

1 VIRGINIA RACING COMMISSION

2 May 7, 2014

3 10700 Horseman's Road

4 New Kent, VA 23124

5 Commencing at 10:00 a.m.

6

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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

12

13

COMMISSION STAFF:

Bernard J. Hettel, Executive Secretary

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

Kimberly C. Mackey, Office Administrator

15 Joseph M. Roney, Director of Security & Operations

C. Richard Harden, DVM, Equine Medical Director

16

17

18

ATTORNEY GENERAL'S OFFICE

Joshua E. Laws, Esquire

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1 MR. REYNOLDS: I'm going to call today's  
2 Commission meeting to order, please. Thank you for  
3 coming. I certainly expect and hope that this is a  
4 productive meeting today.

5 The first item of business is to approve the  
6 minutes of the regular meeting of March 27, 2014.  
7 The minutes are behind Tab One. Are there any  
8 comments, additions, corrections to the minutes? If  
9 not, do I hear a motion to approve the minutes?

10 MS. DAWSON: I move that we approve the  
11 minutes.

12 MR. TROUT: Second.

13 MR. REYNOLDS: All those in favor?

14 MS. DAWSON: Aye.

15 MR. VAN CLIEF: Aye.

16 MR. REYNOLDS: Motion carries. Behind Tab Two,  
17 we have the minutes from our hearing held on April  
18 11th, 2014, behind Tab Two. They're pretty basic.

19 MR. TROUT: Mr. Chairman, I move they be  
20 approved.

21 MR. REYNOLDS: Do I hear a second?

22 MR. VAN CLIEF: Second.

23 MR. REYNOLDS: Did I get a second?

24 MR. VAN CLIEF: You did.

25 MR. REYNOLDS: Okay. All those in favor?

1 MS. DAWSON: Aye.

2 MR. TROUT: Aye.

3 MR. REYNOLDS: Yes?

4 MR. DUNAVANT: I would like to make some  
5 comments on that. I wasn't here for that hearing,  
6 but I wanted to inform the Commission that the  
7 harness horse people were extremely embarrassed and  
8 upset by the Commission's decision to vacate a  
9 judge's ruling in that matter.

10 I don't know how many of you are familiar with  
11 what Epogen is. Until very recently, we were unable  
12 to test for it, and it's a big, bad thing in cheating  
13 and horse racing, and I know the job that Dr. Harden  
14 has done in trying to catch these individuals that  
15 cheat, and they kind of had this person red-handed,  
16 and when I was at Rosecroft last week is when I heard  
17 about it, and we're kind of the laughing stock of the  
18 harness horse industry now for vacating that judge's  
19 decision.

20 MR. REYNOLDS: Okay.

21 MR. DUNAVANT: My people want to know is there  
22 any way that some criminal charges aside from that  
23 can be brought against this individual so that we're  
24 assured that he is ruled off everywhere in this  
25 country.

1 MR. REYNOLDS: Okay.

2 MR. DUNAVANT: You know, it's just not  
3 acceptable to the harness horse people for this  
4 individual to be vindicated.

5 MR. REYNOLDS: Okay. Well, are you done?

6 MR. DUNAVANT: Yes.

7 MR. REYNOLDS: I don't think anybody on this  
8 commission disagrees with those comments that he was  
9 caught red-handed. I'll ask Josh to maybe talk a  
10 little bit about why they were let off. It wasn't  
11 because of what he did or didn't do, but there were  
12 some serious technicalities that arose in this.

13 We all felt that he -- obviously, he did  
14 something, they tried to cover it up, but I want to  
15 turn it over for Josh to speak to that a little bit,  
16 and also maybe to speak about pursuing criminal  
17 charges in that thing.

18 MR. LAWS: Good morning. My name is Josh Laws.  
19 I'm from the Attorney General's office and I'm  
20 counsel for the Racing Commission, and I'll go ahead  
21 and address the criminal charge aspect first, and  
22 then I will --

23 MR. DUNAVANT: Can you speak up a little bit?  
24 I'm old and hard of hearing.

25 MR. LAWS: If you can't hear me, just stop me

1 and ask me to speak louder. I don't have a problem  
2 with that.

3 Regarding the criminal charges aspect, we did get  
4 in contact with the New Kent Commonwealth's attorney.  
5 The Commonwealth's attorney in any jurisdiction in  
6 Virginia is the person who is responsible for  
7 prosecuting criminal charges.

8 My office generally doesn't handle criminal  
9 charges, with some exceptions. We prosecute sexually  
10 violent predators and things like that, but this is  
11 not one of the areas that we handle. We don't have  
12 the jurisdiction to handle it, so we referred it to  
13 the New Kent Commonwealth's attorney's office.

14 My understanding from them is that the  
15 evidentiary burden in criminal court is you have to  
16 prove a charge beyond a reasonable doubt, so it's a  
17 higher burden than we have here, and that; one, the  
18 evidence just wasn't there to prove a criminal  
19 conspiracy, because that's what we would have to  
20 charge them with, is a criminal conspiracy.

21 There wasn't enough evidence to meet the beyond a  
22 reasonable doubt standard; and two, the people who we  
23 would prosecute, mainly, Dean Eckley, is in Ohio, so  
24 Virginia doesn't have the authority to actually issue  
25 a subpoena or an arrest warrant and then have it

1           enforced in Ohio. He would have to come back to  
2           Virginia, then we would arrest him, but beyond that,  
3           our criminal enforcement powers stop at our border,  
4           so we couldn't, you know, go over to Ohio and bring  
5           him back, in other words.

6           And two, the reason that the stewards' decision  
7           had to be vacated. In the Virginia regulatory  
8           scheme, there's probably eleven things that the  
9           Racing Commission personnel have to do in order to  
10          preserve the chain of custody and honor the due  
11          process rights as established in the regulations, and  
12          our folks did a great job; they got ten of eleven.  
13          They did by the book on ten. They did exactly what  
14          they were supposed to.

15          On the eleventh one, there was a little bit of a  
16          hiccup, partly because of the actions of Dean  
17          Eckley's agent, but that little hiccup was fatal to  
18          the case.

19          Under Virginia Code 2.2, I think it's -- I  
20          haven't looked at it in a month. I think it's 2.2 --  
21          I'm not gonna quote it. I don't remember it off the  
22          top of my head. 2.2-400.2, maybe.

23          There are certain standards that this Commission  
24          has to meet when making a decision, and because we  
25          had that one hiccup, we couldn't meet that standard,

1 and so it was my advice to the Commission that if  
2 they upheld the stewards' decision and it was  
3 appealed to the Circuit Court, that there was a  
4 greater than not chance that we would lose.

5 So I'm the one who suggested that the decision  
6 had to be vacated, because I felt that that's what  
7 the law required. I wasn't happy about it. I think  
8 you're right that it's a horrible drug and the  
9 evidence that we had indicated that he gave that  
10 horrible drug to that horse, but unfortunately, the  
11 law said that we had to vacate it. I'm not happy  
12 about it, but I think that's the --

13 MR. DUNAVANT: Let me ask you this. Now, I can  
14 understand that. Is there any way that this  
15 Commission or the management of Colonial Downs can  
16 make it aware to the other states and jurisdictions  
17 that this wasn't just a vacated decision; that there  
18 were complications in how this split sample was  
19 handled and the Virginia Commission is not letting  
20 this individual come back to the state and race?

21 MR. LAWS: Yeah. There's two responses I can  
22 give you to that. I know for a fact Colonial Downs  
23 has issued a no trespass order to Dean Eckley, and if  
24 I'm wrong, please correct me, but he's not allowed  
25 back to this racetrack.



1           And two, the decision that I'm drafting, which  
2 will be the decision of the Commission once they  
3 review it and once they approve it, that's public  
4 record. So the factual findings that are contained  
5 in that decision lay out what the evidence factually  
6 showed occurred. Then it has a legal analysis on why  
7 the Commission had to reach the decision it reached.

8           But the factual findings are public record, so  
9 what the Commission believes the facts show and what  
10 the Commission found as facts, the activity that Dean  
11 Eckley engaged in and his agent engaged in will be  
12 public record, and any state that wants to look at it  
13 can look at it.

14           MR. DUNAVANT: But I'm saying I don't know are  
15 they gonna want to hunt it down. Is there some way  
16 you can send that to them so you know they get it?

