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VIRGINIA RACING COMMISSION

January 21st, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:42 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman
I. Clinton Miller, Vice Chair
Mark T. Brown
William H. (Trip) Ferguson
David C. Reynolds

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

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1 JANUARY 21, 2009

2 MR. BURNETT: Good morning. We'll bring this
3 first meeting of 2009 together a tad late. We
4 apologize for a slightly late start.

5 As usual, the first order of business for our
6 first meeting of each year is the election of a
7 chair and a vice chair.

8 Gentlemen, any druthers?

9 MR. BROWN: Mr. Chairman?

10 MR. BURNETT: Yes, sir.

11 MR. BROWN: Yes, sir. I would like to
12 nominate yourself to be chair again and also, if I
13 might, I'd like to nominate Commissioner Miller as
14 the vice chair.

15 MR. BURNETT: All right.

16 MR. MILLER: Second.

17 MR. BURNETT: It's been moved and seconded.
18 Does anybody have any objection to taking the two
19 motions together or taking the two elections
20 together?

21 All right. It's been moved and seconded. All
22 in favor indicate by saying aye.

23 NOTE: The motion is made by Commissioner
24 Brown and seconded by Commissioner Miller. All were
25 in favor. The motion carries.

1 MR. BURNETT: I understand that Mr. Miller has
2 an Obamaesque speech to give us. Just kidding.

3 MR. MILLER: All I can say is that's the way
4 to hold an election.

5 MR. BURNETT: We next come to the approval of
6 our December 17th meeting minutes, and in reviewing
7 them, I had some question about whether we held a
8 roll call vote immediately after coming out of our
9 executive session. I thought we had. I thought
10 rather than spending a lot of time going through the
11 transcript this morning, maybe we could defer
12 approval of last month's meetings -- meeting minutes
13 until our next meeting. Anybody have any objection
14 to that? We'll hold that off.

15 Commissioners comments? Fellow commissioners,
16 any comments? My only comment is we should not feel
17 too lonely with down numbers in Virginia. From what
18 I've been reading in the trade papers, we're seeing
19 down numbers across the board. In some respects,
20 you could make the argument that Virginia has been
21 holding its own in a sense given what's been going
22 on nationally. I hope we all can find a way to pull
23 together in the spirit that we're seeing nationally,
24 particularly yesterday. And I think that we have
25 seen in the last couple of years better cooperation

1 among that tripartite group of regulator, track
2 owner, and horsemen, more so in the last couple of
3 years than we've seen in my involvement with horse
4 racing in Virginia. I hope we can make that -- get
5 that process to continue.

6 Let's turn to committee reports unless there
7 are other comments. Mr. Reynolds?

8 MR. REYNOLDS: Well, this is kind of an
9 eventful thing. We've been in discussions with the
10 governor's office and the management people and so
11 forth, and we've been cutback dramatically on the
12 marketing and promotion of the -- our efforts that
13 have been going on for the last two and a half
14 years. We've got \$30,000 left to spend for the rest
15 of this fiscal year, which is June 30th, and nothing
16 beyond that. Is that correct?

17 MR. HARRISON: That's right.

18 MR. MILLER: So we have very little to report
19 from that other than that. We've got the
20 Ambassador's project, which we'll keep underway, and
21 we've got the school booklets that we can distribute
22 for some period of time. Other than that, there
23 won't be anymore marketing and promotions in the
24 foreseeable future.

25 MR. BURNETT: May I ask if the \$30,000 is free

1 of commitment to any projects at this point?

2 MR. LERMOND: Well, no. We committed the
3 remainder to CRT.

4 MR. BURNETT: So it's committed to that
5 vendor, but not designated as to how it's spent.

6 Are there fees that are being held by any
7 vendor for services yet to be performed? I'm trying
8 to figure out whether \$30,000 is it from here on out
9 for this racing season or whether there are other
10 monies that are going to be spent that already have
11 been paid for.

12 MR. LERMOND: They amended the budget acts and
13 they limited the amount that we could spend in this
14 fiscal year to 284,000. The last time the marketing
15 committee met, we thought we had about 60 to go
16 before we would reach that 284,000 that we cannot go
17 over this fiscal year. In the meantime, I had -- we
18 had forgotten we had granted money to the
19 steeplechase dominion turf series. Frank submitted
20 that proposal for payment. So once that's gone, we
21 really only have about 30,000 that's left until we
22 hit our threshold of 284 for the year.

23 MR. BURNETT: Okay.

24 MR. HARRISON: Again, basically, we've zeroed
25 out the marketing account.

1 MR. BURNETT: Are there any reserves being
2 held by vendors for work that is yet to be
3 performed? In other words, are there any
4 obligations on the part of CRT between now and the
5 race meet, for example, that was already in their
6 account? No?

7 MR. HARRISON: No. There's nothing --

8 MR. BURNETT: The Ambassador program is it?

9 MR. HARRISON: Right.

10 MR. BURNETT: Okay. Thank you. Anything else
11 on marketing and promotion? Do you have a happy
12 note for us here?

13 MR. REYNOLDS: That's enough.

14 MR. BURNETT: That's enough. Thank you.

15 Executive secretary's report. Mr. Harrison?

16 MR. HARRISON: I have two things. One, I
17 would like the Commission to consider a rule change,
18 and I'm not necessarily asking you to do so at this
19 meeting. It could be next month, that would be
20 fine, but what it is, it relates to the appointments
21 of stewards and their qualifications, and the
22 language that I -- that we've come up with could be
23 edited. It says that the Commission may waive the
24 above requirements for good cause shown and if in
25 the judgment of the Commission an appointment -- an

1 appointee is otherwise qualified.

2 All this will do is this will give me the
3 freedom, if necessary, under budget restraints over
4 the coming months to go within for a steward rather
5 than going outside and paying the additional -- I
6 think it comes to about \$20,000 for a third steward.
7 If we have someone on staff that can actually
8 perform that function, I'd like to have the freedom
9 to do that, if necessary. This is VAC 10-70-20,
10 appointment.

11 MR. BURNETT: Any questions, gentlemen?

12 MR. BROWN: I don't see a problem with it.

13 MR. BURNETT: I agree with Commissioner Brown.
14 I think giving us the flexibility is a good idea.
15 What we do with it is a separate question.

16 MR. HARRISON: Right.

17 MR. BURNETT: From a process standpoint, my
18 question is whether these rules are exempt or not,
19 and to me a pretty strong hint would be how this
20 particular rule was put in place because I think it
21 is relatively recent. We didn't have these
22 requirements of judges and stewards when we started,
23 I don't think, and maybe Dave can give me the
24 answer.

25 MR. LERMOND: I can give you a little brief

1 history lesson on it.

2 MR. BURNETT: Great. Thank you.

3 MR. LERMOND: As you'll recall, Mr. Bowker
4 wanted to make some changes to the stewards chapter
5 and also the appeal to the Commission chapter, the
6 de novo issue and several others. He wanted them to
7 be in place for a race meet that was coming up, and
8 there was no exemption for these. So we were going
9 to have to go through the regular process and it was
10 going to take a full year, but there is an exemption
11 in there that says we can change rules if it's for a
12 specific race meet. Terry Griggs walked us through
13 all that.

14 So we actually -- I looked at the history. We
15 did that and the first -- it was effective through
16 September 4th. And then in November of 2006, these
17 rules became effective, but it was through the
18 regular process. There was no exemption, but our
19 counsel, Ms. Dilworth, actually in an e-mail that we
20 got yesterday pointed out one that I actually didn't
21 know about. And it says, "Agency action relating to
22 the following subjects shall be exempted from the
23 provisions of this chapter and the exemption is the
24 selection, tenure, dismissal, direction, or control
25 of any officer or employee of an agency of the

1 Commonwealth." So I think it relates to the
2 selection of this employee.

3 MR. HARRISON: If necessary.

4 MR. BURNETT: Right. I wonder if it would be
5 acceptable to my fellow commissioners if we had Amy
6 have a look at this and shoot us a short opinion
7 letter authorizing us or telling us whether we're
8 authorized to do this. It seems to me we don't want
9 to be into something that every year we're coming
10 back with the same motion. Perhaps we could -- and
11 I would ask you to address this -- make this change
12 specific to the coming race meet, but at the same
13 time promulgate a rule that would go through the
14 normal rule-making process such that by the
15 following year, it would have been passed -- it will
16 have been passed, and we won't have to fool with it
17 again.

18 And then whether or not we exercise our
19 discretion to waive would be the subject of -- I
20 think a little bit of a fact-finding hearing would
21 be appropriate for us. It doesn't have to be
22 official. I think that as part of our meeting we
23 should offer the opportunity, one, for you, Vic, to
24 tell us what changes you want to make and why, what
25 the good cause is for us to waive any part of these

1 rules with respect to hiring stewards or judges, and
2 then give the public the opportunity to comment. I
3 think that to the extent that other judges or
4 stewards wanted to weigh in, we've had that happen
5 on the harness side, that should be -- that
6 possibility or that opportunity should be made
7 available.

8 So unless there's some objection to that,
9 perhaps we could defer this whole subject until our
10 next meeting, at which time we would have both legal
11 opinion from our counsel and you will have had an
12 opportunity, Vic, to present us with what your basis
13 is for wanting any change.

14 MR. HARRISON: Sure. I'm fine with that.
15 Yeah.

16 MR. MILLER: Can I ask a question? If the
17 issue is the qualifications of a steward and one of
18 those being experience, would somebody check to see
19 what kind of experience is necessary to be
20 accredited by the racing officials or accreditation
21 program administered by the University of Arizona
22 and Louisville as set forth in there, because it --
23 sometimes when you run into these things it would be
24 impossible to appoint a steward if the experience
25 factor is that they have had to serve as a steward.

1 MR. HARRISON: Right.

2 MR. MILLER: So just check on that.

3 MR. HARRISON: We have, but we can lay all
4 that out for you. We'll have all the information
5 for you by the time our next meeting rolls around.
6 Yeah. Sometimes that body will make specific
7 requirements for a specific individual. It makes it
8 a little more complicated and a little less
9 structured. I'll get that to you.

10 MR. MILLER: Okay. Thank you.

11 MR. BURNETT: All right. We've sufficiently
12 beaten that one to death. We'll move to the next
13 one. Twin Spires mediation?

14 MR. HARRISON: Twin Spires mediation is going
15 to happen on Monday the 2nd of February and it was
16 quite a chore getting everybody to agree to a date,
17 but everyone did. We'll see what comes out of that.
18 I just wanted to inform everybody that, yeah, we --
19 there is a date scheduled. We're going to have
20 arbitration -- mediation and that it is not
21 arbitration. It is mediation. And I'm hopeful that
22 something good will come from it.

23 I noticed that just today there is the news of
24 a similar event taking place in California between
25 the thoroughbred horsemen and the racetracks and

1 TrackNet and Twin Spires, and the difference there
2 is that they go right into arbitration. They don't
3 take the mediation step. So I just wanted to give
4 everybody an update on where we stand with that.

5 MR. BURNETT: I'd like to share with the
6 fellow commissioners and with the public what our
7 choices have been with respect to appointing a
8 mediator. As you'll recall in December, we said
9 that if the parties had not reached an agreement by
10 the end of 2008 that the Commission would appoint a
11 mediator. Easier said than done.

12 We're left with two choices typically and that
13 is someone with a lot of experience in mediation
14 that in all likelihood does not have any experience
15 with the racing industry, which in my view poses a
16 significant handicap for the mediator to even
17 understand the language that's going back and forth
18 among the parties. I think it in some cases can
19 handicap the effort.

20 The other choice is to get someone who may be
21 very knowledgeable of the racing industry and,
22 again, in that circumstance you want someone who is
23 neutral in terms of having any favoritism with
24 respect to any particular set of stakeholders, but
25 may not have a lot of mediation experience.

1 We started out going down the first road that
2 I described with a mediator that's in Virginia
3 that's getting some good reports. By the time we
4 got a date, that individual was unavailable. The
5 choice was other Virginia mediators who are well
6 known to most of us that involve ourselves in
7 mediation, but I was unable to identify anyone that
8 had any experience with the racing business.

9 I turned to an individual I know who's an
10 attorney in Florida who has had some experience with
11 mediation, but more importantly has had significant
12 experience with the racing industry, both through
13 his employment as an attorney working with Hialeah
14 and having some understanding of the track side of
15 the equation and having been involved some with
16 horse ownership and advising some people with horse
17 ownership, having some understanding of the horsemen
18 side of life. And then having been a candidate for
19 Dave Roberts' position in Florida, which is kind of
20 a one person racing commission in Florida is the way
21 they work it. He's the director of pari-mutual
22 racing that answers directly to the governor. He
23 was a candidate for that position. I thought his
24 qualifications in all three of those areas came
25 together sufficiently, along with him being bright

1 and honest and industrious would make him a good
2 candidate and I called him and he agreed to do this.

3 So he is going to come in, I assume, the night
4 before, spend some time with Vic and myself and Dave
5 just to try and give him as much information as we
6 can about this overall dispute, as much factual
7 basis as we can. We're happy to share anything that
8 we share with him with any of the parties. There's
9 no secrets here. And then we are not -- the
10 Commission is not involved in the mediation. I
11 believe it starts at two o'clock at Jim Weinberg's
12 office, and they'll go until they're done. That's
13 the plan now and if anybody has any suggestions on
14 how we might do it better, now is the time to raise
15 them.

16 All right. Anything further from our
17 executive secretary?

18 MR. HARRISON: No. That's it.

19 MR. BURNETT: We move on to a single item
20 under the stakeholders section of our agenda and
21 that is the request from Colonial Downs for 2009
22 race days. Absent direction from fellow
23 commissioners, I am inclined that we -- for us to
24 handle this the way it is in the outline, that
25 Colonial Downs make its presentation, get responses

1 from the parties listed there, and I would only add
2 that I think it's our practice to permit everybody
3 to rebut to their hearts content until we got the
4 full discussion of all this on the table. I don't
5 know whether the Commission will feel the need for
6 any legal advice prior to coming out and
7 deliberating on the days request, but that is a
8 possibility.

