

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VIRGINIA RACING COMMISSION

April 15th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:35 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman  
I. Clinton Miller, Vice Chair  
William H. (Trip) Ferguson

COMMISSION STAFF:

Victor I. Harrison, Executive Secretary  
David S. Lermond, Jr., Deputy Executive Secretary

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

## I N D E X

1		
2	1. Approval of Minutes of March 25, 2008 meeting	4
3	2. Commissioners Comments	4
4	3. Committee Reports	
5	a. Commissioner Ferguson to read minutes	
6	of the Thoroughbred Breeders' Fund Committee	
	to approve the distribution of funds for	
	2009 - deferred to Glenn Petty 5(d)	112
7	4. Executive Secretary's Report	
8	a. Approval of Racing Officials	6
9	b. Approval of Stewards for 2009	
	Thoroughbred Meet	10
	c. Gray Slot Machines	10
10	5. Stakeholders	
11	a. Approval request of VHBPA Request for	
	Benevolence Fund Budget	17
12	b. Report and approval request from Colonial	
	Downs and the horsemen regarding the	
	Horsemen's Agreement for the 2009	
13	Thoroughbred Race Meet.	89
14	c. Approval of 2009 Thoroughbred Race Days	91
15	d. Amendment to Request for 2009 Standardbred	
	Race Days	92
16	e. Glenn Petty to read minutes of the	
	Thoroughbred Breeder's Fund Committee to	
	approve the distribution of funds for 2009	
	and 100%	112
17	f. Request from Tyler Picklesimer to change	
	the "coupling" rule	166
18	6. Public Participation	
19	a. Brad Blackwell, TwinSpires to discuss Advanced	
	Deposit Account Wagering	170
20	7. Set next meeting -- May 20, 2009	236
21	8. Adjournment	240
22		
23		
24		
25		

1 APRIL 15, 2009

2 MR. BURNETT: All right. We'll open our  
3 meeting. I apologize to everyone for the late  
4 start.

5 We have three commissioners here today and our  
6 preliminary review of the code is that any action  
7 taken today at this meeting would have to be by  
8 unanimous vote for it to be valid. I'm just saying  
9 that for the benefit of the folks here and my fellow  
10 commissioners.

11 We'll start with the approval of the minutes  
12 of our regular meeting on March 25th. Are there any  
13 changes or amendments upon review of those?

14 MR. WEINBERG: Chairman Burnett?

15 MR. BURNETT: Please.

16 MR. WEINBERG: Just a note. On page 4, as I  
17 was reviewing it, just so we're consistent with what  
18 I say later in this meeting, in the second -- first  
19 full paragraph, the last line, it talks about moving  
20 live racing from Fridays instead of Sundays. It's  
21 the reverse. The change will be to move live racing  
22 to Sundays instead of Fridays.

23 MR. BURNETT: Thank you.

24 Any other changes, observations, mistakes,  
25 whether from the Commission or any other good

1 readers that are with us?

2 MR. MILLER: I recall we approved a second set  
3 of minutes or something at our last meeting, didn't  
4 we? It seems we had not approved some minutes  
5 previously. I don't know.

6 MR. BURNETT: What's that?

7 MR. FERGUSON: We had a correction.

8 MR. HARRISON: But that's mentioned in here.

9 MR. BURNETT: We did mention the correction.  
10 Was it the meeting prior that we approved two sets  
11 of minutes, or was it last month?

12 MR. MILLER: Time runs together for me.

13 MR. BURNETT: It does for me, too.

14 MR. MILLER: Just forget it. Never mind.

15 MR. BURNETT: All right. With the amendment  
16 referenced by Mr. Weinberg on page 4, the first full  
17 paragraph, do we have a motion to approve?

18 MR. FERGUSON: I'll make that motion.

19 MR. BURNETT: Chair seconds. Minutes are --  
20 oh, all in favor indicate by saying aye.

21 NOTE: The motion is made by Commissioner  
22 Ferguson and seconded by Commissioner Burnett. All  
23 were in favor. The motion carries.

24 MR. BURNETT: Any comments from commissioners?  
25 I have none today.

1           Let's move onto committee reports.

2           Mr. Ferguson, do you have a report from the  
3           Thoroughbred Breeders Fund Committee?

4           MR. FERGUSON: I didn't attend the meeting.  
5           I'm going to knock this over to Glenn.

6           MR. PETTY: Would you like that now or would  
7           you like that in this deferred spot?

8           MR. BURNETT: Excuse me. I'm sorry. Deferred  
9           to Glenn Petty 5(d).

10          MR. PETTY: It should be 5(e), but that's  
11          fine.

12          MR. BURNETT: 5(e) says Glenn Petty on it.  
13          All right. Any problem with deferring that until  
14          then, gentlemen?

15          MR. MILLER: No.

16          MR. BURNETT: We'll let Glenn finish preparing  
17          his speech.

18          Executive secretary's report. Mr. Harrison?

19          MR. HARRISON: The first item is the approval  
20          of the racing officials for the 2009 Thoroughbred  
21          Meet. I would ask that you make a motion, one of  
22          you, accepting the list as presented by the  
23          racetrack, in particular Tyler Picklesimer.

24          MR. MILLER: So move.

25          MR. FERGUSON: Second.

1           MR. BURNETT: All in favor indicate by saying  
2 aye.

3           NOTE: The motion is made by Commissioner  
4 Miller and seconded by Commissioner Ferguson. All  
5 were in favor. The motion carries.

6           MR. BURNETT: That's racing officials. Move  
7 to B, stewards.

8           MR. HARRISON: Stewards. Similarly, I would  
9 ask that you approve the thoroughbred stewards as --  
10 for the 2009 Thoroughbred Meet, Jean Chalk, Phil  
11 Grove, and Dave Lermond with Adam Campola as the  
12 alternate.

13           MR. BURNETT: Mr. Harrison, we amended the  
14 rule for the appointment of stewards earlier this  
15 year or late last year, I forget exactly when, and  
16 if I recall correctly, that rule requires that all  
17 of our stewards be compliant with the Ropes  
18 accreditation requirements and gives us the ability  
19 to waive any of those requirements for good cause  
20 shown.

21           It strikes me that either you should represent  
22 to us that all three of these stewards meet the  
23 current Ropes accreditation requirements or one or  
24 more of them do not, and we nonetheless recommend  
25 that individual or those individuals, and the cause

1 why you believe that we should waive that  
2 requirement such that the record reflects our  
3 compliance with our regulatory duty. Does that make  
4 sense?

5 MR. HARRISON: I'd be happy to.

6 MR. BURNETT: Okay. Thank you.

7 MR. HARRISON: Jean Chalk and Phil Grove, of  
8 course, are compliant with the Ropes requirement.  
9 Dave Lermond has served in the capacity of a  
10 steward. He has passed successfully the Ropes  
11 course. The one piece of the Ropes requirements  
12 that he has yet to fulfill is the hourly  
13 requirement. I think there's a certain number. I'm  
14 not sure what it is. Do you know what it is?

15 MR. LERMOND: Fifty days.

16 MR. HARRISON: Fifty days sitting in the  
17 stewards stand.

18 MR. LERMOND: Or already in the capacity of a  
19 racing official.

20 MR. BURNETT: I take it that were we to  
21 approve your recommendation, that the days  
22 Mr. Lermond spends in our stewards stand would count  
23 towards that 50?

24 MR. HARRISON: It would. So sometime I  
25 believe in the month of July, he will meet -- have

1 met that requirement as well. And one of the  
2 reasons that we would like Dave to act in the  
3 capacity of a steward this year is that in the past,  
4 Stan Bowker, who sat in my chair, he fulfilled the  
5 dual role as steward and executive secretary and we  
6 had budgeted as such for this year as well, the cost  
7 of a steward when you factor in the daily per  
8 diem -- that's redundant -- the per diem, and the  
9 daily fee comes to about \$20,000 a year, and it  
10 would benefit us as well.

11 So with someone like Dave, who I believe has  
12 experience as a steward and has interest in being a  
13 steward and is a member of the VRC staff, all those  
14 things color my recommendation of Dave as one of the  
15 three stewards here. He also has a good  
16 relationship with the two senior stewards, and I  
17 think they would make a good trio up there in the  
18 stewards' stand.

19 MR. BURNETT: Any problem?

20 MR. MILLER: I move we approve the three  
21 standards as recommended.

22 MR. FERGUSON: I'll second that.

23 MR. BURNETT: While we have the opportunity  
24 for discussion on this motion, may I ask if there's  
25 any members of the -- here with us today that want

1 to comment on this particular issue? In the past,  
2 it's been -- there's been some sense that the  
3 horsemen have been left out of some of these  
4 decisions. If anybody wants to speak to this, I  
5 would ask them to do so now.

6 MR. PETRAMALO: Just one inquiry. Are one of  
7 the stewards being appointed as a presiding steward?

8 MR. BURNETT: Yes. Jean Chalk would be the  
9 chief steward.

10 Gentlemen, I would prefer that we -- well,  
11 perhaps it could be part of the motion. If you  
12 would agree, Mr. Miller, that part of the motion be  
13 that we have found good cause from departing from  
14 the Ropes requirements.

15 MR. MILLER: As stated on the record by the  
16 executive secretary.

17 MR. BURNETT: Thank you.

18 MR. MILLER: I don't want to go through them  
19 all.

20 MR. BURNETT: That's wonderful.

21 MR. MILLER: One of the main ones is the fact  
22 that he apparently has the experience or the  
23 knowledge necessary to perform this task and will  
24 apparently fulfill the rest of the requirements  
25 during the meet.

1 MR. BURNETT: My sense is that -- putting a  
2 little bit of form over substance, if he's going to  
3 meet his requirement during the middle of the meet,  
4 I'm not sure that those exciting first half days of  
5 the meet are going to make him that much better of a  
6 steward than the second half. I think we're going  
7 to get his good, quality judgment throughout and  
8 that this is an appropriate circumstance under which  
9 we should waive this rule.

10 So I call the question. All in favor indicate  
11 by saying aye.

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

15 MR. BURNETT: Thank you, Mr. Harrison.

16 Gray slot machines.

17 MR. HARRISON: Gray slot machines. I just  
18 wanted to comment. We visited a truck stop down at  
19 the North Carolina border and inside the truck stop,  
20 there were over 20 of these -- what they call  
21 prepaid phone card machines. Really, they're -- to  
22 me, having been in this business for a while, a  
23 couple decades, there's slot machines under the  
24 guise of prepaid phone card machines.