17           MR. LAWS: I think a 49 cent stamp would be the  
18 easiest way to do it. I'm not saying that the  
19 Commission will.

20           MR. DUNAVANT: My association could do that, if  
21 necessary?

22           MR. LAWS: Yeah. Any person, any corporation,  
23 anybody who thought it would be good to let those  
24 bodies know about it can send it.

25           MR. PETRAMALO: Doesn't it get included in the

1 RCI database?

2 MR. HETTEL: They only publish rules. In terms  
3 of the complete analysis of the law, I'm not sure  
4 they do that. We can certainly send it to them  
5 though. It's like ejection notices. They don't  
6 include that in their database.

7 MR. REYNOLDS: Mr. Van Clief.

8 MR. VAN CLIEF: Could I just, speaking as an  
9 individual, I'd like to have a brief comment as well.  
10 Just so there's no question, and for the record, yes,  
11 we are familiar with EPO. We know what it does and  
12 how it works and why it's bad and what it can do to  
13 horses, as well as to the integrity of the sport.

14 Nobody more than this Commission wanted to mete  
15 out what we felt was gonna be justice, and had there  
16 not been a serious legal obstacle to doing that, I'm  
17 sure we would have been on record with something that  
18 you would have found much more satisfactory.

19 I'd also like to make the point that I think this  
20 Commission is attuned to those types of issues as  
21 perhaps any, and I would point out that at this  
22 juncture, we are one of only four states and probably  
23 one of the first to have approved the new and  
24 substantially tougher medication rules. So it's very  
25 much in our gun sites and we are looking to be as

1 tough as we can on those kind of perpetrators.

2 MR. DUNAVANT: Thank you.

3 MR. REYNOLDS: Okay. Is that all?

4 MR. DUNAVANT: Yep.

5 MR. REYNOLDS: Thank you.

6 Before we get to the next part of the meeting, I  
7 actually wanna take a minute to welcome back  
8 Commissioner Clint Miller. Clint, I don't know why,  
9 but great to have you back. We need you and it's  
10 great to see you again after a couple years.

11 Commissioner Miller is a past chairman of this  
12 Commission. He brings a lot of experience to the  
13 table and we look forward to working with you.

14 MR. MILLER: Thank you.

15 MR. REYNOLDS: Thank you for joining us again.

16 MR. MILLER: I think I'm glad to be back. I  
17 really appreciate it.

18 MR. REYNOLDS: We're glad to have you.

19 With that, I will move on to Commissioners'  
20 comments, and I will start with Commissioner Miller,  
21 if you have any comments.

22 MR. MILLER: No comments, except, again, I look  
23 forward to working with all of you. I missed all of  
24 you. I really did.

25 MR. REYNOLDS: Commissioner Trout.

1           MR. TROUT: Just I'll point out once again the  
2 Board of Supervisors member Ron Spears is here with  
3 us today monitoring this and trying to figure out how  
4 the county is gonna balance the budget without the  
5 horsemen and Colonial Downs coming together on some  
6 kind of an agreement. I told him not to take a check  
7 home today.

8           MR. REYNOLDS: We're gonna get it done.  
9 Commissioner Dawson?

10           MS. DAWSON: Yes. Thank you. First of all, I  
11 do want to say that I do echo everything that  
12 Commissioner Van Clief just said about the Eckley  
13 case, that he accurately reflects how the Commission  
14 feels.

15           Secondly, I don't know how many of you have read  
16 the Richmond Times-Dispatch this morning, which I  
17 always try to do, and I didn't have time to bring it  
18 with me, but there is an editorial on the editorial  
19 page about a gentleman who just passed away who was a  
20 very accomplished gentleman.

21           But what the editorial did not say was that he  
22 was also a native Virginia Thoroughbred breeder. His  
23 name is Kenneth Tomlinson. He was an old friend of  
24 mine and had nothing to do with the horse world, but  
25 it was significant to me, because the last time I

1 heard from him was about the Colonial Downs  
2 horsemen's contract dispute and his saying to me that  
3 I do hope you will do everything possible to make  
4 sure that we do have racing at Colonial Downs this  
5 year.

6 So I just want to comment that he was one of the  
7 people that supported racing in the Commonwealth and  
8 he will be very much missed. I know he was a member  
9 of the ETA and very active in the Thoroughbred  
10 industry. So he deserved the accolades he got in the  
11 Times-Dispatch, but they forgot to mention his horse  
12 connections.

13 MR. REYNOLDS: Thank you, Commissioner.

14 I guess with my comments, you know, here we are,  
15 it's May 7, 2014, and we still don't have racing  
16 dates. We have been talking and talking since  
17 January about this. Obviously, we've had many  
18 articles in the paper about this, and quite frankly,  
19 it's time for the talking to stop and it's time for  
20 action.

21 I blame myself for a little bit. In my business  
22 world, I'm an extremely patient person. I've always  
23 negotiated with extreme patience and not pushing too  
24 hard, just let the sides come together. It's worked  
25 well in my life; it's not working well now.

1           So in my mind, today is the day. Today is the  
2 time to take action. I think I urge my fellow  
3 commissioners that we will take action today and we  
4 will pass a resolution and we will have racing dates  
5 in 2014.

6           That's about all I have to say. I could go on  
7 for hours, but I've talked to almost all of the  
8 stakeholders many, many times, Mr. Jacobs many, many  
9 times, Debbie, Ferris and Frank some, and it's just  
10 time for action, and with that, I'll turn it over to  
11 Commissioner Van Clief.

12           MR. VAN CLIEF: Thank you, Mr. Chairman. I  
13 agree with your comments about the four months of  
14 fruitless negotiations that we've undergone.

15           I'm sorry we are sitting here as late in the year  
16 as it is without a contract, and I only wish that the  
17 way we handled it had been a little different.

18           After 17 years, regardless of the nature of the  
19 dust-up, these parties have always managed to come to  
20 a compromise, work out a business plan and go  
21 forward. Certainly would have helped if they would  
22 have done that again, but here we sit.

23           I'd like to, if I could, Mr. Chairman, maybe take  
24 a few minutes to just make some personal observations  
25 --

1 MR. REYNOLDS: Yes.

2 MR. VAN CLIEF: -- about where we are and our  
3 job, and I'll be prepared, if you would desire at  
4 whatever point during the meeting if you wish to make  
5 a motion, and I will talk a little bit about that.

6 My view is that we are at a tipping point,  
7 perhaps an historic tipping point in the history of  
8 Virginia racing, which if you think about it actually  
9 goes back a couple hundred years.

10 As the Chairman said, it's time to take action.  
11 I think failure to do so and in that regard failure  
12 to run racing dates during 2014 potentially has the  
13 direst of consequences for our sport and our  
14 industry.

15 As I think everyone in the room knows, it's the  
16 Racing Commission's responsibility not just to  
17 regulate our sport, but we're charged with the  
18 responsibility of sustaining it, of promoting it, and  
19 if we can, of growing it, and I think that's turned  
20 into a bigger job than regulating it at this point.

21 when you think about what racing, as the point of  
22 the spear, if you will, supports in this state, it  
23 supports a tremendous amount of commerce and  
24 agriculture. whether it's training centers, breeding  
25 farms, lay-up operations, whatever the nature of the

1 operation, racing helps to support, and certainly  
2 over the last 17 years has directly supported the  
3 maintenance of thousands of acres of green space. It  
4 helps to develop and maintain a commerce not just of  
5 racing and breeding, which we focus on as our key  
6 constituents a lot of the time, but all the  
7 collateral industries with which you're all familiar.

8 whether it's the back office functions like  
9 insurance and accounting, or things you see as you  
10 drive along the road; the production of feed,  
11 equipment manufacture and sales, fencing, tack,  
12 veterinary services. The list goes on, and on, and  
13 on, and whether you express it as GEP or financial  
14 impact or whatever stats you like to use, racing  
15 supports an infrastructure, even as limited as racing  
16 is here Virginia, which develops millions of dollars  
17 in revenues, tax base and in capital assets.

18 After having sat on this Commission for now 16  
19 months and watched this, what has become a glacial  
20 process draw out over four months, I'm convinced that  
21 we have to have adequate days of live racing to  
22 continue to support that infrastructure and those  
23 jobs, much of which is the life work of some of our  
24 citizens and residents of this state while we  
25 transition to a new model.



