

1 VIRGINIA RACING COMMISSION

2 June 23, 2014

3 10700 Horsemen's Road

4 New Kent, VA 23124

5 Commencing at 10:00 a.m.

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COMMISSION MEMBERS:

J. Sargeant Reynolds, Jr., Chairman

10 D.G. Van Clief, Vice Chairman

Carol G. Dawson

11 Stran L. Trout

Clinton Miller

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COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary

14 David S. Lermond, Jr., Deputy Executive Secretary

Kimberly C. Mackey, Office Administrator

15 C. Richard Harden, DVM, Equine Medical Director

Courtney Reid, Program Support Technician

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ATTORNEY GENERAL'S OFFICE

Joshua E. Laws, Esquire

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1 MR. REYNOLDS: All right. I think we're close
2 enough for government work here. About a minute
3 before ten, but if there are no objections, we'll go
4 ahead and start. Any objections to starting?

5 MR. PETRAMALO: No.

6 MR. REYNOLDS: Great. Thank you all for
7 meeting here today. I guess we'll convene this
8 Racing Commission meeting. I don't know what the
9 date is. It's summer time.

10 MR. HETTEL: Twenty-third.

11 MR. REYNOLDS: Thank you all for coming.
12 Obviously, we know why we're all here. We've been
13 battling back and forth since January. Over the
14 months, I feel like we made progress, and then we
15 haven't made progress, and then we got very close,
16 and then we were no closer than we were in January,
17 so I hope today we can forge a way forward.

18 we had been talking with the Secretary of
19 Commerce. He's been very involved and very
20 interested in what's going on here, and he's been
21 very helpful, I think. He's had some great ideas,
22 and we've -- I think we over the last couple of weeks
23 have been batting around three options.

24 As we all know, here it is June 23rd. It's very
25 late in the date and we mandated back in December

1 that we would race five weeks, 25 days. well, we
2 take a look at it now at this late date,
3 realistically, with some of the events coming up at
4 the track, the non-course events coming up at the
5 track in August, and butting up against Timonium in
6 Maryland starting their circuit again after Labor
7 Day, that five weeks, 25 days is gonna be awfully
8 hard to do, in my opinion.

9 There were a couple of other options on the
10 table. Option two would be to go ahead and I guess
11 scrap the 2014 meet, get the OTBs open immediately so
12 we can start putting some money away and quickly
13 agree on 2015 dates between Colonial Downs and the
14 horsemen and really focus on 2015 and have a great,
15 great meet.

16 So with that, I would turn it over to the
17 horsemen and then the track and tell us what you all
18 are thinking about, which option is the most viable.

19 Maybe it's not -- I personally think it's awful
20 and very disappointing that we may not run in 2014,
21 but at the same time, it is what it is, and maybe
22 there's a silver lining and we can put that behind us
23 and look forward with a positive outlook.

24 Get the Blue Ribbon Committee back in action. I
25 will ask Vice Chairman Van Clief, who is chairman of

1 that committee to please reconvene that committee as
2 soon as possible and work very hard together to come
3 up with a great vision for the future of racing in
4 Virginia.

5 I actually think it could be very bright. It's
6 not very bright right now, but I think if we can get
7 through this impasse, I think it can be very bright
8 if we all work together.

9 with that, I'll turn it over to Frank to let me
10 know what you all think about it.

11 MR. PETRAMALO: Obviously, from the horsemen's
12 perspective, we'd love to race this summer. I agree
13 with your assessment, Mr. Chairman, that five weeks,
14 25 days would be very difficult to squeeze in this
15 year.

16 It would probably have to start sometime in mid
17 July and could end before Timonium, but it would
18 really be a stretch, and the problem is because we
19 are so late in the racing season, many horsemen have
20 had to make decisions where they're going to race
21 this summer, and a number of them that I've spoken to
22 have shipped their horses to Delaware Park or Presque
23 Isle, et cetera.

24 of course with regard to the normal contingent
25 that usually comes from Florida, it's much too late

1 for them. So it's possible, but it would be very
2 difficult to do.

3 with respect to not racing in 2014, that's less
4 desirable, but perhaps more realistic. But that
5 said, we would expect that if there were no racing in
6 2014, that we would reach a horsemen's contract with
7 Colonial to cover both 2014, no racing, and 2015.

8 Now, with respect to 2015, what we would want is
9 the normal eight weeks of summer racing. And when I
10 say normal, that's the usual, customary stable area
11 open, training, et cetera.

12 I think that reaching a contract to embody both
13 of those principles would be a very simple matter, if
14 it was clear that this notion that Colonial had
15 floated once before of being reimbursed for its
16 alleged losses of one million and a half dollars or
17 whatever it is was off the table. Because if we're
18 back arguing about that, we'll never reach an
19 agreement. That's kind of in a shorthand version
20 where the horsemen stand.

21 MR. REYNOLDS: Okay. Jim? Ian?

22 MR. STEWART: Well, what was put to us was that
23 if the signal came back on, the OTBs would -- we'd
24 negotiate 2015. I'm assuming that based on what I
25 heard from Mr. Petramalo that the signal is not

1 coming back on in 2014, so we have a different view
2 of what 2015 racing should look like.

3 MR. PETRAMALO: I didn't -- perhaps it was
4 failure on my part, but I envisioned executing a
5 contract almost immediately covering 2014 and 2015,
6 and once that contract was in place, automatically,
7 the signal comes back on.

8 MR. STEWART: That's a little different than
9 what was communicated to me, but bottom line is we're
10 not going to agree to the eight-week schedule you've
11 outlined.

12 MR. REYNOLDS: Okay. My personal view, I'm
13 going to ask the commissioners to each make comments
14 if they have them, but my personal view is because
15 you all are not racing this year and you all are
16 going to save a lot of money by not racing this year,
17 I don't see why we can't have the eight weeks next
18 year, full customary meet.

19 You know, that's important to them. I don't see
20 why you can't also have your three, four, five day,
21 whatever it is, boutique meet that you all want to
22 support high-quality racing.

23 I certainly support that as well, but my personal
24 view is because you're gonna save all that money and
25 not even be open this year, if we can get the OTBS

1 back open immediately and start saving that money and
2 building up a purse account for next year, I would
3 think we should be able to have a great, high-quality
4 meet that supports the native industry here. So I
5 would certainly look favorably on the eight weeks
6 full customary meet. A ship-in-only meet next year
7 in my mind is unacceptable.

8 Having said that, I might turn it over to my
9 fellow commissioners for any comments that you all
10 have.

11 MS. DAWSON: Mr. Chairman, I would just like to
12 add that I think the racing fans of the Commonwealth
13 have a great interest in what is decided here, and
14 they put faith and confidence in this Commission to
15 try and get something worked out

16 I would hate to give up on any racing at all in
17 2014. I think there was a third option that we
18 talked about, a ship-in type of a meet.

19 But in any case, if that isn't possible, then my
20 feeling would be that we get a contract for next
21 year, get the OTBs open, and as you say, let's look
22 forward to a really good meet next year.

23 MR. TROUT: Mr. Chairman, I do have some
24 comments on this. Number one, I'm very concerned
25 that there is now a strong potential there may not be

1 any racing in 2014.

2 when you close a business, particularly one that
3 deals with consumers and deals with people who are
4 advocates of going to races or racing horses or
5 whatever it might be, or employees at the track, you
6 take a year off, you've almost got to start over
7 again, and I hate to see that happen.