25 And to give you an example of how meaningless

1 the prepaid phone card aspect of the machines are, I  
2 went up to the machine and I put \$20 in a cash  
3 acceptor. I got my 200 credits up on top and way  
4 down at the bottom of the machine, there's a little  
5 slide area where these cards empty out. And so for  
6 my \$20, I got four of them, and there must have been  
7 20 or 30 in there already. People don't care about  
8 those. They go there to bet on the machines.

9 MR. BURNETT: What are they? What's the  
10 little thing that comes out?

11 MR. HARRISON: It says you can make \$5 worth  
12 of phone calls on the card, but we tried using the  
13 card for that purpose and that didn't work either.  
14 So they have a non-smoking area that have machines  
15 in it; they have a smoking area that have these  
16 machines in it. It was pretty well populated when  
17 we visited it.

18 I just want to put it on the record that when  
19 we talk about never having slot machines here in the  
20 Commonwealth or not allowing instant racing even at  
21 the racetrack or OTBs, that, in fact, we do have  
22 them here. This is just one example. It's my  
23 understanding that there's some other truck stops  
24 that also have these gray slot machines in them.

25 The company is Travel Center Entertainment and

1           they have a website, and I'd just like to explore  
2           this a little further. I just want to put on the  
3           record that we've experienced these type of slot  
4           machines in the Commonwealth, and I'll just -- I'll  
5           write up a memo and get it on to our general counsel  
6           and to just run it up the flag pole.

7           MR. PETRAMALO: How does it work? I mean, you  
8           get 200 points, then what happens?

9           MR. HARRISON: Then you bet a number of  
10          credits that you like and the reels spin and the  
11          lines come up, squiggly lines come up that show you  
12          that you've won or not and you get credited. If you  
13          leave with credits, you pick up a phone that's next  
14          to the slot machine and you call in and say, "Okay.  
15          I want to cash out." A man comes over just as if  
16          you had won a jackpot at a slot machine. He comes  
17          over. He opens up the slot machine. He puts your  
18          winnings on his chit. You take the chit to a desk,  
19          they call it the fuel desk, and they cash you out,  
20          and they ask you to sign a chit, C-H-I-T. They  
21          don't ask for ID or anything. I could have put John  
22          Smith down or Shemp Howard or whatever.

23          MR. PETRAMALO: So I put in the \$20, I get 200  
24          points, and at the end of an hour, I've got 350 --

25          MR. HARRISON: You can cash out. You get

1 cash.

2 MR. PETRAMALO: I get \$35.

3 MR. BURNETT: And don't forget those four  
4 phone cards you got.

5 MR. PETRAMALO: And plus the four phone cards.

6 MR. BURNETT: I'd call home and say how much  
7 you won.

8 MR. PETRAMALO: Interesting.

9 MR. PETTY: There's one in Ashland. You  
10 didn't have to go all the way to North Carolina.  
11 There's one in Ashland. They're all over Virginia.

12 MR. HARRISON: It's in Virginia.

13 MR. MILLER: This one here is when you get  
14 down below Petersburg and you go down towards  
15 Durham?

16 MR. HARRISON: Bracey's Truck Stop.

17 MR. MILLER: I know who runs that.

18 MR. BURNETT: Carrying your point a little  
19 further, you know, I think it's good that we're  
20 discussing that, but I wonder if we're all  
21 forgetting our statutory obligation to promote,  
22 sustain, and grow racing includes an obligation to  
23 make it known to the appropriate authorities that  
24 this kind of conduct is going on, because I think we  
25 would agree it's probably not helping racing.

1 MR. HARRISON: That's right. It's my  
2 understanding that a couple years ago the prior  
3 executive secretary took a run at this, and he went  
4 directly to the governor's office, and he was told  
5 by the county prosecutor in that -- is it  
6 Mecklenburg County? That it's an ongoing  
7 investigation. Of course, that was two years ago.  
8 It's continuing to go on. So I just want to take  
9 baby steps here. I'll write up a memo. I'll get it  
10 to our attorney general, and they'll take it from  
11 there.

12 MR. BURNETT: I'd just like it -- our look at  
13 this not to be similar to the county attorney or the  
14 Commonwealth attorney in Mecklenburg County. I  
15 think if we're going to look at this, we shouldn't  
16 just talk about it. I think I agree with you to  
17 take baby steps initially, but I'd like it to come  
18 back to us, hopefully at the next meeting, as to  
19 what progress has been made and whether or not we  
20 want to make -- take further steps or whether we're  
21 just stymied. Whatever the outcome is, I think we  
22 should come to some resolution about how we're going  
23 to deal with it.

24 MR. HARRISON: I will do that.

25 MS. DILWORTH: Chairman, I'd be glad to help

1 Mr. Harrison craft that letter, but I will also  
2 assure you that the appropriate authorities are  
3 aware of this situation and are looking into it.  
4 I'm not privy to those investigations.

5 MR. FERGUSON: We've got to be for or against  
6 these machines?

7 MR. BURNETT: I think we -- given the way  
8 we're treated, and we're treated with -- what was  
9 the name of the restaurant that --

10 VOICE IN THE AUDIENCE: Chevy's.

11 MR. BURNETT: Chevy's, you know, it strikes me  
12 as quite the double standard. Racing is not getting  
13 anything out of it. It's siphoning dollars away  
14 from us. It might sort of open up the notion that  
15 this kind of wagering is okay and, therefore, let  
16 more --

17 MR. FERGUSON: But would we want to oppose it,  
18 and then turn around and want it for our  
19 franchisees?

20 MR. BURNETT: I would be fine with that  
21 because ours is regulated. Theirs isn't. Theirs is  
22 a fraud. I mean, it's -- I mean, the phone cards  
23 don't work.

24 MR. HARRISON: Right. There are --

25 MR. FERGUSON: There's a fine line between

1 fraud and untaxed.

2 MR. BURNETT: There you go.

3 MR. HARRISON: It's a highly regulated  
4 industry. The slot machine manufacturers, IGT,  
5 Bally's, Aristocrat, Williams, whoever they are,  
6 those are thoroughly betted out and tested by GLI  
7 constantly, every chit in that machine. So you want  
8 those machines to be audited on a regular basis and  
9 you want it to be tested by the testing laboratory.

10 This is just like the wild, wild west. So,  
11 you know, the folks that are playing on them, I'm  
12 not sure if they're getting a fair shake or not.  
13 That's another aspect of this.

14 MR. MILLER: Actually, they also have a  
15 game -- did you see the gaming machine that you put  
16 the money in and it has doll babies and furry  
17 animals and money in these, and you can put money in  
18 and you can directly win money. In other words, if  
19 you put 50 cents in, you might win a \$20 bill. This  
20 little thing shuffles forward, and they fall down.  
21 Highly illegal in Virginia.

22 MR. PETTY: Those are everywhere.

23 MS. RICHARDS: Yeah.

24 MR. PETTY: I came across the machines in the  
25 Travel Americas. It was last day of the 2006

1 Colonial meet. So I don't want to cast any  
2 aspersions on anybody's investigation, but that was  
3 three years ago. I brought it up to the Commission  
4 then because we walked in and I said, "Tell me this  
5 isn't a slot machine." I had a couple of attorneys  
6 with me who in their judgment agreed, it sure looks  
7 like one. They're also gamblers, so it was both  
8 sides of the coin, and that was in August of '06.

9 MR. PETRAMALO: Let me give you a different  
10 spin on it. I say we put 500 of them on the fourth  
11 floor, and we split the take between the track and  
12 horsemen.

13 MR. BURNETT: And the Breeders' Fund.

14 MR. PETTY: And the Breeders' Fund.

15 MR. BURNETT: Y'all want to put it in Chevy's?

16 MR. PETTY: Our phone cards will even work.

17 MR. BURNETT: All right. We'll move on from  
18 gray machines to stakeholders.

19 The first item is the approval of the request  
20 from the VHBPA of their Benevolence Fund Budget. If  
21 y'all would help me on this a little bit. Are not  
22 the horsemen's agreement and the Benevolence Fund  
23 Budget inextricably intertwined?

24 MR. PETRAMALO: They are related, and I can  
25 explain that as I go through the -- quickly go

1 through the budget. I don't want to belabor the  
2 obvious points.

3 Commissioners, as you may not know, I'm not  
4 sure we've ever gone through this in detail with  
5 Commissioners Ferguson and Miller, but here's how  
6 the financing works. By statute, 30 percent of the  
7 breakage is dedicated to benevolent expenses on the  
8 backside during the meet. The breakage is the odd  
9 cents between one and nine cents. So when a bet is  
10 paid and the actual calculation based on the pool  
11 comes out to be \$4.82, the bettor gets \$4.80, two  
12 cents goes into the breakage fund.

13 Thirty percent of that each year comes into  
14 the backstretch benevolence account, which we  
15 administer jointly with the VHHA, the Harness Horse  
16 Association, and it usually runs between 150 and  
17 \$175,000 a year.

18 Each year, what we do is put together a budget  
19 and the budget goes to the Benevolence Committee.  
20 There is a VRC Benevolence Committee that's  
21 currently chaired by John Hanna, who is on our  
22 board, and includes Dr. Dunavant from the harness  
23 association, and over the years has included various  
24 other individuals. They approve the budget, and  
25 then we come and present it to the Commission for

1 final approval.

2 What you have before you today is missing  
3 final consideration by the VRC committee. John  
4 Hanna has not yet had any detailed discussion with  
5 Dr. Dunavant. Dr. Dunavant does have a copy of the  
6 budget. So what I would like to propose is I will  
7 go through the budget with you and ask for your  
8 tentative approval subject to a positive  
9 recommendation forthcoming from the VRC Benevolence  
10 Committee.

11 MR. BURNETT: It would be helpful to go  
12 through that budget.

13 MR. PETRAMALO: I just wanted to outline the  
14 parameters.

15 MR. BURNETT: The question I was asking,  
16 though, and I think I confirmed it by looking at the  
17 horsemen's contract is if we move one penny out of  
18 that Benevolence Fund, there's no contract between  
19 the horsemen and the track; is that right?

20 MR. PETRAMALO: That's possible, yes.

21 MR. BURNETT: Well, contracts usually try to  
22 do a little bit better then possible with all due  
23 respect, and the language that I read, it appears to  
24 have been amended, says that if we don't approve  
25 this contract in its current form and all the

1 expenditures set forth in paragraph 15, which  
2 includes things like the Benevolence Fund paying for  
3 fertilizer on the turf surface, that there is no  
4 contract between the horsemen and the track. I just  
5 want to make sure that we understand that if there  
6 is no contract between the horsemen and the  
7 racetrack, that June 5th will be the start of three  
8 day a week racing, Friday, Saturday and Sunday, for  
9 the summer. Just make sure everybody is clear about  
10 that. Is that our understanding? You know that's  
11 our rule if there's no contract. So if we don't  
12 approve every single item in this, we're going to  
13 race three days a week for the summer.