9 So with that, absent any questions, let's
10 start with Colonial Downs' presentation.

11 MR. WEINBERG: Thank you very much.

12 Just to be clear, there are two race day
13 requests pending, both thoroughbred and
14 standardbred. I believe the standardbred is not
15 controversial. Colonial Downs and the VHHA have
16 agreed to a race day request of 36 days from
17 September 11th to November 7th with an average
18 target purse of \$60,000, and I would ask that the
19 Commission formally approve that race day request
20 unless there are particular issues that the
21 Commission has, and I am prepared to move on to the
22 thoroughbred request.

23 MR. BURNETT: Why don't we just take up the
24 vote on these altogether, but go ahead and move into
25 the thoroughbred side.

1 Does anybody have any questions on the
2 standardbred side? I see Jerry is not here, which I
3 assume means he's okay with everything.

4 All right. Let's move on to the thoroughbred
5 request.

6 MR. WEINBERG: Do you want to proceed with an
7 absent commissioner?

8 MR. BURNETT: Yes.

9 MR. WEINBERG: In our -- in Colonial Downs'
10 thoroughbred race day request, there is a request
11 for 25 days for thoroughbred racing. Colonial Downs
12 continues to believe that a 25-day meet in 2009
13 represents the best opportunity for the promotion,
14 sustenance, and growth of the industry in the face
15 of the economic conditions that we face in 2009.

16 First, in 2009, there will be limited funds
17 available for purses. I can explain this in more
18 detail, but there is, as the chairman alluded to, a
19 decline nationally in the business, a decline in
20 Virginia in the business, and as we explained in
21 December, historical sources of gap funding will not
22 be available. I don't think it will be available on
23 conditions acceptable to Colonial Downs since the
24 horsemen have volunteered to provide gap funding,
25 but only in the context of a 45-day meet.

1 In 2008, the Commission elected to exceed to
2 the desires of the horsemen and the breeders to
3 experiment with a longer 45-day meet. We think that
4 a short meet in 2009 would provide the opportunity
5 to increase average purse size and reverse some of
6 the adverse trends that were set with a longer meet
7 with that experiment.

8 A 25-day meet also provides an opportunity to
9 fix an issue that has plagued Virginia thoroughbred
10 racing since the meet was moved from the fall to a
11 summer meet, and that is the gap funding I alluded
12 to. Since that time, the period during which purse
13 funds are accumulated in an eight and a half month
14 period has been different from the 12-month racing
15 period. A shorter meet in 2009 provides the
16 opportunity to do away with gap funding once and for
17 all and to put racing and purse accumulation in the
18 same 12-month schedule.

19 The 25-day request also reflects that the
20 owner and operator of the track is one of the
21 stakeholders in a multiple stakeholder industry.
22 The economic conditions facing Colonial Downs in
23 2009 deserves serious consideration this year.
24 Twenty-five days of racing recognizes the economic
25 reality that we will face in 2009.

1 As we discussed at the December meeting, we
2 think a 25-day race request emphasizes the quality
3 of racing and that is not more race days, purely for
4 more race days, but to look at how we structure a
5 meet that has competitive purses. Colonial Downs
6 continues to believe in the formula for setting race
7 days of dividing the purse amounts available by an
8 average daily purse amount that is competitive to
9 get horses at the racetrack.

10 If we look around, we see a high at Delaware
11 Park that's racing during the summer of \$263,000 a
12 day. At 25 days, with the purse funds likely to be
13 available, Colonial Downs would be at 238,000. It's
14 still a gap, but it is an average purse size that
15 speaks well to position Colonial Downs now for what
16 it will have to do when slot machines come to
17 Maryland and that is to position itself as a quality
18 turf racing track that offers somewhat competitive
19 purses with competing racetracks at that time. To
20 get there, we'll have to reduce days. Other tracks
21 are reducing days. Delaware Park just announced
22 that it's reducing its schedule by 17 days.

23 Let me turn to a vital component of that fore
24 note, and that is what purse funds are likely to be
25 available for 2009. When Colonial Downs sets the

1 purse amount, it is making a serious estimate that
2 it must abide by. It takes all the risks in setting
3 what is likely to be purse funds available. If it's
4 wrong, then it has a condition book that it cannot
5 fulfill, which either creates credibility issues
6 going forward or requires Colonial Downs to borrow
7 funds to meet the condition book. As we explained
8 in some depth in December, Colonial Downs doesn't
9 have the ability to borrow funds this year so we
10 need to get that amount right. It's critically
11 important.

12 When Colonial Downs filed its race day request
13 in early December, it forecasted purse funds through
14 August 15th of \$6.7 million. I think you will see
15 that in December there was a decline of 20 percent
16 in handle in the SWFs. As Ian will explain in more
17 detail, January isn't looking much better. Looking
18 at those results, the likely forecast is now \$5.9
19 million of purse funds available through
20 August 15th.

21 There are a number of reasons for that. I
22 just alluded to the downturn in the business at the
23 simulcast facilities. The contribution from account
24 wagering is likely to be less for the matters we
25 talked about in connection with Twin Spires and

1 TrackNet. Yes, that matter is being mediated, but
2 the likelihood of recovering all the dollars that
3 will be lost as a result of an increase in host
4 fees, which have a direct bearing on our source
5 market fees. As host fees go up, our source market
6 fees go down. We're going to collect less.

7 And then I have alluded to the gap funding
8 issue. The gap funds simply are not going to be
9 there. So we're relying upon what we generate
10 ourselves between January 1st and August 15th.

11 The 25-day meet does provide some
12 opportunities for improvement. I think as we
13 reviewed throughout August, September, and October,
14 the 45-day meet resulted in average daily attendance
15 going down by about 16 percent, live handle per day
16 down by over 23 percent, simulcast/on-track handle
17 down by over 30 percent, and the horse per race down
18 to 7.9 from 9.1 in 2007.

19 In our race day request, we identified these
20 metrics as those metrics we wanted to improve, and
21 we think we can do it with a 25-day meet. Indeed,
22 when Colonial Downs ran 25 days in the past, the
23 horse per race was at 8.9. When it ran 26 days, it
24 was 9.3 horses per race. And with 30 days, it was
25 9.8 horses per race. So you have heard that no

1 horses will come to a 25-day meet. Historically
2 that has not been the case at Colonial Downs.

3 There's also an argument that a 25-day meet
4 limits racing opportunities. Well, that certainly
5 is true as it limits racing opportunities in
6 Virginia. There can be no argument that 25 days has
7 fewer racing opportunities in Virginia than 45 days,
8 but it's a very Virginia centric argument and the
9 Mid-Atlantic area is one of the most dense areas for
10 racetracks. From the period from May to August,
11 there is racing, live racing occurring in Delaware,
12 West Virginia, Pennsylvania, New Jersey, and
13 Maryland. So there are other opportunities for
14 racing, albeit not in Virginia.

15 A 25-day meet would also allow us to continue
16 to perpetuate our marquee events. Over the last
17 three to four years, the Turf Cup and the Derby have
18 been the most popular days at the racetrack. These
19 events attract the largest crowd. They've raised
20 awareness of horse racing in Virginia with the
21 casual and new horse fan. They offer the best
22 opportunity to bring new fans out to the track and
23 that has been the case in attendance each and every
24 year, and the opportunity to draw those patrons to
25 come back on less marquee days.

1 Although there is some controversy about the
2 amount of purse money spent on these days, the purse
3 money devoted to these days has declined each and
4 every year over the last three years. We've gone
5 from -- we've reduced it by over \$650,000 that have
6 gone to the overnights, but at some point we need to
7 draw the line and preserve the purse structure for
8 these marquee events.

9 We think in a 25-day meet, we would have no
10 adverse affect on these marquee events and would
11 help perpetuate them, but there are real serious
12 economic factors facing a 2009 meet, and Ian can
13 expand upon those in some detail.

14 MR. STEWART: I have spoken in the past on
15 several occasions of how the short, high-end meet
16 that we're proposing is really the only practical
17 successful model to grow thoroughbred racing in
18 Virginia, so I really see no need to reiterate that
19 this morning.

20 What I would like to do this morning is spend
21 a couple of minutes trying to put this into
22 perspective. As I noted, last year it cost Colonial
23 Downs \$23,000 a day for each additional day of live
24 thoroughbred racing. What I want to do is I want to
25 try to answer a question that was posed by one of

1 the commissioners last year in reference to the race
2 day discussion, and that question was essentially
3 this. Why are we spending all this time discussing
4 relatively small amounts of money if each day is
5 only \$23,000?

6 To start with, I'd like to review our balance
7 sheet as of September 30th, 2008, and compare it to
8 our balance sheet at September 30th, 1997, eleven
9 years ago. That's what Jim passed out. At first
10 glance, it has some remarkable, remarkable
11 similarities. Total assets are virtually the same,
12 a little over \$74 million. However, there's some
13 very significant differences in the details.

14 On the asset side, property and equipment has
15 increased over \$20 million as we have continued to
16 try to grow this business and grow this industry.
17 On the liability side of the balance sheet, there's
18 been some other very significant changes. Where
19 once there was almost \$38 million in equity, there's
20 now a deficit of over \$2 million. We also have a
21 new item due to Jacobs Entertainment of over
22 \$66 million. You might ask, well, what does that
23 represent.

24 The initial public offering that raised
25 38 million was used to pay for most of the track.

1 The 66 million represents the money it took to
2 finish paying for the track, expanding the OTBs, and
3 fund the 11 years of operating losses.

4 Someone might also ask, why would you do that?
5 Why would you keep pouring money into a venture that
6 shows no prospect of ultimate success? Frankly, I
7 do not have a good answer. The best I've determined
8 over the years is that Mr. Jacobs did it simply
9 because he really likes horse racing at Colonial
10 Downs. I've said to him before that Colonial Downs
11 is kind of his hobby. Unfortunately, the problem
12 with hobbies is people can lose interest, especially
13 over time and especially when it appears that no one
14 is listening.

15 The problems here are not new. We haven't
16 spoken about them for years. However, time and time
17 again when the choice has to be made, the choice has
18 been to benefit some other group to the financial
19 detriment of Colonial Downs. At times the numbers
20 have been larger than others, but the result has
21 been a continuous erosion.

22 Here's some of the things we're faced with
23 today. Twin Spires and TrackNet Media, the
24 continuing rise in the cost of the signal in the
25 OTBs and a desire to expend live racing in the face

1 of a pour economy, not to mention a growing sense in
2 the industry, excuse me, that the pari-mutual model
3 unfairly enriches the imported states that
4 distribute the signal, of which Virginia is one, at
5 the expense of the track to produce the product, the
6 exporters. This industry trend is extremely serious
7 and has immediate implications for Virginia with the
8 TrackNet situation we discussed last month being
9 only the tip of the iceberg.

10 Overall the pari-mutual wagering business is
11 doing very poorly, both nationally and in Virginia.
12 This trend continued in December. The December
13 handle in our OTBs was down 20.9 percent from
14 December 2007 and 23 and a half percent from
15 December 2006. So far in January there's been not
16 much relief. Handle through Monday was down
17 15.4 percent for the same period in '08. It was
18 down 22.1 percent versus the same period in 2007.
19 On Monday, this past Monday, a holiday, we handled
20 \$260,000. In 2008, we handled \$380,000. In 2007,
21 we handled \$394,000 over 50 percent more on the same
22 holiday. I can go on and on.

23 Now, throughout this Colonial Downs has not
24 sat idle. We've eliminated positions, consolidated
25 operations, asked for help from our venders and

1 implemented salary reductions. However, in spite of
2 this, we still face serious problems. The truth is
3 for this industry to be successful in Virginia, it
4 has to be based on more than finding someone who is
5 for whatever reason willing to pay for it out of
6 their own pocket because when they lose interest,
7 the only option is to find someone else and there's
8 not a lot of those people around.

9 The easier course of action is to make the
10 industry attractive to investors, because then it is
11 much less likely that we'll find ourself in the
12 situation we find ourselves in now.

13 Colonial Downs has to stand on its own two
14 feet. This is not impossible. It can be done, but
15 it can only be done if the other members of the
16 industry recognize that its financial help is
17 fundamental to the health of the industry, and more
18 importantly, act accordingly.

19 So to return to the question asked, why are we
20 always arguing about relatively small amounts of
21 money? The answer is because we are literally
22 fighting for our very survival. Our source of
23 capital is gone. Our investor has lost interest.
24 He no longer sees a light at the end of the tunnel
25 and is no longer willing to personally fund to right

1 this industry.

2 So once again, the Racing Commission is faced
3 with a choice. On the surface, the choice seems to
4 be what is more important. Some additional racing
5 opportunities for horsemen within the state versus
6 the further deterioration on the financial help for
7 the track.

8 The real question, though, is how much longer
9 are we going to be able to go on like this. I
10 honestly don't know. However, I think it is
11 imperative that we show some progress for making
12 this business profitable if we want it to continue
13 and taking a realistic approach to the thoroughbred
14 race dates this year is critical.

15 MR. BURNETT: Thank you, Ian. Any questions
16 of Jim or Ian at this point?

17 All right. We'll move to the response from
18 the VAHBPA and reserve questions for everybody when
19 we get to the end of this presentation. Frank?

20 MR. PETRAMALO: I have a few things to say.

21 I'm going to start out by titling my
22 presentation back to the future. The last time we
23 ran 25 days was seven years ago, 2001. Shortly
24 thereafter, we embarked on an expansion program,
25 which was carefully negotiated between the racetrack

1 and the horsemen and was sold to the Racing
2 Commission with a great deal of difficulty.

3 To make a long story short, we agreed with the
4 track to help it expand the handle and thereby
5 expand money available for purses and days over
6 roughly a five-year period, and we were going to
7 expand from 25 days to 50 days, double the handle
8 from 100 million to 200 million. We embarked on
9 that process and until right now, with this request
10 for 25 days, it proceeded along almost on schedule.