8 I realize that because of the date of today and
9 we're dealing with one week left to go in the month
10 of June, that actually putting together a season
11 similar to what we've had in the past year is
12 probably out of the question at this point.

13 I would like to see -- I think if we could do
14 some racing this year, that would be preferable, and
15 if that could be done -- I understand you said
16 Timonium opens after Labor Day -- to do something
17 just before Labor Day or over that weekend, could
18 still allow the boutique race and allow us a couple
19 of months between now and then to set that up. It
20 could be sufficient time.

21 As far as planning for 2015, what I hear from --
22 and I will say this. My friend Ian over there, we've
23 known each other for a long time. There seems to be
24 a potential of no racing agreement and maybe no
25 racing 2015.

1 If there's not the desire to negotiate some type
2 of a racing meet for 2015, and in particular, since
3 that would allow the off track signals and all of
4 that to be restarted again, which will bring some
5 income in for the track and everybody else, I can't
6 see going in that direction where we're not even
7 considering or can't agree on a 2015 meet in general
8 terms. So that really needs to be done.

9 So from the county's point of view, and I live
10 here in this county, this is our signature business.
11 This is the one when people ask where I live, I say I
12 live in the county with the track. And this is it.
13 And now I have to say I live in the county with the
14 closed track, and that's not very much fun to have
15 any kind of a closed business.

16 I know we fought over this thing for six months.
17 We really need to do something where we can at least
18 reopen the off tracks, reopen the signals.

19 Secondly, look at 2015 and maybe even subsequent
20 years. We need longer-term agreements on this.

21 And third, if there's a possibility of a boutique
22 meet, which is what the track has been asking for,
23 there is time, two months between now and when
24 apparently the Maryland tracks open up, that this can
25 be put together, so there's still some potential on

1 that.

2 what I'm hearing from the two parties right now
3 is no solution and that's scary. Thank you.

4 MR. REYNOLDS: Thank you, Mr. Trout.
5 Commissioner Miller.

6 MR. MILLER: I have a couple questions, if I
7 could.

8 MR. REYNOLDS: Yes, sir.

9 MR. MILLER: I will direct them to Frank or
10 anyone else, Jim, anyone. Has anyone been
11 quantifying the amount of estimated revenue lost by
12 the closure of these off track betting facilities?

13 MR. PETRAMALO: The answer is yes. If you're
14 talking about the horsemen's purse account, I'm
15 looking for the numbers here. If you're talking
16 about the horsemen's purse account, through the end
17 of may, it was probably \$1.1 million.

18 Dave Lermond at the, I guess at the end of May or
19 early June, calculated the lost revenue to the
20 Commission, the localities and the Breeders Fund. I
21 don't have those numbers in front of me. I have a
22 piece of paper with them on it someplace. Here it
23 is. Here it is.

24 Dave calculated that the Racing Commission as of
25 June 1st lost approximately \$337,000; the Breeders

1 Fund, approximately 225,000. Dave has the exact
2 numbers here. The localities, including New Kent
3 County, about 191,000; Virginia Tech, about 34,000;
4 The Virginia Horse Center, about 11,000; the Virginia
5 Horse Industry Board, about 11,000, and the Virginia
6 Thoroughbred Association, the VTA, about 11,000, for
7 a total of a little more than \$800,000.

8 MR. MILLER: And the purse account?

9 MR. PETRAMALO: One point one.

10 MR. MILLER: That's through June?

11 MR. PETRAMALO: Through May.

12 MR. MILLER: Through May I mean. So I'll
13 direct my questions to Dave. Do you continue to
14 monitor? Do you continue to estimate that on a
15 month-by-month basis?

16 MR. LERMOND: Actually, unfortunately, one of
17 my duties on Monday or Tuesday every week is to go
18 through and figure out where we are on these numbers.
19 The last one we had was through June 15th.

20 MR. MILLER: You don't need to give the number
21 right now, but you do have it?

22 MR. LERMOND: Yes, sir.

23 MR. MILLER: You continue to do that as time
24 goes by?

25 MR. LERMOND: Correct.

1 MR. STEWART: I might point out the track has
2 lost in excess of \$2 million.

3 MR. MILLER: The track has lost how much?

4 MR. STEWART: I would say in excess of \$2
5 million.

6 MR. MILLER: Okay. In other words, if these
7 facilities had been open, the track would have in its
8 account right now an additional \$2 million?

9 MR. STEWART: Probably.

10 MR. MILLER: And if these facilities were to be
11 open in July and August, September, whatever,
12 additional revenue would keep coming in to the track;
13 is that correct?

14 MR. STEWART: It would. I guess the question
15 is which ones would reopen. I don't think all of
16 them would.

17 MR. MILLER: Well, some. There would be some
18 revenue.

19 MR. STEWART: Sure.

20 MR. MILLER: It would not be a debit figure, it
21 would be a positive figure.

22 MR. STEWART: Um-hmm.

23 MR. WEINBERG: Sure.

24 MR. MILLER: This is what I can't understand,
25 and maybe I'm naive. Maybe I don't know much about

1 business. I don't know as much about business
2 probably as anyone in this room. I was lawyer. It
3 was a bad business I was in. I didn't depend on
4 consumer satisfaction. If I did, you know, I'd be in
5 bad shape.

6 I just don't understand the track's -- Mr. Jacobs
7 is the owner. I don't understand why he foregoes
8 that positive stream of revenue, keeping the status
9 quo that we have right now, no contract, no racing
10 this year.

11 I don't understand it, because it seems to me
12 that if I took the time and if I were as good at
13 figures as Dave and some of the others in this room,
14 seems to me that somewhere along the line, I would
15 sit down and I would say this is the revenue coming
16 in and it keeps coming in. This is what it would
17 cost me to run this little meet, and it is a little
18 meet.

19 It's almost a nothing meet to have five weeks, 25
20 days of racing within five weeks. But I guess in
21 today's Thoroughbred industry, that's probably the
22 best anyone can hope for.

23 But it seems to me that the cost for that, if you
24 have anticipated or figured out what that costs on a
25 normal basis, it seems to me that the revenue stream

1 coming in to the track compared to the expenses to go
2 out to run the meet, a little five-week, 25-day meet,
3 that the track would still be in a positive revenue
4 position just on that segment of the business. Am I
5 wrong?

6 MR. STEWART: Would you care for me to respond?

7 MR. MILLER: Yeah. That's why I'm saying this.
8 I'm not trying to throw this out into a cloud.

9 MR. STEWART: There was a letter out there on
10 January 30th where we said we would do that and we
11 made that exact evaluation. HBPA refused to do that.
12 The HBPA shut down the OTBs. They shut them down.
13 That's a fact.

14 MR. MILLER: Okay, but that's done.

15 MR. STEWART: That is done. Well, hear me out.

16 MR. MILLER: Ian, going forward is what I'm
17 looking at.

18 MR. STEWART: So for 17 years, Mr. Jacobs
19 operated this business and it has not made any money.
20 He's lost millions of dollars. That has to come to
21 an end. And just to sort of continue on in kind of a
22 losing situation is not an acceptable solution.

23 I've been saying that for -- I've been coming to
24 these meetings for 17 years. Probably longer than
25 anybody in the room, except for Jim, and we've

1 reached the end of the road.

2 MR. MILLER: We'll correct my flawed view then,
3 because how does a positive revenue flow, if you were
4 to open the facilities now and even run the races, a
5 race meet this year, and you still have a positive
6 revenue flow from that segment of your business, how
7 does that add to your losses?