1           we certainly have no objection to moving away  
2           from the status quo, and some of you heard me opine  
3           that I'd like to move away from the status quo as  
4           quickly as we can.

5           I think our responsibility as commissioners is to  
6           our entire industry and our constituents, and that  
7           includes our horsemen, our breeders and our  
8           racetrack.

9           we don't deny that Colonial Downs has every right  
10          to turn a profit and to deliver a positive return on  
11          their investment to their shareholders, and they made  
12          it clear they need a new model. We agree.

13          But I believe that to go dark, if you will, to  
14          not have live racing of the type we've had this year  
15          invites disaster.

16          we are already leaving a lot of money on the  
17          table. The numbers that we were just given this  
18          morning would indicate an estimated \$17 million-plus  
19          in lost handle and a total lost revenue in excess of  
20          \$620,000, among them the relevant stakeholders.

21          so I think it is absolutely essential that we go  
22          forward with racing this year, that we do it in a  
23          manner that will support a Thoroughbred race meet,  
24          and that we do it as swiftly as possible to get back  
25          in to action our satellite wagering facility, stop

1 leaving these dollars on the table, and perhaps most  
2 importantly of all, we have turned off our customer  
3 base. We are hearing from them almost every day, and  
4 when horse racing loses customers -- and we talked  
5 about this trend before.

6 Just to remind you, the latest study done by  
7 McKenzie Associates a couple of years ago indicated  
8 that racing nationally is losing four percent of its  
9 customers every year; not a sustainable trend.

10 I don't know what we're losing here now, but they  
11 will go away if we continue doing what we're doing,  
12 which is nothing, and they may not come back. So  
13 digging ourselves out of a hole any deeper than we've  
14 already dug is not a pleasant prospect.

15 Personally, I am prepared to offer a motion to  
16 the Chair and to my fellow commissioners that will  
17 mandate a five-week 25-day meet, run during the  
18 customary summer dates.

19 I offer it as a transitional year. I think it's  
20 important that we run during this transition, but I'm  
21 also going to ask my fellow commissioners to recommit  
22 to a serious planning process that will result in a  
23 new business model which will give Colonial Downs  
24 what it justifiably wants and needs in terms of  
25 building new product, high-end racing, but at the

1 same time provides continuity for our racing  
2 infrastructure so that there is enough racing to  
3 maintain that infrastructure and those jobs.

4 I think we also need to commit to building a  
5 Virginia racing partnership, one that has been  
6 shattered. I've always looked at racing as a  
7 partnership. With the state, it's a regulated  
8 agency, so here we sit representing the state, the  
9 racetrack operator and the horsemen.

10 That partnership has obviously been fractured,  
11 but I'm an eternal optimist, and I think we can put  
12 it back together and I think we must.

13 I think if we don't race this year, then we risk  
14 a permanent fracture of that partnership, and without  
15 such partnership, it's my opinion as well that  
16 developing the political wherewithal to go get done  
17 what we're going to need to get done to build a new  
18 model is going to be very, very difficult, if not  
19 impossible.

20 To give some credit where it's due, throughout  
21 this sort of painful negotiating period, there have  
22 been some creative ideas, and I think there are some  
23 exciting concepts which have been put on the table,  
24 and I would love to see us follow up on them.

25 Mr. Chairman, thank you.

1 MR. REYNOLDS: Thank you, Commissioner. With  
2 that, we'll go to the executive secretary's report.

3 MR. HETTEL: Yes, sir.

4 MR. REYNOLDS: Do we have any committee reports  
5 today?

6 MR. HETTEL: No.

7 MR. REYNOLDS: Okay. Go ahead. I'm sorry.

8 MR. HETTEL: Okay. No problem.

9 I'd like to start my report by asking Dr. Al  
10 Griffen, the host of the Gold Cup, to give us a brief  
11 synopsis of an excellent weekend and a huge, huge  
12 crowd and growth of pari-mutuel wagering in Virginia.

13 MR. GRIFFEN: Thank you. I bring good news  
14 today. The 89th running of the Virginia Gold Cup was  
15 held this past Saturday, and in attendance, we had  
16 over 70,000 people, which was up probably about  
17 12,000 to 15,000 over our previous high.

18 The course held well. Despite the torrential  
19 rains, the course held up throughout the day well. I  
20 think that with that number, we are well on schedule  
21 to reach our goal of over 100,000 attendees for our  
22 two-day race meets in spring and fall.

23 Handle was up over 67 percent over last year, so  
24 just over 135,000.

25 when you look at the breakdown of bets, you can

1 see the very unsophisticated nature of the better.  
2 Most of them were win wets. Basically, we have a lot  
3 of new blood here who are totally uninitiated as it  
4 comes to betting on horse racing. Great opportunity  
5 in our eyes.

6 we had only 42 horses running in six races,  
7 including the Virginia-bred flat. Little  
8 disappointed in that. I think it was due to the  
9 conditions that we've had to hold to through the  
10 National Steeple Chase Association, but which we have  
11 the opportunity to change and to improve and upgrade  
12 next year.

13 Anecdotally, for the first time ever during the  
14 course of the day, I had three different people, all  
15 sober and well-heeled, who came to me and asked how  
16 they could purchase a steeple chase horse. There was  
17 enthusiasm I can say that I hadn't encountered  
18 before. So to me, I think that speaks to the  
19 enthusiasm that day generated.

20 I'll answer any questions anybody has.

21 MR. HETTEL: Thank you, Doctor. Michael  
22 Pearson.

23 MR. REYNOLDS: We have questions.

24 MS. DAWSON: I do have a question for you.

25 MR. GRIFFEN: Sure.

1 MS. DAWSON: At the end of the day when,  
2 especially right after the Gold Cup, the fourth race,  
3 a lot of people were lined up to try to cash tickets.  
4 In the program, it said that tickets could not be  
5 cashed after 6:30. Some people had to get out of  
6 there. They didn't have time to stand in line.

7 MR. GRIFFEN: Right.

8 MS. DAWSON: It should be clear in the program  
9 what the alternative is. I think there was something  
10 mentioned about calling the Gold Cup office.

11 MR. GRIFFEN: Right. In the program, it states  
12 they can be cashed in at the Gold Cup offices between  
13 now and next year. I think it's six months to do  
14 that.

15 MS. DAWSON: Is it six months? Is that right?

16 MR. LERMOND: Six months. Yes.

17 MR. HETTEL: It would last until the next time  
18 we were there with the International. It would be  
19 good that day also.

20 MS. DAWSON: Okay.

21 MR. GRIFFEN: It's printed in the program,  
22 maybe not hi-lighted enough.

23 MS. DAWSON: Yeah. I think it needs to be.

24 MR. GRIFFEN: Certainly.

25 MS. DAWSON: As you said, there were a lot of

1 uninitiated betters there.

2 MR. GRIFFEN: Right.

3 MR. REYNOLDS: Do you have a bet on how many  
4 outstanding tickets you have?

5 MR. GRIFFEN: No. I don't have that.

6 MR. REYNOLDS: How did it go this year versus  
7 last year? You all had a lot of growing pains.

8 MR. GRIFFEN: We did. What we found was that a  
9 couple times, we were able to postpone the start by a  
10 couple of minutes to accommodate the lines. Talking  
11 to the tellers afterwards, there were very few, if  
12 any, people that did not get to place their bet.  
13 Most people were betting on the following race.  
14 There was a little bit of, again, an initiation.  
15 People would stand in line, get to the beginning and  
16 not know what to do.

17 MR. REYNOLDS: Right.

18 MR. GRIFFEN: So that still is a learning curve  
19 we're trying to help with.

20 MR. REYNOLDS: That's great. Congratulations.

21 MR. PETRAMALO: Commissioner Dawson, I'd like  
22 to point out that I made several wagers while I was  
23 there, but not once did I have to stand in line to  
24 cash a ticket, so.

25 MR. HETTEL: Excellent handicap.

1 MR. PETRAMALO: We'll be back in the fall.

2 MR. REYNOLDS: That's great.

3 MR. PEARSON: I would like to say that's why we  
4 send Mr. Petramalo.

5 MR. HETTEL: Mr. Pearson, do you have any  
6 comments you'd like to make, other than the  
7 handicapping?

8 MR. PEARSON: I think that as a person that has  
9 watched racing for a very long time, that so many  
10 things in racing are on a downturn nationally, it's  
11 really been invigorating for me to watch Gold Cup  
12 become a player in this picture.