14 MR. PETRAMALO: I'm not sure I understand  
15 where the three days a week came from.

16 MR. BURNETT: We previously ruled that in the  
17 absence of a contract between the horsemen by a date  
18 certain that there would be three day a week racing  
19 for the summer. We would not approve 40 days.

20 MR. PETRAMALO: I missed that meeting.

21 MR. BURNETT: You did, but I'm sure you got  
22 the memo. So we are -- I shouldn't say we. I fully  
23 intend to abide by that earlier decree of this  
24 commission and if there's an agreement, great.  
25 We'll run 40 days, but I'm troubled by some of the

1 items I see in the Benevolence Fund and I'm troubled  
2 by some of the non -- some of the cap excess  
3 managers as well, but it appears that there's sort  
4 of a poison pill provision in this contract that  
5 ties the Commission's hands to do what they're  
6 statutorily required to do. So I'm troubled by it,  
7 but maybe we can just go through it and see where we  
8 end up.

9 MR. PETRAMALO: Yeah. I think that would be  
10 helpful because what -- I understand what you're  
11 saying, and I'm sure Jim and Ian do also, but it may  
12 well turn out to be not as great a concern after we  
13 discuss this.

14 MR. BURNETT: Okay. Good.

15 MR. PETRAMALO: Getting back to where I  
16 started, that's where the money comes from and what  
17 you see before you is usually what we do with it  
18 with a few exceptions, and I'll get to that.

19 The first line item, food vouchers. What we  
20 do there is provide food service for the --  
21 particularly for the grooms who work back there, and  
22 we do that in a number of ways. We subsidize the  
23 kitchen so that they can keep the price of food  
24 down. We also print up these little meal tickets  
25 that the kitchen agrees to honor for a meal. Last

1 year it was pegged at I think \$4.50, but we  
2 negotiate the meal with the -- Miguel Paz, who runs  
3 the kitchen. He honors these, they bring them back  
4 to us at the end of the meet, and then I write a  
5 check for the total number of tickets. And also as  
6 part of that food program, we provide water. We  
7 also run -- we run a picnic. Last year we had two  
8 of them. One on the 4th of July, and I forget when  
9 the other one was, but that's what the food is all  
10 about.

11 Chaplain, for the last at least four or five  
12 years, we've had Reverend Marjorie Bevins as our  
13 chaplain. She's a former jockey. Just a wonderful  
14 chaplain and everybody really appreciates her  
15 services, but we pay her for her time. This year  
16 she will be back, and she will have an assistant  
17 chaplain with her, who I believe speaks Spanish,  
18 which is of great help on the backside. That's the  
19 chaplain.

20 The intern program, every year -- again, at  
21 least for the last four or five years, we've had a  
22 summer program where we bring in young folks not  
23 only from Virginia, but from as far away as Texas  
24 who are interested in the horse industry, and we get  
25 them on the backside. They learn what it's like to

1 work in a stable and we also rotate them through the  
2 racing secretary's office, and I think even  
3 occasionally we've had one or two work as temporary  
4 judges, patrol judges. So we'll go forward with  
5 that.

6 The other things like mattresses, air  
7 conditioners, et cetera, that really goes to the  
8 furnishing of the dorms. We have 110 dorm rooms  
9 with 240 beds and we replace the mattresses, air  
10 conditioners, et cetera. We also provide an  
11 incentive program for the grooms who work here by in  
12 each race we award a \$20 prize to the best groomed  
13 horse in the paddock, and we also award prizes for  
14 the best kept barn on a weekly basis.

15 And then, again, because we run such a short  
16 program here, we don't have in place any type of  
17 permanent medical insurance. So what we do, we've  
18 made arrangements with a clinic in Williamsburg and  
19 a dental office down in Providence Forge where  
20 people on the backside have acute medical or dental  
21 problems, we take care of their expenses.

22 And the alcohol and drug counseling program is  
23 fairly self-explanatory. We occasionally run into  
24 problems there, and we take care of the cost of  
25 counseling.

1           There are two new items on there. Well, let  
2 me skip to the last one, landscaping.

3           Traditionally, what we've done is try to improve the  
4 state of landscaping on the backside to give it a  
5 more friendlier or wholesome atmosphere, and we  
6 planted trees all over the place. If you're  
7 interested, you can take a ride down and see our  
8 most recent planting that was done a week ago. We  
9 put trees and bushes around the dormitories. That's  
10 landscaping.

11           The two new items that I want to draw your  
12 attention to are the \$50,000 entry for jockey  
13 insurance and the \$21,600 entry for the training  
14 ambulance.

15           Let me take a minute on the jockey insurance.  
16 Up until probably three or four years ago, the  
17 Jockey Guild, the organization that represents  
18 jockeys nationwide, covered the insurance cost for  
19 jockeys who were injured during a race or riding in  
20 the morning exercising horses, and it covered their  
21 medical expenses and lost income. Well, the Jockey  
22 Guild was preyed upon by an unsavory character, and  
23 this insurance program went bankrupt.

24           So in order to continue to have jockeys come  
25 to race here at Colonial -- and by the way, this is

1 not limited to Colonial, along with the track  
2 management, we agreed to purchase a \$1 million  
3 policy to cover the jockeys. The cost of that is  
4 roughly \$75,000 and over the years, we split that  
5 with Colonial. Colonial paid 50,000; we paid  
6 25,000.

7 As part of our negotiations this year, because  
8 the Commission directed us to pay Colonial Downs  
9 \$115,000 if we wanted to run 40 days, we agreed to  
10 pick up the full cost of the insurance policy,  
11 provided Colonial credited that \$50,000 against the  
12 115,000. So that's that item.

13 The other similar item is for the training  
14 ambulance. By training ambulance, I'm referring to  
15 the ambulance and the crew that's here every morning  
16 when the horses are training between six and ten.  
17 That cost is \$300 a day. Total cost is twenty-one  
18 six. Again, that's traditionally been paid for by  
19 Colonial. We agreed as part of our horse  
20 contract -- horsemen's contract to pay that  
21 twenty-one six provided it, too, was credited  
22 against the 115,000.

23 So those are the only two items in the budget  
24 that are out of the ordinary, and I would hope and  
25 expect that those are suey generous and hopefully

1 would not be repeated in the future, but who knows.  
2 As I said, other than that, what you see there is  
3 basically what we've done for the last four or five  
4 years.

5 THE REPORTER: Hold on one second, please.

6 MR. PETRAMALO: The total 189,600 is in excess  
7 of the number that I told you for the following  
8 reason. We have approximately 40,000 in carryover  
9 from last year. Last year's budget I believe was  
10 156,000. We didn't spend all of 156,000. The  
11 person administering the budget was very careful not  
12 to spend too much money, and as a result, there was  
13 \$40,000 leftover. I tried my hardest, but I  
14 couldn't spend it all.

15 One other thing that you should bear in mind  
16 is the breakage -- the breakage money also is  
17 breakage on harness wagering, and usually the  
18 breakdown between harness wagering and thoroughbred  
19 is anywhere from 80 to 90 percent thoroughbred  
20 versus 10 to 20 percent harness, and we don't  
21 overlook the harness folks. I mean, to the extent  
22 we take care of mattresses, air conditioners,  
23 television sets, et cetera, that's used by the  
24 harness folks also. As I said, what is unique to us  
25 is the jockey insurance and the training ambulance.

1           Now, to further go through the process, John  
2 Hanna will be talking to Dr. Dunavant to make sure  
3 that Dr. Dunavant approves of the budget and that  
4 any questions he has are answered. What I suggested  
5 at the outset was that -- assuming the Commission  
6 agreed -- that they tentatively approve this budget  
7 subject to a positive recommendation that it be  
8 accepted from the committee.

9           MR. MILLER: Mr. Chairman?

10          MR. BURNETT: Please.

11          MR. MILLER: Is there a time constraint on  
12 approving this, or could we wait until they review  
13 it and give us their recommendations to act on it?

14          MR. PETRAMALO: I would expect that John and  
15 Charlie would probably get together within the next  
16 three days or so and get back to you.

17          MR. MILLER: Yeah. But is there a time  
18 constraint? Is there some reason why we should  
19 approve this budget in the next two, three, or four  
20 days including today?

21          MR. PETRAMALO: Well, to the extent that -- as  
22 Chairman Burnett referred to in his opening, the  
23 approval of the horsemen's contract is or  
24 implementation of the horsemen's contract is  
25 contingent on approving this budget. In particular,

1 you can see what we're talking about.

2 MR. MILLER: Okay.

3 MR. PETRAMALO: The credits that we're taking  
4 against the 115,000.

5 MR. MILLER: I see. Okay.

6 MR. BURNETT: Do I understand you to say that  
7 this would be sort of conditioned -- not sort of,  
8 but conditionally approve this budget, subject to a  
9 later nod from the harness horsemen? Is that --

10 MR. PETRAMALO: Yes. Well, basically --

11 MR. BURNETT: Which in turn would mean the  
12 horsemen's contract is conditionally approved?

13 MR. PETRAMALO: I suppose you could look at it  
14 that way.

15 MR. BURNETT: It strikes me that if -- despite  
16 your best intentions, if this committee hasn't met  
17 yet or its principals meet and they come to  
18 loggerheads unexpectedly, and we don't have an  
19 agreement as to this budget and, therefore, we don't  
20 have an agreement, a horsemen's agreement, which is  
21 troubling.

22 MR. PETRAMALO: Well, we have a horsemen's  
23 agreement, but it's subject to being declared null  
24 and void. Now, let me -- not for nothing did I  
25 practice law.

1           If in a worse case scenario, we couldn't reach  
2           an agreement through the committee with the harness  
3           folks, which is highly unlikely, but in that event,  
4           that would make the contract subject to being null  
5           and void, but my belief is that if that were to  
6           happen, there would be further discussions between  
7           the horsemen and Colonial Downs to fix the problem  
8           so that the contract didn't become null and void.

9           MR. FERGUSON: I have a question. If there is  
10          a disagreement on a portion of this, can you take  
11          that portion and set it aside and escrow it?

12          MR. PETRAMALO: I wouldn't think that we  
13          would -- at the committee level that we would get  
14          into any dispute that would require us to escrow  
15          money. In other words, we meet and either agree or  
16          not.