8 MR. STEWART: Because the losses of the whole
9 operation exceed whatever positive revenue there will
10 be. We're gonna lose money running the harness meet.
11 We're gonna lose money running live races. It's a
12 negative proposition and it has been a negative
13 proposition for 17 years.

14 MR. MILLER: You're saying you lose money
15 running the live races, even though that loss that
16 you anticipate would be offset by a positive revenue
17 flow from your off track betting facilities?

18 MR. STEWART: If you add up the whole operation
19 of Colonial Downs -- you can't just segment it off
20 into little pieces.

21 MR. MILLER: Well, we have to --

22 MR. STEWART: There's pieces of it that make
23 money, but there's lots of pieces that lose money.

24 MR. MILLER: Ian, excuse me. We have to
25 segment it off to a little piece to meet our

1 responsibility. Our responsibility as a Commission
2 is to make sure that the licensee that has the
3 authority to run Thoroughbred racing in Virginia,
4 make sure that they run racing or at least operate in
5 such a manner as it is a positive economic benefit to
6 the agribusiness industry in Virginia. That's the
7 primary purpose for which this legislation was
8 passed.

9 Now it had to be anticipated by the legislature
10 when they passed it that although that's the primary
11 purpose of the legislation, it wasn't to have
12 gambling in Virginia. It wasn't even to run in
13 particular Thoroughbred racing. It could be all
14 Standardbred racing, it could be Thoroughbred racing,
15 it could be steeple chase, whatever.

16 But the primary purpose of allowing pari-mutuel
17 betting, wagering in Virginia was to support the
18 agribusiness industry in Virginia, and that a
19 licensee would come forward and apply for a license
20 and be willing to operate within the Commonwealth of
21 Virginia, be willing to operate to meet that
22 responsibility, and in making their analysis as to
23 whether they could operate, they would have to
24 determine can we make a profit meeting that
25 responsibility.

1 Now, you're saying that in the 17 years this
2 licensee has not made any profit; they've not made
3 any money, has lost money. That may well be, but he
4 applied for the license and he got the license and he
5 has a responsibility as a licensee to meet that
6 primary responsibility of supporting the agribusiness
7 industry in Virginia while hopefully making a profit,
8 and if he can't do it, then he needs to, as someone
9 suggested here a few weeks ago, just surrender the
10 license and let someone else give it a go. Would I
11 be incorrect to make that --

12 MR. STEWART: I think you've oversimplified
13 some things.

14 MR. MILLER: Well, that's my problem.

15 MR. STEWART: We've offered to race several
16 different schedules. What we are being held
17 accountable for is refusing to race their schedule.

18 MR. MILLER: Well, don't you have a --

19 MR. STEWART: Where is it said that we have to
20 agree to race the horsemen's schedule?

21 MR. MILLER: Isn't that part of the quandary
22 when you get into the business? If I operate a shoe
23 store, I'm at the mercy of a lot of people that make
24 leather products, plastic products, cork, the people
25 that ship the stuff. They make certain demands on

1 me. It may make it impossible for me to run my shoe
2 store successfully, but I made that decision to get
3 into the business because I thought I could do it.

4 Now the suppliers and manufacturers and shippers
5 are being so adamant in their position, they want to
6 sign a contract with me that is beneficial to me or
7 helps me, so I have a choice to make. Do I continue
8 in the shoe business or do I get out of the shoe
9 business?

10 Now, you have to, as a licensee to operate a
11 track in Virginia, you know you have to deal with
12 horsemen. They may be the most impossible people in
13 the world to deal with. I don't know, but
14 you knew that coming in. You have to deal with them.
15 You have to reach agreement with them, and the
16 statute requires that you meet agreement with them,
17 because the statute requires a contract to do all
18 these other things.

19 So again, I say to you that I'm not saying the
20 horsemen -- they may be completely unreasonable. I
21 don't know, but that's your problem as a licensee.

22 You've got to make a decision are we going to
23 deal with these hard headed bastards or are we going
24 to walk away or are we going to keep everything in
25 the status quo, keep everything up in the air, keep

1 everything uncertain and ride out three more years of
2 your contract term in the situation we are in now
3 where nothing is happening.

4 MR. STEWART: Well, I'll point out a couple
5 things to you. When we invested the \$60 million in
6 1997, there's been two changes to the law since then.
7 One, at the time, there was no requirement that a
8 specific amount be deposited into the purse account.
9 That was to be negotiated between us and the
10 horsemen.

11 A few years later, the horsemen got that law
12 changed with the help of the Racing Commission,
13 actually, and now there's a new law that four or five
14 years ago, Jim can help me out, that requires a
15 contract between us and the horsemen. That's not
16 standard throughout the industry. That wasn't in
17 place when we invested the \$60 million.

18 So you're right in the sense that we have to make
19 a choice and we continuously have to make a choice,
20 but to say that the rules -- that the situation has
21 not changed since we wrote the checks is not true.

22 MR. MILLER: Well, I'm sorry. I didn't suggest
23 the situation hasn't changed. Change comes all the
24 time in all business. The Internal Revenue Service
25 makes rulings, OSHA. You know, when you're in

1 business, everybody's always changing things. why
2 can't I operate my business as a free American
3 without all these rules and regulations? You hear it
4 all the time. We have too much government. We have
5 too many regulations. But that's all part of life.
6 That's part of business.

7 As a licensee, you've got to face it. You've got
8 to work with it. You know, all I'm suggesting is are
9 we going to have a -- I want us to have a contract,
10 and I agree with the Chairman. I think probably
11 option two that he suggested is about the best that
12 we're gonna get at this point.

13 But I want a contract, and I want to see it
14 within a reasonable time. And when I say a
15 reasonable time, okay, I think within a week. I
16 think you've been hashing this thing about for half a
17 year. Well, more than half a year. I wasn't on the
18 Commission, but from what I read, you've been
19 dickering back and forth for at least half a year.

20 So I think all the issues have been thoroughly
21 discussed and everybody's position has been
22 thoroughly established. But unless there's a
23 contract for this Commission to either approve or not
24 within the next few days or week or two, then I
25 suggest to you that you're gonna be unable to operate

1 in virginia as the licensee, and that you should
2 think about either surrendering your license or face
3 the consequence of having your license revoked before
4 the end of your twenty-year period, because we can't
5 go on for three -- we can't. We can't.

6 MR. STEWART: So your proposition is that we
7 negotiate, but in the end, we agree to what they have
8 to say?

9 MR. MILLER: I don't want you to negotiate one
10 more bit.

11 MR. STEWART: So I just agree to what they have
12 to say?

13 MR. MILLER: Yeah. We have already established
14 25 days. Five weeks, 25-day race meet. We directed
15 that --

16 MR. STEWART: They refused to do that.

17 MR. MILLER: -- back in December.

18 MR. STEWART: They refused to do that.

19 MR. MILLER: You refused to do that.

20 MR. WEINBERG: No, sir.

21 MR. MILLER: Both of your refused to do that.

22 MR. WEINBERG: No, sir. No, sir.

23 MR. MILLER: Look. Let me -- I don't -- The
24 fact that they refused to do it in January, February,
25 March, April, May is of no consequence to me. They

1 are willing to do it now. That's what I'm looking
2 at. Now all the things that went before, that's
3 water over or under the damn, whichever.

4 MR. STEWART: So everything that has taken
5 place in the last six months is irrelevant?

6 MR. MILLER: It's relevant to the fact that we
7 can't reach a place where we can do anything. We're
8 at a standstill. We're at a point where you're not
9 performing properly as the licensee.

