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VIRGINIA RACING COMMISSION

October 21st, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:36 a.m.

COMMISSION MEMBERS:

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

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

I N D E X

1		
2	1. Approval of the minutes of September 16, 2009 meeting	3
3		
4	2. Commissioners Comments	4
5		
6	3. Committee Reports	4
7		
8	4. Executive Secretary's Report	
9	a. Approval of the amendments to Chapter 60 to the proposed stage from Dave Lermond	8
10		
11	5. Stakeholders	
12	a. Colonial Downs -- Update for the 2009 Harness Meet	19
13		
14	6. Public Participation	42
15		
16	7. Set next meeting -- November 17, 2009	45
17		
18	8. Adjournment	45
19		
20		
21		
22		
23		
24		
25		

1 OCTOBER 21, 2009

2 MR. BURNETT: Good morning. We'll open our
3 regular meeting for the month of October.

4 The first item on our agenda is the approval
5 of the minutes from our September meeting. I would
6 comment that they appear to be the shortest set of
7 minutes I've ever seen in the Racing Commission.

8 Did you all have a chance to look at them to
9 see if there's a page or two missing or what's going
10 on?

11 MR. BROWN: I move to approve.

12 MR. BURNETT: It's been moved to approve. Do
13 we have a second?

14 MR. REYNOLDS: Second.

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

17 Note: (Aye.)

18 MR. BURNETT: Motion carries unanimously.

19 The record should reflect that we are now four
20 commissioners. Mr. Ferguson submitted a letter of
21 resignation shortly after our last meeting, and
22 therefore, until the governor fills the fifth slot,
23 we will be a commission of four.

24 The next item of business is commissioners
25 comments. Gentlemen, any comments?

1 MR. BROWN: I've got something I want to take
2 care of. It's a little off the agenda.

3 MR. BURNETT: Well, it's a good time to do it.

4 MR. BROWN: This is under the Breeders Cup for
5 Standardbred Subcommittee. I just want to make a
6 statement. Based on the recommendations of the
7 Breeders Fund Standardbred Subcommittee, I move that
8 the Commission approve the following expenditures
9 from the standardbred purse into the Virginia
10 Breeders Fund for calendar year 2009.

11 Number one, \$50,000 to the VHHA for the
12 administration of the standardbred portion of the
13 Breeders Fund. Number two, \$150,000 to partially
14 fund the VA-bred stakes races to be held at Colonial
15 Downs November 7th, and approximately \$14,000 per
16 year in breeders awards, which is consistent with
17 last year's total for these awards.

18 Now, the one thing I would like to point out
19 is --

20 MR. BURNETT: What was that last number?

21 MR. BROWN: 14,000.

22 MR. BURNETT: Thank you.

23 MR. BROWN: I'm sorry.

24 The one thing I would like to point out is
25 last year we had approved a higher number for the

1 stakes itself, but with the economic things the way
2 they are, some of the monies just aren't available
3 to bring that number up to 240 like we had, but we
4 still are going to have to be racing at the same
5 numbers, the VHHA is going to put the money in there
6 to make up the difference. So I'd move that we
7 approve this. Any questions?

8 MR. BURNETT: I don't claim to be a
9 parliamentarian, but I'm wondering whether we need
10 to go through any motion to add that item to our
11 agenda since there is some formality to that
12 expenditure, put it on the agenda to be heard
13 without objection, hear your motion. How about a
14 friendly amendment to your motion that it be
15 included -- that it be added to the agenda --

16 MR. BROWN: That will work.

17 MR. BURNETT: -- for the purpose of being
18 heard today? Do we have a second?

19 MR. REYNOLDS: Second.

20 MR. BURNETT: It's been moved and seconded
21 that this matter, the expenditure from the Virginia
22 Harness Horsemen Association Breeders Fund be put on
23 the agenda today for consideration and that \$214,000
24 be approved from that fund for the purposes set
25 forth by Mr. Brown. Is there any further discussion

1 about it now?

2 I do have a question.

3 MR. BROWN: Sure.

4 MR. BURNETT: Is the money on hand presently?
5 Is it available?

6 MR. BROWN: Yes, it is. Correct.

7 MR. BURNETT: In prior years, we've approved
8 about \$240,000 for these same purposes?

9 MR. HARRISON: Last year we did, right?

10 MR. LERMOND: That's correct.

11 MR. BURNETT: Any other questions or comment?

12 MR. HARRISON: Well, yeah. I kind of want to
13 apologize for not including a document in with your
14 folder for this.

15 MR. BURNETT: It's all right. We're getting
16 it done.

17 MR. HARRISON: It came on the agenda, then we
18 took off, and it stayed off there.

19 MR. BURNETT: Are we ready to vote on it? All
20 in favor indicate by saying aye.

21 Note: (Aye.)

22 MR. BURNETT: Motion carries unanimously.

23 Thank you.

24 The only comment I wanted to make was how
25 shocked I was by the recent foal report of the

1 Jockey Club. They characterized it as a corrected
2 foal report. I hadn't seen the one that was wrong,
3 and I don't know if it had anything to do with
4 Virginia, but if memory serves me, they reported
5 that Virginia had something in the nature of
6 120-some mares bred and 52 live foals reported in
7 Virginia, which is, I think, down from something
8 like a thousand foals 25 years ago.

9 It's a pretty sad statement of where we are.
10 It's a national problem, but if you carry those
11 numbers forward, you're probably looking at 25
12 Virginia-breds getting to the races, and perhaps 12,
13 14, or 15 horses actually breaking their maiden and
14 winning, and then out of that bunch maybe one or two
15 allowance horses, and if you're lucky, one stakes
16 horse. That's where the statistics are going to
17 carry you, I think.