13 And to a person that's particularly jaded from  
14 being at a racetrack 55 years my last birthday, I've  
15 had some sort of professional license for 55 years, a  
16 long time. To see the enthusiasm of the public at  
17 those races.

18 After watching a million races that are just  
19 races, just the distribution of funds made me feel  
20 good about our sport, and I think that there's  
21 something to be taken from that, from all the  
22 participants in this room, but I think it has to be  
23 recognized and accepted before you're going to be  
24 able to make any progress. Thank you.

25 MR. HETTEL: Thank you. Okay. We'll get now



1 to the impasse of the 2014 Thoroughbred days, and I'd  
2 like to call on either Ian or Jim. would you like to  
3 begin this discussion on where you are with the 2014  
4 race meet?

5 MR. STEWART: Sure. Good morning. This  
6 morning, let's start with the facts. On December 11,  
7 2013, the VRC ordered 25 race days over five weeks.  
8 This was perceived to be a status quo solution. In  
9 extended negotiations, we offered to race more days  
10 to compensate for cost.

11 On January 28, 2014, the contract with the HBPA  
12 expired. On January 30, 2014, I wrote Mr. Hettel a  
13 letter, which Colonial Downs reiterated its  
14 previously stated willingness to sign the same  
15 contract as before and run the 25 days.

16 On February 4, 2014, upon the HBPA's continued  
17 refusal to extend the contract, the VRC ordered  
18 Colonial Downs to stop taking wagers on the  
19 Thoroughbred races in the OTBs. No matter what else  
20 you hear today, these are the facts.

21 Today, we find ourselves in a very ironic  
22 position. The HBPA, after three months of  
23 unsuccessfully trying to muscle Colonial Downs into  
24 giving in to it's demands, decides they want to do a  
25 contract and race 25 days after all.

1           while it's certainly admirable that they appear  
2           to have realized the futility and self-destructive  
3           nature of their actions, it's not that easy to turn  
4           the clock back and pretend the last three months  
5           never happened.

6           In the three months from February to the end of  
7           April, the HBPA's actions cost the state \$240,000 and  
8           the localities \$125,000 in lost pari-mutuel bets. It  
9           has cost the Breeders Fund \$100,000, the Thoroughbred  
10          purse account \$670,000. Ironically, the harness  
11          purse account has been the sole beneficiary, by my  
12          calculation, gaining \$119,000. This obviously is the  
13          time of year when the interest in horse racing is at  
14          its peak.

15          This has cost Colonial Downs approximately \$1.5  
16          million against it's operating plan. Four of our  
17          OTBs are closed. A number of people lost their jobs  
18          or had their hours reduced. Today, we find ourselves  
19          in a very different place than we were three months  
20          ago.

21          So now, the HBPA wants to turn the clock back and  
22          race 25 days, a return to status quo. Unfortunately,  
23          that's not possible. The operating funds to pay for  
24          the 25-day meet were never generated because there's  
25          been no Thoroughbred wagering in the OTBs for the

1 last three months. So how can we have status quo at  
2 25 days after losing three months worth of revenue?

3 To argue that another low-end race meet will  
4 achieve the mandate to promote and sustain and grow  
5 Virginia racing while promoting excellence is a  
6 pretty big stretch. What's the point of Colonial  
7 Downs spending another \$1 million to pay for a  
8 five-week meet that does not advance the strategic  
9 vision of Virginia racing?

10 In spite of this, if the HBPA is prepared to  
11 reimburse us for our losses in the last three months,  
12 we'll run the 25-day meet and we're prepared to spend  
13 the next ten days negotiating the details.

14 In the event the HBPA does not agree, we're  
15 prepared to run several weekends for the Breeders  
16 Fund money. This will require horsemen to join the  
17 request with us for the standard 18 percent and 22  
18 percent take-outs. We invite those who would like to  
19 race to do so. We're trying to make the best of the  
20 current situation.

21 We live in kind of a funny world. For some  
22 reason, many people believe nothing is anyone's fault  
23 and there are no consequences. The harsh reality is  
24 this.

25 Since February, every stakeholder in Virginia

1 Thoroughbred racing has lost something. It is  
2 somebody's fault and there are consequences. Simply  
3 pretending the last three months never happened is  
4 not an answer. To suggest we can simply return to  
5 the status quo is not an answer. Even with 25 days  
6 of racing, we're operating slightly above a  
7 break-even cash flow on a huge investment. We cannot  
8 operate at a loss.

9 Horse racing in Virginia requires a long-term  
10 plan that recognizes the strategic and economic  
11 reality. Nothing else is sustainable. It's very  
12 difficult to force somebody to keep doing something  
13 that loses money. It's time to move beyond the  
14 short-term battles to achieve short-term goals and  
15 look to the future. The sooner we contract a  
16 long-term economic model that works, the sooner we  
17 get back to racing.

18 MR. HETTEL: Thank you, sir. Mr. Petramalo or  
19 Stephanie?

20 MR. PETRAMALO: Yes. Let's talk about the  
21 facts in specifics, as opposed to generalities. We  
22 were here -- well, let me back up. We started  
23 negotiating with Colonial Downs for a new contract in  
24 late summer, early fall of 2013. That contract, of  
25 course, included race days. We got to December and we

1 had reached no agreement on the issue of race days.

2 As you will recall, Colonial Downs submitted a  
3 request for four weeks, 12 days. We submitted a  
4 request for eight weeks, 32 days. That was  
5 consistent with the long-established -- and when I  
6 say, "long-established", I'm talking ten-year formula  
7 that we use for determining race days.

8 We took \$200,000 -- when I say, "we", this is  
9 Colonial and the horsemen now. We took \$200,000,  
10 divided it into the available purse money to ride at  
11 race days. Well, the formula yielded 30 days for  
12 2014. Colonial reneged on the formula.

13 So we extended our contract which expired on  
14 December 31st three different times through  
15 January 29. We were getting nowhere, and on  
16 January 29, I had a conversation -- we were supposed  
17 to be here in the meeting, but it was called off  
18 because of snow.

19 That same day, I had a conference call with Ian  
20 and Jim, and we agreed that we were at a stalemate  
21 and that there was no sense in negotiating further.  
22 That meant the contract expired with the third  
23 extension, and by law, not by any action of the HBPA.  
24 By law, without a contract, the OTBs had to shut down  
25 the Thoroughbred racing.

1           Now here's where we were in terms of race days at  
2           that point. This was an agreement between the  
3           principals, Ian and myself, on seven weeks, 28 days.  
4           However, Colonial said we can only do that if you  
5           reimburse us or give us \$300,000 toward overhead  
6           expenses. Our counter was, no, we'll do 150,000, but  
7           not 300,000. So that's where the stalemate was; not  
8           really a big problem.

9           The Commission set up professional mediation  
10          through the McCammon group. When we went to  
11          mediation, I thought we were there with 7/28 and the  
12          difference between us being 150,000. During that  
13          mediation, the HBPA upped its counter offer to  
14          \$280,000, only \$20,000 apart.

15          Colonial rejected it, and for the first time says  
16          we want to run two weeks for a total of six days,  
17          high-end boutique meet. Well, the mediator threw his  
18          hands up in frustration and said we're not going  
19          anyplace on this.

20          About a week or two later, we came back to this  
21          Commission on St. Patrick's day, and this Commission  
22          proposed a compromise; seven weeks, 21 days, cutting  
23          back from the seven. We agreed to that and put that  
24          in writing to the Commission. Colonial rejected it.

25          Colonial then came back with -- excuse me. I

1 believe that the next thing that happened was  
2 Colonial came back with three scenarios rejecting  
3 seven weeks, 21 days. They came back with three  
4 scenarios, which can be fairly characterized as  
5 centering around a six-day boutique meet in the fall  
6 with high purses, and Colonial also said, look, we  
7 need a long-term agreement.

8 We rejected that for reasons that I won't get in  
9 to, but we countered. We said, okay, here's what  
10 we'll do. We will agree to seven weeks, 21 days in  
11 the summer, and we'll agree to a three-day boutique  
12 meet, and because you want stability, we'll do a  
13 two-year deal. Well, Colonial rejected that also.