10 MR. STEWART: Because we don't agree with them?

11 MR. MILLER: Because you're not performing your
12 function. It may be the horsemen's fault. It may
13 be. They may be 90 percent at fault, but you have a
14 responsibility as the licensee to come in here with a
15 contract with these horsemen.

16 Now you can come in with a contract for this year
17 and fight out next year and the next year and the
18 next year.

19 That's not the best situation, but that's what
20 you may be suggesting, that you keep fighting, but
21 I'm suggesting that you -- that it's over. There's
22 no use to keep --

23 It's not good for Virginia to have the track, the
24 licensee, and the horsemen continually fighting year
25 after year after year and not meeting the

1 responsibility of providing the very best race meet
2 that is possible to provide within the confines of
3 what Virginia will allow and meeting your
4 responsibility to support the agribusiness industry
5 in Virginia. That's what I'm suggesting.

6 Now you have a decision to make. Do you keep the
7 store open or do you want to close it? Do you deal
8 with the people you have to deal with, even though
9 it's not the best situation for you or not? What are
10 you going to do?

11 I suggest that if you want to stay in business,
12 you have to swallow hard and say this isn't fair.
13 The government isn't fair. The horsemen aren't fair.
14 No one's fair. We're the victim, but if we're gonna
15 keep the store open, this is what we have to do.

16 MR. STEWART: Well, I suggest to you that the
17 reason you're taking -- well --

18 MR. WEINBERG: I would only observe, Chairman
19 Miller, with that responsibility -- I mean
20 Commissioner Miller, with responsibility, there is
21 also a benefit that the Virginia model was ten OTBs
22 fully functioning for a full year, and with that
23 revenue, the licensee is obligated to run a live
24 meet.

25 with respect to the Standardbred breed, that's

1 functioning. The OTB has been open -- ten OTBs were
2 open, subsequently have had to close. Revenue has
3 been generated and that revenue will be spent on a
4 live meet.

5 But I think it is disingenuous to suggest that
6 the licensee has an obligation to run a meet in a
7 year when it has had no revenues. So there is an
8 imbalance in saying you have an obligation to run
9 when you have not had the benefit of the license.
10 Right?

11 And let me just throw one more observation out.

12 In running a business, a shoe business, if you
13 believe that the model is broken, that if you
14 continue to sell tennis shoes, for example, and you
15 want to change that, you want to get into the sandal
16 business because you think that will improve your
17 profitability, sometimes that's a struggle. Change
18 is disruptive.

19 It is not that the licensee is saying I don't
20 want to run at all. It is saying I want to run
21 differently than what I have run in the past, and the
22 people it has dealt with in the past have said we
23 don't want to do that. That's a little bit of a
24 difficulty, but we should be given the opportunity to
25 find people who do want to do that.

1 MR. MILLER: You hold the key to the revenue.
2 You say you're losing this revenue, that revenue is
3 not coming in, but if you agree to a contract, that
4 revenue will start coming in again, and you will have
5 an opportunity -- you have six more months this year
6 and you have next year.

7 You have three years left on your contract to
8 make any necessary adjustments in your business to
9 meet your profitability standards. You have that
10 opportunity, but you're not even taking -- see, to
11 me, you're not taking the opportunity that is handed
12 to you. You're -- if you don't agree with the
13 horsemen and all this off track betting is -- no
14 revenue is coming in, are you willing to go three
15 years with that and have nothing?

16 MR. WEINBERG: No one is talking about going
17 three years.

18 MR. MILLER: well, when is the first positive
19 step going to be made to rectify the situation? When
20 do you anticipate that happening?

21 MR. STEWART: with all due respect, why is it
22 our responsibility? Because we are the licensee,
23 right?

24 MR. MILLER: Right.

25 MR. STEWART: The problem is you have no

1 jurisdiction over the HBPA. You have none. If you
2 had some, you would have done something in January.
3 They are an unlicensed organization.

4 MR. MILLER: What would you suggest?

5 MR. STEWART: You have no authority over them.

6 MR. MILLER: What would you suggest? If we had
7 authority over the horsemen, what would you suggest
8 the state would do regarding the horsemen?

9 MR. STEWART: We'll, you're telling me that I
10 should sign a contract that they write. You could
11 tell them to sign a contract that I write.

12 MR. REYNOLDS: Or compromise.

13 MR. WEINBERG: What should have been done in
14 January if you had authority over the horsemen's
15 group is to say we've ordered 25 days, five weeks of
16 racing. That is what is gonna be done in 2014. Now
17 sign a contract and get on with it. Right?

18 The Commission spoke. They had an opportunity to
19 be heard. We were heard, you made your decision and
20 you should have forced the parties to sign the
21 contract then. Now five months has transpired. The
22 revenues are very, very different. What was
23 appropriate in January is not appropriate in June.

24 Twenty-five days, five weeks was the premiss that
25 we had revenues for a full year. That premiss is

1 false.

2 MR. MILLER: Okay. So if that's gone for this
3 year, if the contract is signed now, you get together
4 on this option two, the revenues start building so
5 you'll have revenues for the balance of this year to
6 use for a meet next year. So you'll have a
7 year-and-a-half worth of revenues coming in to run an
8 appropriate meet in 2015, right?

9 MR. WEINBERG: Right.

10 MR. STEWART: We'll have 11 months of revenue.

11 MR. MILLER: Pardon?

12 MR. WEINBERG: If you run during the summer,
13 you have 11 months if you start in June of 2015.

14 MR. MILLER: So why don't you agree to option
15 two and go forward with a contract now?

16 MR. WEINBERG: We agreed to option two with the
17 ability to negotiate in private a contract. You're
18 saying do eight weeks, 32 days. That is what we
19 rejected in getting to the five weeks, 25 days.
20 Right? I'm sorry. You were not here in December.
21 That's what the horsemen wanted. We wanted a lesser
22 meet. The Commission compromised at 25 days, five
23 weeks.

24 MS. DAWSON: Excuse me, Mr. Chairman, for
25 interrupting. I wanted to say something here about a

1 perception that you mention that we should have
2 forced a contract to be signed. We don't have any
3 authority to do that.

4 MR. WEINBERG: He asked me if the Commission
5 had authority over the horsemen.

6 MS. DAWSON: You said we should have done that
7 in January.

8 MR. WEINBERG: If you had the authority.

9 MS. DAWSON: Thank you.

10 MR. REYNOLDS: Quickly on the eight-week thing.
11 I think we were talking about 32 days for next year.
12 Now we're talking 24 days with three of those being
13 boutiques. We're not talking eight weeks, 32 days.

14 MR. PETRAMALO: Twenty-four days is the same as
15 we raced last year.

16 MR. REYNOLDS: Just for clarification on that.

17 MR. PETRAMALO: There are several
18 clarifications that probably should be added to the
19 discussion. Just by sitting there breathing,
20 Colonial Downs since January or since the shutdown of
21 the OTBs has probably generated somewhere between
22 \$1.5 million and \$2 million from online wagering,
23 completely unaffected by the dispute. They have
24 their own EZ Horseplay.

25 But more importantly, they draw source market

1 fees, five percent of all Virginia wagering from
2 their three competitors. This is a great country.
3 You're getting five percent from your competitors,
4 TVG, Twin Spires and Xpressbet. Just by living,
5 they're getting that. So they're generating income.

6 Secondly, Colonial always says, oh, we lose
7 money. No doubt about it. On paper over the last 17
8 years. They've lost money. Have they lost money on
9 a cash flow basis? No. By the time you throw in
10 depreciation and non-cash items, bingo, they have a
11 loss. But if you're talking about taking money out
12 of their pocket to run this racetrack, no.