18 I wondered whether -- I'll just make this
19 observation, whether it makes sense for us with
20 Glenn's help to start looking at the number of foals
21 that are, for lack of a better term, nurtured in
22 Virginia. I think a lot of our friends in the
23 legislature and elsewhere could draw the conclusion
24 that what we're doing isn't much worth it for 25
25 horses making it to the races, but I suspect there's

1 many times that number of horses that are foaled
2 elsewhere and brought back to Virginia. I think
3 Mr. Evans is a good example of that. He breeds 55
4 to 75 foals a year. I think the majority of them
5 hit the ground in another state and are brought back
6 here to be raised.

7 So most of the economic benefit of raising
8 those horses is in Virginia. It might make some
9 sense for us to be talking about a number of young
10 horses or foals that are raised before they move on
11 to their careers here in Virginia, give it a little
12 bit more oomph for what we do, for what that's
13 worth. Anyway, that's my comment.

14 Any other comment?

15 Not hearing any, we'll move on to the
16 executive secretary's report. Mr. Lermond?

17 MR. LERMOND: Good morning, Mr. Chairman,
18 fellow commissioners.

19 MR. BURNETT: Good morning.

20 MR. LERMOND: I'm going to ask you to recall
21 the March meeting of 2009, and also if you can turn
22 to Tab 2 of your notebooks.

23 During that meeting, the Commission voted to
24 adopt amendments to Chapter 60, particularly the fee
25 schedule, into the notice of intended regulatory

1 action stage of the regulatory process. This is
2 basically the very first step of the normal
3 regulatory process in Virginia.

4 Since that time, the regulatory wheels have
5 slowly turned and they've been -- the action has
6 been reviewed by DPB, the Secretary of Commerce &
7 Trade, and also the governor's office. Once the
8 governor's office reviewed it, then we were able to
9 publish it in the Virginia Register, which was
10 published on August 17th, and that started a 30-day
11 public comment period which ended on September 18th
12 during which time no comments were received.

13 Today what I would like to do is, one, have
14 you approve these -- this action to the next stage,
15 which is the proposed stage, and in doing so we
16 wanted to make one minor change and that is to
17 include grooms and hot walkers in with the group of
18 people that would pay \$25 as opposed to 50.

19 People among the staff, two of my fellow
20 stewards, in fact, commented that they thought that
21 \$50 for a groom or hot walker might be a little
22 excessive. I think in Maryland there's a lesser
23 charge for them as opposed to owners and jockeys,
24 and all of us on the staff talked it over and we
25 just thought that we'd like to make that one

1 amendment to the original action just to kind of
2 take care of those people a little bit if we could.

3 MR. BURNETT: Can you give us some sense of
4 what the overall economic impact is of reducing
5 that -- what would have been 50 to 25, how many
6 grooms and hot walkers do we license every year?

7 MR. LERMOND: In calendar year 2008, there
8 were 432 grooms and hot walkers that were licensed
9 or renewed, and that's out of a total of 4,800
10 licenses issued and renewed.

11 MR. BURNETT: So --

12 MR. LERMOND: Roughly 10%.

13 MR. BURNETT: So if my math is right, a little
14 better than \$22,000 at 50 bucks would be generated
15 from the 432 and by cutting it in half, it would
16 knock it down. So it's a reduction in what you
17 would otherwise collect of about 10 or \$11,000. Is
18 that fair?

19 MR. LERMOND: That's correct.

20 MR. REYNOLDS: What was it before?

21 MR. LERMOND: It's been \$10.

22 MR. BURNETT: So instead of increasing from
23 \$4,320 revenue on that particular item, from that to
24 22,000, you want to increase it to about 10 or
25 11,000. Is that fair?

1 MR. LERMOND: That's a fair statement.

2 MR. BURNETT: When is the last time there was
3 any increase? There's never been an increase.

4 MR. LERMOND: There has never been an increase
5 since pari-mutuel wagering started in Virginia.

6 MR. BURNETT: So it started in 1998 at the
7 price that it's at right now?

8 MR. HARRISON: I think we issued our first
9 license in 1996.

10 MR. BURNETT: Ninety-six.

11 MR. BROWN: Mr. Chairman?

12 MR. BURNETT: Yes, sir.

13 MR. BROWN: What is -- what are the going
14 rates in Maryland, New Jersey, Pennsylvania? I
15 mean, is that -- are we in line? Are we still much
16 lower or --

17 MR. LERMOND: This will bring us in line with
18 those surrounding states. Generally, it's \$50 a
19 year. Kentucky is a hundred. Maryland has -- I'm
20 not sure about grooms. This is the schedule I have
21 for the owners, trainers, drivers.

22 MR. BURNETT: Any other questions of
23 Mr. Lermond?

24 I have one. I recall in March that there were
25 substantially more regs that were put in front of

1 us, and what you brought back to us today under Tab
2 2 is the only item that you're suggesting be changed
3 from what was presented to us in March.

4 MR. LERMOND: That's correct. The only thing
5 that's not here today is the big chart of
6 schedule -- of fees, which was how the old regs were
7 worded, where you actually went to a chart and it
8 would say night watchman, hot walker. So rather
9 than have that big chart, we just thought we'd put
10 it into verbiage.

11 MR. BURNETT: Okay. All right. Any further
12 discussion on this item?

13 MR. BROWN: No, sir. Everything is in line.

14 MR. BURNETT: Do we have a motion to approve?

15 MR. REYNOLDS: So move.

16 MR. BURNETT: Chair seconds. Any further
17 discussion?

18 All right. All in favor indicate by saying
19 aye.

20 Note: (Aye.)

21 MR. BURNETT: Motion carries unanimously.

22 Anything further on this issue, Mr. Lermond?

23 MR. LERMOND: No, sir. Thank you.

24 MR. BURNETT: Thank you.

25 MR. WEINBERG: Just a point of clarification.

1 The next step is for the Commission to schedule
2 hearings on these regulations?

3 MR. BURNETT: I think so, but I'll defer to
4 Mr. Lermond who has been carrying that water for us.

5 MR. LERMOND: I don't think we're required to
6 have a hearing, but being at the proposed stage,
7 there's still one more chance that we can change
8 anything further before it goes to the final stage,
9 along with the 60-day public comment period, and it
10 will go through the same folks that looked at it the
11 first time as well.

