say, you know, so what. You guys have live racing, we take your signals, and we pay for your signals. We pay you five percent or whatever to take your races and take bets on them, and so what. You should be happy. That's their
MR. BURNETT: They might also take the position, correct me if I'm wrong, that stranger things have happened than to have a racetrack go out of business for purposes of live racing, but there continued to be ADW in the state that has no other racing. Politically we know that that's not a likely scenario in Virginia. From this perspective, what's wrong with that? We've got too many racetracks. Let's have a few high quality racetracks and minimal racing and all the rest, then we got the -- you know, then we're over populated with racetracks and they're in the wrong locations, et cetera, et cetera, et cetera, all the arguments we've heard in the past. So their argument in some respects would be that's not our problem. We're national outfits and you got some idiosyncrasies there in Virginia and we can't fix them, maybe you can, maybe you can't, but we have a national model, fit or get lost. Is that fair?

MR. WEINBERG: I think I heard that before.

MR. BURNETT: Have you really?

MR. SIEGEL: What happens in other states? Is there a precedent for this?

MR. STEWART: Well, in other states, oddly
enough, I think that we have been reasonably
assertive, for lack of a better word, in
establishing what a fair price for account wagering
companies to pay in this state. We're probably
better off than most of the other states.

MR. BURNETT: For Mr. Siegel's benefit, and
correct me if I'm wrong on this, not that many
states even regulate the advanced deposit account
wagering, let alone charge -- dictate a source
market fee. So the typical model for ADW is for the
company to come into Iowa, draw a circle around
Sioux City of 35 miles or around where there's a
racetrack and say we'll pay you three and a half
percent of whatever is wagered from that market
because that's the cannibalization factor, and we're
compensating you for that. Other than that, we'll
just not pay anything out to the rest of the state.
We get it all for free.

In Virginia, we dictated that the entire state
is the source market, so they've got to pay
regardless of where the bet is made and whether
anybody had any intention or possibility of going to
Colonial Downs to spend their money. Is that fair?

MR. WEINBERG: That's fair. I think
California is probably the closest analogy. I think
they arrive at the same result, but get there by a different path by limiting the amount of host fees that can be charged with the consequence that the same number of dollars or the same percentage of dollars remain in California, and they put caps on what the ADW providers can basically charge as their fees.

MR. BURNETT: For everybody's benefit and the market, why don't you go back through the distinction between a -- did I say the market? I meant the record. The distinction between a source market fee and a host fee.

MR. WEINBERG: Okay. On a simplistic view, a host fee is paid to the track that is conducting the racing. So if a race is emanating from New York, there's a host fee paid to that track in New York. If there is a customer wagering on that track in Virginia through an account wagering provider, that account wagering provider pays a source market fee. The source being the source market for the wager to Colonial Downs and the horsemen. They split that fee 50/50.

What has candidly happened in the industry is TrackNet has been successful in amalgamating content or signals from those tracks across the country.
So, whereas, customarily a track may charge a three percent host fee, that host fee is now five, seven, or eight percent. That host fee has a direct affect upon the amount of the source market fee because under our agreements with the ADW providers, the ADW providers deduct off the top what they have to pay in host fees.

In some situations that host fee amount is capped at three and a half percent and above that amount the ADW provider on the one hand and Colonial Downs and the horsemen on the other hand split the cost of that increased host fee, but the consequence has been as host fees go up, Virginia source market fee goes down. And so dollars that were once in the state have now migrated depending upon who you're looking at into the host track that broadcasts the race and in part the ADW provider, and Churchill is particularly complicated because it owns a number of tracks and host fees typically are split between the horsemen and the track owner. So as a host fee doubles from three percent to six percent, the horsemen and the track are splitting that increase.

Churchill Downs' case, it in essence is paying itself. TrackNet -- I'm sorry, TwinSpires takes the wager, pays an increased host fee to Churchill
Downs. Ultimately, those dollars came out of the Virginia stakeholders' pocket and that is where the rub is occurring.

So January -- July 1st, 2009, legislation was implemented that just said the source market fee is ten percent in Virginia, and whatever the host fees are, they are, but if you want to conduct business in Virginia as an ADW provider, the source market fee is ten percent.