11 Each year we increased the days beginning in
12 2002 when we had 26; 2003, 30; 2004, 34; 2005, 40;
13 2006, 42; 2007, 40, and last year 45. And each
14 year, with the exception of 2008, the average purses
15 per day increased. I might also add the most
16 success we had in attracting horses, Jim didn't
17 mention this. He stopped short of this, was our
18 40-day meet where we had 9.1 horses per race. Now,
19 this expansion was financially supported by the
20 horsemen, and it still is supported by the horsemen
21 and it will for the foreseeable future be. Let me
22 explain that.

23 In order to entice Colonial Downs to open up
24 five more OTBs, we agreed to take a less than
25 statutory rate for our horsemen's share. By

1 statute, we were entitled to six percent. We took
2 four and a half percent. What this means is every
3 month we, the horsemen, write a check between 65 and
4 \$70,000 and send it to Colonial to help them pay for
5 that expansion and that contribute -- and that
6 continues into the future as long as they're running
7 those five. So that's our share and that's how we
8 pay for the expansion.

9 Now, when we came here last month, we
10 suggested to the -- we requested of the Commission
11 that we run 45 days, the same as 2008, not increase
12 it. We recognize the economic reality. To this
13 extent, I certainly agree with the tenor of Jim and
14 Ian's presentation that this year looks like a not
15 good year nationwide as well as here in Virginia,
16 but that said, we proposed 45 days. The Commission
17 basically told us we're not going to decide it. You
18 folks go see if you can work it out.

19 So we, the horsemen, proposed a compromise.
20 We said, okay, we will run 40 days and we, the
21 horsemen, will provide the gap funding. Our board
22 authorized that, so we'll provide the gap funding
23 for 40 days. At the same time, we had an ongoing
24 horsemen's contract that expired -- was to expire as
25 of December 31st. We sent the racetrack a

1 comprehensive proposal, written proposal. We met
2 and basically got nowhere.

3 So where we are today is the track saying
4 let's go back to the Future. We want to run 25
5 days, and the horsemen saying we want to have the
6 track live up to its contractual commitments and to
7 support expanded racing at 40 days.

8 Now, at 40 days, we will have purses that will
9 average -- depending on what we expect to be in the
10 purse account, will average more than they did last
11 year with 45 days. Now, when we constructed our
12 compromised proposal, we premised it on \$9.4 million
13 being in the purse account. In late November,
14 Colonial was projecting 9.7. We wanted to use a
15 lower number because we wanted to transfer some
16 money to the Breeders' Fund in recognition of the
17 Breeders' Fund paying the 100 percent owners bonus,
18 so we used a lower number.

19 Now, Colonial comes in here today and says,
20 well, guess what? That number was too high. They
21 say the number was -- the number should be reduced
22 by about 12 percent. I'm just doing the arithmetic.
23 They said as of August, we originally thought it
24 would be 6.7 million available. Now we say it's
25 5.9. That's a 12 percent deduction.

1 For purposes of discussion today, I'd be
2 willing to say, okay, take the 9.7, reduce it by
3 12 percent. That gets us, I don't know, 8.5 or 8.6
4 million. That's the number that we would think
5 would be reasonable to look at. And if you use that
6 number and take our 40 days, we're still making
7 available purses at the highest level that they've
8 ever been made available in Virginia.

9 Now, I don't want to vehemently disagree with
10 Colonial's numbers, because as I said I think the
11 economy is not going to turn around and it's not
12 going to help the horse industry, but that said,
13 bear in mind that while through calendar 2008, the
14 thoroughbred handle at the SWFs was down about
15 11 percent or I think it was -- in terms of dollars,
16 it's about \$15 million down. The handle at the ADWs
17 was up about 11 and a half million dollars. And
18 that's principally because ADW or account line
19 wagering grew, but more importantly, YouBet came
20 on-line for a full year. So the numbers aren't
21 good, but they're probably not as bad as Colonial
22 would lead you to believe.

23 But the point here is that your charge as a
24 Racing Commission is to do everything within your
25 regulatory authority for the promotion, sustenance,

1 and growth of the native Virginia horse industry,
2 not the Colonial Downs interests of Jeff Jacobs and
3 his gaming enterprise.

4 Every time we get into these discussions, we
5 get new numbers. Now, these are the first time I've
6 ever seen these numbers. The numbers that I always
7 like to look at are the ones that they send to the
8 SCC, and I'll be more than happy to share these with
9 you.

10 If you'll look at the most recent SCC filing,
11 the 10-Q for the third quarter, Colonial Downs, one
12 small part of the four-part Jacobs gaming
13 enterprise, had a net loss of about \$750,000. All
14 of that was accounted for by a non-cash item, a
15 depreciation expense of a million and a half
16 dollars. If you look at what I call their cash
17 flow, because I'm simple. I'm not an accountant,
18 but I say this is cash flow. Money coming in.
19 Their cash flow was a positive 1.2 or 1.4 million
20 for those three-quarters.

21 We always get these numbers thrown around
22 here, but nobody ever comes in here and says, okay,
23 here are the numbers for the race meet. We started
24 out on June 12th, ended on August 8th. Here's the
25 money that came in the door. Here's the money that

1 went out the door. This is what it looks like.
2 I've never seen numbers like that, but in any event,
3 we can argue about this, but my point is you're not
4 here to make money for Jeff Jacobs and Colonial
5 Downs. You're here to do what's best for the
6 Virginia horse industry.

7 Point number two, cutting back from 45 days to
8 25 days is absolutely detrimental to the horse
9 racing industry. You will not provide opportunities
10 for horsemen to race here, and you will not find
11 horsemen coming here to stable for 25 days with the
12 opportunity of maybe racing a horse once or twice
13 during that period.

14 Now, you'll notice all these folks here. None
15 of whom were invited by me by the way. They all
16 showed up on their own. They are Virginia owners
17 and trainers. Some of whom stable a large number of
18 horses here during the summer. Carlos Garcia is
19 here, 20 horses. Bird Allen is here, his son
20 Ferris, the leading trainer has 50 to 60 horses.
21 These people will tell you they're not going to come
22 back to Colonial Downs for 25 days. It's not worth
23 the expense to ship all those horses and a work
24 staff to take care of them to run for 25 days.

25 A 25-day meet will not be a happy meet. It

1 will not be in the interest of Virginia racing. It
2 will, however, be in the hobby interests of Jeff
3 Jacobs, the marquee events, right? Sure. They'll
4 have the two big races, the Derby and the -- and the
5 Turf Cup, but that's about it. Look at the numbers
6 of what's being proposed here. This is really
7 breath taking, breath taking.

8 If you take their proposal, we're going to run
9 25 days for \$5.9 million and we're going to run
10 those stakes races. Guess what? The money being
11 devoted to stakes races is 47 percent of the total
12 purse money. That is absolute craziness, but what
13 it does is serve the purpose of a hobby owner who
14 likes to say, well, gee, we have these two big
15 races. We put them on CBS, \$300,000. Isn't this
16 wonderful? That's not wonderful for Virginia
17 racing. Not in the least bit.

18 So what I'm suggesting to you is that you do
19 what's reasonable for Virginia racing; that is,
20 recognize as we do that a compromise may be in line,
21 particularly because of the sagging economy as our
22 new president refers to it and proceed cautiously.
23 We would be willing to say, okay, the 9.4 that the
24 horsemen project is too high. The number should be
25 12 percent less. We'll work with eight and a half

1 million. That will still give us purse levels
2 higher than they were last year, and it will still
3 give Virginia horsemen and horsemen in the
4 Mid-Atlantic the opportunity to bring their horses
5 down here and race.

6 Now, a key portion of our compromise
7 proposal -- I don't want to sell short on this. A
8 key portion of our proposal is that these marquee
9 races be cut as well as all of the other stakes
10 races. If you have the compromise proposal in your
11 book, it's dated December 22nd. We propose cutting
12 the Derby from 750,000 to 600, and the Turf Cup from
13 600 to 500,000. Both of those by the way are grade
14 two events, and both of those are far in excess of
15 the minimum required for grade two races by the
16 Graded Stakes Committee. The Graded Stakes
17 Committee says for grade two, you've got to have a
18 purse of 200,000. We're at least three times that
19 for the Cup and more for the Derby.

20 We're also proposing cutting all the other
21 stakes races, the little stakes races that the
22 Mid-Atlantic horsemen and Virginia horsemen run for.
23 We propose cutting them from 60,000 to 55,000. All
24 total that saves us 310,000 that would have gone to
25 stakes that we could put into overnight races, the

1 races that really fuel the industry and support the
2 owners and trainers who come here to race. The
3 folks who race in the Derby and in the Turf Cup,
4 they don't come from Virginia. They don't come from
5 the Mid-Atlantic. They come from California. They
6 come from New York. They come from Florida. Come
7 in, race their fine horse, pick up a check, and
8 they're gone. They don't support Virginia racing.
9 They're the marquee events.

10 So what we're proposing then is a compromise.
11 Now, we discussed this with Colonial and Colonial
12 was flat out, we're not moving off of the 25 days.
13 So what my -- in conclusion, on the race day issue,
14 I say to you do what's right for Virginia racing,
15 require 40 days in 2009.

16 The second point that you ought to be aware of
17 is that we don't have a horsemen's contract in
18 place. It expired as of December 31st. There are a
19 number of extant issues there, some large, some
20 small, but perhaps the largest issue is Colonial
21 would have to agree in the contract to cut the
22 purses for those big races because that's where the
23 purses are set forth in the contract. That's point
24 one.

25 Another point we're arguing over is signal

1 sales. That's probably solvable and there are some
2 other minor problems that are solvable. The point
3 is we don't have a contract. We reached an impasse,
4 and there are two things that may flow from that
5 fact. One is that the statutory requirement for
6 Colonial to continue operating its OTBs and its
7 racetrack is that it have in place a contract with
8 the horsemen. That's right in the statute. Section
9 59.1-369 -- 369(14) says, the Commission shall
10 require the existence of a contract between the
11 licensee, that's Colonial, and the recognized
12 majority horsemen's group, that's us, providing for
13 purses and prizes. We don't have that. Not in the
14 least bit. That's why we're here today.

15 Now, what you -- you know, what you choose to
16 do in furtherance of your regulatory authority, of
17 course, is up to you and I'm sure you'll act on the
18 advice of counsel there, but practically speaking,
19 the other thing that might likely happen is not a
20 happy thing and that is even if Colonial continues
21 to operate its OTBs, the likelihood is that its
22 simulcast content is going to dry up.

23 I would not be surprised if other horsemen's
24 groups, say Florida, Kentucky, Ohio, West Virginia,
25 decide that they won't send their signals here

1 because there is no existing contract between
2 Colonial Downs and the Virginia HBPA. This, of
3 course, is what happened in reverse last summer
4 here. We would not agree to send our signal to
5 Calder because Calder didn't have contract with the
6 Florida HBPA. So I just mention these for purposes
7 of information so that you get the full picture of
8 what's going on with Virginia racing.

9 If you have any questions, I'd be more than
10 happy to answer them.

11 MR. BURNETT: Any questions at this time,
12 gentlemen, of Mr. Petramalo?

13 All right. We'll hold our questions until the
14 end. I assume the VTA is going to be represented by
15 Mr. Petty.

16 MR. PETTY: Yes, sir.

17 MR. BURNETT: Could we hear from you, sir, on
18 this subject?

19 MR. PETTY: You can hear from me very briefly.
20 I think all of you have been here through this
21 process before where we give our standard speech,
22 that this isn't our battle, but it does impact what
23 happens to us and when we talk about promoting,
24 sustaining, and growing the industry, we'd like to
25 raise our hands and say that's us.

1 I think what's being talked about today
2 creates a perception problem for my industry, and I
3 would suggest also for the general public. If you
4 move from 45 days to 25 days, you don't send the
5 right message to anybody that's considering
6 investing. You don't send the right message to
7 anybody who's considering sponsoring. You don't
8 send the right message to anybody in the General
9 Assembly. You don't send the right message to the
10 people who are coming to the races, the people that
11 support your OTBs, et cetera.

12 Unfortunately for Colonial Downs,
13 unfortunately for you, and unfortunately for the
14 people in this room, a lot of people that I just
15 described don't understand what's going on here and
16 what the issues are for the various parties, but
17 when you're a horse breeder, you have to look at
18 what you're going to do in sort of a five-year
19 window because it takes you almost five years to
20 produce -- by the time you breed your mare until the
21 time you get that three year old in Carlos' hands,
22 that's a five-year project.

23 So as I've said before, there needs to be
24 consistency. We need to get off the roller coaster.
25 We need to figure out how to accommodate the parties

1 and have a sensible plan in place, which is
2 supposing a lengthy echo for Frank's, we need a
3 compromise. We need to fix it. We need to move on.
4 I would only add to that that I think there's an
5 interesting math problem here. If your handle is
6 down 20 percent and you look at the racing day
7 request, going from 45 days to 25 days isn't a
8 20 percent reduction in days. A 20 percent
9 reduction in days would be nine days. If the handle
10 is down 20 percent, you want to reduce your calendar
11 20 percent as a result. You're getting a lot closer
12 to the HBPA's numbers than Colonial's.

13 So if you look at it in terms of pure
14 mathematics, I think what's being offered by way of
15 compromise makes more sense. It's pretty clear
16 based on the comments of Commissioner Reynolds,
17 everybody is going to have to tighten their belts
18 this year. If you don't get that by now, you've
19 been on a long, wonderful vacation, but if you've
20 been living here with the rest of us, then you're
21 aware of that.

22 So I think it's a difficult decision for
23 everybody, but I think there's a sensible compromise
24 in there. You know, we look at the -- I've
25 discussed the big picture with you all. Virginia

1 breeding is at such a financial compromise compared
2 to other states that every single thing that happens
3 like this is another thing we have to try and
4 overcome beyond the fact that our fund has shrunk
5 20 percent and when you're the smallest guy in the
6 Mid-Atlantic and your funds shrinks another
7 20 percent, the hill gets taller and steeper. So
8 everything that happens days in and day out
9 unfortunately makes the job of getting people to
10 breed horses and be involved in agriculture, all the
11 things we're trying to do as an industry, that much
12 more difficult. So that is all part of this entire
13 equation.