13 Something else you ought to consider. Colonial
14 Downs doesn't exist in a vacuum. It's part of Jacobs
15 Entertainment, which owns casinos and video lottery
16 outlets in Louisiana. They generate a lot of money,
17 and every time they need to restructure their
18 operation, they always come here and say, well, we
19 need your permission because we're gonna pledge the
20 assets of Colonial for this purpose or that purpose.

21 They always say, and oh, by the way, this
22 benefits Colonial Downs because it gives Colonial
23 access to cash, et cetera. So we're not talking
24 about a little company here that's struggling. It's
25 part of a larger company, and that, you ought to

1 consider.

2 Finally, we always get the recriminations. Who
3 is responsible? We opposed five weeks, 25 days in
4 December and in January, because for the horsemen, it
5 turned out to be a disaster. That is, the amount of
6 starts were reduced by about 25 percent. The handle
7 was down 23 percent. Attendance was down a similar
8 amount.

9 So we thought five weeks, 25 days is not gonna
10 make it. You folks basically said, well, go back to
11 the table and see what you can come up with, and we
12 did that.

13 Over the next five months, we accepted every
14 compromise that you the Racing Commission proposed,
15 whether it was seven weeks, 28 days; seven weeks, 21
16 days; six days, 24 days. We accepted every one of
17 those. Those folks rejected every one. So it's not
18 quite fair to say, well, you know, it's all the
19 horsemen's fault.

20 The other thing is Ian starts out by saying
21 you're telling us that we've got to accept the
22 horsemen's contract. The horsemen's proposal, where
23 do you get off doing that? Well, turn it the other
24 way. Where would you get off telling us that we have
25 to accept their six days?

1 The point is for the last 17 years, we've been in
2 a partnership, like it or not, on opposite sides of
3 the table, and we've had to negotiate days. Over
4 that period, we've had to negotiate days from 25 to
5 45. These folks are the ones who all of a sudden
6 come in and say, guess what, six days is it or
7 nothing. Now you decide who is being unreasonable in
8 this process.

9 MR. MILLER: I want to say one other thing. I
10 won't say another word. It doesn't matter at this
11 point who is reasonable and who is unreasonable, as
12 far as I'm concerned. We've got a responsibility to
13 get some racing running in Virginia. We have a
14 responsibility to move off this impasse. We have
15 that responsibility.

16 I have heard nothing from anyone that would
17 indicate that if we don't do something today that
18 anything is going to change.

19 To me, if we keep this song and dance -- this is
20 only my third meeting, but the last two meetings were
21 useless. I mean I was ashamed to be a commissioner,
22 because it made us look silly, really, to come over
23 here, have these horsemen come over here, have people
24 come over here expecting that we were going to do
25 something positive, we were going to get something

1 moving here in Virginia.

2 we didn't. We had two meetings where we came
3 over and said nobody can agree, now keep working.
4 Come back, no agreement. Now nobody can agree. You
5 all keep working.

6 But obviously, you all could meet forever and
7 you're not going to work anything out, unless we take
8 a positive stance and say this is what has to be done
9 or else we need to look at other people to carry out
10 the function of racing in Virginia. I mean we can't
11 go on the way we're going. I mean I think anyone can
12 see that.

13 So you know, what was done in January, February,
14 March, April that was reasonable or unreasonable, we
15 chalk that up to experience and we say that was a
16 problem. This person was right, this person was
17 wrong.

18 But today, we have to cast all that aside and say
19 what is the best approach to try to preserve the
20 product in Virginia and to go forward and hopefully
21 keep this licensee in place.

22 Because I'll tell ya. I don't see anybody
23 knocking down the door to get involved. It is a
24 tough situation. It will be a tough situation if
25 this licensee doesn't carry out the functions for the

1 remaining three years of their license. It will be
2 really tough.

3 I'm hoping that this licensee will meet its
4 responsibility, and that for this interim between now
5 and next summer, that you can work to put something
6 in place that will be good for the balance of your
7 three-year license. I'm just hoping.

8 MR. REYNOLDS: Thank you. Mr. Commissioner.

9 MR. VAN CLIEF: Thank you very much,
10 Mr. Chairman. A few comments of my own, if I might.
11 When I first joined this Commission a little over a
12 year ago and looked at the enabling legislation, it
13 was clear that a large part of our mission, perhaps
14 because there's not a lot to regulate these days, the
15 major of part of our Commission is as a Commission,
16 do what we can within our authority to do what is
17 best for the future of the horse racing and breeding
18 industries in Virginia.

19 At this point, we can spend all day talking about
20 who is at fault here, and I don't think it's gonna
21 get us very much further. The arguments sound very
22 much the same this morning as they did last month and
23 the month before.

24 It has been both a painful and an instructive six
25 months, and one marked by about as much dysfunction

1 between a racetrack management and a horsemen's group
2 as I've seen in 40 years in this industry and a
3 number of states, but that's behind us.

4 Like our chairman, I think that we can look
5 forward to a future in Virginia racing and Virginia
6 breeding, and it is much brighter than it looks this
7 morning.

8 I think our obligation as a Commission is to do
9 what is best for the industry here in Virginia for
10 our native industry. That includes in my mind our
11 owners, our breeders, our racetrack owner and
12 operator, our customers, and all the other businesses
13 that depend on these principals for their livelihood,
14 both private and public industry.

15 I think we are absolutely out of time. I concur
16 wholeheartedly with what Commissioner Miller has just
17 said, and I think that one of the fundamental
18 conclusions that we all have to reach is that it is
19 the obligation of the racetrack licensee to conduct
20 live racing.

21 The Commonwealth granted a license for that
22 purpose. It is meant to support an agribusiness
23 represented in great part by the people behind you
24 there, and I think it's decision time. I think we
25 have to take action. There have been a number of

1 points of contention. I don't know how relevant some
2 of those are here today.

3 I have had the opportunity in recent weeks to
4 speak privately with the racetrack ownership, the
5 representatives of the breeders and the owners, and
6 whereas I think we've all on this Commission been
7 staunch advocates of live racing during 2014, and I
8 say this with sort of a heavy heart, actually.

9 I have felt all along that the very wrong thing
10 to do would be to go dark; nonetheless, I'm forced to
11 conclude at this point, and I do so only knowing that
12 reluctantly, but nonetheless, the parties all concur
13 to some extent that it's late, that if we did run a
14 race meet this year, that it would be of dubious
15 quality and perhaps dubious economic benefit, and
16 that if we are going to look to the future, one
17 option is not to run live racing this year, get the
18 satellite wagering of OTBs back in operation
19 immediately, get cash flowing, bank the money and be
20 prepared with a game plan for next year.

21 Maybe I shouldn't call it a footnote. There's an
22 element the Commission has to keep in mind. There is
23 a contract between Colonial Downs and the harness
24 horsemen for the conduct of their usual meet. We
25 have to be at least cognizant of that contract and

1 the welfare of those horsemen as well.

2 what I would be prepared to support,
3 Mr. Chairman, would be if it meets with our fellow
4 commissioners' approval, I believe it meets with the
5 constituencies' approval, to rescind our order to
6 race in 2014, but do what is necessary to execute a
7 contract which will allow the immediate
8 re-institution of operation of our satellite wagering
9 facilities.

10 I think given the fact that we are considering
11 letting everyone off the hook here for live dates in
12 2014, that it is imminently reasonable to support the
13 call for an eight-week race meet in 2015, three days
14 of racing per week.