MR. BURNETT: What I think has been interesting is that in the '80s, 90 percent -- 85 to 90 percent of all revenues generated for racing were generated from live racing on the track. So just 30 years ago, 25, 30 years ago, almost all the money came from people going to the racetrack physically and plunking their $2 down across the window.

With the advent of the Interstate Horse Racing Act and simulcast wagering, now it's about 85 or 90 percent most of the racetrack's revenue comes from bettors who aren't at the racetrack. They're at someplace else. They're in an OTB in California. They're in a racetrack in Texas. They're in a -- they could be in Europe. They could be anywhere.

MR. PETRAMALO: They could be sitting on the beach with a laptop.
MR. BURNETT: Yeah. They're on their laptop. They have an account. They've opened an account with YouBet or whoever. They're sitting there typing away or they're on a telephone or something doing it. And historically that was thought to be found money. So the racetrack said, oh, geez, we're just so lucky to have all this money coming in. We get most of our money from live handle, but we've got this other stuff going on, so we're only going to charge -- we'll just charge three percent of the handle on that for us to take.

Well, when the numbers flipped, instead of getting 90 percent of the money out of 20-cent dollars, 20 cents out of every dollar that was bet, 90 percent of the money was coming from that. Now 90 percent of their action with only a 30-cent dollar or a 3-cent dollar, so they've got much lower volume from which to operate.

The horsemen, interestingly and ironically, started the push to say, you know, guys, we've got to do better in selling our signal to take care of horsemen at these tracks. You've got to charge a higher host fee, get more money when you're selling the signal. Forget that three percent. Let's get it up to five percent, six percent, seven percent,
because few people are coming to the racetrack. So we need y'all to charge more for the signal so that the horsemen can do better in places like Churchill Downs and year-round racing locations, but what we would like to think of as an unintended consequence or an unthought of consequence is that in a place like Virginia where are nine, ten months out of the year our OTBs are or year-round our OTBs are buying those signals from other people. Instead of paying three percent dollars for those signals, we're now paying six percent for those signals on every dollar, and it's cutting into what's available to run our Virginia operations. So the advent and extreme popularity of ADW combined with increased host fees for a state that usually buys signals, most of the time buys signals have squeezed us down to this pie that Ian articulates is getting smaller every month.

Did I miss anything on that, Jeanna? You're right on top of these numbers.

MS. BOUZEK: You hit the nail right on the head.

MR. PETRAMALO: You know, I think there's something else that you ought to bear in mind. It's kind of a footnote to Ian's presentation, that is
the premise of his presentation, and that is when we're talking about account wagering, we're talking about wagering over the internet or wagering by telephone.

Generally speaking, wagering over the -- well, gambling over the internet is unlawful under federal law. It violates the Criminal Wire Act, and it also violates the 2006 Unlawful Internet Gaming Act. The only thing that saves these ADW companies is something called the Interstate Horse Racing Act, because as long as they fall within the ambit of that act, then their operations are legal, because the Interstate Horse Racing Act is an exception to both the Wire Act and the Unlawful Internet Gaming Act, but the Interstate Horse Racing Act is premised upon pari-mutuel being lawful in the state and being regulated by a state agency such as your agency here.

So without pari-mutuel wagering -- excuse me, the pari-mutuel wagering at Colonial Downs and its regulation by this Commission, those folks couldn't come in here and take Virginia customers on-line and on to wager any place, period.

MR. REYNOLDS: But they are or they were doing that before. I don't understand --
MR. PETRAMALO: That's why we sued them.

MR. REYNOLDS: Okay. If we stop live racing, what's prohibiting them from running YouBet, which is going to dramatically increase their business with ADWs? What are you going to tell YouBet now, that it's illegal?

MR. BURNETT: We'd have to bar pari-mutuel wagering, because I think -- I would say we would become a Birmingham, Alabama. They start a racetrack. It went to hell in a handbasket, but they retained their commission. They retained the right to have pari-mutuel wagering in the state. As far as I know, they continue to generate purse money and income money that they spend at some other racetrack.