14 So I will leave you with that and I'm happy to
15 answer any questions.

16 MR. BURNETT: Thank you. Any questions of
17 Mr. Petty?

18 All right. The fourth and equally important
19 presenter today is the general public. I see we've
20 got a number of people, as Mr. Petramalo alluded to,
21 several trainers and owners being here. Are there
22 any members of that group or any other group that
23 are here that would like to address the Commission
24 on this issue of race days? Mr. Garcia?

25 MR. GARCIA: I come from Mid-Atlantic. I'm

1 going to represent some of my colleagues in here
2 that come to this meet, Ferris Allen, Merryman, and
3 others. We've been coming for the last 10, 11 years
4 supporting racing in Virginia. Some of the other
5 horsemen in the Mid-Atlantic, they don't want to do
6 that. So for ten years I've been coming over here,
7 and I can see from the first year to last year how
8 much improved -- the perception of racing, it's
9 improving. We have more fun. We can see more
10 people in the stands. We bring better horses. No
11 horse is breaking down. We got good racing. Now
12 they want to cut down to 25 days. For us, it's not
13 worth it.

14 It's expensive. If we have to bring our
15 horses over here, it is not worth to do it. To ship
16 one horse or two for a meet is fine. I'd rather go
17 to Delaware Park. We have Philadelphia Park. We
18 have Penn National. They'll have turf courses, but
19 you're talking to come to Virginia for 25 days.

20 Now, what are we going to do in Virginia? Are
21 we going to reduce it for nine days a week -- nine
22 days a meet? Make it a little fair. I don't think
23 it's possible to do that. It'd be nice for racing.
24 Not good for Virginia racing. Let's put it that
25 way. We have to maintain the days, keep improving

1 what we started. We planted a seed. Now we
2 terminated it. Are we going to cut it down? Are we
3 going to have a drought? It doesn't make sense to
4 me. We all are losing right now. I'm losing
5 because it costs me about \$40,000 for each horse
6 from the time -- from conception to bring him over,
7 I'm losing money. So is mister -- whatever his name
8 is, the owner of racetrack, but the purpose is to
9 produce for the future. We have to build. We are
10 in the process of building right now.

11 The economy in Virginia is bad. The economy
12 in the nation is bad. People don't bet like they
13 used to be, but we are losing right now. We have to
14 keep looking forward to make it better. If we're
15 going to back off, where are we going to go?
16 Nowhere. We work very hard to race in Virginia.
17 Are we going to stop? What is the problem we have
18 over here? That's what I'd like to know.

19 MR. BURNETT: Thank you, sir.

20 Any questions of Mr. Garcia? I have one
21 question. Can you tell me approximately how much an
22 owner is charged to have his horse or her horse come
23 with you to Colonial Downs versus stay at a home
24 stable? In other words, if you get 70 bucks a day
25 or 80 bucks a day, whatever it is that your rate is

1 in Maryland, you bring a horse down to Colonial.
2 You charge a day rate. And then are there
3 additional shipping and other types of expenses that
4 the owner absorbs coming down here? And if so, how
5 much?

6 MR. GARCIA: Of course. It is a lot more
7 expensive. We've got to charge -- we have to pay
8 more for accommodations to come here. Colonial
9 don't produce that. We have to get a foreman. We
10 have to find accommodations. We have -- the owners
11 have to pay a little more because I cannot absorb
12 all that.

13 MR. BURNETT: That's my -- how much does that
14 owner pay more per day or however --

15 MR. GARCIA: Well, another \$5, I charge. I
16 don't want to put so much burden on them. I take
17 the beating myself, too. Besides that, they call it
18 the Saratoga of the South. Around here for the
19 meet, they treat it that way. They think we have so
20 much money, we're coming over here. They charge
21 everything more. We pay 7, \$8, for each thing. I
22 mean, it's ridiculous. If we need it, we've got to
23 buy it. Nobody wants to come over there. Then they
24 have the gas expenses and everything. Last year was
25 very hard. We still come every day. We have to got

1 so many different bills. We are contributing for
2 Virginia racing to go forward. It would be ashamed
3 to take a step back.

4 MR. BURNETT: Thank you, sir.

5 Anybody else wish to address the Commission on
6 this issue?

7 All right. Seeing none. Gentlemen, our
8 counsel provided us with a copy of 59.1-369, and the
9 underlying assignment of racing days, regulation 11
10 VAC 10-20-220, and it sets forth the criteria that
11 we need to consider for racing. It lists
12 approximately 24 specific items and a catchall
13 labeled 25. I think there's some value in our
14 looking at those criteria, particularly when there's
15 conflict among the parties.

16 As a preliminary matter, is there any desire
17 for legal advice before we engage in public
18 discussion on this particular item?

19 MR. MILLER: I'm looking for that.

20 MR. BURNETT: I will say that I have a notion
21 or two that I'm not sure whether it's legally proper
22 or permissible. I would like to share that with our
23 counsel. Unless there's some objection, I would
24 move that we go into closed session --

25 MR. MILLER: Before we do that --

1 MR. WEINBERG: Chairman?

2 MR. MILLER: I'm sorry.

3 MR. WEINBERG: I'm sorry. I didn't mean to
4 interrupt.

5 MR. MILLER: Before you get into that, I know
6 no one else other than Mr. Garcia spoke from the
7 general public, but could I just ask if there is
8 anyone out there who agrees with Mr. Garcia's
9 comments and do you support those comments? Just
10 raise your hands.

11 MS. QUERY: Absolutely.

12 MR. MILLER: Thank you. Some people just
13 don't want to talk.

14 MS. QUERY: I'll speak to something.

15 MR. MILLER: No. I mean --

16 MR. PETRAMALO: This is Mary Query. She's a
17 trainer here in Virginia.

18 MR. MILLER: I just wanted to get a sense of
19 who all of you are and what your position is, and I
20 can imagine what your position is and you agree with
21 Mr. Garcia and Frank's comments basically, right?

22 MS. QUERY: Definitely.

23 MR. MILLER: Now, I would say this. We don't
24 want to keep anyone from addressing us. If there's
25 anything in addition that you think would benefit

1 the Commission to hear, certainly I would encourage
2 you to speak up. So do you have -- Mr. Chairman, I
3 don't want to --

4 MR. BURNETT: Oh, no. If you can drag it out
5 of them, have at it.

6 MR. MILLER: I mean, we need as much help as
7 we can get.

8 THE REPORTER: I need you to state your name
9 for the record, please.

10 MS. QUERY: Okay. Mary Sue Query. This is
11 like Frank was saying and Carlos. I've been born
12 and raised here. I came out years ago to set -- for
13 the voting and they came and asked me like what are
14 you doing? Who are you with? I'm like I'm with no
15 one. I'm sitting here, you know, handing out things
16 to get this passed by myself.

17 And now I sit here and I'm like y'all want to
18 cut days, and just like Carlos said, they've got to
19 bring riders in. I gallop horses in the field
20 because I don't have a track, then I go to Maryland
21 to work the horses so I can have Virginia bred here.
22 They just started this, you know, a hundred percent
23 payback, and then they want to take more days from
24 us. I have a horse that I can run, but I can only
25 run him every ten days or every seven days. Then

1 the vet says, no, he needs a little bit more time,
2 so then y'all cut us more days.

3 I'm like it just cuts our throat, and then the
4 blacksmiths don't want to come up here. We have
5 vets from Maryland come. And then Tyler, he's
6 saying, "Come on. We've got to fill these races.
7 We need more horses." If the people are not stabled
8 here, you know, where are they going to come from?
9 They're not going to drive all the way down here.
10 It's expensive. It's expensive. It costs like \$700
11 just to bring a horse here. I mean, I'm sure it's
12 probably more, I'm not sure, but you cutting days is
13 cutting our throats. You know, it's just -- we work
14 so hard, you know, to get -- I know this year it's
15 terrible, but if we can just get through the rough
16 waters, you know, there's nothing next year that --
17 hopefully we can get this thing going.

18 I sure hate to cut our days and everybody
19 don't come, then Tyler and everybody is looking for
20 horses to fill races, and then y'all can say, well,
21 I told you so, Jacobs and them. We need those days.
22 We need to look forward. We need to look to the
23 future. I don't know what else -- I get so -- I'm
24 not -- but I just want to say something. I just
25 want to say something.

1 MR. BURNETT: Thank you.

2 Yes, ma'am?

3 MS. RICHARDS: I would just like to raise a
4 concern to educate the members of the Commission.
5 At the beginning of the year, horsemen submit a
6 stall application, which is a commitment saying that
7 you will come and stable at that racetrack. And I'm
8 just concerned that with 25 days, horsemen will not
9 be able to make that commitment because when it
10 ends, they will have no place to go. Delaware will
11 be running. Monmouth will be running. The stalls
12 will be full. They will be kind of out there in
13 left field.

14 MR. BURNETT: Thank you.

15 Yes, ma'am?

16 MS. HESTER: I would just like to comment --

17 MR. BURNETT: Would you state your name for
18 the record, please.

19 MS. HESTER: Leanne. Leanne Hester. I'm an
20 owner, a trainer, and a breeder, so I can kind of
21 see all the aspects and great points from every one
22 of you, but number one, for Virginia it's so hard as
23 a trainer to be a Virginia trainer. You have to go
24 to outside states no matter what you do to get your
25 gate cards, to get all your licensing. It's much

1 harder on an owner in Virginia than in any other
2 state because of this program. I think if we have
3 less days -- it's a trickle down effect, like Glen
4 was saying. It takes several years to get these
5 fowls to the races.

6 So if we have less days, people are going to
7 get disillusioned. If it goes backwards, we're
8 going to have less breeders. So the whole program
9 is going to be damaged, the breeders, the stallions,
10 everything is affected by this decision today
11 because of this trickle down effect of why breed.
12 We might not even have a program, and we're showing
13 this instability really bad right now. So I really
14 think that not taking a step back is important to
15 not just racing, but to the whole picture, the
16 breeding in Virginia, the whole race industry in
17 Virginia.

18 MR. BURNETT: Thank you.

19 Anyone else? Yes, sir. Your name, please?

20 MR. GARDINER: My name is Tom Gardiner,
21 G-A-R-D-I-N-E-R. I manage some starter stables here
22 in Virginia. I'm based out of Richmond. We have
23 three of them right now. I have about 80 owners
24 altogether, a lot of them one, two, and three
25 percent, but most of them have never owned a horse

1 before. Probably 95 percent of those people are
2 Virginia people. I'm trying to get them involved
3 with Virginia racing.

4 We've bought most of our -- we had up to six
5 horses. We only have three right now, but we've had
6 up to six horses. My trainer, Pasquale Pane, he's
7 stabled in Bowie, Maryland, right now. I've tried
8 very hard to support Virginia and Colonial Downs.
9 I'm a former employee actually of Colonial Downs as
10 a teller, worked in the audio visual back in the
11 early days of Colonial Downs.

12 When we go down to the horse sales, we try to
13 buy and we look for Virginia bred horses. We try to
14 support the Virginia bred, the Virginia industry as
15 owners, and I try to get my owners involved. And
16 two or three of them have split off and got their
17 own horses now, and they're bred.

18 So, again, as Leanne said, we're looking for
19 the future, you know. It is two or three or four
20 years out there. If I'm going to a sale and buying
21 Virginia bred, I'm not going to run for a 25-day
22 meet, you know, it just cuts down my opportunity.
23 Why do that when the other -- the rest of the year,
24 minus 25 days, I'm racing somewhere else. Maybe
25 I'll be looking for Maryland breds or wherever --

1 Pennsylvania bred or wherever we will be racing.

2 I'm trying to support the Virginia bred. We
3 didn't buy anything at this past sale because I
4 wasn't sure where Virginia was going to go, but it
5 definitely affects what I want to do with my
6 business and how much I want to expand. That's why
7 I'm here today is to make my decision. Where's
8 Virginia going? Where do I need to be going with my
9 future? Granted I'm a very small fish in a great
10 big pond, but it does have an impact. I'm trying to
11 pay the bills. I understand where Colonial Downs is
12 coming from. If you can't pay the bills, you can't
13 pay the bills, but I'm very concerned about a 25-day
14 meet.

15 I've talked to my trainer at length. If we go
16 to a 25-day meet here, I'm nearly certain we'll stay
17 in Bowie and run out of Bowie, and that gives us
18 options to then go to West Virginia, Pennsylvania,
19 Delaware, or wherever -- and Colonial Downs. We'll
20 just pick our best spot for our horses.

21 He loves to come here. He's been here six
22 years in a row. We bring about 20 head, but it just
23 doesn't make sense to uproot yourself so much for
24 five days or five weeks. You give up your stalls
25 back there. Sometimes you have trouble getting back

1 in. So that's our issue. We'll probably -- I can't
2 say for sure, but we'll probably stay in Bowie if we
3 go to a 25-day meet and race out of there and race a
4 lot of horses elsewhere.

5 MR. BURNETT: Thank you, Mr. Gardiner.

6 Anyone else wish to speak on this issue? Yes,
7 ma'am?

8 MS. COX: I'm Nelly Mae Cox. I'm an owner and
9 breeder and I have had horses run at the Colonial
10 Downs meet from its inception, and I know how
11 important it is to all of us in this room. There
12 are many others that have supported it from the very
13 beginning, and we want to run our horses here. And
14 I think that the aspects of breeding horses in
15 Virginia, having the green spaces and all of the
16 other things that help the agricultural economy of
17 this state are very important, and we need some
18 help. Thank you.

19 MR. BURNETT: Thank you.

20 Anyone else wish to speak? Yes, ma'am.

21 MS. NIXON: My name is Stephanie Nixon, and I
22 have a farm here in Ashland. I've been coming here
23 like most of these guys since the track has started
24 and, you know, I get up at four o'clock every
25 morning, come down here, take care of my business

1 here, then go back to my farm, take care of my
2 business at the farm, then come back in the
3 afternoon to saddle my horses, look after the horses
4 here. I've been doing it for 11 years, but there is
5 no way I'm going to come back and ship all my
6 horses, all my help, split up my operation for 25
7 days. It's just -- you know, it's not worth it to
8 me to do that.