12 MR. WEINBERG: Okay.

13 MR. BURNETT: Is there any preference that
14 there be a -- or request to having a hearing? There
15 may be some benefit to that.

16 MR. WEINBERG: Well, that's -- maybe I'm
17 preempting myself. Maybe I should talk to staff
18 first, but at the time these were proposed we
19 expressed some concern that they looked to expand
20 the universe of those subject to permit, which I
21 understand is not the intent. I just think there is
22 a better -- more consistent way this opening
23 paragraph could be phrased to refer to the other
24 aspects of the regulation that identifies
25 specifically who needs a permit.

1 This opening paragraph could be read to
2 increase the number of people who need permits,
3 because each person connected with a racetrack,
4 directly employed doesn't necessarily match up to
5 who is identified in the regulations that requires a
6 permit.

7 MR. BURNETT: I'm recalling the discussion of
8 wanting to shrink the universe as opposed to expand
9 it.

10 MR. WEINBERG: I'm just looking to maintain
11 the status quo, which I think is the intent.

12 MR. BURNETT: Right. There was some
13 discussion about whether or not we need to be
14 licensing restaurant workers. Is there anything
15 about our -- from a process standpoint that if we
16 bring this back to a hearing, changes are offered
17 that we think are meritorious and we vote to make
18 those changes, does the process start all over
19 again? How does the -- our desire to change
20 something affect the time line with respect to
21 getting them all approved?

22 MR. LERMOND: We can certainly change -- we
23 have one more chance to change it, and that's when
24 it goes from the proposed stage to the final stage.
25 So as long as the changes aren't huge, there

1 wouldn't be a problem. I would suggest we can get
2 the rules committee together possibly to discuss
3 this and maybe a couple other things that we had on
4 the back burner and get this squared away and make
5 whatever changes we need to and submit it as final.

6 The problem is I just want to get this going
7 and continuing in the process, because there's a
8 fear that if it's not so far along in the process
9 when a new governor comes on, then you would run the
10 risk of having to go back to the proposed stage. So
11 I just would like to keep it rolling, but there's
12 still plenty -- there's still an opportunity to
13 change this if we need to.

14 MR. BURNETT: Commissioner Miller?

15 MR. MILLER: Well, I was going to say that
16 part of the purpose for the public comment period is
17 for the very thing Jim pointed out. Everyone makes
18 their comments for the proposed rules and
19 regulations. They suggest the need for the hearing,
20 further discussion, et cetera, et cetera, before we
21 reach the point of saying this is the final
22 regulation. So we're going through the process.

23 MR. WEINBERG: Right. I just wanted to make
24 sure we were all clear that we have sort of one more
25 bite before we make --

1 MR. MILLER: We could change it 180 degrees
2 before it comes up as a final regulation.

3 MR. BURNETT: I guess my question was whether
4 that starts -- in essence, starts the process again
5 by going back to the governor's office to look at
6 what we suggest are the changes, et cetera, et
7 cetera.

8 MR. LERMOND: They will look at the changes in
9 the final stage. The same parties will look at it
10 one more time.

11 MR. BURNETT: Okay. Good.

12 MR. LERMOND: I agree with Mr. Miller. Had we
13 had some comments during that comment period that
14 may have -- you know, we would have then considered
15 a meeting or, you know, something of that nature.
16 Again, I think the rules committee could look at
17 this.

18 MR. BURNETT: Well, let's plan on moving it
19 along expeditiously for the reasons you say and
20 providing another opportunity for comment in a
21 public hearing, so we can put our final approval on
22 it as quickly as possible.

23 Great. Thank you.

24 Anything else on that subject? Mr. Harrison?

25 MR. HARRISON: We took a serious look at

1 the -- some of the security and controls in the
2 paddock area on race day. We did a walk through,
3 and we met with Pat Kelleher. I was wondering if
4 Pat and/or Joe could speak to some of the changes
5 that we made recently.

6 MR. RONEY: Mr. Chairman, we went and
7 discussed the changes in the paddock along with
8 Dr. Harden last week, and we felt that there was too
9 much access to the paddock, and it was getting a
10 little out of control. This is something we've
11 talked about doing for a couple years now.

12 So we finally got together. We took the bull
13 by the horns, and we went over and did a walk
14 through of the paddock and did some rearranging with
15 the entrance of the horses coming down the path.
16 They now enter through the lower half of the
17 paddock, and that's the only way they can enter.

18 In addition to that, we started to screen
19 their badge. We instituted that. We're not making
20 them carry their badges right now. We're just
21 trying to get them use to it. When they come into
22 the paddock, they're going to get scanned. So we
23 scan their badges. We have a time they come in.
24 Obviously, we can't scan them when they go out
25 because there's too many entrances to go out of.

1 So the horsemen are happy about it, the way
2 they're coming into the paddock. There's less
3 confusion. There's less traffic. There's just some
4 grumbling about scanning the passes, and why I have
5 to wear my badge. So we're trying to get them
6 instituted to do that. So that seems to be working
7 really, really well. So between Colonial Downs and
8 the Commission, I feel more comfortable and so does
9 Doc Harden about the security and the access to the
10 paddock.

11 MR. BURNETT: Great.

12 Any comment further, Pat?

13 MR. KELLEHER: As Joe said, we all met and got
14 together and I think we were able to -- there's
15 still some other things that we are planning on
16 changing. We can't make a great big change with two
17 weeks, you know, two and a half weeks left in the
18 meet, but right after this we'll again revisit some
19 of the things that we've discussed, and there are
20 some other issues that we need to work on together
21 that we're going to continue to work toward, the
22 security of the gates and everything else, to try to
23 make sure we sure everything up.