MR. PETRAMALO: Commissioner Reynolds, I think the argument from the ADW company would be if Colonial Downs shuttered the racetrack and no longer conducted racing, but as long as the statute was still there that would permit somebody else to come in and open up a racetrack and have pari-mutuel wagering, they would argue that as long as pari-mutuel wagering is on the books and lawful in Virginia, even though nobody is conducting it, they can come in and do business here.
MR. REYNOLDS: And that's my question to Ian.
Ian says if we don't have live racing, then we can't have ADW.

MR. STEWART: I wasn't saying that from a legal standpoint. I was just making a point that I think -- I don't think that the Birmingham situation would be tolerated very well in this state.

MR. BURNETT: Politically, correct.

MR. WEINBERG: I think the reference is a political one, that absent live racing, the tolerance for gaming in Virginia has not been very strong and that it's not a far reach to say if there's not an opportunity for live racing, there's not going to be an opportunity for pari-mutuel.

MR. REYNOLDS: How do you restrict that opportunity to YouBet six months from now?

MR. STEWART: I think the time frame would be a little longer. It would probably take a year for it to run through the legislature, I got to believe.

MR. BURNETT: You mean if we were to stop live racing and YouBet just wanted to continue to do business?

MR. REYNOLDS: Yeah.

MR. BURNETT: I think that falls in the hands of prosecutors, and we've seen what difficulties
there was when they were openly active without a license from us declaring us to have an unconstitutional statute or whatever their defenses were. We had some trouble trying to get prosecutors to go after them. The interesting part of it being or the difficult part of it being, it's one thing to prosecute YouBet, the big corporate bad guy that's coming in and stealing from Virginia, but you've got the other side of the equation, which is a Virginia citizen who's participating in the illegal bet, which is a felony. So the prosecutor is going to be put in the position to have to go after both in all likelihood or at least use the bettor as a witness who might be taking the Fifth or have to be immunized or something to be able to make a case.

Yes?

MR. MILLER: Is live racing the key or the opportunity for live racing? The statute now, we have opportunity for live racing. If you were to shut down live racing, as long as the statute remains the same, they can carry on. So the statute would have to be changed to remove the opportunity for live racing before the betting would be -- the gaming would be illegal.

MR. WEINBERG: I think that's right
politically, although not to get hung up on technicalities, the statute still says you need a license.

MR. MILLER: So if there were no licensee, that would be the key then, if you were to give up your license to conduct live racing.

MR. STEWART: I mean, if the Racing Commission didn't give YouBet a license, they couldn't operate.

MR. MILLER: No. I mean, if Colonial Downs were to -- if you were to come in tomorrow, you decided that we're shutting down the track. Here's our license to be the sole licensee in Virginia. Therefore, no live racing, no licensee, then would that end it? Would that end the opportunity to carry on pari-mutuel betting in Virginia?

MR. WEINBERG: Not as long as this commission grants an ADW provider a license.

MR. MILLER: I'm not making myself clear, I guess. In order to have pari-mutuel betting, you have to have racing or an opportunity for racing.

MR. WEINBERG: Right.

MR. MILLER: You can't just have pari-mutuel betting in Virginia; is that correct?

MR. WEINBERG: That's the way the current statute is set up.
MR. MILLER: So if we don't have racing in Virginia, we don't have live races running, and we don't even have anyone licensed to run a race, would that end the opportunity for pari-mutuel betting?

MR. PETRAMALO: I don't think so, because the statute when it was amended in 2003 to permit account wagering specifically defines account wagering as a form of electronic wagering and makes it subject to regulation by this Commission.

MR. MILLER: Separate and apart from the racing part?

MR. PETRAMALO: Yes.

MR. MILLER: Okay.

MR. PETRAMALO: I think so.

MR. WEINBERG: I think you're right. I think generally the structure of the statute is there are three forms of pari-mutuel wagering allowed in the Commonwealth. There's wagering on live racing, which happens at the racetrack, there's wagering on simulcast racing, which happens at the racetrack and at the satellite wagering facilities, and there's account wagering which can happen anywhere electronically.

The first two, if you don't have live racing, you can't have satellite facilities. Those two were
coupled to go hand in hand, but under the current statute, we could have no live racing and no simulcast -- no SWFs and still have account wagering.

MR. BURNETT: Depending on how you wanted to interpret the statute, and I think you'll agree with me that all of the statutes presume a licensee for live racing, including the ADW statute which provides for that division between -- it assumes that the licensee is to receive some of the 11 and a half percent.