9 The reason why I do this is because I love
10 Virginia racing. I'm like Mary Sue. I've had to go
11 to Maryland to get a gate card. I've had to go to
12 Maryland to do this. I've had to do -- you know, go
13 all over to run my horses, and it's sad that we
14 can't keep promoting Virginia racing like we have,
15 and I just don't understand. I don't think -- I
16 don't see myself coming down here, and it hurts me
17 to have to say that as much as I love Virginia
18 racing.

19 MR. BURNETT: Thank you.

20 MS. HESTER: Can I ask a question?

21 MR. BURNETT: Certainly.

22 MS. HESTER: Why is only -- why are only the
23 thoroughbred days at stake? If they're trying to do
24 a general cutback, why aren't the standardbreds not
25 being asked for some days, too? Isn't it the same

1 pot of money?

2 MR. BURNETT: I said you could ask a question.
3 I didn't say we'd answer it, number one. It is a
4 matter of contract between horsemen and the track,
5 and I don't want to go into all the arguments about
6 it, but there is an agreement between the harness
7 horsemen and the racetrack as to that meet.

8 There are differing expenses and different
9 factors being considered and for whatever reason,
10 they have reached an agreement on that number. I
11 have not heard anybody say that the two issues are
12 intertwined in any significant way, but I'd be
13 certainly open to hearing about that as I'm sure the
14 rest of us would if that's the case. I don't think
15 I can really embellish on that anymore.

16 I did say that everybody would have an
17 opportunity to offer any rebuttal if they would
18 like, and this would be a good opportunity to do
19 that.

20 MR. WEINBERG: If I may, I would like to
21 return to a few points that Frank made. I think
22 when we look -- there is a suggestion that Colonial
23 Downs had not lived up to the bargain struck in 2001
24 when we arrived at this five-year plan. I have to
25 take serious issue with that. Frank explained how

1 each and every year since then there have been
2 growth in race days.

3 You may recall when we sat in this room in
4 December of 2007, we looked at charts, and those
5 charts showed that each and every year of that
6 contract there had been increases in race days, give
7 or take a few years where we dropped back a couple,
8 but consistently year in and year out the earnings
9 of Colonial Downs had declined.

10 So Colonial Downs sacrificed its earnings to
11 make sure that race days expanded. To suggest that
12 we somehow didn't live up to our agreement, we built
13 those OTBs. The deal with the horsemen was, look,
14 we are not going to build OTBs in small metropolitan
15 areas, which we cannot make a profit in under the
16 statutory scheme of purse contributions.

17 If we build an OTB in Martinsville and have to
18 pay six percent into the purse fund, that OTB will
19 never been be profitable, but we will do this. If
20 you'll reduce the purse contribution to four and a
21 half percent, we'll take the risk that there will be
22 sufficient handle in Martinsville that we can make a
23 profit and that the horsemen get more handle, and
24 hence, more purse funds. Colonial Downs took that
25 risk. It turned out to be bad bet for Colonial

1 Downs. There are more race days, but there's less
2 earnings, but that's --

3 MR. STEWART: I'm sorry.

4 MR. WEINBERG: Go ahead.

5 MR. STEWART: I was just going to point out
6 two things. If you look at the financial results in
7 Scott County, Martinsville, and Vinton, the horsemen
8 made more money than we did. And the truth of the
9 matter, as Jim pointed out, the horsemen recognized
10 that four and a half percent of something is better
11 than six percent of nothing. They weren't going to
12 be any OTBs unless the cost structure changed. So
13 while I appreciate he wants to characterize it as a
14 sacrifice, the truth of the matter is it was a
15 benefit.

16 MR. WEINBERG: I'd just like to point out a
17 few math characterizations I would disagree with.

18 I think Frank suggested when we ran 40 days,
19 we had the highest concentration of horses per race
20 at 9.1. I believe when we ran 30 days, there were
21 9.8 horses per race. There was a suggestion that if
22 the total purse funds available for racing in 2009
23 were 8.6 that that would be the highest average
24 daily purses that we raced for, that would be
25 \$215,000 a day roughly. That would not be the

1 highest we have raced for. Would it be an
2 improvement over last year? Yes. Would it be less
3 than what we raced for in 2007? Yes. In 2006, it
4 would be a decline.

5 Yes, there might be more gross dollars wagered
6 through the ADW this year, but our margins on those
7 dollars is going down, and as the ADW providers
8 including YouBet, pay higher source fee -- I'm
9 sorry, pay higher host fees to TrackNet Media, our
10 source market fees are going down.

11 On the math that Glen did, yes, handle on the
12 OTBs is down 20 percent, but what also is not
13 factored into the 5.9 available is the absence of
14 the gap funding. Gap funding represents four and a
15 half months of purse generation in the SWFs. So
16 just adding, that's about roughly a third of a year.
17 So if you add those two numbers together, 20 percent
18 and 33 percent. That's 53 percent. So 25 days is
19 more than 47 percent of 45 days.

20 I'm not suggesting that is the proper math,
21 but you need to take into account in 2009, we're
22 looking to fix a systemic problem and that is the
23 gap funding. We don't have it to provide. The
24 horsemen have said if you race 45 days, we'll give
25 it to you, but anything short of that, we're not

1 going to provide it to you. We are looking at five
2 million dollars for purses.

3 MR. PETRAMALO: Surrebuttal, two points.

4 MR. WEINBERG: I can --

5 MR. PETRAMALO: I'm sorry, Jim.

6 MR. WEINBERG: That's all right.

7 The last point is, what is our industry? I
8 appreciate and respect the views of the owners,
9 trainers, and breeders that have expressed their
10 view, but if the track isn't considered a Virginian
11 and part of that industry, then we're going to sit
12 around and we can all make idle threats. The
13 horsemen are going to withhold signal. The breeders
14 and trainers aren't going to bring their horses.
15 That's not how we're going to move this industry
16 forward. We need to find a solution. 2009 is going
17 to be a year of cutbacks. There is no way with the
18 dollars we have before us that we are going to have
19 traditional growth in race days.

20 The growth is going to come in my view from
21 perpetuating our niche as a turf track mecca. Part
22 of that is preserving these marquee races. We can
23 negotiate on all the other stakes races. I think
24 there are plenty of them, but it's time to stop
25 picking on the big two. We've been picking on them

1 for years and that was part of a lengthy
2 contractual negotiation as well. Those purse
3 amounts were set as quid pro quos over a long
4 history of contract negotiation, and the growth is
5 going to become in sort of preparing for the future
6 because three years hence, we're going to be dealing
7 with slots in Maryland and jacked up purses, and we
8 need to figure out how we're going to compete,
9 whether it's a shorter meet or some other way.
10 We're not going to be able to preserve the status
11 quo, continuing to grow three or four days a year
12 and expect that we're going to compete on the same
13 terms as we are today.

14 One legal point not directly affecting race
15 days, but obviously for the reasons set out in my
16 letter to Mr. Harrison, we disagree whether -- that
17 we do have a contract that addresses purses and
18 prizes in place. I'm not sure that is directly
19 related to the issue of race days before you. I
20 would suggest to you once race days are behind us,
21 the obstacles we face in negotiating a contract that
22 addresses a host of other issues would probably be
23 easier than it has been in the past few weeks.

24 MR. STEWART: I guess I've got one brief
25 comment. I hear the owners and the trainers and I

1 understand the personal issues involved there and
2 their hopes and desires for Virginia racing.

3 Colonial Downs has several hundred employees,
4 and they share many of those same hopes and desires.
5 They're making sacrifices. They want to preserve
6 their jobs. All you have to do is listen to the
7 radio any morning. This morning it was Clear
8 Channel. Who's it going to be tomorrow?

9 We need to put this industry on a
10 fundamentally sound financial foundation, or we'll
11 all have trouble, very serious trouble.

12 MR. BURNETT: Anything further?

13 Mr. Petramalo, surrebuttal.

14 MR. PETRAMALO: Two quick points. Just as a
15 matter of arithmetic, the handle at the OTBs is not
16 down 20 percent. I don't know where that number
17 comes from, that it was down 20 percent in December.
18 Per the calendar of 2008 in your own report, it
19 shows it's down 11 percent. Just a minor point.

20 With regard to the point that Jim made on the
21 number of days, we're not seeking growth here in a
22 time of economic downturn. Our compromise kind of
23 recognizes that and we're saying, okay, we won't
24 race 45 days the way we did in 2008. We'll cutback
25 to 40 days. So I think we're being responsible

1 there. We're not seeking an expansion at an
2 inopportune time.

3 And secondly, Jim represented that the
4 horsemen said they would fund the gap only if it was
5 45 days. That's not correct. What I said to you
6 was our compromise proposal was 40 days, and we will
7 fund the gap at 40 days. End of surrebuttal.

8 Let me add one final thing because you folks
9 know that I always get animated here, but I want to
10 make clear that there's no personal animosity
11 between horsemen's representatives and the
12 racetrack. We have spirited exchanges, but believe
13 me, it doesn't go beyond what you see.

14 MR. BURNETT: I think the spirited exchanges
15 are helpful, and they keep the Commission awake. So
16 that's good.

17 Mr. Petty, we ought to give you a chance at
18 surrebuttal as well. Anything to add?

19 MR. PETTY: I think the folks that spoke here,
20 especially Mr. Gardiner, he really sums up our
21 situation. He's says he's a little fish in a big
22 sea. As far as I'm concerned, he's the biggest damn
23 fish in our, you know, big ole swallowing ocean.
24 Guys like that, I mean, for us that want to buy
25 Virginia bred and want to support the industry, I

1 mean combine that with everything everybody else
2 said, I think it sums it up very nicely.
3 Unfortunately, your job is to adjudicate their
4 interests and their interests and their interests
5 and figure out how to make everybody's interest
6 work. That's the trick here, because everybody has
7 very different interests, but that's always been the
8 definition of the stakeholders in this industry. So
9 I don't have anything other to add than sort of
10 ditto what everybody has really already said.

11 MR. MILLER: Mr. Chairman?

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

13 MR. MILLER: Could I ask a question --

14 MR. BURNETT: Please.

15 MR. MILLER: -- of Frank? On the gap funding
16 proposal --

17 MR. PETRAMALO: Yes, sir.

18 MR. MILLER: -- will you agree to provide the
19 gap funding should the number of days be less than
20 40, would you still be willing to work out the gap
21 funding?

22 MR. PETRAMALO: No. Absolutely not. And
23 that's not coming from me. That's coming from our
24 board yesterday afternoon.

25 MS. RICHARDS: It's also spirited.

1 MR. PETRAMALO: Yes, very spirited.

2 MR. MILLER: I have a question of --

3 MR. BURNETT: Please.

4 MR. MILLER: -- Jim.

5 On your presentation of this sheet that you
6 gave regarding debt, assets and debt, you indicate
7 that the 66 million plus due to Jacobs Entertainment
8 is to cover the cost of finishing the track,
9 additional money debt -- in addition to the 38
10 million, the cost of setting up the SWFs, and you
11 said covering 10 years of losses.

12 From a bookkeeping standpoint, does Colonial
13 Downs carry that on its books as a -- is that a loan
14 from Jacobs, or has Jacobs claimed those losses on
15 their taxes for their entire operation? And if
16 they're reimbursed, do they go back and show that as
17 a reimbursement for a previously claimed tax loss?

18 MR. STEWART: Colonial Downs and Jacobs
19 Entertainment -- Jacobs Entertainment is a
20 subchapter S corporation. The losses flow through
21 to Mr. Jacobs personal tax return. This is carried
22 as an intercompany account on the Colonial Downs
23 balance sheet. There's no credit posted back for
24 any tax benefits.

25 MR. DALE: But there's no provision for taxes

1 in there either.

2 MR. STEWART: There's no provision for taxes.

3 MR. BURNETT: I think I understand that. I'm
4 dense when it comes to taxes, but anyway, Colonial
5 Downs is treating that as if it were an obligation
6 back to Jacobs -- to Mr. Jacobs. In other words,
7 you're try to make him whole.

8 MR. STEWART: Well, in order to balance the
9 books, you know, when the money comes in, we have to
10 add another side to the entry due to Jacobs
11 Entertainment. Now, you know, the -- when the
12 initial consolidation of Colonial Downs into Jacobs
13 Entertainment in 2001 or 2002, it slips my mind,
14 there was originally \$12 million left on the books.
15 He wrote off 10 or 15 million. He left 12 million
16 on the books. That accrues interest, but the rest
17 of it doesn't.

18 MR. BURNETT: Ian, may I ask one question in
19 follow-up just so I -- I view this document you gave
20 us as essentially an illustration of where this
21 enterprise as a whole is. Would it be fair to say
22 that if in 2008 somebody wrote Mr. Jacobs a check
23 for \$74,212,000 and he deeded over everything he
24 owned that had to do with Colonial Downs racing, he
25 would walk away saying I broke even? I put a lot of

1 time and energy and blood, sweat, and tears, but
2 basically I'm breaking even at that point. Is that
3 a fair way to look at that?

4 MR. STEWART: Well, actually you really don't
5 need 74 million. You could get by with 66, and then
6 he'd be even.

7 MR. BURNETT: Gotcha. Right there. So what
8 he's put into it, he breaks even there. All right.

9 And a question for Duke, are we still at the
10 incremental cost of about \$23,000 a day? Has that
11 changed in any way? For additional racing, if we
12 were to go -- if you pick 30 days or 35 days,
13 whatever the number of days is, for every day you
14 add after that, we had this discussion last year, I
15 think last -- late last year it was about \$23,000 in
16 the incremental additional costs, is that number
17 still right?

18 MR. STEWART: That's still good.

19 MR. BURNETT: Gentlemen, I think this is going
20 to take some creativity on our part which might
21 involve some notions that our lawyer might wince at
22 if she didn't have the chance to hear them ahead of
23 time. I suggest we go into closed session. I'm
24 going to make a motion to that affect.