15 I would stipulate a personal preference that some
16 of those dates, at least three, if purse structure
17 and the financial aspects support it, be set aside so
18 that Colonial Downs can commence the development of
19 their high-quality racing. This would be, in my
20 mind, in conjunction with Virginia Derby week. I
21 think we do want to see the development of
22 high-quality racing.

23 At the same time, I do think it's absolutely
24 imperative that the licensee conduct racing in such a
25 manner as to support the racing industry as it exists

1 today. If you can't do that, in my mind, without a
2 six- or 12-day meet, I cannot support that.

3 I don't think you can do that without offering
4 stabling and training facilities as would be the norm
5 for any racetrack I'm familiar with around the
6 country.

7 So I would further stipulate that in the context
8 of an eight-week, 24-day meet in 2015, that Colonial
9 Downs would offer stabling and training facilities as
10 they have in the past.

11 I think with regards to -- this may be some
12 detail that we don't need to address, but I know it
13 has been a sticking point. I think at this point,
14 I'm not interested in hearing anymore about the
15 reimbursement issue. We're down the road on that.
16 Everybody have been losers and we can argue all day
17 long who did what and when, and we sit here six
18 months down the road. I don't think that's
19 particularly relevant.

20 I would, Mr. Chairman, if we get to the point of
21 crafting this into a motion and a resolution today, I
22 would like to ask Colonial Downs to provide us with
23 written notification of their compliance within a
24 week, and I would expect that there would be a
25 contract forthcoming fairly shortly.

1 Those are my comments. I do agree that we -- the
2 time has come for action and we need to know where
3 everybody stands.

4 MR. REYNOLDS: Okay. Thank you. I think this
5 needs to be done sooner rather than later. I would
6 like to -- I don't know if we need to draw up a
7 resolution now or bring it no the next meeting. I
8 just ask my fellow commissioners do you all agree
9 with Mr. Van Clief's suggestions?

10 MR. MILLER: I agree, and I suggest that we get
11 together with our counsel and have him prepare it, go
12 into closed session and have him draft the
13 resolution. I think we should act today. I would
14 like, Mr. Chairman, if you would ask if there's
15 anyone else that wants to be heard.

16 MR. REYNOLDS: Absolutely. Before we go in
17 closed session, let me just make a quick comment
18 before we do that.

19 Commissioner Van Clief mentioned that we're
20 trying to protect our fellow horsemen, the harness
21 folks, so if we can't get a contract, we want a
22 contract as quickly as possible so we can get the
23 OTBs back open. That's obviously a large key.

24 But if we don't have any sort of resolution, and
25 I don't see this at all. If we don't have any

1 resolution by October 25th, which is the end of the
2 harness meet, then this Commission will call for a
3 hearing to do a fact-finding session to understand
4 why the licensee has not entered into a contract.

5 So having said that, would anybody from the
6 public like to speak? Doug, would you like to speak
7 on behalf of Debbie?

8 DR. DANIELS: Well, with the Virginia
9 Thoroughbred Association, and Donna is here to speak
10 on behalf of them if she would like to as well, too.

11 I think we very much agree with what has been
12 said here today. Certainly, the breeders want a
13 contract. Wanted to race in 2014, and if we are not
14 going to race in 2014, we believe a contract needs to
15 be cut as soon as possible for 2015, or we're gonna
16 be right back in the same position that we were in
17 before.

18 There's been a lot of legislators who have been
19 very interested in those. We're concerned about this
20 going into some type of legislation. We even hear
21 that legislation has been proposed, possibly, for the
22 next session. So if we do not get this thing done,
23 we're just gonna be going into the General Assembly.
24 We're gonna be kicking the can down the road and
25 we're gonna find ourselves right back in the same

1 situation again. So thanks, Mr. Chairman.

2 MR. REYNOLDS: Thank you. Anybody from the
3 public wish to speak, please state your name.

4 MR. FARLEY: My name is Dan Farley. I have
5 known D.G. a long time, and one thing I have to agree
6 with him on is I've been in the racing industry as a
7 journalist for 43 years. I have never seen anything
8 in the way of an impasse like this one. I think that
9 the management of this racetrack. The only
10 horsemen's group they could possibly like would be
11 one who did exactly what they wanted. That can never
12 work in this business.

13 A boutique meet, I'm gonna tell you what happens
14 when you have only a boutique meet. My friend, Ken
15 Ramsey, is gonna send a trailer full of Kittens Joys
16 down here. He's gonna take all of your money away
17 from you and go back home. You're not gonna get
18 anything out of that.

19 In terms of a race meet, I also think Mr. Van
20 Clief was right. And eight-week meeting three days a
21 week, Friday, Saturday, Sunday will offer you much
22 more than a five-day week where you're sure to have
23 at least two very slow days during those weeks.

24 I know Mr. Jacobs, having read about him a little
25 bit, is in the casino business in Nevada.

1 This is not like the casino business. This place
2 is not guaranteed a profit, but maybe there are
3 alternative revenue sources out there. I know in
4 Kentucky, tracks have gone to what's called instant
5 racing. It's hooked up in the lottery legislation.
6 I know Virginia has a lottery. If instant racing can
7 be fit into the racing scene, there's a lottery
8 legislation that is going to guarantee you some
9 income.

10 I've been here before, and I love this little
11 racetrack. It's a very nice little racetrack and it
12 is heartbreaking to see it empty.

13 If you're worried about your revenue flow,
14 investigate other sources of revenue. You're out in
15 the middle of nowhere. There's not a casino out
16 there to bother you. Something like instant racing
17 will grow revenue.

18 But if you don't want to live up to your
19 obligations to the State of Virginia as Commissioner
20 Miller has pointed out, give up your license. Let
21 somebody else come in here or lease the track to them
22 to contract a meeting.

23 Do something. You have got to make some sort of
24 movement, the way I see it, or get out of town.
25 That's all I have to say. Sorry for Kentucky

1 sticking it's nose in your business.

2 MR. REYNOLDS: Thank you. Anybody else? Yes,
3 ma'am?

4 MS. COSLEY: Catherine Cosley. I'm an owner.

5 Just very not too long ago, I became an owner and
6 became interested in this. I think the meeting
7 minutes need to reflect that the little people
8 continue to lose money, too. And there's -- I have a
9 lot of observations as well.

10 One of them is if Colonial Downs would have spent
11 as much effort promoting horse racing in this area in
12 Virginia as much as they have been promoting all of
13 the non-horse activities that will be participating
14 in this track, I think we'd be doing -- that should
15 be part of a marketing plan as we go forward.

16 The second thing is, and I often end up saying
17 things a lot of other people keep in their mind and
18 it doesn't come out of their mouth. But as just a
19 small person, a common person as part of these
20 proceedings, it's my perception that Colonial Downs
21 continues to come to this table as a scorned wife
22 that has had to deal with an extramarital affair and
23 can't get over it and get past it and do what they
24 need to do to move forward in a partnership.

25 So I think a lot of other people here are -- I

1 mean I know everybody else, the little guys are
2 losing money, and I think those things need to just
3 continually be reflected in the meeting minutes for
4 you to realize we are hurting. The little guy is
5 hurting, and here I am coming into this business
6 within the last year. Where's my incentive to stay
7 in this business if I have to come in it within this
8 dynamic?

9 MR. REYNOLDS: Okay. Anybody else? Yes, sir.

10 MR. ALLEN: I'm Ferris Allen. I've been here
11 since before the beginning. I remember making a trip
12 down here in the 60s to see if we could have racing
13 here, so this is very personal for me.