MR. PETRAMALO: Right.

MR. BURNETT: One might argue that if you don't have that licensee there, then it defeats the entire ADW -- the statutory scheme except Mr. Petramalo would argue that that just defaults that other five and a half percent to his horsemen.

MR. PETRAMALO: Well, no, quite the opposite. The ADW companies I think would take the position that since there's no live racing --

MR. BURNETT: We don't have to pay it.

MR. PETRAMALO: -- we don't have to pay it. There's no horsemen's group, and there's no track.

MR. BURNETT: Right.

MR. PETRAMALO: Sure. It goes in our pocket.
MR. BURNETT: Right. That's another way of looking at it. Sure.

Now, Glenn is over here cringing as we're sitting here, you know, preparing the eulogy of live racing in Virginia, but he's had his share of depressing knowledge of 51 foals this year, which doesn't speak well for the Virginia-bred program of live racing in the next couple, three years, and it's probably only going to trend further downward. We probably ought to think about concluding this meeting and moving over to the Virginia Racing Improvement Group meeting because that's what we're drifting into here pretty easily, but you may have a comment on the record given this discussion.

MR. PETTY: I don't know where the 51 foal mark comes from because Ned Evans will produce 75 himself, so I don't know where that -- I heard that floated around a little bit.

MR. BURNETT: It was in the Blood Horse and reported by the Jockey Club.

MR. PETTY: That's from early registration, but we'll see how our statistics shake out. I don't think it's quite that dire, but it certainly has been trending, as you said, in the wrong direction, but I think Ian's point about one without the other
was both political and historic. This is how it came to be.

I always said that I think what the ADW companies would argue is we shouldn't participate in the cost of your meet because we don't participate in the profits. We don't participate in the revenue. Churchill, which makes money on part of their live racing, you know, probably doesn't understand the way it works. And that's the whole issue. They don't understand how it is for the importer.

And part of the problem is, we're the only state really like this. Virginia is really kind of a lone wolf on this whole thing. Arkansas is a little bit similar. They have a short meet. They have enough population demographic to bet enough money for it to matter, but other places that are like Virginia are Wyoming or Idaho or places that don't have a population to make a difference to the wagering companies.

So we're kind of stuck out there on our own. That's part of the problem. I don't think the industry or the media or anybody understands our problem as it's developed because the racetracks want this, the horsemen want this, and we end up in
MR. REYNOLDS: Glenn, I'm looking at this thing and what I'm hearing them say is they've got nothing to lose by not having live racing here.

MR. PETTY: That's correct.

MR. REYNOLDS: Now they're going to have YouBet pick up their business in Virginia.

MR. BURNETT: As long as we're operating.

MR. REYNOLDS: You're going to have to prove that they're doing it illegally --

MR. BURNETT: Right.

MR. REYNOLDS: -- and who has the stomach for that.

MR. BURNETT: Right.

MR. HARRISON: Peter?

Interestingly, some racing jurisdictions turn a blind eye towards account wagering, some major ones like Florida, they neither condone it nor prohibit it. They know it's going on in the state, but they don't regulate it. On the other hand, they're not doing anything about shutting it down. It varies from racing jurisdiction to racing jurisdiction.

MR. STEWART: I would say, for what it's worth, I don't think we have to write the eulogy for
live racing here. We just have to establish a fair
way to allocate the funds. There's plenty of money.
I wouldn't say there's plenty of money. There's
enough money. There's enough money. It just has to
be allocated properly.

MR. REYNOLDS: Then why should they accept
this 11 percent? They're going to say that's too
much.

MR. PETRAMALO: It seems to me they have a
number of options, the ADW companies, in light of
our new statute. The first one obviously is they
can stop doing business in Virginia, pull up stakes
and say, okay, we're not going to -- it's costing us
too much. We're not going to pay the 11 percent.
We're going to go away. I don't think that's
likely. The handle probably within the next year or
two is going to be 40 to $50 million a year of the
ADW companies here in Virginia. That's not chump
change.