25 Now, in accordance with the provisions of

1 Section 2.2-3711 (A) of the Code of Virginia, I move
2 that the Commission go into closed meeting for the
3 purpose of consultation of legal counsel employed or
4 retained by a public body regarding specific legal
5 matters requiring the provision of legal advice by
6 such counsel. All in favor indicate by saying --
7 well, do I have a second?

8 MR. FERGUSON: Second.

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

11 NOTE: The motion is made by Commissioner
12 Burnett and seconded by Commissioner Ferguson. All
13 were in favor. The motion carries.

14 NOTE: The Commission went into closed
15 session, following which the hearing resumes as
16 follows:

17 MR. BURNETT: All right. Gentlemen, the first
18 order of business is a certification.

19 I move the adoption of the following
20 resolution: Whereas, the Virginia Racing Commission
21 has convened a closed meeting on this date pursuant
22 to an affirmative recorded vote in accordance with
23 the provisions of the Virginia Freedom of
24 Information Act, and whereas, Section 2.2-3712 of
25 the Code of Virginia requires a certification by

1 this Commission that such closed meeting was
2 conducted in conformity with Virginia law.

3 Now, therefore, be it resolved, that the
4 Virginia Racing Commission certifies that, to the
5 best of each member's knowledge, (i) only public
6 business matters lawfully exempted from open meeting
7 requirements under the Virginia Freedom of
8 Information Act and (ii) only such public business
9 matters as were identified in the motion convening
10 the closed meeting were heard, discussed or
11 considered by the Commission in the closed meeting.

12 Roll call vote. Mr. Miller?

13 MR. MILLER: Aye.

14 MR. BURNETT: Mr. Reynolds?

15 MR. REYNOLDS: Aye.

16 MR. BURNETT: Mr. Brown is absent.

17 Mr. Ferguson?

18 MR. FERGUSON: Yes.

19 MR. BURNETT: The chair votes aye, and
20 Mr. Brown as soon as he opens that door is going to
21 vote. Mr. Brown, are you voting aye or nay if the
22 meeting --

23 MR. BROWN: Aye.

24 MR. BURNETT: Thank you, sir. He knew what
25 that motion was.

1 Folks, we spent a lot of time trying to find
2 our way through this thicket and we discussed an
3 alternative about which we are not certain of the
4 legality after spending some time with our counsel.
5 We are not satisfied that we can come up with a
6 legal analysis with which we are comfortable today.

7 With that said, we think that by sharing with
8 you the commissioners' idea, recessing for 30
9 minutes to allow the parties to talk about it, and
10 come back to us. If there is voluntary agreement,
11 we can have race days today. So I want to share
12 with you what our thinking is. I will invite my
13 fellow commissioners to correct me if I wonder off
14 what I think I understand the proposal to be.

15 We are cognizant that everybody is suffering
16 and that everybody is acting in good faith to find a
17 way to keep their own particular stake in the
18 business alive and keep the industry in Virginia as
19 a whole alive as best we can. We are mindful of the
20 impacts of making race day assignments that are
21 extreme in any way, either high or low, and our
22 instinct would be to assign 35 days of racing with
23 Colonial Downs being responsible for the gap
24 funding. We are not satisfied that we can order
25 Colonial Downs to provide gap funding. We have some

1 significant doubt about that, and we are also
2 mindful that the horsemen have expressed an interest
3 in providing gap funding if they can run 40 days.
4 We think imposing that 40 days of racing on the
5 racetrack at the expense that it is, even with gap
6 funding taken care of by the horsemen, is perhaps an
7 onerous burden.

8 The middle ground that we want the parties to
9 discuss is the assignment of 40 racing days with the
10 horsemen being responsible for the gap funding and
11 the horsemen being responsible for an additional
12 \$115,000 worth of incremental increases in costs
13 payable to the racetrack. We're not sure we can
14 order that either, but we think if the horsemen and
15 the racetrack were to come to us with either one of
16 those proposals that we can award race days.

17 So it is our intention to first ask the
18 horsemen, the racetrack, the breeders if they're
19 willing to take half an hour and talk about it right
20 now. And if the answer is yes, then we would recess
21 for half an hour, hear what you have to say. If
22 race days come out of it, fine. If they don't,
23 we'll go back to the drawing board and do what we
24 can. I would also say that Mr. Ferguson suggested,
25 I'm willing to go back and forth if that's any help

1 to the parties.

2 Any questions about any of that?

3 MS. STEWART: Well, the problem is I'm not
4 sure that I can do that. I mean, I can't --
5 Colonial Downs/Jacobs Entertainment is not going to
6 fund the gap.

7 MR. BURNETT: Understood.

8 MS. STEWART: I've got nowhere to go.

9 MR. FERGUSON: Can we get these parties to
10 discuss this in separate rooms with some shuttle
11 diplomacy instead of in front of a crowd?

12 MR. BURNETT: If they're willing.

13 MR. PETRAMALO: We're always willing.

14 MR. BURNETT: Patty?

15 MR. STAPLES: What's wrong with a crowd -- as
16 a crowd? We're all horse people here. Excuse me
17 for butting in, but I don't see a crowd here. I
18 just see horse people here. Why can't we discuss
19 this right here?

20 MR. FERGUSON: For the very reason that we're
21 doing it. It interjects -- it interjects --

22 MR. STAPLES: I could never get a response
23 from y'all anyway. That's why I bolted today and I
24 didn't know, but -- and I've been an owner. I've
25 spent my money in Maryland. I've got Maryland

1 people -- Virginia people in Maryland that wanted me
2 here today. We finally made it, and I think we
3 should have this as open as we can and transparent,
4 you know, that's all.

5 MR. BURNETT: No. I agree with you, sir.
6 That's part of what we're attempting to do is be
7 just as open as we can. What we're trying to do
8 is -- and it will all be public. We're trying to
9 let these two parties maybe insult each other in
10 private for lack of a better term until they find a
11 deal, and then they're going to have to tell us all
12 about it and you're going to know all about it.

13 MR. STAPLES: Wonderful. Sounds like a winner
14 to me. Let's get with it.

15 MR. BURNETT: Anybody need a horse trainer?

16 MR. STAPLES: A what?

17 MR. BURNETT: I said anybody need a horse
18 trainer. It sounds like you're right on it.

19 MR. STAPLES: We're promoters, though, too,
20 and we're from the Commonwealth.

21 MR. BURNETT: That's good.

22 MR. STAPLES: I was born here.

23 MR. BURNETT: Congratulations.

24 MR. STAPLES: Thank you, and you're quite
25 welcome.

1 MR. BURNETT: We're all on the same page, I
2 hope.

3 MR. STAPLES: Thank you. I hope so, too.

4 MR. BURNETT: Any further comment from
5 anybody? Are we making any progress? I mean, if
6 we're wasting our time, we're wasting our time.
7 We're all struggling over this trying to find some
8 way that we can make the best possible decision in
9 very difficult circumstances.

10 MR. HARRISON: Do you want to use the
11 conference room? You can use my offices. I just to
12 make it -- I want to facilitate the means.

13 MR. PETRAMALO: Let me see if I understand
14 where we are. You put two alternatives on the table
15 and asked the parties whether they were willing to
16 discuss them. As I understand it, Colonial Downs
17 has said forget one. We won't discuss it.

18 MR. BURNETT: Part of one, I heard. He's
19 trying to be upfront and say -- we're not sure we
20 can impose -- we fully recognize that if we can't
21 impose gap funding, it is possible that we would be
22 running 35 days divided into 5.9, 5.7, five point
23 whatever it is. That's going to be the daily
24 purses, and there's still a discussion to be had
25 about stakes and all the rest. That's one scenario.

1 Another would be that if the horsemen were
2 willing to pay the incremental costs between 35 days
3 and 40 days at \$115,000, and the gap funding, this
4 Commission would be inclined to impose those days.

5 MR. PETRAMALO: Maybe I misunderstood. You
6 put two proposals on the table for our
7 consideration. The first one was 35 days with
8 Colonial Downs providing the gap funding, number
9 one.

10 MR. BURNETT: If legal.

11 MR. PETRAMALO: Number two was 40 days with
12 the horsemen providing gap funding plus \$115,000.

13 MR. BURNETT: Correct.

14 MR. PETRAMALO: So what I was trying to
15 summarize before we recessed was where I thought we
16 were, and I thought I heard Ian say we're not going
17 to talk about number one because it's off the table.
18 Colonial will not provide any gap funding, which I
19 accept.

20 So that means if we recess to retire or retire
21 to talk about this what we're talking about is the
22 horsemen providing gap funding for 40 days, plus
23 115,000; is that correct?

24 MR. BURNETT: And such other issues as you
25 might find germane during the course of your

1 negotiations on the track and everything else.

2 MR. PETRAMALO: Goes without saying.

3 MR. BURNETT: Yes. Yes. Correct.

4 MR. FERGUSON: I would like to make a motion
5 to recess.

6 MR. BURNETT: We have a motion.

7 MR. MILLER: This negotiation based on what
8 Frank has described is what they're going to be
9 talking about, will that be something -- is that
10 something you all want to do, Jim?

11 MR. WEINBERG: I think we're happy to talk
12 about it. I can't, again, promise you where we'll
13 go.

14 MR. MILLER: Well, and Frank can't either.

15 MR. PETRAMALO: No. I mean, let's --

16 MR. BURNETT: Let's go 30 minutes and see
17 where we are.

18 MR. PETRAMALO: Let's cut to the chase unless
19 I'm missing something. What you're basically saying
20 to the horsemen is are you willing to come up with
21 \$115,000, because we've already told you that we'll
22 do 40 days and gap funding. The question is will
23 \$115,000 convince Colonial Downs to say yea. Isn't
24 that where we are?

25 MR. BURNETT: I don't know that it'll convince

1 Colonial Downs to say yea. It would convince the
2 Commission to impose 40 days.

3 MR. PETRAMALO: All right.

4 MR. BURNETT: Colonial Downs might not like it
5 at all. Maybe their objective is to run 28 days,
6 period, end of discussion. I don't know. But
7 that's where it is.

8 MR. PETRAMALO: Okay. We're happy to talk
9 as -- join Jim with that -- in that notion. We're
10 happy to talk.

11 MR. BURNETT: Okay. We'll come back at ten
12 past one. Stand adjourned for half an hour.

13 Note: A recess was taken, after which the
14 following proceedings were had:

15 MR. BURNETT: All right. We'll go back into
16 our meeting. I think where we left off was having
17 shared with the parties our view of some potential
18 avenues and left you to discuss those and ask if
19 both parties can tell us where they are.

20 MR. STEWART: Well, you proposed two
21 alternatives. We discussed them amongst ourselves
22 and amongst our principal. Neither one of them is
23 going to work for us. We came here through this
24 process. We didn't ask for a bailout. We asked for
25 what we thought was reasonable given the economic

1 conditions that the track faces and the whole
2 country faces. So, unfortunately, we can't really
3 be supportive of either one of those alternatives.

4 MR. BURNETT: All right. From the horsemen
5 side, can you be supportive of either one of those
6 alternatives the way it's phrased?

7 MR. PETRAMALO: Yes, the second one.

8 MR. BURNETT: So were this Commission to award
9 40 days of thoroughbred racing in 2009, the
10 representation of the horsemen is they would pay to
11 Colonial Downs \$115,000 and would satisfactorily
12 provide gap funding?

13 MR. PETRAMALO: Correct. But, remember, part
14 of our compromise proposal was cutting those stakes
15 purses.

16 MR. BURNETT: That has not been part of this
17 proposal. We recognize that there are several
18 issues that need to be addressed in the horsemen's
19 contract and part of our objective in handling this
20 the way we have today was to give both parties some
21 sense of where the Commission is at least on the
22 days issue in hopes that that might help y'all along
23 on putting some kind of contract in front of us.

24 MR. PETRAMALO: Well, just limited to the
25 days, 40 days with us providing the gap funding and

1 finding 115,000, that's acceptable.

2 MR. BURNETT: Gentlemen, any questions of
3 either party? Any discussion on where we are?

4 MR. BROWN: Mr. Chairman?

5 MR. BURNETT: Mr. Brown?

6 MR. BROWN: Ian, was there any kind of
7 counterproposal that even remotely looks like it
8 could work from your side?

9 MR. STEWART: Well, I think we put our best
10 offer on the table. I mean, we've kind of been
11 talking about this for a long time. The
12 situation -- if I could see that the situation was
13 improving, then I could make a case for something
14 better, but I don't see the situation improving. I
15 hate to be the bearer of doom and gloom all the
16 time. I find that depressing.

17 MR. BURNETT: Any other questions or
18 observations, gentlemen? It seems we have a --
19 excuse me, sir. We'll take you at public
20 participation. We're happy to hear from you. I
21 don't want to leave you out.

22 MR. STAPLES: Thank you. That's all I ask.
23 Thank you very much.

24 MR. BURNETT: You bet.

25 We can make a decision today on the days issue

1 knowing what we have in front of us. We know we
2 don't have a horsemen's contract. There are
3 multiple issues that need to come from that, or we
4 can defer a decision. Both of them having their
5 benefits and detriments.

6 MR. MILLER: Mr. Chairman?

7 MR. BURNETT: Yes.

8 MR. MILLER: How soon would a proposed
9 horsemen's contract be back with us? Is it
10 something you all can go off and agree on if we
11 determine the days today?

12 MR. PETRAMALO: We had planned on meeting on
13 Friday to take that up, finish the contract.

14 MR. MILLER: And when you say finish the
15 contract, that would include whatever number of
16 days -- if we were to designate the number of race
17 days today and when you get together on Friday, you
18 all will be negotiating back and forth regarding
19 your position on the stakes races --

20 MR. PETRAMALO: Correct.

21 MR. MILLER: -- and so forth?

22 MR. PETRAMALO: And payment to Colonial of
23 115,000, where it would come from.

24 MR. MILLER: May I continue, Mr. Chairman?
25 Then the original position that you had today when

1 we first -- before we asked you all to get together,
2 you had agreed that you would concede another five
3 days. You would go from your 45-day request down to
4 40 days of racing, and you would provide the gap
5 funding?