14 I've got a lot of notes, but what I really want
15 to do is I want to debunk a lot of Colonial's
16 argument here.

17 A lot of their argument early on -- and I blame
18 you, Commissioners, for buying in to it to a
19 degree -- was that they wanted high-quality boutique
20 racing. Well, they already have about as
21 high-quality boutique racing as they can have with
22 their Virginia Derby weekend and those stakes that we
23 as horsemen have agreed to skew in their favor so
24 they could have marquee races here.

25 we've had terrific people through here. We've

1 had Hall of Famer Edgar Prado through here. Tenth
2 leading rider of all time, Mario Peno through here,
3 and the best female jockey ever, Rosie Napravnik
4 here, and many, many top horses through here, because
5 we as horsemen have seen that having the best quality
6 racing we can have here for a certain weekend is a
7 great thing to do.

8 That's already been here, right, and we even
9 agreed, and D.G. was a proponent of this, of
10 tightening the meet down to 21 days so it could aim a
11 little more in that direction.

12 All that Colonial is interested in doing here is
13 reducing their expenses. That's all they care about.
14 They could give a rat's ass about horse racing.
15 That's all they want to do is reduce their expenses.

16 You can look at it over and over and over again,
17 and everything they've done, everything that has gone
18 on here, and look at it any way you want. Try to
19 find something that they've done that's anything
20 other than them reducing expenses, and I want to hear
21 about it. That's all it is. Thank you.

22 MR. REYNOLDS: Thank you. Jeanna.

23 MS. BOUZEK: I'm Jeanna Bouzek. I'm vice
24 president of operations. I want to speak on behalf
25 of the employees; not only the few that are left, but

1 the ones that have been laid off. I keep hearing
2 each commissioner say get these OTBs open. Get these
3 OTBs open. I can assure you these employees that
4 have been laid off, some starting in February and
5 some scheduled for this week and next week, aren't
6 just sitting around waiting for the OTBs to open.
7 Equipment has been sent back.

8 You can't just (snapping fingers). I stood up
9 here three months ago and said if we don't somehow
10 get these OTBs up and OTBs open, the system will
11 never look the same, and it's not gonna look the
12 same. So you can't figure into your calculations
13 that if all the OTBs are open, the employees are
14 gonna come on back and the customers are gonna come
15 on back.

16 You know, it's my job. I do what I'm told. It's
17 as hard on us as it is on the horsemen, as it is on
18 the horse owners, as it is on whoever. Just that the
19 employees that are left in the OTBs are taking a
20 beating over what's going on, and your OTB system is
21 never gonna look like it did before.

22 I stood up here and said it three months ago.
23 It's a shame that it got this far, and it's a shame
24 for the employees that I came up with 17 years ago
25 that we've had to look at and lay off because of all

1 this.

2 MR. REYNOLDS: We want to get what we can of
3 the OTBs open, and also want to look forward and
4 perhaps pursue instant racing. That gives us
5 something to shoot for. We can't do that without an
6 agreement between these two parties.

7 MS. BOUZEK: I understand the cost-cutting and
8 cost-cutting, but I invite anybody to come over to
9 the track after the meeting. We've done about
10 \$200,000 worth of renovations.

11 That was always something that I thought was
12 something we were supposed to have for this live meet
13 we were supposed to have in 2014. We did renovations
14 to the Jockey Club. We've expanded concessions.
15 We've done a lot of work in preparation for what is
16 now gonna be nonexistent in 2014.

17 MR. ALLEN: That's why you won't leave the
18 stable area closed.

19 MS. BOUZEK: I don't have any decision about
20 that.

21 MR. REYNOLDS: Any other comments? Yes, ma'am.

22 MS. GOODWIN: Good morning, Commissioners. My
23 name is Heather Goodwin, and I'm actually one of the
24 few people in this room that does not have a
25 financial stake whatsoever. I'm feeling pretty lucky

1 right now, obviously.

2 I do have an interest in Virginia and equestrian
3 activities. My father was, actually was before he
4 passed, one of your only other pari-mutuel licensees.

5 My father's name is John Holland, and he actually
6 came on the scene shortly after Colonial Downs
7 arrived and started their process, and he did race.
8 He raced one season, three weekends with a harness
9 horse. Unfortunately, we didn't have the privilege
10 of having Thoroughbreds then, but we did race one
11 season.

12 Unfortunately, on the projections that I
13 personally did for him at that time, the costs in
14 actually attempting another season were extremely
15 prohibitive and we bartered [sic] most of that on the
16 fact of where the industry was at that time.

17 We actually went along with Colonial Downs to
18 further legislation to add more OTBs down the road
19 when we weren't even operating, mostly because we
20 wanted to see the industry thrive. We wanted to see
21 the industry grow in the Thoroughbred, Standard, as
22 well as steeple chase, which we've done on several
23 occasions without pari-mutuel betting.

24 In my mind, one of the problems here, and I think
25 it has been touched on by everyone, is that these

1 parties don't have to play nice. They don't have to
2 work together. Fortunately, there is an opportunity
3 for all of you to make money with each other, if you
4 can come to an agreement.

5 I know that there has been some mention of
6 legislation, and I think one of the difficulties for
7 a commission such as yourself in Virginia is you have
8 no real power. You can't make anyone really do
9 anything. You can threaten to stop the industry and
10 bring everything to a halt, but that's not gonna
11 help anyone in this room. It's not gonna keep these
12 people employed. It's not gonna keep these people in
13 the industry. You're letting money go to other
14 states.

15 There is a benefit in Virginia to racing. There
16 can be money made. The problem is that the
17 Commission doesn't have the authority to make
18 everyone play nice.

19 what I would actually recommend, and it's several
20 years since I've have actually looked at the
21 legislation revolving around racing in Virginia, but
22 you need a requirement of mandatory arbitration to
23 bring these groups to the table and say, someone, a
24 third party, is gonna look at your numbers. We
25 want Colonial Downs and Jacobs, to whatever extent,

1 to make money. If he makes money, everybody else
2 makes money.

3 I understand the theory about them, you know,
4 wanting to cut their expenses. It is a whole lot
5 easier to be charitable and raise your percentages if
6 you're breaking even or making money.

7 So I would encourage the Commission to actually
8 look at legislation that allows you to do something.
9 Allows you to bring these parties to the table and
10 say we're gonna tweak the numbers here and there and
11 actually get somewhere, because otherwise, you've
12 wasted the last 20 years, not to mention a whole lot
13 of taxpayer dollars, and these people who are
14 dependent upon this industry are gonna have to look
15 elsewhere. Thank you.

16 MR. REYNOLDS: Thank you. Mr. Van Clief.

17 MR. VAN CLIEF: I'd like to respond to that. I
18 think that's a very perceptive and correct statement.
19 I agree with you. I think we suffer, all of us,
20 whatever party you want to look at, whatever faction,
21 from what, essentially, is a dysfunctional economic
22 model.

23 There aren't enough dollars in our system to
24 support race track, owner, breeder, collateral
25 industry and so forth.

1 I would like to echo the chairman's admonitions
2 that we get our planning group back to work in very
3 quick order. I will look forward to doing that
4 myself, and I think that one of the high priorities
5 on that list will be some enabling legislation from
6 the painful lessons that we've learned here in 2014.
7 Thank you for your comments.