The second thing they can do is mount some
sort of legal challenge in one of two ways, either
by bringing some court action under various theories
about how we're doing something that is destructive
of interstate commerce or whatever. Leave it up to
lawyers, they'll come up with something.
Alternatively, they can go to our legislature and say, whoa, you folks made a big mistake last year. Let us tell you what the truth is. You better change that law. So that's the second option.

The third option, it would seem to me to be to sit down with the stakeholders and try to work out some kind of deal. If they think that -- I mean, they have some leverage, obviously. You got the 800-pound guerrilla controlling all of the content that it's selling here in Virginia that we live on for most of the year. At the same time that 800-pound guerrilla owns a couple of these ADW companies that it doesn't want to pay 11 percent for.

Now, a rational business mind would say, hey, let's sit down and talk turkey. That hasn't occurred so far. We tried to entice them along those lines during the summer meet when they were boycotting our signal and much to our detriment, I might say, they weren't interested. So that's the way it seems to me, it made sense to look at the problem.

MR. BURNETT: Well, leaving out these conglomerations and left pocket to right pocket type of problems which are there, looking at it from the
ADW perspective -- I'm not trying to defend them. I'm just saying this is the pitch they were making. I think we've heard it from Greg. If they're in a state where there are 20-cent dollars coming out and these guys have got to operate, and they're paying a six percent source market fee -- paying a six percent host fee to buy the signal, and then they've got to pay Virginia 11 and a half percent source market fee.

Now, before they, you know, pay their first electric bill back at the office, they've got 60 and a half cents out of 20 gone for fees and they've got to operate on three, three and a half cents to pay salaries, do advertising, distribution, blah, blah, blah, blah. To me you've got to be in a big bucks environment to make that work.

MR. PETRAMALO: But it's like the grocery store, though. When you go to the grocery store, their margin on meat might be 10 percent. Their margin on cereal might be three percent. Their margin on other stuff, household goods, may be 20 percent. That's the way the ADW companies work, because for the most part, the big guys are doing business in about 35 to 38 states. And guess what? In about 30 of those states, they're paying zero in
terms of a source market fee.

So that 20 percent take-out, you take off the top a quarter of a percent that they send to Oregon where they hub, and then you take out maybe five percent for host fee, so they're sitting there with 15 percent.

MR. BURNETT: Just to do the analogy, you're suggesting that because you're getting your meat really cheap, you should also reduce the price of the milk?

MR. PETRAMALO: No. All I'm saying is --

MR. BURNETT: You're saying that we should get -- we should in some way be the beneficiary of the fact that other states don't charge the way we do.

MR. PETRAMALO: What we're saying is we're selling meat. In West Virginia, they're selling cereal. You're making money in West Virginia because the cereal is cheap. You come to Virginia, it's costing you more because meat is more expensive.

MR. BURNETT: It's the same product in both states.

MR. WEINBERG: Right. I guess to use your analogy, you're only looking at one supermarket,
right? You're looking at them operating one store, and I think under Frank's analogy, they're operating 35 stores.

MR. PETRAMALO: Yes.

MR. BURNETT: You're saying if you're going to have a grocery store in New York City, you've got to expect to have more overhead.

MR. PETRAMALO: Yes.

MR. WEINBERG: Right. I think under your scenario, yes, you build some sympathy for those numbers as you articulated them just looking at one store. Frank's point is they operate --

MR. BURNETT: Yeah. Yeah.

MR. WEINBERG: -- 34 other stores and they're making a lot of money.

MR. BURNETT: I understand that, but the indisputable fact about that argument is we're saying because you're making money in other states and they're not smart enough to charge you what they should charge you like we're smart enough to do, you should pay us probably a little bit more than is fair.

MR. WEINBERG: Well, no.

MR. BURNETT: You couldn't operate as a company nationwide paying 11 and a half percent to
every single jurisdiction where you do business.
You would agree with that?

    MR. PETRAMALO: No. I wouldn't agree with
    that at all.

    MR. BURNETT: Tell me why.

    MR. PETRAMALO: Absolutely not.

    MR. BURNETT: Tell me why.

    MR. PETRAMALO: When Chuck Champion was
running YouBet, he got up at more conferences than I
can remember and said, look, we can live on a two
percent margin. If we have the volume, we can live
on two percent margin.

    MR. BURNETT: That's what I said, big bucks.
You've got to have the volume.