24 MR. BURNETT: Great.

25 MR. HARRISON: We appreciate you working

1 towards a common goal. It's a good feeling. We
2 have the same interest at heart here.

3 MR. BURNETT: It's nice that despite a minor
4 inconvenience that the horsemen are supportive of
5 it. It sounds like it's a more orderly arrangement,
6 and it just helps everybody to do what they need to
7 do to make things go smoothly.

8 MR. HARRISON: Right. There was a safety
9 issue. There was some jogging of horses going on on
10 the path leading on the other side of the
11 paddock/receiving barn that goes out to the
12 racetrack. So this puts an end to that, too, and
13 also there was a slight window there where some -- a
14 horse that had already been in the paddock could
15 actually make its way back to his own stall, and
16 then come back to the paddock. So that door has
17 been closed completely now.

18 MR. BURNETT: Good.

19 MR. HARRISON: Happy about that.

20 MR. BURNETT: Good.

21 All right. Anything further from the
22 executive secretary's report?

23 MR. HARRISON: No, sir.

24 MR. BURNETT: Stakeholders, Colonial Downs and
25 their update from the 2009 meet.

1 MR. STEWART: I'll give you sort of a brief
2 update on how the harness meet is moving along.
3 We've completed 25 days through yesterday. If you
4 look at the attendance, and it's a little misleading
5 because the last two years we had the New Kent
6 County Fair in there, but if we were to normalize
7 it, take out the fair, we're averaging 356 people.
8 A year ago, we were averaging 344 people. So I
9 guess we're up people.

10 The handle, betting at the track on the live
11 product is down about 11 percent, if you sort of do
12 the same normalization, taking out the effect of the
13 fair.

14 The signal sales are down about 30 percent.
15 There's probably two things going on there.
16 TrackNet continues to boycott our product. I don't
17 think that's the major reason why that number is
18 down. I think it's more reflective of the overall
19 economic situation.

20 MR. BURNETT: I don't know if this is the time
21 to ask it or not, but we had a discussion at the
22 last meeting, and you weren't here, Ian, about Lasix
23 administration, and I understood there was going to
24 be -- there was a regular weekly meeting between the
25 horsemen and stewards and other vets.

1 Mr. Chalk, will you give us an update?

2 MR. CHALK: We did have a meeting, and it's
3 pretty near the same for the rest of this year, but
4 we made arrangements for the party that was having
5 trouble getting their horse up there, that the vet
6 goes to their barn to ensure that their horse gets
7 Lasix in a timely manner.

8 The thing that we're really up against is we
9 can't just say this year we got four vets, so we can
10 let all the vets go to each barn because if those
11 vets don't come back next year and we make the lady
12 that does the Lasix for us mad and she doesn't come
13 back, then we're left in the cold next year.

14 So what we've done for next year is we --
15 through Mr. Harrison and everything, we've asked the
16 racing secretary when they unlock stalls next year,
17 to leave three stalls where the -- at the end of the
18 barn there, barn one, so that they have them to put
19 those horses in until they get their Lasix, and the
20 vet will be right there for everybody to get their
21 Lasix. If there's anybody that needs
22 re-accommodating, we'll try to please them that way.

23 MR. BURNETT: It sounds like --

24 MR. CHALK: I apologize for not giving you
25 that information before the meeting.

1 MR. BURNETT: No. That's great. That was a
2 jointly worked out --

3 MR. CHALK: Yes.

4 MR. BURNETT: -- arrangement, and everybody is
5 seemingly satisfied with it?

6 MR. CHALK: Of course, you have some people,
7 the lady who wrote the letter, she may not be
8 pleased yet, but you can't accommodate everybody.

9 MR. BURNETT: The operative word is yet.
10 You'll get there.

11 Anything further on the update with Colonial
12 Downs harness meet?

13 MR. STEWART: No, not with the harness meet.

14 MR. BURNETT: Any additional business from
15 Colonial Downs?

16 MR. STEWART: Well, I do have a couple
17 comments to make.

18 MR. BURNETT: Good.

19 MR. STEWART: I'd like to spend a couple
20 minutes this morning talking about the state of
21 racing in Virginia.

22 Racing in Virginia is dependent upon
23 pari-mutuel wagering that provides money for the
24 races. There may be other models out there to
25 provide this money such as sponsorships or sportsmen

1 putting up the money, but until those models are
2 adopted, pari-mutuel racing is basically what we
3 have, and the state of Virginia racing is,
4 therefore, tied to the state of pari-mutuel wagering
5 in Virginia.

6 Unfortunately for Virginia, the vast majority
7 of that pari-mutuel wagering takes place on races
8 run outside of Virginia. As you know, the track
9 must pay a royalty to the track that we take the
10 wagers on. This is called a host fee or a signal
11 fee. Colonial Downs pays these fees without any
12 contribution from the horsemen. This is an
13 extremely significant expense for Colonial Downs.
14 The total signal fees paid by Colonial Downs was
15 just shy of five million dollars in 2008.

16 To put this in even more perspective, a one
17 percent increase in this fee from say three percent
18 to four percent will cost Colonial Downs one and a
19 half million dollars. It will put us in the
20 negative in that situation.

21 Now, a significant portion of our handle comes
22 from the TrackNet affiliated tracks. I believe
23 you're familiar with TrackNet as it is the very same
24 organization that I've discussed extensively in
25 conjunction with account wagering.