8 MR. REYNOLDS: Thank you. Are there any last
9 comments before we go into closed session?

10 NOTE: There is no response.

11 MR. REYNOLDS: I see none. Mr. Laws.

12 MR. LAWS: Is there a motion to go into closed
13 session in accordance with Virginia Code
14 2.2-3711(A)(7), for the purpose of getting legal
15 advice from counsel on how to craft a motion that's
16 consistent with the Virginia Administrative Code and
17 the Virginia Code, and also to receive legal advice
18 on the resolution that has been proposed by Vice
19 Chairman Miller?

20 MS. DAWSON: Mr. Chairman, I so move.

21 MR. VAN CLIEF: Second.

22 MR. TROUT: Second.

23 MR. REYNOLDS: All those in favor?

24 NOTE: The Commission votes aye.

25 MR. REYNOLDS: we will be in closed session and

1 be back as quickly as possible.

2 NOTE: There is a recess from 11:10 a.m.
3 until 12:05 p.m.

4 MR. LAWS: At this point, is there a motion on
5 the floor to end closed session and go back into open
6 session, and certifying further that to the best of
7 each member's knowledge, only the public business
8 matters lawfully exempted from open meeting
9 requirements under this chapter, and only such public
10 business matters as were identified in the motion by
11 which the closed meeting was convened were heard,
12 discussed or considered in the meeting of the public
13 body?

14 MS. DAWSON: So moved.

15 MR. REYNOLDS: All those in favor, say aye.

16 MR. TROUT: Aye.

17 MR. MILLER: Aye.

18 MR. REYNOLDS: Any opposed?

19 NOTE: There was no response.

20 MR. LAWS: Mr. Chairman, with your indulgence
21 at this point, I'm gonna read a resolution.

22 The Commission is ordering Colonial Downs to
23 request 2015 Thoroughbred race days in accordance
24 with the directive set forth hereinafter.

25 The Commission is ordering Colonial Downs and the

1 Virginia HBPA to enter into a contract for 2015 live
2 Thoroughbred race days that will include at least
3 eight continuous weeks and 24 race days, three days
4 per week, with the stables and training facilities
5 open.

6 Such contract shall be presented to the
7 Commission or the executive secretary of the
8 Commission by July 1st, 2014. If Colonial Downs and
9 the Virginia HBPA enter into a contract for 2015
10 Thoroughbred race days, the Racing Commission will
11 rescind it's December 2013 order for Thoroughbred
12 race days in 2014.

13 Further, upon entering into this contract, by
14 operation of law, the satellite wagering facilities
15 in Virginia can once again begin accepting
16 pari-mutuel wagering on Thoroughbred horse racing.

17 Further, the Commission is prescribing and
18 delegating authority to the executive secretary of
19 the Racing Commission to accept and approve a
20 contract between Colonial Downs and the Virginia HBPA
21 that conforms to this resolution.

22 That's the end of the resolution. Mr. Chairman.

23 MR. REYNOLDS: Thank you. Is there any
24 discussion among the commissioners?

25 MR. TROUT: Let me say one thing real briefly.

1 I'm disappointed that we're skipping a year. I think
2 everybody else is disappointed to be skipping the
3 year 2014.

4 But I'm really reminded, and this is almost an
5 anniversary. Forty years ago, I started out as a new
6 lawyer. I was arguing or discussing with one of my
7 bosses the problems with a case I had, and he kind of
8 sat back and he looked at me and he said, "You've got
9 to play the cards that you're dealt. Whatever you've
10 got in your case, good and bad, that's where you are.
11 You can't do one more draw, you can't do more cards."

12 That's where I think we are today. We've been
13 through a lot of discussions. We've had a lot of
14 potential blames and potential problems that have
15 been gone through with losses of money here and
16 there, but right now, we are where we are today and
17 we need to go forward from our current situation to
18 play the cards that we're dealt, play the cards that
19 we have and not look so much towards the past as
20 something that needs to be corrected, but the future
21 as something that needs to be embraced.

22 So I do approve this resolution.

23 MR. VAN CLIEF: Mr. Chairman, do you need a
24 motion?

25 MR. REYNOLDS: I would love a motion.

1 MR. VAN CLIEF: In that case, I will move the
2 resolution as read by Mr. Laws.

3 MS. DAWSON: I second it.

4 MR. REYNOLDS: Hearing a motion and a second,
5 all those in favor, say aye.

6 NOTE: The Commission votes aye.

7 MR. REYNOLDS: The motion carries. Mr.
8 Weinberg?

9 MR. WEINBERG: For the record, let me make
10 Colonial Downs's legal objection to the order. I
11 think the order requires the terms of the contract
12 between the horsemen and Colonial Downs. That issue
13 has been decided by the Richmond Circuit Court once
14 before, and it has been held that the Commission does
15 not have the authority to prescribe the terms of that
16 contract, so I register our objection on that
17 grounds.

18 MR. REYNOLDS: Okay.

19 MR. WEINBERG: Secondly, you in essence have
20 made a finding of fact about 2015 race days, which is
21 contrary to the Administrative Procedures Act and to
22 your own regulations as to how that is to be done, so
23 I register our objection on that ground.

24 MR. REYNOLDS: Okay. Thank you.

25 MR. WEINBERG: Thank you.

1 MR. LAWS: If I could ask you a couple
2 questions about that. It's my understanding, and I
3 want to know if you agree, that under Virginia law,
4 the Commission has the authority to accept or reject
5 any term in the contract agreed to between the
6 licensee and the majority horsemen's group.

7 MR. WEINBERG: That is correct.

8 MR. LAWS: And would it then be appropriate for
9 the -- strike that. Would it then be lawful for the
10 Commission to tell the parties, the licensee and the
11 recognized majority horsemen's group, the terms that
12 it's willing to accept or terms that it's willing to
13 reject?

14 MR. WEINBERG: Yes.

15 MR. LAWS: Why does this resolution not fall
16 into that permissive category?

17 MR. WEINBERG: Because it uses the words shall
18 order Colonial Downs to enter into a contract that
19 contains these terms.

20 MR. LAWS: Thank you.

21 MR. WEINBERG: You're telling us what it has to
22 have.

23 MR. LAWS: I understand. Thank you.

24 MR. REYNOLDS: I certainly hope you all,
25 regardless of where this resolution falls, I hope you

1 all will work hard and get us some sort of contract
2 by July 1st.

3 MR. PETRAMALO: Donna Dennehy just poked me and
4 said, "You're a lawyer, too, aren't you?"

5 My view is that the Commission does have the
6 authority to do what it just did on the following
7 rationale.

8 You have outstanding a December 2013 assignment
9 of race days and ordered this Commission of five
10 weeks, 25 days. You reaffirmed that at your May 7th
11 meeting. What you in effect are doing analytically
12 and legally is saying to the parties, we the Racing
13 Commission will vacate that if you do the following.

14 Now the parties are free not to do that, and if
15 they don't, then we're stuck with five weeks, 25
16 days. I think that's perfectly lawful.

17 MR. REYNOLDS: Okay. Thank you. Any other
18 comments from the commissioners before I seek a
19 motion for adjournment?

20 NOTE: There is no response.

21 MR. REYNOLDS: Do I hear a motion to adjourn?

22 MR. TROUT: So moved.

23 MS. DAWSON: Second.

24 MR. REYNOLDS: All those in favor?

25 NOTE: The Commission votes aye.

1 MR. REYNOLDS: Thank you all for coming. We
2 are adjourned.

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5 NOTE: This hearing is adjourned at
6 12:12 p.m.

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CERTIFICATE OF COURT REPORTER

I, Sandra G. Spinner, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 29th day of June, 2014.

SANDRA G. SPINNER

COURT REPORTER