17          MR. FERGUSON: You could do that if you wanted  
18          to? I'm trying to --

19          MR. PETRAMALO: Yeah, I guess.

20          MR. FERGUSON: I'm trying to look at it -- get  
21          it out of the box.

22          MR. PETRAMALO: I suppose it's possible, but I  
23          don't mean to be too dismissive of this, but we've  
24          been doing this with our friends with the sulkies  
25          for the last five or six years, and we've always

1 managed to work out any problems between us. Our  
2 major problem has been with the guys on that side of  
3 the table. That would be you, Jim.

4 MR. WEINBERG: I recognize that.

5 MR. BURNETT: I thought you said plural.

6 MR. PETRAMALO: No. Ian is under a grace  
7 period.

8 MR. STEWART: For another few minutes.

9 MR. BURNETT: I guess -- I'm pleased to hear  
10 from my fellow commissioners, but what troubles me  
11 is I think that the Commission has bent over  
12 backwards, provided time for y'all to come to an  
13 agreement, and we thought -- it was represented that  
14 we were going to have an agreement. Here we are  
15 today, it's not an agreement. It's subject to  
16 unwinding and other people approving this and  
17 approving that. I don't like that. I don't think  
18 the public likes it. We're going to do something  
19 about it in coming years and make it painful for the  
20 parties to procrastinate, and I know that's the  
21 lawyers favorite thing on earth to do, but it's not  
22 beneficial to our program.

23 So what we need to do is deal with this  
24 problem this year, I agree. Let's deal with what we  
25 have in front of us right now. I'm not sure I know

1           how to.

2           MR. PETRAMALO: I will assume responsibility  
3           for this. It was my failure to get the committee  
4           together and approve this in a timely fashion.  
5           Colonial was for the first time not blameworthy in  
6           any respect.

7           MR. WEINBERG: Let the record reflect.

8           MR. BURNETT: We'll consider the source.

9           Gentlemen, any questions about the specifics  
10          of the racing benevolence budget? I don't want to  
11          call it the committee's budget because the committee  
12          hasn't put it together as far as I know.

13          MR. FERGUSON: I have a question. Are these  
14          not capital expenditures, or are they just  
15          operational expenses that may vary from our  
16          regulations?

17          MR. BURNETT: The ones I see on this  
18          committee, correct me if I'm wrong -- on this  
19          budget, correct me if I'm wrong, come from the 30%  
20          side --

21          MR. PETRAMALO: Yes.

22          MR. BURNETT: -- of the benevolence budget and  
23          are -- it does not matter whether they are capital  
24          or repairs. That money needs only meet our standard  
25          of being benevolent -- for a benevolent purpose.

1           MR. PETRAMALO: Well, to further complicate  
2 this, there is a requirement under the horsemen's  
3 contract that Colonial spend 100,000 in capital  
4 expenditures on the backside. It's quite likely  
5 that that will be spent given the new sprinkler  
6 system that's being put in as we speak in the  
7 receiving barn, but if they don't get that \$100,000  
8 mark, whatever is left -- whatever the difference  
9 between what they spend and 100,000, that, too,  
10 would be credited against the 115,000.

11           But as long as we're talking about credits, I  
12 think I can probably make the following  
13 representation; that is, if for some reason the  
14 \$71,600 isn't credited to Colonial, we, the  
15 horsemen, will find some other way to get the 71,600  
16 to Colonial and that may entice Colonial to waive  
17 the null and void provision in the contract.

18           MR. BURNETT: To the extent that the parties  
19 are intent on making these expenditures, are we put  
20 in a position of essentially choosing whether they  
21 come out of the benevolence budget or they come out  
22 of purse funds? Is that a fair way of looking at it  
23 from the horsemen's side?

24           MR. PETRAMALO: Probably.

25           MR. WEINBERG: I mean, you can kick me, but to

1 the extent that the horsemen don't receive a credit  
2 against the 115 --

3 MR. BURNETT: Right.

4 MR. WEINBERG: -- right?

5 They're going to have to pay Colonial, that  
6 money otherwise would have ended up in purses.

7 MR. BURNETT: Right.

8 MR. WEINBERG: So these -- not to pile on, but  
9 some of these are truly benevolent things that allow  
10 us to evoke more money to purses at the end of the  
11 day.

12 MR. HARRISON: Peter, one question. So then  
13 an item like the ambulance, that's -- the cost of  
14 the ambulance, that's required in our rules. It  
15 made it into this budget under the same principle?

16 MR. PETRAMALO: Yes.

17 MR. BURNETT: What would that principle be?

18 MR. HARRISON: That the purse money and/or the  
19 Benevolence Fund would be impacted -- would be  
20 otherwise impacted. All I'm saying is the ambulance  
21 is required by our rules. So the fact that you're  
22 paying for it now, that's something new, right, from  
23 last year?

24 MR. PETRAMALO: Yes. That's correct.

25 MR. HARRISON: So what was the thinking?

1 MR. PETRAMALO: Well, again, it was our paying  
2 for a benevolent cost that in the past Colonial has  
3 paid for. And by doing that, they were crediting us  
4 with 21,000, that, as Jim points out, would  
5 otherwise likely come out of the purse account.

6 MR. BURNETT: This is just moving that  
7 \$115,000 around?

8 MR. PETRAMALO: That's correct.

9 MR. BURNETT: Our choice here is whether or  
10 not we want those to be determined winners of purse  
11 funds to underwrite the cost of the 21,000 or  
12 whether we want that to be that much less money  
13 available for employees and others on the backside.

14 Before we get to any ultimate decision on  
15 this, can I have a little bit more detail on the  
16 landscaping budget of 40,000? I take it when you  
17 say dormitories, you mean landscaping around the  
18 dormitory, bushes and trees, et cetera, as you just  
19 referenced?

20 MR. PETRAMALO: Yes.

21 MR. BURNETT: How much did that cost?

22 MR. PETRAMALO: So far it's \$18,000 and I  
23 haven't received the bill from the landscape  
24 architects, so I'd say -- I'm ballparking it at  
25 20,000. There is another \$5,000 worth of planting

1 that has to be done. So we're looking at roughly  
2 25,000 in landscaping.

3 MR. BURNETT: I take it there's a provision  
4 for the non-meet time maintenance of it so that  
5 it's -- those trees make it. There's always been a  
6 discussion about adequate water and --

7 MR. PETRAMALO: You're looking at the  
8 maintenance.

9 MR. BURNETT: Are you the guy that does that?

10 MR. PETRAMALO: Yeah.

11 MR. BURNETT: Bring your boots to every  
12 meeting and your hoes.

13 MR. PETRAMALO: There is one item there that's  
14 listed, you'll see track base inspection. And at  
15 our request and with Colonial's consent, we're  
16 having the original architect of the dirt track come  
17 down and take core samples of the base while the  
18 cushion is off.

19 The base is probably -- well, certainly more  
20 important to the safety of the surface than the  
21 cushion, and we agreed that we would pay to have  
22 that person come down. In fact, he was supposed to  
23 be here today, but because of the bad weather and  
24 the inability to get the track cleaned off after  
25 Strawberry Hill, he's not here today, but he will be

1 drilling core samples, et cetera. That's probably  
2 going to cost us about \$3,000.

3 MR. BURNETT: Is this in your mind something  
4 that the track would ordinarily do, but you're  
5 shifting that off of the -- moving it towards the  
6 \$115,000 credit?

7 MR. PETRAMALO: I'm not certain of that. I  
8 wouldn't necessarily agree to that. I mean, we --  
9 not to downplay the track's role here, but as you  
10 know, the horsemen, particularly the trainers who  
11 are here every morning, always have concerns about  
12 the -- quote, the dirt track and the turf course.  
13 So we pursued various programs over the years to  
14 ensure that the surface was safe and met the  
15 concerns of the trainers.

16 Last year, as you may recall, together with  
17 Virginia Tech, we undertook an experimental  
18 fertilizer program for the turf course. To us, what  
19 we're proposing here is of the same ilk; that is,  
20 looking at the dirt course to make sure that it  
21 provides a safe surface for not only jockeys, but of  
22 course, the horses.

23 MR. BURNETT: It strikes me that that's at the  
24 heart of what the owner of the racetrack should be  
25 doing, is making sure that this racetrack meets an

1 acceptable industry standard of safety. If the  
2 jockeys and the trainers are somehow concerned with  
3 the analysis, believe that the standard is not high  
4 enough, want to make it a better standard than the  
5 industry would otherwise expect, I can so understand  
6 them going to those lengths, but I would want to see  
7 first that the track has met its core responsibility  
8 of providing a safe racetrack.

9 If you have some reason to believe that the  
10 racetrack does not meet industry standard safety  
11 requirements to the extent that they're out there to  
12 be determined, that should be made known to us and  
13 that's something we should know on a regular basis  
14 for the protection of all participants in racing.

15 I'm unclear whether we're having a benevolence  
16 fund drift over into management obligations or  
17 whether we're trying to add some frosting to an  
18 already good cake.

19 MR. PETRAMALO: I think it's probably the  
20 latter. I'm not suggesting in any way that the  
21 racetrack surfaces are unsafe, I don't think they  
22 are, but we have trainers and owners who are often  
23 concerned when their horses breakdown or their  
24 trainers come back and say, gee, you know, I work my  
25 horse over the dirt track and he's coming back sore.

1           What we want to do is go the extra mile to ensure  
2           for the safety of both the animals and the jockeys  
3           that the best possible is being done. We're going  
4           the extra mile to satisfy the owners and trainers.

5           Now, as you know, we're not going to satisfy  
6           everybody, but if, for example, the person who  
7           designed the track comes down and blesses off and  
8           says this base is fine, there's no problem with it,  
9           we can then assure our members that we've inspected  
10          it. It's fine. You don't have to take the track's  
11          word for it.

12          MR. MILLER: Mr. Chairman?

13          MS. RICHARDS: This is a ten year thing.

14          MR. MILLER: Frank, you mentioned the word  
15          ensure. Who does actually ensure that the track  
16          meets the standards acceptable in the trade in the  
17          event there's a catastrophic occurrence on the  
18          track?

19          MR. PETRAMALO: Well, not wanting to speak for  
20          the track, I assume they have some type of liability  
21          coverage, but the coverage for the jockeys is the  
22          insurance policy that we've talked about. If, for  
23          example, there's a hole in the course and the horse  
24          steps in it and goes down.

25          MR. MILLER: Well, I'm thinking of a \$2

1 million horse.