14 The next thing that happened was the Commission  
15 got involved again and proposed a compromise of six  
16 weeks. We accepted that; Colonial rejected that.

17 Then Commissioner Reynolds on behalf of the  
18 Commission sent out a letter to us and said, look,  
19 this is it. Time to act. We're gonna give you until  
20 May 1st. Make another attempt at reaching an  
21 agreement, and we did that.

22 I had conversations with Jim Weinberg, and he  
23 said Jeff Jacobs is willing to come up here and meet  
24 with the horsemen, but let's see first of all whether  
25 we can agree with some concepts to see whether it

1 makes any sense for him to do so.

2 The concepts were as follows. Colonial wanted to  
3 split the purse account in the following fashion.  
4 Two-thirds to a summer meet and one-third to a fall  
5 boutique, and I said that's no problem. We pretty  
6 much proposed that in the 7/21 scenario that we did.

7 He said, however, Colonial wants the option to  
8 use that one-third money from the purse account or  
9 income from Instant Racing to reimburse its apparent  
10 \$1.5 million loss. My response was I think it highly  
11 unlikely that our board would ever agree to use purse  
12 money to reimburse you, but I propose the following.

13 Colonial says they lost a million-and-a-half, and  
14 at that point, we figured our loss was about a half a  
15 million. I said, well, subtract our half from your  
16 million-and-a-half, leaving a net of \$1 million, and  
17 with regard to your reimbursement of that sum, we'll  
18 take it from Instant Racing, if and when it comes,  
19 but my board will not agree to use purse money for  
20 that. A day or two later, Jim Weinberg came back and  
21 said that's not acceptable to Colonial.

22 So here we are. You decide who's at fault here.  
23 I think there's enough blame to spread among all  
24 sides, including the Racing Commission. I think  
25 you're to blame, and I kind of put that in quotes,



1           because you were too lenient on us. We were diddling  
2           around for four months going absolutely noplacE, and  
3           here we are almost in the middle of May when the back  
4           side usually opens up for shippers. So we're way  
5           behind the curve at this point.

6           But I think it's simply wrong to say that now  
7           everything has, as Ian says, everything has changed  
8           and we can't go back and do the five weeks, 25 days.

9           They are as much to blame for losses as we are.  
10          All they had to do is sit down and be reasonable, the  
11          same way they've done every year for at least the  
12          last 13 years that I've been involved. This year was  
13          different. It's my way or the highway. That was  
14          their view.

15          But in any event, so here we are today. While  
16          we're not happy with five weeks, 25 days, we  
17          understand that those are the days that the  
18          Commission has assigned. We can't wait any longer,  
19          so we will run those days and we will cooperate. And  
20          when I say, "cooperate", that means we will execute a  
21          contract with Colonial for this year, that for all  
22          intents and purposes is the same as the contract we  
23          had last year.

24          Now, Colonial says, well, we're not gonna do  
25          that. Well, I suggest it's now time that you start

1 acting as a regulatory agency that has the  
2 responsibility to make and enforce decisions that are  
3 in the best interest of Virginia racing.

4 You have the authority to direct Colonial Downs  
5 to run the five weeks, 25 days that you've assigned,  
6 even if they don't want to run them, because if they  
7 don't, the statute makes it quite clear that you,  
8 quote, shall revoke their license to operate the OTBs  
9 if they do not run the assigned days.

10 As I said, we'll cooperate, we'll execute a  
11 contract, and I don't think there's anymore time  
12 for delay.

13 MR. DUNAVANT: The harness horsemen are  
14 concerned. We heard rumors that as Frank just  
15 mentioned, they might shut down the OTBs and take  
16 their license. We have a contract for this year, and  
17 we feel like that would kind of be stepping on the  
18 harness horsemen's shoes if you were to shut down the  
19 wagering in the OTBs when we have a contract to race  
20 and we don't think that's proper.

21 MR. REYNOLDS: We're aware of that. Thank you.

22 Bernie, do we need go into a closed meeting  
23 today?

24 MR. HETTEL: Yes, sir. We do. We have a  
25 personnel matter we need to talk about.

1           MR. REYNOLDS: Can we do that after the public  
2 participation towards the end of the meeting?

3           MR. HETTEL: Sure. Absolutely. It would be  
4 the last item.

5           MR. REYNOLDS: I'd like to make it the last  
6 item, so those who want to leave and not stick around  
7 for that --

8           So I want to move to the public participation.  
9 We have a lot of folks from the public today. If you  
10 all would like to speak, you're welcome to. If you  
11 would like to speak, please just stand up and state  
12 your name, please, for the record. Would anybody  
13 from the public like to speak?

14          MS. COSLEY: Actually, I do. As the Gold Cup  
15 --

16          MR. REYNOLDS: What's your name?

17          MS. COSLEY: My name's Catherine Cosley [ph].  
18 I actually live locally. As I mentioned back on  
19 March 17th, I came on the back side of the racetrack  
20 as a hot walker and just a horse enthusiast, and now  
21 five years later, I now own two Thoroughbred race  
22 horses.

23          As the representative from the Gold Cup  
24 identified, part of this is growing the sport, and I  
25 now am getting in to the sport at a time period

1           wherein it's more of a low point, and I just want  
2           people to realize that there are people out there  
3           that are enthusiastic about this, and that unless  
4           this goes forward for somebody as small as myself,  
5           I'm not gonna be able to continue moving in that  
6           direction, unless there's something here locally for  
7           me to be able to race my horses, and that's all I  
8           have to say.

9                     MR. REYNOLDS: Thank you. Anybody else?  
10           Debbie?

11                    MS. EASTER: Debbie Easter, Virginia  
12           Thoroughbred Association. I think as I've stated  
13           before at previous meetings, I think it's unfortunate  
14           that we've gotten to this point. Obviously, for us  
15           to grow racing and for Colonial Downs to be  
16           successful, hopefully successful, that we all have to  
17           go forward as partners. As Chairman Van Clief said,  
18           that's -- we're not acting like good partners here at  
19           this point.

20                    I'm interested in Mr. Stewart's comments about  
21           the couple days they might propose, a couple weekends  
22           with Breeders Fund money, because that's the first  
23           we've heard of that proposal, and being a  
24           representative of the Breeders, I think I would have  
25           loved to hear that phone call before it was put out

1 in public here.

2 But I do think, you know, there are those of us  
3 that are open minded. We know the model is broken.

4 Chairman or Commissioner Van Clief's Blue Ribbon  
5 Committee. We've all said we're open minded. We  
6 need to look at the whole situation. We need to  
7 study what's going on.

8 We know that Colonial -- nobody's arguing that  
9 they don't lose money while we're having live racing  
10 here, and the model is broken and we got it. I would  
11 just let everybody know that this is a transitional  
12 year and that people are very open minded to talking  
13 about the future and making it a win-win for  
14 everybody. Thank you very much.

15 MR. REYNOLDS: Thank you. Any more? Yes,  
16 ma'am.

17 MS. GODSEY: My name's Karen Godsey, and I've  
18 been a trainer down here the last ten years and I  
19 have a training center in Ashland, Virginia.

20 If we don't have racing days this year, I leave  
21 here, I have to send probably 15 horses out-of-state.  
22 I probably need to lay off two people. I need to  
23 call my feed man and tell him I probably don't need  
24 but half the feed you're bringing me. My hay man,  
25 all that kind of stuff. So it's gonna affect people

1 like me greatly.

2 Mr. Wilson here, I train a horse for him. We're  
3 waiting to set up a van, depending on what happens in  
4 this meeting, whether he stays here and races, keep  
5 supporting Virginia racing, or we'll be sending him  
6 out-of-state.

7 MR. REYNOLDS: Thank you. Yes, ma'am.

8 MS. MCKENNEY: My name's Jessica McKenney.  
9 I -- for Colonial Downs at the Dogwood Classic. I  
10 got my trainer's license last year. Looking forward  
11 to a great meet this year.

12 I had a stakes horse, a Virginia-bred stakes  
13 horse that holds a track record that I pretty much  
14 gave away yesterday. I claimed him two or three  
15 years ago for 16,000 here. I pretty much gave him  
16 away yesterday, because I figured since Colonial  
17 Downs didn't come to agreement before the Derby that  
18 we're done.