1 One of TrackNet's other functions is to
2 negotiate the signal fees that we will pay in our
3 OTBs. They negotiate with Colonial Downs through
4 our membership in the Mid-Atlantic Cooperative. The
5 Mid-Atlantic Cooperative is a fine cooperative of
6 Mid-Atlantic tracks in Maryland, Delaware,
7 Pennsylvania, and New Jersey, which was formed a
8 couple years ago to provide a counterbalance to the
9 market power of the large exporting tracks, and so
10 far it's been fairly successful. Quite frankly, if
11 it had not been for our membership in the
12 Mid-Atlantic Cooperative, we would have probably
13 been out of business already.

14 Without discussing the specifics, I can tell
15 you this morning that TrackNet's proposal to the
16 Mid-Atlantic Cooperative calls for significant
17 increases in signal fees. These increased costs
18 will have significant financial costs to the track.

19 Now, this comes at a time when our OTB handles
20 are shrinking at an alarming rate. The first 19
21 days of October show among other things, Vinton's
22 handle is down 41 percent; Alberta's handle is down
23 36 percent; Martinsville's handle is down
24 31 percent; Scott County is down 38 percent. The
25 Richmond area handle is down significantly as well.

1 Broad Street is down 15, and Hull Street is down
2 nine. And for the year, for example, Broad Street
3 is down over 20 percent, Hull Street is down over
4 14 percent. The really scary thing to me is no one
5 really knows what the bottom is.

6 It's clear what TrackNet has in mind. They
7 intend to extract the maximum possible from Virginia
8 through whatever means necessary. This is not new.
9 Their actions and tactics follow a predictable
10 pattern. They're only willing to negotiate from a
11 position of overwhelming strength. Their strategy
12 is to take customers out of our OTBs, make them
13 account waging customers, pay us a minimal return
14 on that ADW handle that does not even approach their
15 fair share of the cost of live racing. Live racing
16 is what allows them to operate in Virginia. While
17 at the same time eroding our margins in the OTBs
18 through ever increasing host fees. They're willing
19 to engage in whatever tactics are necessary
20 including boycotting our live product in order to
21 force an agreement to their advantage.

22 I've pretty much pointed out over the years
23 how vulnerable Virginia racing is to the potential
24 actions of the exporting states since Virginia is
25 fueled by importing simulcasting. Now, it's

1 wonderful to envision a national solution to this
2 basic import/export divergence of interest among the
3 states, the racetracks, and the horsemen. However,
4 really, that's a luxury we no longer have. Steps
5 need to be taken now to protect our industry.

6 ADW providers in this state must bear their
7 fair share of the cost of live racing. Colonial
8 Downs cannot bear this cost alone because it happens
9 to have an OTB pari-mutuel wagering model instead of
10 an ADW pari-mutuel wagering business model. The ADW
11 companies cannot be allowed to take an inexpensive
12 ride on our racetrack out there. Oligopolies such
13 as TrackNet cannot be allowed to simply impose a
14 cost structure on our OTB network where, once again,
15 Colonial Downs bears the full burden.

16 Finally, we must look at live racing
17 realistically. State after state and track after
18 track are reducing dates and cutting purses. They
19 are simply responding to the economic conditions of
20 the state of the industry. We must do the same in
21 order to survive. When we look at the thoroughbred
22 purse money likely to be available for 2010 and
23 spread that over 40 days, we really will no longer
24 be able to kid ourselves that we're offering a high
25 quality thoroughbred program.

1 If you've spent any time here during the
2 harness meet and looked at the numbers, you know
3 we've kind of reached a point where we can't really
4 go on like this. The truth is the pie is shrinking,
5 and unfortunately, everybody is not going to be able
6 to keep their same size share.

7 MR. BURNETT: If I might comment. I'm not
8 going to accuse you of stating the obvious because
9 it's a lot of detail to this, but I think in the
10 general scheme of things, it's consistent with my
11 earlier comments about foal production and where
12 we're being carried nationally and in some ways in a
13 more extreme sense here in Virginia.

14 There's no disputing the pie is shrinking.
15 There's no disputing that everybody is going to take
16 a hair cut at one level or another, and I think you
17 would agree that it pushes us back into the very
18 position that we've been trying to get out of; that
19 is, fighting over who gets what size piece of pie
20 and with the pie even smaller, that makes it even
21 more difficult.

22 I infer from what you say that you may have
23 some regulatory or statutory solution to this
24 export/import dilemma, which I think that we've seen
25 coming for a long time. It's a very difficult

1 problem, and we're not the only state this way, but
2 the importing states who sell primarily a simulcast
3 product are in many ways at the mercy of the
4 exporting states, and the horsemen end up in two
5 worlds where they promote the notion that there
6 ought to be a higher host fee for the sale of their
7 product.

8 That may be very helpful to horsemen and purse
9 structures and even tracks themselves in the
10 exporting states, but then it comes around and bites
11 their fellow horsemen in the importing states, and
12 the best I've ever been able to come up with as any
13 kind of solution is that there be some type of
14 formula that, of course, would require some level of
15 uniformity nationally that would recognize a number
16 of days that folks are importing and the number of
17 days that folks are exporting in any given state and
18 that there be some divvying up of rate or the pie or
19 however, that that would work.

20 I am not so naive as to believe that that's
21 going to be happening any time soon even with the
22 effort to start a national compact, particularly
23 when the leaders of that effort are blighted, we'll
24 have a compact as long as they don't have to change
25 their ways.

1 So I don't want to prattle on about it, but I
2 would like to hear any further thoughts you have on
3 the solution side of life here as to what, if
4 anything, there is that this body or our legislature
5 or anybody else for that matter can do to help this
6 difficult problem.

7 MR. STEWART: Well, I think, you know,
8 solutions are always challenging. We've talked
9 about ADW. That's one of the reasons we have 10
10 percent lost there. That only addresses part of the
11 problem. The other problem is, as you point out,
12 you have the exporting states and the importing
13 states. The exporting states want more, which
14 leaves the importing states with less. It's the
15 issue as to which is more important, the
16 manufacturer of the product or the market for the
17 product. We happen to be the market.