2 MR. PETRAMALO: That usually is up to the  
3 owner to insure the animal.

4 MR. MILLER: Well, but owners then get  
5 lawyers, and they claim that there's something --

6 MR. PETRAMALO: Yes. Sure.

7 MR. MILLER: -- wrong on the track.

8 MR. STEWART: We carry liability insurance,  
9 you know, if they determine that we were negligent.

10 MR. MILLER: We're probably getting into this  
11 deeper than we need to get into it. I'm just  
12 suggesting that as -- if I'm the insurance company  
13 and I'm insuring your track, and then all of a  
14 sudden, another third person, the horsemen have done  
15 something to change the condition of the track based  
16 upon the survey by the person who put in the track,  
17 they come up with something, and being the agency  
18 that's beyond -- beyond what you all dictated the  
19 track -- the condition of the track should be in,  
20 then all of a sudden, there's a question about  
21 whether or not that insurance policy is going to  
22 cover that situation. That's getting in too deep,  
23 but I'm just --

24 MR. FERGUSON: Well, what I'd do as a horse  
25 owner, I'd just pick up the phone and call Sue Bob,

1 M.O., and she'll fight it out with -- her attorneys  
2 I guess will fight it out with the other folks; is  
3 that right? It's like car insurance. You call your  
4 insurer.

5 MR. PETRAMALO: Well, if I have a \$2 million  
6 horse, you can rest assured that horse is going to  
7 be insured and if something happens to the thing, I  
8 report it to my insurance company. And as you point  
9 out, my insurance company talks to their insurance  
10 company.

11 MR. STEWART: I'd like to point out that --

12 MR. BURNETT: Please.

13 MR. STEWART: -- historically we've had what  
14 is considered to be one of the finest racetracks in  
15 the country out there. We have never skimmed on  
16 maintaining it and maintaining that reputation, with  
17 the one exception that I can think of when we had  
18 some orange dirt out there. I think we've always  
19 had -- and we'll always continue to have as good a  
20 racetrack as we can possible be. If the horsemen  
21 would like to, you know, bring somebody else down,  
22 you know, analyze --

23 MR. FERGUSON: What is orange dirt? Is that  
24 in Georgia?

25 MR. STEWART: -- I'm happy to do that.

1 MR. MILLER: All I'm suggesting is that if the  
2 horsemen in their responsibilities under  
3 landscaping, this track and the track base  
4 inspection or maintenance, anything on the track,  
5 you're going to have to finally sign off on  
6 whatever --

7 MR. PETRAMALO: Oh, yeah.

8 MS. RICHARDS: Absolutely.

9 MR. MILLER: You're going to be ultimately  
10 responsible. You're going to have to approve  
11 whatever they do.

12 MR. STEWART: Absolutely. If Mr. King makes a  
13 recommendation, that's a recommendation. It's up to  
14 us to determine what to do with it.

15 MR. MILLER: So you may or may not go along  
16 with it?

17 MR. STEWART: As I said, our objective is to  
18 maintain our representation, et cetera.

19 MR. MILLER: I just wanted to --

20 MR. WEINBERG: But to be clear, Peter, back to  
21 your question. I mean, this came up in -- this was  
22 frosting on the cake. No one has raised concerns  
23 about the soundness of the track.

24 MR. PETRAMALO: That's my --

25 MR. BURNETT: We're mixing here some different

1 issues.

2 MR. WEINBERG: Right. This was clearly an  
3 instance where was it possible to address what we  
4 anticipate to be standard questions coming up during  
5 the meet, not that there are any questions about the  
6 soundness of the surfaces. So this was just a way  
7 to put some icing on the cake.

8 MR. BURNETT: Okay. That's what I anticipated  
9 this was, and I just wanted to make sure I  
10 understood what it was so that I can form an opinion  
11 as to whether or not this is appropriately a  
12 benevolence item, whether it belongs in a  
13 Benevolence Budget for the backstretch or whether it  
14 belongs someplace else. That's the purpose of my  
15 question.

16 And then likewise turf maintenance is noted on  
17 the comments under the landscaping, 40,000 budget,  
18 and I also notice that page 21 in the contract,  
19 paragraph 15, that it provides that they'll --  
20 you'll have to help me with where the money comes  
21 from, but I think it's from this fund --

22 MR. PETRAMALO: Yes.

23 MR. BURNETT: -- any fertilizer necessary  
24 thereto for the track's turf surface.

25 MR. PETRAMALO: That's part of the Virginia

1 Tech program if we choose to go forward with that  
2 this year.

3 MR. BURNETT: Maybe I was asleep at the switch  
4 last year. If this program was approved under the  
5 benevolence program, but I'm having a hard time  
6 figuring out how we're spending benevolence funds  
7 for the poorest amongst us who would otherwise  
8 benefit from it, instead we're fertilizing the  
9 racetrack.

10 MR. PETRAMALO: Well, it's --

11 MR. BURNETT: Help me with that one, please.

12 MR. PETRAMALO: Okay. We did go through this  
13 last year. There was concern about the hardness of  
14 the turf surface and its durability given that we  
15 run 80% of the races on the grass. There was a  
16 fertilizer out there that's used in the National  
17 Football League that does wonders for turf in the  
18 sense that it promotes deeper root growth, more  
19 compaction, more durability.

20 So we went to this company, which was working  
21 with Virginia Tech, where I believe some of the  
22 formula for this fertilizer was developed. We put  
23 together a little program, and last year I think we  
24 spent 12 or \$15,000, with the track's agreement,  
25 buying the fertilizer. It was not used on the

1 entire track. It was just used on the 10 path just  
2 to make sure it didn't kill everything, and the  
3 interim reports that I read from Virginia Tech said,  
4 yes, this is doing what it's supposed to do.

5 There's deeper root growth. You look at this sample  
6 on path 10 versus a control sample, and it's good  
7 stuff. Makes the track safer.

8 We are awaiting a proposal from the same  
9 company for additional -- we're expanding it from  
10 just a test on path 10 to doing the whole track.  
11 Again, subject to Colonial's approval. So there's  
12 some money thrown in there just on the off chance  
13 that we go ahead and do this.

14 Now, in talking -- I'm giving you more detail  
15 than you'll ever want to know, but Saturday, Robin  
16 and I talked with the new track superintendent and  
17 he has an interesting plan that he's going to work  
18 on the turf course that he plans to implement. It  
19 may well be that his plan doesn't at this time  
20 require us to -- or suggest that we go forward with  
21 the fertilizer program. So it's still up in the  
22 air, but it's in there just in case.

23 MR. STEWART: I think the reality is there's  
24 several drums of this left. I told Mr. Petramalo  
25 that if we could use it --

1 MR. PETRAMALO: Yes.

2 MR. STEWART: -- we would reimburse him for  
3 it.

4 MR. PETRAMALO: Right.

5 MR. STEWART: The problem with the fertilizer,  
6 as I understand, it's a little difficult to use in  
7 our equipment because it's very thick and it causes  
8 problems, but it's our intention to use what's left.  
9 There's three or four drums left.

10 MR. PETRAMALO: Right. There are three  
11 55-gallon drums left. We had a total of eight last  
12 year, five were used.

13 MR. FERGUSON: This is liquid, not granule?

14 MR. PETRAMALO: It's liquid, but it has to be  
15 mixed, I believe.

16 MS. RICHARDS: It's very concentrated.

17 MR. STEWART: I guess it's like molasses.

18 MR. PETRAMALO: It comes from North Carolina,  
19 I believe.

20 MR. BURNETT: Any other questions?

21 MR. HARRISON: The shuttle van --

22 MR. PETRAMALO: I'm sorry. I passed that  
23 over.

24 Each year we rent a 10 or 12 person van for  
25 the entire meet and we hire a driver, who also works

1 in the kitchen and speaks Spanish, to during off  
2 hours transport grooms to Wal-Mart, to the Spanish  
3 store, to the beach on Thursdays, et cetera. It's  
4 absolutely invaluable. We'd be lost without it.

5 We also use it for -- when you have -- we have  
6 some big races here, the Derby, and I forget that  
7 other race. When the folks come in from out of  
8 town --

9 MR. WEINBERG: Because the purse keeps going  
10 down.

11 MR. BURNETT: The one with the little purse.

12 MR. PETRAMALO: When those folks come in and  
13 out of town, we use the van and we help Colonial and  
14 we shuttle in the big shots and all that kind of  
15 stuff. It's only a very, very small percentage of  
16 the van's use.

17 MR. BURNETT: It appears, gentlemen, that all  
18 of this cascades, that if we don't get past this  
19 item, we don't have a contract. And I've got, you  
20 know, a hard time taking \$21,600 away from grooms  
21 and hot walkers and their needs to pay for something  
22 the track already has an obligation to pay and that  
23 the horsemen have negotiated from their purse  
24 account. That's my problem with it.

25 I don't -- hey, we need an ambulance. No

1 question about that. If the track negotiates with  
2 the horsemen to have somewhat lighter purses so that  
3 they can run more days as they did, that's fine,  
4 too. I just don't think they ought to be going in  
5 and saying, well, we want to keep those purses all  
6 sweet for us. We'll just take it out of our grooms  
7 and our hot walkers' pockets. That ain't right to  
8 me. That's not what was intended by this  
9 Benevolence Fund.

10 And I'll tell you -- I'll confess. I spent a  
11 lot of time when I was in Frank's position pushing  
12 this Commission to spend benevolence money and to  
13 stretch the definition of benevolence money. We  
14 started when they thought beds and air conditioners  
15 weren't benevolence, and food was not benevolence.  
16 It was a hard push to get the Commission to spend  
17 150, or whatever it was, the first few years on all  
18 these various programs. They've taken hold.  
19 They've been recognized nationally and all that, but  
20 I do think we need to draw some lines.

21 I think items like taking care of the turf  
22 course and what was characterized as something about  
23 horsemen's questions, I call backstretch whining,  
24 when it comes to complaining about surfaces and  
25 courses. We do have one of the safest courses

1 around and if the horsemen want further assurances  
2 of what's there, I am all for it, and I think they  
3 should go for it, work out whatever they want to,  
4 but not at the expense of the grooms and the hot  
5 walkers benevolence.