19 It breaks my heart to give away these horses that  
20 I put my blood, sweat and tears in to, because we're  
21 talking about losses because people can't come  
22 together on something. It's not just my livelihood;  
23 it's my passion and it's my life, and it's not just  
24 playing games about who did what and pointing fingers  
25 at somebody.

1           It's so frustrating to see all the bad  
2 information circulating, when I know that Frank and  
3 the HBPA has been willing to negotiate, that they  
4 have had other options, and then we come in here and  
5 get something like Mr. Ian has proposed that's just  
6 outrageous, that if anyone can sit here and can  
7 listen to this, I just want to get up and leave.

8           I have some people that are trying to sell some  
9 straw. Do you know anybody that would like to buy  
10 some? Because we're sitting on it. She can send it  
11 to Delaware, but she'd rather, you know, sell it to  
12 these people here.

13           These good people like Karen, like Stephanie that  
14 have farms here, they're stuck in a lurch.

15           what are we gonna do? Time for bickering is  
16 over. Let's make a decision whether we close it down  
17 or we work something out, because it's a wonderful  
18 facility and a wonderful place and it has got great  
19 people, so I really hope we can come up with  
20 something.

21           MR. REYNOLDS: Thank you. Anybody else?

22           NOTE: There is no response.

23           MR. REYNOLDS: Okay. Let's see. I think it's  
24 time for our motion.

25           MR. VAN CLIEF: All right. Mr. Chairman, I'm

1 prepared to offer a motion as follows. Whereas the  
2 Virginia Racing Commission's charged with a  
3 responsibility of sustaining and developing the  
4 Commonwealth's native horse racing industry, and  
5 whereas as Colonial Downs and the Virginia HBPA,  
6 after not less than four months of negotiation,  
7 mediation and attempted compromise have not reached  
8 agreement on a contract for conduct of live racing  
9 during 2014, and whereas it is our belief that  
10 failure to conduct a live race meet in 2014 would do  
11 irreparable harm to the state's horse racing and  
12 breeding industries, we the Virginia Racing  
13 Commission hereby direct Colonial Downs to conduct a  
14 2014 summer race meet of not less than five weeks in  
15 25 days duration, and further direct that training  
16 and stabling facilities necessary to sustain such  
17 race meet be made available to horses and their  
18 connections which would participate in the meeting.

19 we further direct the Virginia HBPA and Colonial  
20 Downs to immediately enter the necessary contractual  
21 agreements necessary to conduct such race meeting and  
22 necessary to immediately commencing operation of the  
23 state's satellite wagering network.

24 we further direct that such contract be submitted  
25 to the Commission -- I'm going leave this open, but I



1 would have said within ten days, so let's be specific  
2 on that before we leave -- but I'll include it as  
3 within ten days following this meeting, so that any  
4 approvals necessary may be issued by the Commission  
5 without delay.

6 Now, as a footnote, my ten-day period was as fast  
7 as I could make it, while we still give legal notice  
8 of a meeting. So that is subject to change if the  
9 Commission or others think it appropriate.

10 MR. REYNOLDS: Yes, sir.

11 MR. VAN CLIEF: While making the motion, I  
12 wanted to also stipulate that the 2014 contract be  
13 transitional in nature.

14 I want to be clear with all the parties that the  
15 Commission does believe we need to develop a new  
16 model. We need to pursue some of the initiatives  
17 that have been mentioned to us in recent weeks, and  
18 we will convene the industry stakeholders for the  
19 purpose of developing such an updated racing model  
20 and pursuing the implementation of productive new  
21 initiatives.

22 Such a plan will be designed to give Virginia  
23 racing the opportunity to reverse its present  
24 declining trends and to support growing racing and  
25 breeding industries within the state.

1           we're gonna ask the stakeholders who are  
2           currently convened under the auspices of our VRC  
3           so-called Blue Ribbon panel to continue to make  
4           immediate and best efforts to reach agreement  
5           regarding the specifics of a new business model.  
6           It will be our intent to use such a model as the  
7           basis for a multi-year contract, so we can hopefully  
8           give some stability and a chance for progress to the  
9           industry going forward.

10           MR. REYNOLDS: Thank you, Mr. Van Clief. Are  
11           there any questions from the commissioners before I  
12           entertain a motion?

13           MR. TROUT: Mr. Chairman, just a brief comment.  
14           I think this is a good resolution that tries -- we've  
15           heard a lot of concern about who is responsible for  
16           what, and some of that responsibility has been placed  
17           on this Commission, and I think this is an effort by  
18           the Commission to try to make things work, at least  
19           assuming that it does go through.

20           I think that this is a valid and appropriate  
21           action to be taken by this Commission at this time in  
22           order to try to preserve and move forward horse  
23           racing in Virginia, pari-mutuel betting in  
24           particular. Thank you.

25           MR. REYNOLDS: Okay. Ms. Dawson?

1           MS. DAWSON: Mr. Chairman, I agree with  
2 Commissioner Trout. I don't know whether this  
3 resolution will be adopted, but I do ask that if it  
4 is, could we have the authority to amend it and  
5 correct it grammatically in a couple places?

6           MR. REYNOLDS: Yes.

7           MS. DAWSON: All right.

8           MR. VAN CLIEF: Just a comment, too. I think  
9 anything I write, it's implicit that it needs to be  
10 corrected grammatically, so I say absolutely.

11           One other technical point, too. It occurs to me  
12 that obviously, this Commission voted in December to  
13 pre-approve, for lack of a better description, a  
14 five-week, 25-day meet.

15           So technically speaking at this point, should the  
16 motion be couched as a reiteration of that approval  
17 or a reconfirmation of that approval, Counselor?  
18 From that standpoint, how should we technically couch  
19 that?

20           MR. TROUT: Would Counsel take a look at that?  
21 That was actually something where the Commission said  
22 if such a contract comes before the board, it was  
23 something we would consider favorably or at least  
24 vote on it.

25           This actually is probably a stronger document

1 that is coming up now, and Counsel, he's pondering  
2 about it, so he's thinking. You gotta worry when an  
3 attorney starts thinking.

4 MR. LAWS: The Commission assigned racing days  
5 in December 2013. I don't think at this point that  
6 assignment of racing days currently as things are now  
7 can be reopened. I don't think it can be done anew,  
8 so I think phrasing it as a reiteration of a previous  
9 order would be proper.

10 MR. VAN CLIEF: Mr. Chairman, I amend my motion  
11 to move that we reiterate our action in December.

12 MR. REYNOLDS: Okay. Are there any other  
13 comments?

14 MR. TROUT: One thing you mentioned with the  
15 ten-day period, we do need to -- unless this would  
16 constitute pre-approval, we do need to meet and to  
17 approve the contract; is that correct, Counsel?

18 MR. LAWS: Yes.

19 MR. VAN CLIEF: Is ten days appropriate at this  
20 point? Is that something that -- I would think if  
21 the parties can agree, they would deliver a contract  
22 for approval within ten days.

23 MR. TROUT: As far as notice of the meeting,  
24 can this meeting be continued to another date that  
25 might be less than the ten days, or is that ten days

1           pretty much an administrative law requirement for  
2           notice?

3           MR. LAWS: I think ten days is what it is, but  
4           the Commission can issue a notice every day saying  
5           that ten days from now we're gonna have a hearing,  
6           and once the contract is agreed to, that way the  
7           notice would already be out there and you could just  
8           rescind the notices that are irrelevant.

9           MR. REYNOLDS: Ten days would be Saturday,  
10          May 17th, so the earliest date would be May 19th.  
11          That's 12 days.

12          MR. VAN CLIEF: My intent was to turn up the  
13          heat as high as we possibly could to get the parties  
14          to come together and get back to us, since time is  
15          now of the essence.

16          MR. PETRAMALO: I don't know the answer to this  
17          question, but is this approval of the contract  
18          something that you could delegate to the executive  
19          secretary in the same fashion that in the past you  
20          delegated to the executive secretary approval of ADW  
21          license renewals? I don't know the answer to that.

22          MR. VAN CLIEF: I'd ask Counsel, and if we can,  
23          then I would amend my motion again to authorize the  
24          executive secretary and chairman to approve it.

25          MR. LAWS: I don't know the answer to that off

1 the top of my head. I'll look in to it and be happy  
2 to talk to you and Jim about it as well.