18 So from our standpoint, we have to stand up
19 for ourself and say we cannot afford to continue
20 to -- I don't know quite the right word is, but
21 money cannot all float back to the exporting states.
22 Otherwise, there won't be any here any racing here
23 in Virginia.

24 MR. WEINBERG: I mean, one way to put some
25 specificity on that, a number of states have caps on

1 host fees. If you look at how we specify who gets
2 what in our statutory scheme, we leave that
3 component out of the equation.

4 One could question, well, why do that? You
5 just heard that it costs the racetrack five million
6 dollars a year, which is about half of the purse
7 account, it seems like a significant number. Maybe
8 it should be part of the formula.

9 MR. STEWART: I mean, I'm a believer in
10 expanding the pie. That's why we've invested in the
11 EZ Horseplay platform, the kiosks. I think that is
12 the ultimate solution, but until we get to the
13 solution, we have to survive the experience.

14 MR. BURNETT: It's an interesting dichotomy or
15 adjusted position of on the one hand wanting as much
16 freedom from regulation to be able to, you know, be
17 flexible and do what you want to do, et cetera, et
18 cetera, and negotiate your best deals and all the
19 things that a free market enterprise brings, and on
20 the other hand, needing some level of protectionism,
21 if you want to call it that, from a regulatory
22 environment. And then, of course, there's a minor
23 potential that the legislature in it's attempt to
24 help you ends up just mucking things up, and I don't
25 have an answer for that.

1 I wonder -- what's coming into my head is
2 whether there's any opportunity for states that are
3 similarly situated to Virginia to band together in
4 any way. It's not a -- it shouldn't be anymore
5 adversarial than it needs to be, but it might bring
6 some balance to the negotiation if the heavy weights
7 that have year-round constant exporting and can
8 essentially dictate what the terms are had on the
9 other side all of the little states banded together
10 in some fashion that would bring some balance to
11 that equation.

12 MR. STEWART: I think that's the
13 Mid-Atlantic's Cooperative objective. We've been
14 very fortunate, I really believe that, to be part of
15 that. I think the scary thing about the whole thing
16 is you look at places like Kentucky, which is
17 clearly a horse racing state, a powerful state, and
18 they're screaming that they have to have slot
19 machines in order to survive. So it's -- you know,
20 it makes it challenging for everybody else. They
21 need more.

22 MR. BURNETT: Well, it strikes me we need more
23 fans, and more -- which generates more handle. I
24 don't know who said it, that we were -- whether it
25 was that fellow that you know in New York, Vic, or

1 the article I was reading in *Final Turn* of
2 *Bloodhorse* this week that just give it a few more
3 years and our average age 65-year-old fan is going
4 to be in the nursing home where he or she can't make
5 a bet, and then where are we.

6 I'm not sure that the traditional product is
7 that appealing to the younger bettor and that may be
8 at the root of the problem in this ocean of slot
9 machines helping us. It's helping on the other one
10 hand with a pretty healthy Band-Aid for the
11 short-term, but I think you are in the long haul
12 wiping out racing fans that are in the crossover
13 going the wrong way.

14 MR. STEWART: I think slot machines are an
15 interesting issue, because certainly if it would
16 come to Virginia that would benefit the horse racing
17 industry, but I think what people are going to find
18 over time is that in order to have a slot machine,
19 you don't need a horse. You just need electricity.

20 MR. BROWN: You're going to see a lot more of
21 that.

22 MR. BURNETT: A lot more of that.

23 MR. STEWART: For those that, you know,
24 benefit from it, may find, you know, it's a
25 short-term solution over a longer period of time.

1 MR. BROWN: It's a temporary fix. That's the
2 problem.

3 MR. BURNETT: Well, besides our all being
4 sympathetic with each other on the problem that we
5 all have here in Virginia, do you have any
6 suggestions on what direction and what remedial
7 efforts we might be able to take regardless of size?

8 MR. STEWART: I don't this morning. It was
9 more of a -- I guess my opinion piece, my editorial.
10 I'd be happy to bring more detail, more potential
11 solution over the next couple meetings. I don't
12 think this issue is going to go away.

13 MR. BURNETT: It might become more severe.
14 Vic?

15 MR. HARRISON: Mr. Chairman, I think Ian's
16 comments and Jim's comments are spot on. I think
17 that while I didn't necessarily support the 10%
18 source market fee in the code, I certainly
19 understand why it's in there and the discussion
20 today really points to that, but from my vantage
21 point, the single most important issue in this
22 industry today is the issue of retainage. So that's
23 our pie. That is the pie. The 20% that's taken out
24 of every wager to pay off the racetracks, to pay off
25 the state, to pay off the vendors, to pay the

1 breeders, to pay the owners, that formula has to be
2 calculated. It has to work for importing states and
3 exporting states.

4 So what I've been -- you know, I do a fair
5 amount of blogging in the course of a workweek, and
6 I've been -- I'm trying to draw people's attention
7 to this issue. I think what we could do, maybe
8 Peter and I could come up with a creative letter to
9 go out to industry leaders calling for some sort of
10 a summit or a meeting or a gathering of some of the
11 brightest minds in our industry to tackle the
12 problem. Otherwise, we're just going to snipe each
13 other out of existence.

14 It's going to be the haves versus the have
15 nots. There's going to be guerrilla warfare. It's
16 going to be alliances formed. It's a mess. I hate
17 to say it, but it seems like an industry on its way
18 out. If there's anything we can do to save it, we
19 should.

20 So all I can suggest right now is perhaps we
21 get together and craft a letter that's to the point
22 and filled with the passion that we have and see
23 where that gets us.