6 MR. FERGUSON: I have a question.

7 MR. PETRAMALO: May I respond to that?

8 MR. BURNETT: In a moment.

9 MR. FERGUSON: May I ask a question?

10 MR. PETRAMALO: Yeah.

11 MR. FERGUSON: It might affect your response.  
12 Is it the VRC's -- this is an honest question,  
13 believe it or not. Is it the VRC's duty to provide  
14 for this Benevolence Fund, or is it part of your  
15 ongoing negotiations between your two parties, which  
16 is just normal horse trading? Are we supposed to  
17 get involved in this -- with this item --

18 MR. PETRAMALO: I think the answer to that is  
19 yes.

20 MR. FERGUSON: -- other than approving it?

21 Well, if you guys have worked it out,  
22 should -- really, should I have some sort of red  
23 flag to go up about whether -- how you divvy up your  
24 Benevolence Fund?

25 MR. PETRAMALO: The statute requires 30% going

1 into a Benevolence Fund, and I believe the  
2 expenditures from that fund are subject to your  
3 approval. So that's why you get involved. Whether  
4 or not you need to or should go on a line item  
5 basis, I don't know, but the response that I wanted  
6 to make to Commissioner Burnett's comments are as  
7 follows.

8 I object most strenuously to the -- I was  
9 going to say unstated assumption, but I think it was  
10 a stated assumption that somehow or other the grooms  
11 and the exercise riders and the people here who work  
12 on the backside are being shortchanged. This is the  
13 best run backside in the entire country bar none.  
14 Trainers who come here say that; owners who come  
15 here say that; and your own year-end reports say  
16 that.

17 So I object most strenuously to the notion  
18 that somehow or other because we're going to spend  
19 \$21,600 for an ambulance, that we're shortchanging  
20 the grooms.

21 MR. BURNETT: Let me respond to that, Frank.

22 I agree with you that it is the best run  
23 backstretch, with my limited exposure to  
24 backstretches, and certainly the one I have the most  
25 opportunity to compare would be Charles Town, which

1 is not too hard to have Colonial Downs be a big  
2 winner there for those of you that have been on the  
3 backside of Charles Town, but just because you're on  
4 top, doesn't mean you can't get better.

5 What I'm saying is that money that you want to  
6 spend on something else that I -- like training  
7 ambulance, might well be spent on some poor guy  
8 that's got a terrible alcohol problem or might be  
9 spent on some other chaplaincy program or it might  
10 be spent on clothes that this year comes along. I  
11 just -- I think that our statutory obligation is to  
12 see that this money is spent for benevolent  
13 purposes, and I can't get there with the training  
14 ambulances that is required already of the  
15 racetrack. If you want to horse trade for it,  
16 that's fine, but not with benevolence money is my  
17 point.

18 MR. PETRAMALO: But the point is over the past  
19 five years, we've taken care of every one of those  
20 concerns that you've just voiced and never, ever  
21 have we had to say, well, pal, you got an alcohol  
22 problem, but we don't have the money to help you.  
23 That hasn't happened.

24 MR. BURNETT: Well, let me point out. I  
25 noticed that you reduced groom cash awards by \$2,000

1 in the hardest economy we've seen in most of their  
2 lifetimes. Gee, I think those poor people could use  
3 at least the same amount of money as they got last  
4 year, but we're down 2,000 on that one. Air  
5 conditioners, down 1,000; mattresses, down 2,000;  
6 intern program, down 2,000. To me -- scholarships,  
7 down 3,000.

8 Now, look, numbers don't lie. I think you --  
9 are you telling me that somehow these grooms are  
10 saying, really, I don't need that money. Just give  
11 it back.

12 MR. PETRAMALO: All right. Let's -- numbers  
13 don't lie. Remember at the outset I said our budget  
14 last year was 156,000, and we only spent 110. We  
15 had -- 106. We had 40,000 leftover. Well, that's  
16 what you're comparing for the most part. You're  
17 comparing say \$2,000 -- I forget what the mattress  
18 budget was last year.

19 MS. RICHARDS: You don't buy them every year.

20 MR. PETRAMALO: We got 4,000 last year. Well,  
21 we didn't spend 4,000 for mattresses. So this year,  
22 we got 2,000. Maybe we spend it; maybe we don't.  
23 It's a budget. Those are the numbers.

24 MR. BURNETT: Usually a budget is a budget,  
25 and then when the expenditures are made, an

1 accounting is provided, which I've always understood  
2 to be the case that we in the past have received. I  
3 think we've bought mattresses just about every year  
4 because as you well know, many of them don't survive  
5 and have various problems, but again, let's just use  
6 the groom cash awards. Why are they being shorted  
7 that? Why don't you double the groom cash awards?  
8 It's not like they couldn't use the money? It's not  
9 like they're overpaid.

10 MR. PETRAMALO: We could do it. There's no  
11 doubt about it. We could do it. You know, if you  
12 want to double the cash awards to 16,000, we just  
13 shift 8,000 from the perspective fertilizer program.  
14 I mean, there's plenty of room within this budget to  
15 do good things. The question is which ones do we  
16 do.

17 MR. BURNETT: That's right.

18 MR. PETRAMALO: The bottom line is the  
19 experience over the past five years has suggested  
20 that what we're doing is fine, and everybody is  
21 happy with it.

22 MR. FERGUSON: I agree with Frank on that  
23 because I'm a pedestrian member of the VRC. So I  
24 have to rely on folks like you to make those  
25 judgment calls because I can't tell you how many

1 mattresses to buy every year or how many air  
2 conditioners to buy. I can help you buy mattresses  
3 and air conditioners being in the hotel business.

4 MR. PETRAMALO: I found a good on-line supply  
5 source last year. Good mattresses and cheap.

6 MR. FERGUSON: I mean, it seems we would be  
7 micromanaging somebody that's competent in handling  
8 this, but I agree with you that you have concerns  
9 about the welfare and well-being of these folks in  
10 the back, but again, I think they're doing a good  
11 job. I haven't seen any -- there's no panhandlers  
12 out here in the morning when I come down to the VRC.

13 MR. CANAAN: If I could just make one comment.  
14 I want like -- and I know Dr. Dunavant just got  
15 this, but I would like him to have a review of this  
16 to make sure -- and every year they do work it out,  
17 but to make sure that, you know, candidly, the  
18 harness industry is getting their fair share of this  
19 as well.

20 I said to Frank this looks, you know, a little  
21 thoroughbred heavy, and that's fine. I mean,  
22 they're the majority of the handle, the majority of  
23 the breakage, but he's served on this committee, I  
24 haven't, and I don't know to what extent his input  
25 in the past has been on this. Maybe he's fine with

1 all this, but he may want -- he may have something  
2 for the backstretch that he really is interested in.  
3 He just hadn't voiced yet. I don't know. I do want  
4 to point out that I think it's important that his  
5 input be considered.

6 MR. HARRISON: The 72 days at \$300 a day, does  
7 that cover both meets or is that just the  
8 thoroughbred meet?

9 MR. PETRAMALO: Just the thoroughbred.

10 MR. HARRISON: So for the harness meet, you'll  
11 be providing that as per the rules, but you won't be  
12 reimbursed for that?

13 MR. WEINBERG: I mean, with all due respect,  
14 we're paying for it one way or another, right? The  
15 track is bearing the cost of the ambulance, whether  
16 you take it in the form of a credit against the 115  
17 or the horsemen pay us the 115 and we turn around  
18 and use twenty-one five of it for the ambulance. At  
19 the end of the day, the track is bearing that cost.  
20 Short answer, yes.

21 MR. BURNETT: Under the deal they made for the  
22 115, the question is does it come out of the  
23 Benevolence Fund, or does it come out of the purse  
24 fund for these items.

25 MR. STEWART: Right. That's the heart of the

1 matter.

2 MR. BURNETT: We're beyond the 115 piece,  
3 that's behind us, and what you're crediting around  
4 here is just which horseman's pocket does it come  
5 out of so to speak.

6 MR. MILLER: Mr. Chairman, could I ask  
7 Frank --

8 MR. BURNETT: Please.

9 MR. MILLER: -- about something that's  
10 omitted, not in this proposed budget that was in  
11 last year's? What's the Groom Elite Program?

12 THE REPORTER: The what?

13 MR. PETRAMALO: Groom Elite Program.

14 That's a training program sponsored by our  
15 national organization, and it's an excellent  
16 program, and over the years we have run various of  
17 the courses here. There's what we call a basic hot  
18 walkers program, which is usually three to five days  
19 long, and it takes somebody who is unfamiliar with  
20 the horse industry to teach them how to lead a horse  
21 around. We also run intensive six to eight week  
22 training courses for grooms to upgrade their skills,  
23 and we've even run an advanced course for that.

24 This year we're -- and we don't repeat the  
25 same one every year because we've got a relatively

1 small population here. We don't want classes with  
2 three people in them. My intent this year was to  
3 not run one of those full-blown, expensive classes  
4 because we don't need it. I was thinking -- we were  
5 thinking more along the lines of running a program  
6 for owners to -- not in the economics, of course,  
7 ownership. There are plenty of those programs, but  
8 educating owners about -- more about horses, the  
9 horse's anatomy and what it means when it has a  
10 bowed tendon and how to understand these humongous  
11 vet bills when you get them every month.

12 We haven't yet figured out how best to do that  
13 or where best to do that, whether it's -- whether we  
14 get the most bang for the buck here at Colonial or  
15 whether we should do it someplace in Northern  
16 Virginia. The bottom line is because of our  
17 relationship with the Groom Elite program, we can  
18 probably do that at our own expense and not have to  
19 take benevolence money.

20 MR. MILLER: Thank you.

21 MR. BURNETT: Along similar lines, I'm just  
22 looking at what's not there this year that was there  
23 last year to get an explanation for it. Contract  
24 labor was 10,000 last year, am I right that it's  
25 zero this year?

1 MR. PETRAMALO: Yes. Well, we shift the money  
2 around, but it's zero. Contract labor we used to  
3 hire people to hang the mesh --

4 MR. BURNETT: Yeah.

5 MR. PETRAMALO: -- to do various odd jobs.  
6 Now that's done by others at no cost.

7 MR. BURNETT: Okay.

8 MR. FERGUSON: How do you get alcohol/drug  
9 counseling for 2,500 bucks? That's cheap.

10 MR. PETRAMALO: Well, we've -- we have a  
11 public operation here in Providence Forge. It's a  
12 county organization. We use their services. We use  
13 the AA services, and we have a private consultant on  
14 the east side of Richmond that we've used.

15 MR. FERGUSON: Back it up with the court  
16 system?

17 MR. PETRAMALO: We don't usually get involved  
18 with the court system. There's only one occasion  
19 that comes to mind when we've been involved with the  
20 court system, but for the most part, our main  
21 problem is two-fold. We get grooms who come up  
22 dirty on a drug test, which means their license gets  
23 revoked and what we do is work out an arrangement,  
24 usually with the stewards, that will permit them to  
25 be reinstated provided they sign up for a course,

1 and then they come back and test clean. We provide  
2 the test service. We pay for the testing, et  
3 cetera.