3 MR. REYNOLDS: Anything within our authority  
4 that we could do to expedite it, certainly, we want  
5 to do.

6 MS. EASTER: I don't know if I'm allowed to  
7 have a question right now, but certainly one of the  
8 stumbling blocks has been the reimbursement of  
9 colonial in this matter, and I don't know if you all  
10 have to meet to be more specific in your resolution,  
11 so that that doesn't become a stumbling block in the  
12 next ten days.

13 MR. REYNOLDS: Personally, that's gonna be  
14 their problem. As a Commission, we're gonna direct  
15 five weeks, 25 days of racing, and we're gonna use  
16 everything within our power to see that that happens.

17 As far as reimbursement, they're gonna have to  
18 figure that out themselves. If somebody wants to  
19 differ, that's fine.

20 Commissioner Miller?

21 MR. MILLER: Mr. Chairman, there's always  
22 disadvantages to being a lawyer. One of the  
23 disadvantages is that you always should be certain  
24 about exactly what you're voting on, and since this  
25 is such a contentious issue to begin with, perhaps

1 let me suggest that while we're in our -- well,  
2 either while we're in our closed meeting, someone be  
3 delegated to put the words of this resolution down  
4 exactly.

5 MR. REYNOLDS: Yes.

6 MR. MILLER: Because once you pass a resolution  
7 that has a binding legal effect, it should say what  
8 it's supposed to say without any subsequent  
9 anticipated amendments or changes in the resolution  
10 to satisfy someone's question about what does the  
11 resolution say.

12 In other words, let's have the resolution exactly  
13 set down exactly what it's supposed to say, so that  
14 that if someone does want to and ancillary  
15 attack -- if that's a word -- the resolution, they  
16 have the exact resolution that we voted on, not some  
17 uncertainty. Am I making myself clear?

18 MR. REYNOLDS: You are.

19 MR. MILLER: In other words, let's put it down  
20 so that every word means what it says, and so that  
21 there's no doubt, so everyone has a clear  
22 understanding about exactly what the resolution says,  
23 because any party would have a right to attack the  
24 passage of the resolution.

25 MR. REYNOLDS: Right.

1           MR. MILLER: I assume -- and it's a contentious  
2 issue, so I can't assume that all the stakeholders  
3 are gonna be satisfied with whatever resolution we  
4 pass. I would hope they would be, but they may not  
5 be, and they're gonna have to have an opportunity to  
6 say this is what's wrong with the resolution.

7           MR. REYNOLDS: Right. I would agree with you  
8 that we need to vote on something that's clear and  
9 concise. Now, my question is if we went into a  
10 closed meeting to draft this, is that legal for us to  
11 sit there and draft it, or do we have somebody  
12 working on it while we're in our closed meeting?

13           MR. MILLER: I would suggest we have somebody  
14 working on it.

15           MR. LAWS: We can go into closed session for  
16 more than one reason, and we can do it for a  
17 personnel reason and also in anticipation of probable  
18 litigation. So when it's appropriate to make the  
19 motion to go into closed meeting, I'll list those two  
20 reasons, and at that point, we can talk about the  
21 personnel issue and draft the appropriate language in  
22 a clear and unambiguous language for the motion.

23           MR. MILLER: I think Jim has an observation.

24           MR. WEINBERG: I just wanted to add to  
25 Commissioner Miller's observation. I think the last



1 resolution was this was a reiteration of a order  
2 previously entered in December, to which Colonial  
3 Downs has no objection.

4 To the extent this is an amendment and it seeks  
5 to change the order, Colonial Downs would just note a  
6 procedural objection.

7 I think the Commission, under the Administrative  
8 Process Act, has an obligation to notify the parties,  
9 look, at this meeting, we are going to amend or  
10 consider an amendment of a preexisting order and put  
11 us on notice so that we are prepared to address those  
12 issues that come up.

13 So with all due respect, I don't think the agenda  
14 that was circulated for this meeting did that, so I  
15 didn't want to hold that back, have a lot of effort  
16 go into a resolution and then object on procedural  
17 grounds.

18 Substantively, I think what you have urged the  
19 parties to do, Mr. Stewart said in his remarks we're  
20 prepared to do, to have those discussions to see if  
21 we can come to a contract in the next den days. I  
22 offer that up in a sign not to be obstructionist, but  
23 to try to be helpful.

24 MR. REYNOLDS: No, no, no. It's good to know  
25 all that up front. Thank you.

1 Do you think we should go into closed session?

2 Do you want to read the order?

3 MR. LAWS: Yeah. I have the cite on my phone.

4 MR. REYNOLDS: Okay.

5 MR. LAWS: At this point, is there a motion to  
6 go into closed meeting under 2.2.37(11a) of the  
7 Virginia Freedom of Information Act, and specifically  
8 the Provision A7 and also A1 to discuss legal advice,  
9 to receive legal advice on probable litigation  
10 related to the motion that has been discussed, and  
11 also to discuss personnel and employment matters  
12 regarding the Commission staff?

13 Is there a motion to go into closed hearing for  
14 those reasons?

15 MR. REYNOLDS: So moved.

16 MS. DAWSON: Second.

17 MR. LAWS: Any objection?

18 NOTE: There is no response.

19 MR. REYNOLDS: All those in favor?

20 MR. VAN CLIEF: Aye.

21 MR. LAWS: Opposed?

22 NOTE: There is no response

23 MR. LAWS: We'll go into closed session.

24 NOTE: There is a recess from 11:04 a.m.  
25 until 11:43 a.m.; thereafter, the meeting continues

1 in public as follows:

2 MR. LAWS: At this point, is there a motion  
3 that confirms that under 2.2-3712, otherwise known as  
4 the Virginia Freedom of Information Act, only public  
5 business matters lawfully exempted from open meeting  
6 requirements under that law were discussed during the  
7 closed meeting, and only such public business matters  
8 as were identified in the motion by which the meeting  
9 was closed were heard, discussed or considered in the  
10 meeting by the public body?

11 MR. REYNOLDS: So moved.

12 MS. DAWSON: Second.

13 MR. LAWS: All those in favor?

14 MR. REYNOLDS: Aye.

15 MS. DAWSON: Aye.

16 MR. VAN CLIEF: Aye.

17 MR. LAWS: Any objection?

18 NOTE: There is no response.

19 MR. LAWS: Back in open meeting.

20 MR. REYNOLDS: Thank you all for your patience.

21 I'm gonna turn the floor over to Commissioner Van  
22 Clief, who will read our motion.

23 MR. VAN CLIEF: Mr. Chairman, I'll withdraw the  
24 motion I made earlier, and in the interest of  
25 clarification, I'll submit the following.

1           I make a motion to reconfirm the Commission's  
2           December 2013 decision; namely, the Virginia Racing  
3           Commission hereby directs Colonial Downs to conduct  
4           2014 Thoroughbred race meet -- I'm sorry -- a 2014  
5           Thoroughbred race meet of five weeks and 25 race days  
6           duration. Further, the Commission stands ready to  
7           approve any contract agreed to by Colonial Downs and  
8           the Virginia HBPA.

9           Additionally, once a contract is approved by the  
10          Commission, Commission staff will immediately take  
11          action to direct that any satellite wagering  
12          facilities currently closed by operation of law be  
13          promptly reopened.

14          MR. REYNOLDS: Are there any questions or  
15          discussion?

16          MS. DAWSON: I second that motion.

17          MR. REYNOLDS: Okay. All those in favor say  
18          aye.

19          MR. MILLER: Aye.

20          MS. DAWSON: Aye.

21          MR. TROUT: Aye.

22          MR. REYNOLDS: The motion carries.

23          To follow up on that, I'd like to set the next  
24          race meeting date. What I'd like to see by that  
25          date, if not before, is for you all to enter into

1 your new contract and bring it before the Commission  
2 for our consideration for approval on that date.

3 I was thinking the best dates for me are  
4 May 19th. That's the earliest we can do it. I'd  
5 love to pick that date or May 21st. Do those dates  
6 work?

7 MR. STEWART: I cannot be here on May 21st.

8 MR. REYNOLDS: All right. We got a bull's eye  
9 on May 19th. Does that work?

10 MR. PETRAMALO: Yes.

11 MR. REYNOLDS: Stephanie?

12 MS. NIXON: Good.

13 MR. REYNOLDS: Great. Commissioners?

14 MR. TROUT: That's fine.

15 MR. MILLER: Fine.

16 MR. TROUT: Ten a.m.?

17 MR. REYNOLDS: Our next meeting will be on  
18 May 19th, 2014 at ten o'clock in the morning, I guess  
19 right here, if the horsemen will allow us to come in  
20 here.