24 MR. BURNETT: Can I add more of a question to
25 your observation that it's the retainage? It seems

1 that the retainage is what fluctuates. If it's an
2 on track dollar, and I'll just use a blended rate,
3 it's 21-cents. If it's an ADW dollar, it's
4 something else. If it's, you know, a simulcast
5 dollar, it's a little different. It depends on what
6 money is being spent, where it's being spent, and on
7 what product, but the one constant is that we have
8 essentially the population of Virginia spending
9 about 200 million dollars, just to pick a number, in
10 handle per year. That's what we have to offer to
11 the racing world --

12 MR. HARRISON: Right.

13 MR. BURNETT: -- is 200 million dollars worth
14 of betting. That's the constant. What we're all
15 fussing about -- legitimately, and I don't mean to
16 diminish it, is whether or not we should be getting
17 40 million dollars of that 200 for putting on our
18 races and sticks and bricks and ADW, and that's what
19 should stay in Virginia to be spread around among
20 everybody or whether it should be 20 million or five
21 million or whatever that number is.

22 And what we're watching is that 25, 30 years
23 ago, it would have been 40 million dollars easy,
24 plus concessions, et cetera. Today, and over the
25 last 20 years, we've watched the trend go from that

1 40 million dollars, if some had their way, moving
2 more to like 12. And that's what's eating us up.
3 It eats up the horse people. It eats up the folks
4 that have to support and build these fine
5 facilities, and I'm not sure where all that money is
6 going, but it's clear that we're trying to
7 accomplish more with less money. The one thing we
8 have to offer out there that's a constant is
9 200 million dollars worth of business.

10 We need to find a way to maximize the value of
11 that to those outside of the state of Virginia that
12 want to pay a whole lot less for it than we think
13 it's worth. Is that a fair way of looking at it?

14 MR. STEWART: I think you're right. I think
15 that's exactly right. The constant is there's 200
16 million dollars of business. How are we going to
17 divvy that up? What's the fairest way to divvy it
18 up that reflects the relative values that everybody
19 brings to the table?

20 MR. REYNOLDS: Mr. Chairman? To me, that's
21 still not addressing what you've laid out. The
22 industry is declining on a national basis, it's
23 declining here, and it's going to continue to do so.
24 It's a very dramatic situation, and we have to come
25 up with dramatic answers. We have to come up with

1 something very significant.

2 That discussion to me was how to divide the
3 pie again. You're going back to how do you increase
4 the pie. Slot machines are one way and we all have
5 doubts about that, concerns about that, and I
6 personally don't believe that would politically fly
7 in the current environment. So what are the other
8 things that dramatically we can do? The only one I
9 see is expansion of the OTBs and whatever. We
10 really need to focus on the big issue, big dramatic
11 changes in that, and how can we do that. When you
12 talk about developing ideas about it, I would
13 suggest we really focus on the big ones.

14 MR. STEWART: I don't disagree. I think the
15 one opportunity that's still out there is to fully
16 penetrate the market and how do you best do that,
17 but at the same time, you have to make sure that all
18 your efforts don't go forgotten because the money
19 you're taking in the front door is going out the
20 back door.

21 MR. BURNETT: It's the old model of paying
22 attention to revenues or costs. Both sides of that
23 equation need attention. I would think that the
24 great minds that you might solicit to give us advice
25 would probably agree on one thing, and that is that

1 racing is headed in the direction of kind of a
2 Wal-Mart approach, that you need a lot more volume
3 at a lot lower margin if you're going to make it,
4 because the margins are going down. It's just the
5 nature of the beast and with the Betfairs of the
6 world -- literally the rest of the world, not us,
7 but Betfairs, I don't know what their take is, but
8 anything close to 20% is very low, that we need to
9 be in the wholesale business in racing, and the only
10 way that we're going to survive is by generating a
11 whole lot more volume at a much lower cost.

12 I go right back to what Commissioner Reynolds
13 said. I think the answer that we've all come up
14 with in our particular -- today's environment in
15 this state is aggressive expansion of the ADW
16 activity. I don't know how -- I can't think of
17 anything else that is close enough to us, that's
18 available to us, that has a potential to generate
19 anything. I don't know whether it's premature to --
20 for you all to talk about it at all, but I think the
21 potential for the site in Innsbrook illustrates
22 progress in that direction.

23 MR. STEWART: Yeah. I think that's -- that
24 could be very successful. You know, you're still
25 limited by the same issues in that that will be a

1 licensed OTB. I think the -- obviously, we would
2 like to take the account wagering concept to the
3 bars and restaurants.

4 MR. BURNETT: Isn't that an opportunity to do
5 just that? It seems to me to the extent that the
6 OTB in its traditional form is altered considerably
7 because this is now a rental location, it's part of
8 another ongoing establishment, and just because the
9 OTB component might be closed on a Sunday or a
10 Monday or a Tuesday or for a couple of days as
11 you've done at some various locations, the ADW
12 activity remains available there. Now you got the
13 same SWF light, if you will, that we're talking
14 about in other locations.

15 To me that's kind of a nice easing into that
16 notion in a neighborhood where there won't be any
17 accusations of seedy activity. There won't be any
18 sense that people are stumbling around trying to
19 find a partner on a two-dollar ticket and that kind
20 of nonsense, and that it might get sufficiently
21 engrained that if you open another that didn't have
22 a SWF formality to it but was not that far away, it
23 would just be a shrug. You know, they got one down
24 the street. Here's another one.

25 That pace could pick up such that now you

1 start crossing lines where there's no longer the
2 referendum, which I don't believe is necessary, for
3 ADW activity. Just from a political standpoint and
4 a public acceptance standpoint becomes a shrug, and
5 from the standpoint of those who enjoy the activity
6 and hopefully younger folks that use phones and
7 other screening devices and the like take greater
8 interest and up goes the volume.