4 The other portion has to do with alcohol  
5 problems and, again, it's a similar program that we  
6 worked out. We get them into an AA program and if  
7 it has any cost attended to it, like paying to get  
8 them to and back -- back to the track from going to  
9 the courses, et cetera, we take care of that.  
10 Occasionally, we've actually had to pay professional  
11 counselors, but that's on average what we spend for  
12 drug and alcohol counseling.

13 MR. FERGUSON: For the entire budget?

14 MR. PETRAMALO: Yeah. You know, Commissioner,  
15 we're only here for a limited period of time.  
16 Tracks that run year-around, they've got much more  
17 extensive programs and it costs more, but we're here  
18 from -- this year we'll be here from mid-May until  
19 the end of July. That's not a long period of time.

20 MS. RICHARDS: Plus people are encouraged if  
21 they belong to more than one HBPA, that their home  
22 base is sponsoring the program.

23 MR. FERGUSON: Helping you.

24 MR. PETRAMALO: Oh, yeah. That's an excellent  
25 point. A lot of the people from Maryland are

1 covered by the year-round Maryland program, and we  
2 help -- we help sometimes with the cost of what the  
3 Maryland people have to pay.

4 MR. BURNETT: Sometimes you'll get folks that  
5 when they were in Maryland this time of year get in  
6 a little trouble, the Court says you shall go to  
7 ASAP or whatever for a period of time. They want to  
8 come down here. They get permission from the court  
9 in Maryland to come down provided that they go to  
10 regular, blah, blah, blah, and these folks help  
11 them -- they make sure they find a program to go to  
12 and get their credits and stay current.

13 MR. MILLER: Mr. Chairman?

14 MR. BURNETT: Go ahead.

15 MR. MILLER: Since we have a required  
16 percentage under the statute or regulations to apply  
17 the 30% to this Benevolence Fund, do we have a  
18 generic definition of what fits within the word  
19 benevolence as far as expenditures are concerned? I  
20 mean, is there some broad definition or do we go  
21 through this every time this issue comes up every  
22 year to see whether or not something fits within an  
23 appropriate expenditure from the Benevolence Fund?

24 MR. PETRAMALO: I think the answer is  
25 benevolence for the most part is not defined in the

1 statute. It talks about benevolence alcohol  
2 counseling and things of that sort, but there's  
3 nothing in the statute that says employing a  
4 chaplain is for benevolent purposes or providing  
5 meal tickets.

6 MR. MILLER: So we determine --

7 MR. PETRAMALO: Yes.

8 MR. MILLER: -- what is an benevolent  
9 expenditure?

10 MR. PETRAMALO: That's correct.

11 MR. MILLER: Whether it's an appropriate  
12 benevolence fund expenditure. So in approving this  
13 budget, we have to make that determination in our  
14 mind --

15 MR. PETRAMALO: Yes.

16 MR. MILLER: -- whether this fits that  
17 appropriate definition framework or whether it's an  
18 appropriate benevolence expenditure.

19 MR. BURNETT: I think the last question on  
20 missing item was clothing. Last year you spent  
21 about \$4,000 on t-shirts and caps. This year zero.

22 MR. PETRAMALO: There will be at least caps  
23 distributed this year. Again, we're probably going  
24 to find that money someplace else. We always give  
25 away caps. We give away little -- I have one,

1 little key chains and things of that sort. We will  
2 continue to do that hopefully in connection with a  
3 Virginia horse that does well in the Triple Crown  
4 series.

5 MR. BURNETT: Like a quality sort of horse  
6 that's from up the road, is that the kind of horse?

7 MR. PETRAMALO: Exactly. A \$2 million horse.

8 MR. PETTY: Plus a zero.

9 MR. BURNETT: One observation I would make is  
10 it would be good if that someplace else that is  
11 coming up with a lot of this other money paid for  
12 these things that don't appear to fit the  
13 benevolence definition, and let the benevolence  
14 money take care of benevolence items. This is the  
15 way I look at it, but -- has everybody hashed this  
16 out well enough? Are there any more questions about  
17 this? Do we want to bring this to a head?

18 MR. FERGUSON: I personally don't see anything  
19 on here that's not benevolent. You have an  
20 ambulance. Landscaping, I think, is very important  
21 for the appearance of your place, your workplace.  
22 Do you see anything that's clearly not in the  
23 benevolence?

24 MR. BURNETT: Yeah. The ambulance, I can  
25 barely get there on the jockey injury insurance, but

1 I'm lean on that. Inspecting track base and turf  
2 maintenance doesn't get there for me.

3 MR. FERGUSON: That's a stretch, but --

4 MR. MILLER: Will we have a -- Mr. Chairman?

5 MR. BURNETT: Yes.

6 MR. MILLER: Some of them are a mighty fine  
7 line. The problem we have today is unless all three  
8 of us agree today, we can't take any action, I mean,  
9 that's meaningful because the majority has to --

10 MR. BURNETT: They're really asking us to take  
11 conditional action because then the harness horsemen  
12 are going to ultimately hold the card of where it  
13 goes from there.

14 MR. MILLER: What would you like to see  
15 changed, Mr. Chairman?

16 MR. BURNETT: I would like to see the training  
17 ambulance paid for by the horsemen, not by  
18 backstretch employees.

19 MR. MILLER: You're saying out of the purse  
20 money?

21 MR. BURNETT: Yeah. I think that's a better  
22 place for it to come from than the Benevolence Fund.

23 MR. FERGUSON: All right. So let's pick that  
24 apart. Ultimately, who pays that? And that was an  
25 item negotiated between those two parties, right?

1 MR. PETRAMALO: Well, we start out with the  
2 problem that the Commission said if you guys want to  
3 run 40 days, it's going to cost you 115,000. That  
4 starts the problem right there. Wasn't our idea.  
5 It was your idea.

6 MR. MILLER: Mr. Chairman, I was going to make  
7 that observation maybe in the form of a question,  
8 but I don't need to. The observation is that if it  
9 wasn't for that \$115,000 item, we wouldn't be --

10 MR. PETRAMALO: That's exactly right.

11 MR. MILLER: -- discussing this at all anyway.

12 MR. WEINBERG: I might slightly recast that.  
13 You know, with due all respect, I hear the word  
14 procrastination, but that to me suggests that you're  
15 putting off something that you can do, and we  
16 weren't --

17 MR. BURNETT: Good point.

18 MR. WEINBERG: -- but we were at an impasse  
19 about how much purse funds are available and how  
20 they get split up. So we looked in every single  
21 nook, cranny, crevice, and tried to find it, and  
22 that 115 became a point of contention.

23 MR. FERGUSON: But you agreed on it; is that  
24 correct?

25 MR. PETRAMALO: Yes. We agreed on how it

1 would be paid.

2 MR. BURNETT: And now I'm hearing, gee, I  
3 don't like the deal I made from both sides at some  
4 level.

5 MR. PETRAMALO: That's not at all true.

6 MR. BURNETT: Well, you got five days for the  
7 115,000, and you said okay. So, you know, now it  
8 was -- it's a problem that we have to spend this  
9 115,000.

10 MR. PETRAMALO: Well, we solved the problem.  
11 The problem is being created here.

12 MR. BURNETT: It sure is. Correct.

13 MR. PETRAMALO: We solved the problem. It's  
14 consistent with the way we've done things for the  
15 last five years with this Commission's approval.

16 MR. BURNETT: Well, I would have to  
17 respectfully disagree because the \$50,000 jockey's  
18 insurance amount was not included in benevolence in  
19 the past. I'm looking at your sheets here.

20 MR. PETRAMALO: That's correct. It wasn't.

21 MR. BURNETT: So let's not represent that this  
22 is the same as it's always been. This is a marked  
23 departure to the tune of at least 30% when you put  
24 the training ambulance and the jockey's insurance in  
25 there, between them there's 71,000, almost \$72,000

1 being spent different than last year.

2 MR. PETRAMALO: Okay. Let me ask you --

3 MR. BURNETT: All I'm saying is it's not the  
4 same as last year.

5 MR. PETRAMALO: Let me ask you this then.  
6 Where do you think in your mind there's more of a  
7 straying from a benevolent purpose, paying for  
8 jockey insurance and an ambulance or paying to have  
9 the track kitchen extended or a bathhouse built or  
10 new ventilators put on the receiving barn, all of  
11 which have been approved by this Commission as  
12 benevolent expenditures.

13 MR. BURNETT: I can get there on those. I  
14 can't get there on these.

15 MR. PETRAMALO: You can get there on expanding  
16 the kitchen, but not for an ambulance?

17 MR. BURNETT: Yes, I can.

18 MR. PETRAMALO: Wow. I guess that's why  
19 there's a lawyer on each side of the case.

20 MR. BURNETT: Well, the track doesn't have a  
21 statutory obligation to provide an expanded kitchen.

22 MR. PETRAMALO: I don't see what the track's  
23 statutory obligation has got to do with anything in  
24 terms of what's a benevolent purpose.

25 MR. BURNETT: That's true. Okay. I'll give

1           you that. I can't get there.

2                   Do you want to vote?

3           MR. PETRAMALO: Well, it seems to me that  
4           the -- picking up from what Jerry said about  
5           Dr. Dunavant's interest in looking at this. For the  
6           purposes of your vote, you ought to assume that  
7           everything is fine with Dr. Dunavant and the rest of  
8           the Commission -- the rest of the committee because  
9           if it isn't, you don't have to go through all of  
10          this. You should only assume that Dr. Dunavant says  
11          this is fine, then you have to address the question  
12          that's being raised by the chair, is this  
13          appropriate.

14                  MR. BURNETT: Right. That's fair.

15                  MR. PETTY: Mr. Chairman, are you interested  
16          in a comment from the peanut gallery?

17                  MR. BURNETT: Sure. I'll hear one more  
18          comment if my fellow commissioners will indulge it.

19                  MR. PETTY: I think you've -- everybody has  
20          got to a point where it's a 115,000 problem, and  
21          there's only two pots of money to resolve it from,  
22          the purse account, and the benevolence, and the cap  
23          ex account.

24                         I think if they had chosen the purse account,  
25          which is tremendously important to a large group of

1 people and I'm not reducing the importance of the  
2 benevolence portion, I don't think you'd be debating  
3 which races it came from. I think you would say  
4 this is a one-time thing that we're doing to make a  
5 deal and move forward, and everybody would swallow  
6 it hard and move on. We wouldn't argue whether it  
7 was maiden races or allowance races or crowning  
8 races.