6 MR. PETRAMALO: That's correct.

7 MR. MILLER: And you did that based upon --
8 you were still going to try to get together with
9 Colonial Downs to try to get them to reduce those
10 stake -- those two big stakes races?

11 MR. PETRAMALO: Well, our proposal was to cut
12 all of the stakes -- virtually all of the stakes
13 races except three. Not just the two big races, but
14 12 others.

15 MR. MILLER: Well, what I'm trying to get to
16 is whether your offer to -- your submittal to the
17 Commission that you would agree to the 40 days and
18 provide the gap funding, was that contingent upon
19 you all getting together this Friday and you working
20 out an agreement to reduce those --

21 MR. PETRAMALO: Yes.

22 MR. MILLER: -- stakes races?

23 And if you failed to do that this Friday, then
24 you would not go with 40 days and the gap funding?

25 MR. PETRAMALO: That's correct.

1 MR. MILLER: I just wanted to be clear about
2 that.

3 MR. WEINBERG: And I would like to speak to
4 that point, if I may.

5 MR. BURNETT: Please.

6 MR. WEINBERG: We set that meeting prior to
7 our discussion with Mr. Jacobs. I don't want to
8 lead this Commission to the impression that if it
9 reached a race day decision today, that Colonial
10 Downs would sit down on Friday and negotiate out a
11 contract. We need to regroup and figure out exactly
12 what it would like to do.

13 MR. MILLER: If I could ask a question,
14 Mr. Chair?

15 MR. BURNETT: Please.

16 MR. MILLER: Well, if you didn't work it out
17 Friday, you would eventually -- somewhere along the
18 line, the contract would have to be negotiated,
19 would it not? If you didn't get together this
20 Friday and determine how you're going to -- what
21 contract you're going to wind up with, you would
22 keep negotiating until you could reach a contract, I
23 assume?

24 MR. WEINBERG: I believe so. I think that's a
25 reasonable assumption.

1 MR. MILLER: So what we're talking about is
2 just the time element. It might be a little more
3 extended than this Friday?

4 MR. WEINBERG: Correct.

5 MR. MILLER: And one other question. I've
6 asked this -- I've discussed this individually with
7 several of the commissioners. I may have discussed
8 it with you. I don't know. What is -- what's the
9 drop dead date that we can get the book out to --
10 what's the drop dead date that you need these race
11 days established so you can go out and book your
12 races for the season?

13 MR. PICKLESIMER: There's really no -- I mean,
14 I would like to have the book out 45 days, 60
15 days -- 45 days minimum, I guess, before the meet
16 starts, you know, stall apps, a little bit earlier
17 than that.

18 MR. MILLER: April the 1st?

19 MR. PICKLESIMER: Yeah. I mean, you know,
20 truthfully if dates are set -- you know, the sooner
21 they're set, you know, we can get the ball rolling,
22 but you know, we got -- there's time. It's just how
23 much.

24 MR. MILLER: All right. That's all I have,
25 Mr. Chair.

1 MR. BURNETT: Any other questions or comments?
2 I guess, gentlemen, one of the things we could do is
3 set days today and reserve the right to adjust those
4 days based on what's worked out in the horsemen's
5 contract with the track. I don't know if that's
6 helpful or hurtful frankly, but if there were
7 provisions in that contract that they came back to
8 us with that caused us to then change those days in
9 some fashion, it might make some sense to be able to
10 do that. It may just invite more problems than it
11 solves, but we have on the one hand a party that
12 says that was our best offer. We made that offer.
13 It doesn't sound to me as I hear something that -- I
14 don't know what would happen between now and 30 days
15 from now that would necessarily change that
16 position. It's based on a review of the market and
17 a review of where we are in our economy and where
18 racing is in that economy. I just find it hard to
19 imagine that very much would change in that period
20 of time on that particular issue and analysis.

21 So I'm not sure what the benefit is in waiting
22 to set days. If we agree on that point, then we've
23 got a tough decision to make right now.

24 MR. MILLER: Mr. Chairman?

25 MR. BURNETT: Mr. Miller?

1 MR. MILLER: Maybe if I could just walk
2 through something here so that I understand it, and
3 hopefully will impart maybe some information so
4 everyone might understand. Maybe I don't understand
5 so I can be corrected.

6 But if we were to set the days at 40 -- race
7 days at 40, and we know that we have the gap funding
8 in place except if we set those days at 40 today,
9 and then Frank is unable to work out an arrangement
10 for a reduction in stakes, the purses for those two
11 big stakes, then I'm assuming that the gap funding
12 would not be provided.

13 MR. PETRAMALO: That's correct.

14 MR. MILLER: Okay. Which means that the
15 purses, the daily purses based upon a 40-day meet
16 and based upon the amount of funds available for
17 purses as we prospectively anticipate -- as we
18 anticipate, the daily purses would be very -- would
19 be less than 200,000 a day?

20 MR. LERMOND: 150.

21 MR. BURNETT: No. Take 2.4 million out of the
22 5.9. Now you're 40 into four. Yeah, 85, 90,000
23 would be your overnights.

24 MR. MILLER: Okay. So we know that's what it
25 would be. That's where we are if we put 40 days in

1 place today, and then if they're unable to work out
2 the stakes race reduction. So that's what
3 Virginia's racing meet would be looking at, purses
4 less than a hundred, it would be safe to say.

5 MR. BURNETT: Overnight.

6 MR. MILLER: Overnight purses.

7 Now, to me I'm wondering how many -- I'm
8 wondering about the crop of race horses, you can
9 tell I'm not in the business, what quality we might
10 get. I don't know. Maybe it would be all right.

11 Now, on the other hand, if we go for 35 days
12 today, no gap funding, and we made the determination
13 that that makes no difference to the Commission
14 whether there's gap funding or not. If there's no
15 gap funding, that's tough. It's a tough year. It's
16 a tough economy. It's a down year. This is the
17 year to do it. Folks are going to suffer anyway, we
18 might as well suffer magnificently. Then if we have
19 35 days, no gap funding, and let's take -- the two
20 big stakes races remain as they are at 600,000 and
21 750,000, then the overnights would be?

22 MR. BURNETT: A little better than a hundred.

23 MR. MILLER: Just a little bit better.

24 MR. BURNETT: We're using a number of
25 \$2.4 million for the total stakes program. Now,

1 that certainly could change, but if you kept that
2 number, you subtract the 5.9, that takes you down to
3 the four million, and makes the 35 days a little
4 better.

5 MR. MILLER: So that's where we are. So all
6 the horsemen understand where we're going to be with
7 the overnight purses if we adopt the 35 days and/or
8 if we adopt the 40 days, right? Everyone
9 understand? And is my understanding correct? Am I
10 understanding it, Mr. Chairman?

11 MR. BURNETT: The math you've done makes
12 perfect sense to me. I had -- I thought I
13 understood the horsemen to say that they would take
14 their chances on how the stakes schedule worked out
15 and would do the 40 days with the gap funding and
16 the 115, and then just see where it fell and come to
17 the Commission with a contract. And if I've got
18 that wrong, I've got that wrong, but those are two
19 different situations, I think.

20 MR. PETRAMALO: Well, we're not going to come
21 to a contract unless those stakes purses are cut
22 with 40 days and gap funding.

23 So we're not going to come back here and say,
24 okay, we'll run the same stakes program we did last
25 year, which was \$2,520,000. We're not going to do

1 that. And if you take that -- if you take that and
2 look at a purse -- a purse account which is scaled
3 back to take into the 12 percent -- the 12 percent
4 drop, you're looking at purses of \$8.5 million,
5 which means the stakes portion of that would be
6 30 percent, which is higher than it was last year,
7 which was 27 percent.

8 MS. RICHARDS: Which is higher than
9 anywhere --

10 MR. PETRAMALO: Which is higher than anywhere
11 in the world. That's not going to happen. We are
12 not going to have horsemen coming here racing for
13 \$11,000 a race. If you follow Commissioner Miller's
14 arithmetic, and I'm not real good at it, but I think
15 it's about \$11,000 a race. It's not going to
16 happen.

17 MR. BURNETT: The overnights --

18 MR. PETRAMALO: Yeah. Yeah.

19 MR. BURNETT: -- is what you're talking about?

20 MR. PETRAMALO: Yeah. Overnight.

21 THE REPORTER: Hold on one second my battery
22 is dying.

23 MR. BURNETT: Any strokes of genius before we
24 start flooding motions to see what flies?

25 MR. MILLER: Mr. Chairman, I just think --

1 it's almost an impossible situation. You know,
2 nobody -- as Frank said, nobody -- I'm not going to
3 say nobody, but you know, they're not going to race
4 for \$1,000 or \$11,000 or whatever it is on the days
5 that it comes out to exactly 100,000 a day.

6 MR. LERMOND: With thirty-five days.

7 MR. HARRISON: If you go a year without gap
8 funding, does that then preclude the need for future
9 years of gap funding? I think it does if you bite
10 the bullet, but that would make for a very lean year
11 purse-wise, wouldn't it?

12 MS. RICHARDS: If you had any horsemen left.

13 MR. BURNETT: The question is what damage does
14 it do the following year when you try to attract
15 people back.

16 MR. MILLER: Well, in the interim, I'm just
17 concerned about what -- it's easy for me to sit here
18 and talk about a tough year, you know, and as I say
19 suffer magnificently, that's a term I shouldn't have
20 used. It's easy for me to say. I'm just -- you
21 know, if you have purses that small, I don't know
22 who would show up, what would happen to racing --
23 how would it impact -- how does that -- maybe I can
24 ask a question to someone that's in the business.

25 If you have a track that has a very, very low

1 caliber of horses, how long does it take to get
2 around the industry that that track runs a bunch of
3 horses that are not -- not bet worthy, let's put it
4 that way, wager worthy.

5 MR. BURNETT: I think what happens is, it's
6 not so much about the horses. They just look at the
7 condition book and look what the purses are and say,
8 "I'm not going there."

9 MR. STAPLES: What they need to know is how
10 much it costs to get one to that track. If you get
11 in there with no injuries or anything, just the vet
12 bills, the vet and getting there, that's close to
13 four grand in Maryland anyway. And that's at a good
14 deal. Are you going to run for 11?

15 MR. BURNETT: Sir --

16 MR. STAPLES: He asked for the public here.
17 I'm sorry.

18 MR. MILLER: I'm concerned about -- I'm
19 concerned -- you know, we've got all these concerns.
20 I'm just trying to specifically address a few of
21 them at a time and one of them is -- I mean, what
22 does that do to your -- you know, someone is
23 carrying your racing on their satellite, you know,
24 they're carrying the racing -- I mean, the racing
25 public sitting out there and Colonial Downs comes

1 up, are people going to wager on this satellite
2 network? Are they going to bet on these horses that
3 are running for such small purses and --

4 MR. PETRAMALO: My opinion?

5 MR. MILLER: Yeah.

6 MR. PETRAMALO: The key to wagering handle is
7 field size. If you had 12 horses running in the
8 race and they were, quote, cheap horses, you would
9 probably get decent handle, but if you're running a
10 race down here for \$11,000, the likelihood that
11 you're going to get 12 horses to run is not great.
12 You run up with a six, seven horse field at best,
13 and those are low wagering races. Nobody is going
14 to bet on them. Somebody will bet on them, but it's
15 nowhere near the wagering handle you'll get and if
16 the wagering handle is down, the income that comes
17 to the track and the horsemen for selling the
18 signal, of course, is down.

19 MR. HARRISON: That's 11,000 in purses. What
20 if the purse was 15,000 or 17,000?

21 MR. PETRAMALO: Last year, I think -- last
22 year, if I'm not mistaken, the average overnight was
23 like about 17,000. Under our original compromise
24 proposal, the 40 days, cutting the big -- the stakes
25 races, that's bumped up to 20,000. That will bring

1 horses. If you run overnights for 20,000 a day on
2 average -- I mean 20,000 a race, then you're doing
3 something.

4 MR. HARRISON: But the same could be said for
5 a 25-day race meet, right?

6 MR. PETRAMALO: No. What are you talking
7 about? If you take a 25-day race meet and back out
8 the high purses for the stakes, you're down to
9 nothing. Do the arithmetic. Take 5.9 -- take
10 \$6 million or whatever the last number is and
11 subtract two and a half million dollars, that gives
12 you what?

13 MR. HARRISON: Three and a half.

14 MR. PETRAMALO: Three and a half million
15 dollars. That's 100,000 a day.

16 MR. STEWART: For what it's worth, we did the
17 math. It's \$14,476 is our average overnight and
18 that includes running ten races a day. If you only
19 ran nine races a day, that number goes to 16,000.

20 MR. MILLER: Based on how many races a day?

21 MR. STEWART: Based on ten races a day, 11
22 races on Saturday, and 12 on Virginia Derby and Turf
23 Cup Day. A 25-day meet that we proposed, the
24 average overnight is 17 -- is, I'm sorry, 14,476.
25 If you only wanted to run nine races a day, the

1 average overnight would go to 16,151.

2 Obviously, if you run fewer races, it drives
3 the number up.

4 MR. PETRAMALO: Well, it's interesting because
5 I take \$100,000 a day and divide it by nine races,
6 that's \$11,000. Now, how he gets 14,000 is beyond
7 me, but our numbers -- well, our numbers always are
8 a little off. You swore up and down last time that
9 the carryover into 2009 would be \$270,000. You
10 called me -- you suggested I didn't know what I was
11 talking about when I said it would be 400,000-plus.
12 Well, guess what? As of yesterday, the carryover is
13 \$670,000. So who's bad at math?

14 MR. PETTY: Both of you.

15 MR. STEWART: You're using the number that's
16 big, Frank, because you're not paying your bills.

17 MR. PETRAMALO: That is absolute balderdash.
18 You're owed 68,000, which we got a bill for
19 yesterday, which by the way, remember, I keep
20 telling you how we pay these guys every month?
21 Well, that's the 68,000 for December. We got the
22 bill yesterday. When we pay that, there will be
23 \$612,000 in the purse account. Far more than the
24 270,000.