9 MR. STEWART: Yeah. I think that's
10 essentially the road we're headed down.

11 MR. BURNETT: Anybody else got any great
12 solutions for us here?

13 MR. REYNOLDS: No great solutions, but can we
14 look forward to discussing this thing next time and
15 looking at potential solutions on the large scale?

16 MR. STEWART: Sure. I'm happy to talk about
17 those kinds of alternatives.

18 MR. REYNOLDS: All right.

19 MR. BURNETT: I don't know whether from a
20 business planning standpoint it's in your interest
21 or not to be identifying and announcing potential
22 sites, but it might be helpful and maybe a little
23 bit encouraging and inspiring for those of us on the
24 periphery if we did some modeling as to where
25 certain numbers of sites and certain amounts of

1 handle volume might take us. I know we're now on
2 the revenue side of the discussion, and I don't mean
3 to take away from your concern about the cost side.

4 The Commission has some concern about the cost
5 side, because I think part of the political equation
6 here is adequate regulation or at least the
7 perception of sufficient regulation that the public
8 is being adequately protected. There's no way
9 around the fact that it's going to cost the
10 Commission some money to do that supervision and
11 whether or not that half percent on a traditional
12 ADW model works in a public venue remains open.

13 That's the question we have, and I think we
14 need to do some modeling, Vic, in terms of what kind
15 of supervision we might anticipate providing in a
16 SWF-like environment. I think that's something that
17 when the questions come up or whether we
18 preemptively go talk to folks in jurisdictions where
19 these might be that we have a plan as to what
20 supervision is going to be.

21 I might add, I sent an e-mail to Vic about it
22 this week because a friend of mine went to the
23 Mormon Park steeplechase races, and his 14-year-old
24 son kept bugging him about wanting to go over to the
25 man with the chalkboard and make a little wager.

1 The father said, number one, that's illegal. He's
2 not supposed to be doing that. Number two, you're
3 only 14. He's never going to take your money. He's
4 not going to let you do that. The son just kept
5 bugging his dad and bugging his dad, and about the
6 fourth or fifth race, he says all right. Just go
7 over there and find out what I'm telling you. The
8 kid runs over there with a couple bucks, made a bet,
9 and lost his money, which may be what promoted dad
10 to send me an e-mail and say, hey, is that legal or
11 what?

12 Our view is that it's not, but it's
13 interesting that -- I'd be willing to guess that one
14 or more members of the Commonwealth attorney's
15 office or the Commonwealth attorney himself are
16 probably at those races, but so what? Again, get a
17 SWF or one of those ADW machines that's very
18 carefully regulated by all of us and the world is
19 coming to an end. So I don't know how to answer
20 that question.

21 Anything else on that subject, folks?

22 Anything further, Ian?

23 MR. STEWART: I don't.

24 MR. BURNETT: Would any member of the public
25 like to address the Commission?

1 Seeing none, we need to set our next meeting.
2 I understand that one or more of us are available
3 but not all of us on the 17th, 18th, or 19th. I'm
4 available any one of the three days. Whatever the
5 rest of this group would like to do is fine by me.

6 MR. BROWN: I'm in the same boat, the 17th,
7 18th, 19th, whatever.

8 MR. MILLER: The nineteenth is good for me.

9 MR. BURNETT: Bad for you. The 18th is bad
10 for Vic.

11 MR. HARRISON: And for Jim.

12 MR. BURNETT: And for Jim.

13 MR. MILLER: How about the 17th?

14 MR. BURNETT: Is that a Monday?

15 MR. HARRISON: Tuesday.

16 MR. BURNETT: Somebody has a bad day on that
17 Tuesday.

18 MR. MILLER: Well, I do, but --

19 MR. BURNETT: What about a week earlier?

20 MR. REYNOLDS: Let me look at my busy
21 schedule.

22 MR. BURNETT: It would be the 10th, 11th, or
23 12th. It would be the Tuesday, Wednesday, Thursday
24 of the prior week.

25 MR. REYNOLDS: The 10th or the 12th is good

1 for me.

2 MR. BROWN: Good for me.

3 MR. BURNETT: Shoot for Thursday the 12th, how
4 does that work for you, Vic? I haven't consulted
5 you at all about that.

6 MR. HARRISON: I can make that morning, and
7 Dave is here regardless.

8 MR. LERMOND: That's fine.

9 MR. BURNETT: Well, I'm anticipating we might
10 have a fairly interesting discussion about where
11 we're trying to go with these SWFs.

12 MR. HARRISON: Thursday wouldn't be good for
13 me, that Thursday. Wednesday or Tuesday would be
14 fine.

15 MR. LERMOND: Maybe we should go back a week
16 from the third to give everyone more time to come up
17 with their solutions.

18 MR. MILLER: Let's try the 10th.

19 MR. BURNETT: I think I can do that. I never
20 know when you say back or forward.

21 MR. LERMOND: The 25th.

22 MR. BURNETT: Now, you're in the week of
23 Thanksgiving.

24 MR. BROWN: We've had this problem before.

25 MR. REYNOLDS: Can we do Tuesday, the 17th?

1 MR. BURNETT: We would be missing a couple of
2 our more important --

3 MR. HARRISON: The 17th Clinton was bad on.

4 MR. MILLER: Let's try the 17th. I'll try to
5 make it. I may be able to change something. If I
6 don't make it, it won't be the end of the world.

7 MR. BURNETT: It might be.

8 MR. MILLER: Seventeenth, is that all right
9 with everyone?

10 MR. BURNETT: The 17th we'll try for.

11 MR. BROWN: Let's go with it.

12 MR. BURNETT: All right. We'll go with that.
13 To my knowledge, there's no need for a closed
14 meeting.

15 Do we have a motion to adjourn?

16 MR. REYNOLDS: So move.

17 MR. BURNETT: Second. All in favor, aye.
18 We're adjourned.

19 Note: The proceedings concluded at 10:32 a.m.

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CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on October 21st, 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 29th day of October, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011