    MR. STEWART: I mean, it's a classic internet
business model, and it's -- I guess the buzz word is
scalable. I mean, you can just keep cranking the
revenue through the same cost base.

    MR. BURNETT: So your view is that --

    MR. STEWART: There's only one computer.

    MR. BURNETT: -- they pay a six percent host
fee and 11 and a half percent source market fee
everywhere they did business, these companies would
still be profitable.

    MR. STEWART: If they had enough volume.
MR. BURNETT: No. Right now.

MR. STEWART: Well, the issue here, though, is their choice is do we go into Virginia or not.

MR. BURNETT: That's right.

MR. STEWART: That's a choice they have to make.

MR. BURNETT: I agree.

MR. STEWART: So if they go into Virginia and they pick up another three points to their bottom line, you know, it's free three points. They're going to do.

MR. PETRAMALO: Ask yourself this.

MR. BURNETT: I'm not talking about practicality. I'm just looking at theoretically how they justify their business loss.

MR. PETRAMALO: If as a result of Churchill buying YouBet, they combine YouBet with their own TwinSpires and they control 44 percent of the account wagering market nationwide, can they live on a margin of two or three percent? My answer would be yes, because of the volume --

MR. WEINBERG: Peter --

MR. BURNETT: So they're wildly -- publically traded and wildly profitable right now. They should be, right?
MR. REYNOLDS: That's their logic. In negotiating, I don't want to give away that much. I don't want to pay this 11 percent.

MR. PETRAMALO: Oh, sure.

MR. REYNOLDS: I don't have to stay in Virginia.

MR. BURNETT: That's their --

MR. PETRAMALO: Yeah. We say, well, it's been nice knowing you. If they want to go, let them go. That's our negotiating position.

MR. BURNETT: Glenn has some observations.

MR. PETTY: I think the bluff call here, and I don't know how you would do this. I don't know if the Commission could do it. What you need to know is two things, and let's just use YouBet since we're talking about them. What states do they do business in and what source market fees do they pay in those states. That would be -- it would enlighten everyone.

The second thing is if you take 100 percent of their handle, what racetracks do those bets come from, and what is the host fee for those tracks. I mean, are they paying six percent on half the bets or three percent? Because once you understand that, then you hit Frank's point. They may be crying we
can't possibly live on three percent here while they're making 20 percent in 30 other states, but if you don't have that information, it's a poker game, who can bluff who out of what.

MR. BURNETT: And that's before you introduce the trending as well. Three years ago we were talking about host fees in the three percent range, now we're talking about at them four and seeing them go to five and six and on big races 10, 12, you know, you name it depending on what --

MR. PETTY: If you knew what their pie looked like, how much of it was Hollywood, how much of it was NYRA, how much of it was Churchill, how much of it was Mid-Atlantic, then you could really tell what the cost structure really was versus the blue chip, black chip, you know, the bluff game.

MR. BURNETT: It's pretty clear to me -- it's again like lawyers. It's always the guy across the street that's making all the money.

MR. PETTY: I think I know who's not making all the money.

MR. BURNETT: That's what they say.

MR. WEINBERG: But there is just one final point.

MR. BURNETT: Please. Sure.
MR. WEINBERG: Also, in your model or in the model that we were working under with the contracts, the ADW providers had no incentive to negotiate better host fees because it was a pass off. It wasn't really coming out. And so this model of a fixed source market fees says go out, you guys have the volume, you have the relationship, go negotiate the best host fees that you can.

MR. BURNETT: I hear you.

All right. Let's close, yes. Does any member of the public wish to address the Commission? Seeing none, I'll move to the next item.

The next meeting is December 16th. Does that work for everybody? That's the usual Wednesday.

Closed meeting, if any. I'm unaware of any need for a closed meeting.

Do we have a motion to adjourn?

MR. MILLER: So move.

MR. BURNETT: The chair seconds. All in favor say aye.

Note: (Aye.)

MR. BURNETT: We're adjourned.

Note: The proceedings concluded at 11:25 a.m.
CERTIFICATE

VIRGINIA:
COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on November 17th, 2009, New Kent, Virginia, at the time of the hearing herein.

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

Given under my hand this 24th day of November, 2009.

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

My Commission expires:
March 31, 2011