25 MR. BURNETT: Gentlemen, let's see if I can

1 make this worse by offering a motion and at least
2 give us something to discuss, and we can decide what
3 direction we want to go. I'll make --

4 MR. REYNOLDS: May I ask question?

5 MR. BURNETT: Please.

6 MR. REYNOLDS: Ian, you said you came in with
7 your best offer. Does that mean that 25 days and no
8 gap funding is it, unless you get them to agree to
9 this?

10 MR. STEWART: Well, I mean, that's what we
11 think is the most appropriate thing. I mean,
12 obviously, you know, you guys have to decide what
13 you think the most appropriate thing is. If it's a
14 different number than that, then obviously we're
15 much more interested in the numbers closer to 25. I
16 mean, I guess what I'm saying is -- I'm not sure
17 you're choosing between our number and their number.

18 MR. REYNOLDS: I'm asking you whether the 25
19 days and no gap funding is the best offer.

20 MR. STEWART: I've got no gap funding.

21 MR. BURNETT: Twenty-five days and we need gap
22 funding is the point.

23 MR. REYNOLDS: Twenty-five days is the best
24 you got.

25 MR. STEWART: Well, I mean --

1 MR. FERGUSON: He's not going to bid against
2 himself.

3 MR. STEWART: I guess at the end of the day,
4 you know, the Racing Commission is going to award
5 what it thinks is the most appropriate number of
6 days. We believe that given the economic
7 environment that, you know, 25 days is the most
8 appropriate. If you said 26, would I go screaming
9 out of the building? No.

10 MR. REYNOLDS: Okay.

11 MR. BURNETT: Are we ready? Let's see whether
12 this makes any sense. I've got four points on this
13 motion. One is I move that we assign today 35
14 racing days with the contingency that if before our
15 next meeting the horsemen agree to put up \$115,000
16 and pay for gap funding, it will increase that
17 number of days to 40 days; that we reserve the right
18 to reconsider that award of days for any reason or
19 no reason as long as it's legal until our next
20 meeting; that we will revisit this issue if we think
21 it appropriate at our next meeting.

22 Lastly, we are unhappy that there is no
23 horsemen's contract and that we will explore taking
24 some steps to remedy that problem if we don't see a
25 contract by the next meeting. I'm not casting

1 aspersions on either or both sides, only that we
2 need a contract in front of us. We think it's
3 unacceptable that there not be one, and we expect
4 the parties to make their best efforts between now
5 and the next meeting to come up with a contract to
6 present to us. That's my motion. Is there a
7 second?

8 MR. FERGUSON: Second.

9 MR. BURNETT: We have a second. Is there a
10 discussion?

11 MR. BROWN: I kind of like the proposal. I
12 think it gives time to have some things, you know,
13 take effect, the 115,000. I think it also gives
14 time to figure out between the two parties the
15 gap -- you know, as far as Frank's coming up with
16 gap funding, how they're going to figure this out
17 and work on the contract. It's incentive to work on
18 that contract.

19 Yes, I do understand our economic times are
20 tough, and we all have to make our changes, but you
21 know, we also have got to think about all the
22 parties involved, too.

23 MR. BURNETT: Gentlemen, anything? Further
24 discussion?

25 MR. MILLER: No.

1 MR. BURNETT: We're prepared to vote.

2 MR. PETRAMALO: Would you please repeat step
3 two? I kind of missed that.

4 MR. BURNETT: I'm sorry. That's kind of an
5 important point. Step two was that if within or if
6 prior to our next meeting, which is going to be set
7 shortly on the 18th of February --

8 MR. PETRAMALO: Right.

9 MR. BURNETT: -- the horsemen express a
10 willingness and capacity to pay \$115,000 to Colonial
11 Downs and be responsible for gap funding, we will
12 increase the award of days from the 35 days to 40
13 days.

14 MR. PETRAMALO: Thank you.

15 MR. BURNETT: Anything else I made unclear?
16 All right. All in favor indicate by saying aye.

17 NOTE: The motion is made by Commissioner
18 Burnett and seconded by Commissioner Ferguson. All
19 were in favor. The motion carries.

20 MR. BURNETT: All right. We'll move to
21 legislative issues. Excuse me. I'm sorry, Jim.

22 MR. WEINBERG: Can we approve the standardbred
23 dates?

24 MR. BURNETT: Yes. Thank you for keeping me
25 honest here.

1 MR. PETTY: No.

2 MR. BURNETT: The thoroughbred -- I mean the
3 standardbred horsemen and the racetrack have agreed
4 upon a 36-day meet this fall that needs approval.
5 It's embodied in your contract, I believe.

6 MR. WEINBERG: It is.

7 MR. BURNETT: Do we have a motion to approve
8 that 36-day meet this year?

9 MR. BROWN: I make a motion to approve.

10 MR. BURNETT: The chair seconds. All in favor
11 indicate by saying aye.

12 NOTE: The motion is made by Commissioner
13 Brown and seconded by Commissioner Burnett. All
14 were in favor. The motion carries.

15 MR. BURNETT: All right. Thank you.

16 MR. WEINBERG: Thank you.

17 MR. BURNETT: Can we have a brief report on
18 legislative issues, where we stand? I'm looking at
19 somebody that might know a little something about
20 that. Whoever wants to make it.

21 MR. DIAMONSTEIN: Jim, do you want to do it?

22 MR. WEINBERG: I'll do my best and I'll ask
23 others who are actually on the hill to chime in.
24 There are two bills that are being drafted with the
25 anticipation that they would be submitted before the

1 legislative deadline of Friday.

2 One addresses the ADW situation, which would
3 just provide by statute that an ADW licensee would
4 pay a license fee to the Commission, a source market
5 fee to the track and horsemen, and a contribution to
6 the Breeders' Fund.

7 The second bill is the Omnibus Bill that
8 provides for propositional wagering, net pool
9 wagering, changes the title of the executive
10 secretary to executive director, cleans up
11 references to stewards to include judges, which are
12 the standardbred equivalent, permits the licensee
13 who's held a license for more than five years to
14 make political contributions, allows all towns to
15 participate in the referenda process, and endorses
16 the Commission's authority to work with other
17 agencies inside the state and outside the state on
18 health and welfare issues, such as steroids, whips,
19 and other matters. I think I've got them all.

20 MR. MILLER: Mr. Chair?

21 MR. BURNETT: Yes, sir.

22 MR. MILLER: The percentages on the ADW, I
23 remember seeing it on my computer, but I can't -- it
24 was -- to Colonial Downs it was?

25 MR. HARRISON: Ten percent to the Commission,

1 ten percent to the horsemen and track, which gets
2 divided evenly, so five percent a piece, and one
3 percent to the Breeders' Fund.

4 MR. MILLER: One percent to the breeders, five
5 percent to who?

6 MR. WEINBERG: The racetrack --

7 MR. MILLER: Right.

8 MR. WEINBERG: -- and the horsemen groups,
9 thoroughbred/standardbred.

10 MR. MILLER: That's ten percent. And so is
11 that a total of 11 percent?

12 MR. WEINBERG: Correct.

13 MR. PETRAMALO: Eleven and a half percent.

14 MR. MILLER: Eleven and a half.

15 MR. PETRAMALO: Yes.

16 MR. WEINBERG: The half percent being the
17 Commission's license fee.

18 MR. MILLER: And all the ADW licensees --

19 MR. PETRAMALO: Correct.

20 MR. MILLER: -- would be required to pay that?

21 MR. BURNETT: What is the one-half percent to
22 the Virginia Racing Partnership?

23 MR. WEINBERG: You're looking at some instant
24 racing legislation that was introduced, not to the
25 knowledge of Colonial Downs, but I think Senator

1 Norman and Delegate or Senator Mark Herring.

2 MR. PETRAMALO: Senator.

3 MR. WEINBERG: Senator.

4 MR. PETRAMALO: There are two instant racing
5 bills pending. Senator Norman's bill and Senator
6 Herring's bill, which is being carried by him at the
7 request of the horsemen's organizations. Senator
8 Norman's bill is the one that's been kicking around
9 for a couple legislative sessions. It gives four
10 percent to the horsemen, 43 percent to Colonial
11 Downs. The Herring bill keeps Colonial at 43, but
12 the horsemen get ten percent and the Breeders' Fund
13 gets five and a half percent.

14 MR. BURNETT: The state gets the balance?

15 MR. PETRAMALO: Yes. That's the difference
16 between the two bills.

17 MR. STEWART: For the record, Colonial Downs
18 is opposed to both of those, both of those
19 legislation. We don't think it's appropriate to
20 introduce it this year, and we've spoken -- I've
21 spoken personally with the speaker of the house, and
22 I told him last fall we wouldn't be introducing that
23 legislation. I told him again that we had no
24 knowledge that this legislation was being proposed
25 and that we would not support it.

1 MR. BURNETT: Okay. Thank you.

2 Anything further on legislative matters,
3 gentlemen?

4 MR. DIAMONSTEIN: Mr. Chairman, I would hope
5 the individual members of the Commission who felt
6 strongly about the bills -- issues of the bills
7 would testify -- first of all, would clear it
8 with -- clear it with your secretary because I find
9 you'll have no objections as long as when you come
10 up -- for example, Peter if you came up, that you
11 made clear you're not there on behalf of the
12 governor. You're not there on behalf of the
13 Commission. You're there as an individual. And as
14 an individual, you each have the right to testify.

15 I would like you to perhaps -- that's the way
16 it was said to me. I'm sure they'll say the same
17 thing to you, but I'd suggest if you do feel
18 strongly, it'll help a great deal on the bills to
19 get them through.

20 MR. BURNETT: Would you be kind enough to
21 keep -- Vic will probably be the easiest way to go,
22 keep Vic informed as to committee meetings and the
23 like, and we can see what we can do with our
24 secretary to permit that.

25 MR. DIAMONSTEIN: I'll be happy to.

1 MR. BURNETT: Just so we know when we might be
2 called upon.

3 On one other minor legislative matter,
4 rule-making matter, Tyler needs or would like to
5 make two books per meeting, and our rules apparently
6 provide that it needs to be one every 15 days, which
7 is a little bit awkward for us, and absent there
8 being some reason why two condition books for the
9 entire meeting, regardless of its length, would not
10 be appropriate, I would simply suggest that we bring
11 that forward as a rule-making effort for us, Vic,
12 and we can take it up at our next meeting.

13 It may be one of those situations where we can
14 make a rule for this meet, and then have to put it
15 into the permanent rule-making, but whatever form it
16 needs to take, I told him that absent any objection
17 today, I think he can go ahead and plan on doing two
18 books.

19 MR. PETRAMALO: You did it once before, by the
20 way.

21 MR. BURNETT: I thought we did.

22 MR. LERMOND: It's at your discretion to do
23 it.

24 MR. PETRAMALO: Last year with 45 days, we had
25 three books, but the year before with 42 days or

1 whatever, 42 days, we did two books.

2 MR. WEINBERG: I think you're right that we
3 did it, but I think someone raised the issue last
4 year. So we're just trying to clean up --

5 MR. BURNETT: We now come to public
6 participation and, sir, if you would like to address
7 the Commission on any subject, we're ready to hear
8 you.

9 MR. STAPLES: Just one thing real quick.

10 MR. BURNETT: Yes, sir. Go right ahead.

11 MR. STAPLES: The next meeting on
12 February 18th, do you have time to still discuss
13 promoting the Turf Cup, the Colonial Turf Cup, I
14 know the Derby only draws 10,000 in 11 years, and
15 our company says it just hadn't been promoted.
16 We're willing to work with these people. We have
17 been. We're even willing to work with the state on
18 some state promotions, but could that be on the
19 agenda at the next meeting where we could discuss
20 this, because it's just not -- we're not throwing
21 any spheres at these people. It's just it hadn't
22 been promoted right. We need to promote it. We
23 need to promote the state. We need not to lose this
24 sport. We lost Secretariat, Doctor Jay, you know
25 that, but that's over.

1 We're going to keep this sport here. I think
2 we really will. We just hadn't promoted it. We
3 need the governor and everybody to help us promote
4 it. We can do it. I know we can double it if
5 they'll give us two months ahead of time at least.
6 I know we can double it. They'll let us use the
7 OTBs to promote, too, that we can do it. Better
8 Weather Productions, we're licensed out of
9 Portsmouth right now, Virginia, and we're owners
10 also.

11 MR. BURNETT: I believe that.

12 MR. STAPLES: We definitely want to race in
13 Virginia, and we're willing to bury any hatchets
14 we've had with anybody.

15 MR. BURNETT: That's helpful, too. We like to
16 bury hatchets.

17 MR. STAPLES: There has been some. We don't
18 need to go outside the state. What happens in the
19 state stays in the state.

20 MR. BURNETT: We don't have any rust on our
21 shovels. We bury those hatchets all the time. If
22 you would contact Vic after this meeting, our
23 executive director. We have a very active and
24 successful marketing and promotions committee that
25 probably ought to hear what you've got to say and

1 bring it forward, if that makes sense.

2 MR. STAPLES: I would like to. Yes, sir.
3 Absolutely. But we do want to discuss it here with
4 these other people.

5 MR. BURNETT: Certainly.

6 MR. STAPLES: These other horse people, the
7 promotions.

8 MR. BURNETT: You've got a patient audience.
9 You can see that today.

10 MR. STAPLES: I know. More so than me. I
11 just love them so much, I can't help but forgive
12 them.

13 MR. BURNETT: All right.

14 MR. STAPLES: We're going to take care of
15 them, too. Thank you very much.

16 MR. BURNETT: Thank you, sir.

17 MR. STAPLES: Thank everybody here.

18 MR. BURNETT: Is February 18th all right for
19 our next meeting? Any objection to that, gentlemen?

20 All right. No need for a closed meeting.

21 Motion to adjourn.

22 MR. BROWN: Second.

23 MR. BURNETT: All in favor indicate by saying
24 aye.

25 NOTE: The motion is made by Commissioner

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Burnett and seconded by Commissioner Brown. All
were in favor. The motion carries.

Note: The proceeding concluded at 2:32 p.m.

CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on January 21st, 2009, New Kent, Virginia, at the time of the hearing herein.

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

Given under my hand this 28th day of January, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011