21 MR. PETRAMALO: Yes.

22 MR. REYNOLDS: Frank, did you have a question?

23 MR. PETRAMALO: Well, I just wanted to be clear  
24 that in December, we had applied for eight weeks, 32  
25 days in the summer. Colonial had likewise applied in

1 the summer for four weeks, 12 days and the Commission  
2 came back and said, well, we're awarding the same  
3 schedule that we did last year.

4 You didn't include in your motion the direction  
5 to run five weeks, 25 days in the summer.

6 MR. REYNOLDS: we talked about that, and we  
7 would like as a Commission to see it run in the  
8 summer, but the exact motion that was put forth that  
9 we approved just said five weeks, 25 days.

10 In years past, I believe the Commission has  
11 always left it to you all to figure out the exact  
12 dates when you all would run and you have always come  
13 to an agreement on that.

14 Josh, do you want to explain why we couldn't put  
15 summer in there?

16 MR. LAWS: Because it wasn't in the  
17 December 2013 motion, I didn't think it was proper to  
18 include any other additional instructions that were  
19 not made in December 2013, because I don't think  
20 currently as we sit today, the Commission has the  
21 authority to make any additional instruction.

22 MR. PETRAMALO: well, let me just suggest the  
23 following. I think I've got the transcript here, but  
24 my recollection is the motion was to run five weeks,  
25 25 days as you did in 2013. Then as you did in 2013,

1 in my interpretation, includes running in the summer,  
2 because that's what we did in 2013.

3 MR. LAWS: If you do have that language?.

4 MR. WEINBERG: I have the transcript and I'm  
5 afraid that's not what it says.

6 MR. REYNOLDS: I have exactly what I read right  
7 here.

8 MR. HETTEL: Go ahead and read that verbatim  
9 back.

10 MR. REYNOLDS: I'll read the whole thing. I  
11 made some comments before I made the motion, but the  
12 motion itself, I'm gonna go backwards. The motion  
13 itself said: Mr. Chairman, I make the motion that  
14 the Virginia Racing Commission grant approval to  
15 Colonial Downs for 25 days of Thoroughbred racing  
16 over five weeks for 2014.

17 Colonial Downs and the Virginia HBPA shall work  
18 together to mutually agree upon the dates, days and  
19 times for the 2014 meet.

20 Now, I'll go back and read what I said leading up  
21 to that motion.

22 Mr. Chairman, before I make my motion, I would  
23 like to make a few comments. I am certainly  
24 disappointed that Colonial Downs and the Virginia  
25 HBPA were unable to agree on racing dates for 2014;

1           therefore, they have left this important decision to  
2           this Commission.

3           For three years, I have heard debate after debate  
4           for more dates versus fewer dates. Beauty is in the  
5           eye of the beholder and the constituency that one  
6           represents.

7           As a commissioner, I ask myself what is in the  
8           best interest of the overall health of Virginia  
9           racing and its path forward. Right now, that path is  
10          treacherous and unclear.

11          The overall health of the Thoroughbred racing  
12          nationally and Virginia in particular face extremely  
13          challenging times. I've heard over and over that the  
14          mission of Virginia horse racing is to promote,  
15          sustain and grow the native industry.

16          At this point in time, I believe we are in a  
17          situation where all we need -- where we all need to  
18          work together for the survival of this industry first  
19          and foremost. Only then can we promote, sustain, and  
20          the ultimate goal, grow this industry again.

21          How do we do this? I'm not sure at this point,  
22          but what I am sure of is that we have a room full of  
23          people who have the best interests of Virginia racing  
24          in their hearts.

25          Yes, each stakeholder represents different



1           constituencies, but we all share the passion and the  
2           determination to make this work. We just don't have  
3           agreement on a path forward.

4           I am encouraged by the recent formation of a Blue  
5           Ribbon panel chaired by Commissioner Van Clief.  
6           Although our work is not finished, I do believe we  
7           have identified the major issues that need to be  
8           addressed. We must find agreement on the best path  
9           forward.

10          The various stakeholders continue to disagree on  
11          race days and how we define quality racing. I am  
12          confident that what will come out of the panel will  
13          be an overall consensus and an executable game plan;  
14          however, none of that will matter if we don't work  
15          together and execute that plan. To repeat, that can  
16          only happen if we all work together.

17          Now as far as the racing dates go for this year,  
18          I have studied both the proposals thoroughly and  
19          clearly, and the two proposals are worlds apart.

20          My fervent hope is that through our work early  
21          next year on the Blue Ribbon panel, we can bridge  
22          that gap. I am not a fan of the status quo, or as  
23          some say, splitting the baby. I believe that last  
24          year's results are inconclusive and don't think that  
25          enough data exists to vote for one extreme or the

1 other.

2 Therefore, I will propose the following motion to  
3 repeat the weeks and days that Colonial Downs and the  
4 Virginia BPA agreed to last year without reliance on  
5 last year's Commission for final arbitration.

6 Again, this Commission stands ready and committed  
7 to working with all of the stakeholders to move  
8 Virginia racing forward.

9 MR. PETRAMALO: Let me just read what  
10 Commissioner Siegel said at Page 51: Between now and  
11 the next meeting, if these parties would like to come  
12 back and make some alternate suggestions they can  
13 agree upon, whether it be fewer days or more weeks or  
14 vice versa, this is Commission will entertain that,  
15 but the idea was to do what you agreed to do last  
16 year, only because you couldn't agree to do anything  
17 else.

18 That's what I took to mean agreeing to do what  
19 you did last year was 5/25 in June and July.

20 MR. REYNOLDS: Okay.

21 MR. PETRAMALO: I mean what I don't want us to  
22 get hung up on, is if we get in discussions with  
23 Colonial Downs and Colonial -- with regard to a new  
24 contract, and they say, well, guess what, we'll run  
25 5/25, but in the fall, it's part of the harness heat

1 and we're back to where we started.

2 MR. REYNOLDS: You make a good point.

3 MR. VAN CLIEF: Just again, speaking  
4 individually, my intent, and as you probably noticed  
5 in my original draft, was that we avoid running the  
6 Thoroughbred meet concurrent with the harness dates.

7 My reason for that is not so much that I don't  
8 think Thoroughbreds and harness horses can't coexist,  
9 they probably can, but I think that the risk that we  
10 would be undertaking as an industry to run a  
11 Thoroughbred race meeting with the only facility on  
12 which to race a turf course at our disposal in  
13 September is too risky.

14 All it's gonna take is one hurricane to blow your  
15 race meeting away, and the industry would potentially  
16 be in serious financial risk. So I would oppose a  
17 concurrent Thoroughbred harness meet for just that  
18 reason.

19 MR. REYNOLDS: Mr. Laws, does that -- and we  
20 pretty much have to stick with what we approved in  
21 the motion?

22 MR. LAWS: Yeah. I think that the plain  
23 language and unambiguous language of the motion is  
24 what's crucial, and that's what the Commission  
25 passed, and that's what the Commission has the

1 authority to enforce.

2 MR. REYNOLDS: Okay. All right. Are there any  
3 other questions or comments?

4 NOTE: There is no response.

5 MR. REYNOLDS: The next meeting will be --

6 MR. HETTEL: Mr. Chairman, before you adjourn,  
7 Debbie would like to address the EZ Horseplay  
8 question you posed to me last night.

9 MS. EASTER: We'll take it up at another time.

10 MR. HETTEL: Okay. Good. Go ahead,  
11 Mr. Chairman.

12 MR. REYNOLDS: All right. Again, the next  
13 meeting will be May 19th at ten o'clock, and do I  
14 hear a motion to adjourn?

15 MR. VAN CLIEF: So moved.

16 MR. TROUT: So moved.

17 MR. REYNOLDS: Do I hear a second?

18 MS. DAWSON: Second.

19 MR. TROUT: Second.

20 MR. REYNOLDS: All those in favor?

21 MS. DAWSON: Aye.

22 MR. TROUT: Aye.

23 MR. REYNOLDS: We are adjourned.

24 NOTE: This meeting is adjourned at  
25 11:57 a.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 5th day of June, 2014.

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SANDRA G. SPINNER

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