9 So while there are some philosophical  
10 differences in what is and isn't benevolence, if  
11 there was a ten-year contract, you might have reason  
12 to sit here and debate longer, but in this  
13 particular case, trying to solve a problem to get us  
14 from point A to point B, a group that meets monthly,  
15 it may be that -- it may be that let's do this for  
16 today, and let's make this better next year.

17 MR. BURNETT: But I don't understand, Glenn,  
18 with all due respect, why the other side of that  
19 argument isn't equally as valid. Why don't just  
20 take the 115 out of the purse account as it was  
21 originally intended and not be taking it from the  
22 Benevolence Fund. Let's give some more money to the  
23 grooms. Let's give some money to the poorest.

24 MR. PETTY: I think the argument would be that  
25 the Benevolence Fund is a Mercedes and the purse

1 account is a SUV. And if everybody in the Mercedes  
2 is being adequately cared for, which is for you guys  
3 to argue about the budget, but if they're being  
4 adequately cared for, and we all agree it's the best  
5 program in the country. In fact, I'd go out on a  
6 limb and say we spend more per day than anybody  
7 else. So good for us. It just seems like you have  
8 to make some choice of who compromises, and that  
9 group seems to be in a pretty good place, they're  
10 very well taken care of, and last year they couldn't  
11 even spend all the money they had. The purse  
12 account can always spend all the money it has and  
13 more. Ask both parties.

14 MR. BURNETT: We can go on like -- forever  
15 with this, but the purse account has \$9 million.  
16 The Benevolence Fund is under 200. Which one can  
17 tolerate \$70,000 better? How are you to spread the  
18 load in the broadest fashion?

19 Anyway, you're not going to convince me. So,  
20 you know, we tried -- I tried to keep an open mind.  
21 I'm not convinced, but if y'all want to vote, I'm  
22 ready to vote.

23 MR. MILLER: Well, there's -- a vote really --  
24 under the circumstances, a vote would be useless.

25 MR. PETRAMALO: Correct.

1           MR. MILLER: I would suggest that to get a  
2 meaningful vote, we would have to wait until all  
3 five commissioners are here and the other two  
4 commissioners that are absent today would have to  
5 be, you know, brought up to speed on all issues that  
6 are being raised here today in order to get a  
7 meaningful vote because even -- as long as one of  
8 the three here, you can't get a majority vote.

9           MR. PETRAMALO: Well, let me --

10          MR. MILLER: I have vacillating thoughts. I  
11 jump from one side to the other. I think what Glenn  
12 stated is an appropriate observation, but I also  
13 agree with the chairman when you look at who can  
14 best bear the cost of this 115,000 and, of course,  
15 we have no -- and we never will have anyone here, I  
16 don't think, from the beneficiaries of the  
17 Benevolence Fund.

18          MR. PETRAMALO: May I have a moment to consult  
19 with counsel?

20          MR. BURNETT: Yeah.

21          MR. MILLER: I'll tell you -- I move we take a  
22 five-minute recess.

23          MR. BURNETT: Would you take a friendly  
24 amendment to ten?

25          MR. MILLER: Ten minutes.

1           Note: A short recess is taken, following  
2           which the hearing resumes as follows:

3           MR. BURNETT: Ready to resume?

4           MR. WEINBERG: I'm happy to resume.

5           MR. BURNETT: Mr. Weinberg?

6           MR. WEINBERG: What I'd like to do is I'm  
7           happy to go through the contract changes. I think  
8           it would be helpful if there are other issues  
9           relating to the contract, we try to address those,  
10          as well as this clause dealing with the Benevolence  
11          Fund. And so I'm happy to review with you the  
12          changes in the '09 contract from the '08 contract if  
13          that would be a helpful exercise to the Commission.

14          MR. BURNETT: I think it would. We have your  
15          letter to Vic dated April 8th and we have the staff  
16          memo to us, which tracks along with it. Is there  
17          any preference which document we might track to make  
18          it easier for all of us? Do they cover the same  
19          issues?

20          MR. HARRISON: They do, yeah. Basically, I  
21          took the black line changes and commented on those.  
22          So it's a synopsis of the change. It's not of the  
23          entire contract. Just the changes from the prior  
24          year.

25          MR. BURNETT: Right. Why don't you go ahead,

1 Mr. Weinberg.

2 MR. WEINBERG: I would begin with signal  
3 sales. The '09 agreement returns to 21% of signal  
4 sales from 15% in the '08 contract, but the 21% was  
5 in the '02 and '05 thoroughbred agreement.

6 The next change relates to the stake purses.  
7 As you know, that was a significant point of  
8 negotiation and really resulted in some protracted  
9 negotiations, and in an effort to address the  
10 concerns about the proportion of funds devoted to  
11 stake races versus overnights, Colonial Downs agreed  
12 to a temporary reduction in the Turf Cup from 600 to  
13 500. In addition, reductions were made of 50,000  
14 each in the All Along and the Oaks. That freed up  
15 200,000 from the graded stake races. It's also a  
16 reduction in the 13 lesser stakes from 60,000 to  
17 50,000. So that was a movement of, if I'm doing the  
18 math right, 330,000 from stakes to overnights.

19 MR. BURNETT: I don't want to flyspeck this  
20 obsessively, but I'm interested in the comment that  
21 it's a temporary reduction in light of your having a  
22 merger clause in the contract. The merger clause  
23 doesn't say there aren't any other agreements.

24 MR. WEINBERG: Well, I say that only in  
25 precedential value of, well, you agreed to 500 last

1 year. Why can't you do 500 this year. I am certain  
2 we will hear that argument. I'm just preserving --

3 MR. BURNETT: But there is no agreement as to  
4 what it's going to be next year?

5 MR. WEINBERG: No. This is a one-year  
6 agreement.

7 MR. BURNETT: Okay. Thank you.

8 MR. WEINBERG: The next change is in Section  
9 5-A and it affects the condition book, and it  
10 provides an opportunity for the VHBPA to have  
11 greater input in instances where extra races are  
12 added, and it sets up some guidelines, affirmative  
13 guidelines on when extra races are permitted.

14 It also notes that we are implementing a new  
15 scratch from form rule that will run on an  
16 experimental basis for the first couple weeks of the  
17 meet, and if there are problems, we'll make some  
18 adjustments, but that is the new language in the  
19 agreement.

20 MR. BURNETT: Let me stop you there for a  
21 moment. First, I think I understand that rule is  
22 that if you want to scratch before it goes out to  
23 publication, you can without penalty.

24 MR. WEINBERG: I'll defer to Tyler to answer  
25 that.

1 MR. PICKLESIMER: The scratch time will  
2 basically be the day of. Horse scratching by nine  
3 o'clock and you can scratch down to eight without a  
4 penalty. Once you get to eight, then you'll have to  
5 use a vet excuse or something that's acceptable.

6 MR. BURNETT: When you say day of --

7 MR. PICKLESIMER: Day of race.

8 MR. PETRAMALO: Race day.

9 MR. BURNETT: You can scratch right up to the  
10 day of --

11 MR. PICKLESIMER: Day of race, right, but no  
12 scratches before race day.

13 MR. BURNETT: Without penalty.

14 MR. PICKLESIMER: Right. Without penalty down  
15 to eight.

16 MR. BURNETT: First in time; first in right.

17 MR. PICKLESIMER: No, no, no.

18 MR. BURNETT: I mean, the guy that shows up  
19 with the scratch, he calls first?

20 MR. PICKLESIMER: Well, it would be nine  
21 o'clock. Basically the horses with physical reasons  
22 will be let out first.

23 MR. BURNETT: Sure.

24 MR. PICKLESIMER: If you have no reason, too  
25 tough, whatever, you know, scratches, you know,

1           you're going to make seven. You're stuck. You're  
2           going to have to come up with a physical reason --

3           MR. BURNETT: Okay.

4           MR. PICKLESIMER: -- to get out.

5           MR. BURNETT: Does this conflict with any  
6           rules we currently have? Do we have to make any  
7           rules changes to -- rules of racing changes of any  
8           sort?

9           MR. LERMOND: No.

10          MR. BURNETT: And this is on an experimental  
11          basis?

12          MR. PICKLESIMER: Basically, it allows us to  
13          get a final program, riders, we'll final up the  
14          draw. Everything is basically done at the draw.  
15          You can get it out to your forum quicker. You can  
16          get it out to the person entered, whoever, you know.

17          MR. BURNETT: Can we get a report back on this  
18          experiment, just how it works?

19          MR. PICKLESIMER: Sure.

20          MR. BURNETT: Obviously, if it's really  
21          successful, you're probably going to be asking that  
22          it be expanded, but I think it would just be helpful  
23          for us to know what impact you thought it had.

24          MR. PICKLESIMER: Sure.

25          MR. BURNETT: Thanks.

1 MR. WEINBERG: The next change is Section 5-B  
2 relating to the gap funding. As we discussed, the  
3 HBPA is arranging for gap funding this year. This  
4 provision just sets out the mechanics, sets out a  
5 May 1 deadline for having all these arrangements  
6 finalized. So if there were an issue we needed the  
7 Commission's input on, we have the opportunity at  
8 the May meeting to get it, but that is the rationale  
9 for the change in that section.

10 MR. BURNETT: What section are you on?

11 MR. WEINBERG: I'm in Section 5 --

12 MR. PETRAMALO: Page 9.

13 MR. WEINBERG: -- B and C.

14 MR. BURNETT: Can I understand and just for my  
15 own purposes that the repayment -- the priority of  
16 payment in the event of overpayment?

17 MR. WEINBERG: The contract originally said --  
18 it had two provisions. If you overpay, you get  
19 repaid dollar for dollar, and the gap funding if  
20 it's not paid within the same calendar year gets  
21 repaid dollar for dollar. So that begs the question  
22 which one comes first.

23 MR. BURNETT: Who comes first, right.

24 MR. WEINBERG: In the past, it didn't matter  
25 because the same entity was funding both

1 obligations. Now that it does matter, we needed to  
2 set some priorities. So we made it clear that gap  
3 funding gets repaid first before the purse  
4 overpayment funding gets repaid.

5 MR. BURNETT: Okay. Thank you.

6 MR. WEINBERG: Sure.

7 And the next item is in Section 5-F and that  
8 memorializes the arrangement for the payment of the  
9 extra five days of racing where \$115,000 is due from  
10 the HBPA to Colonial Downs. There is a side letter  
11 that then sets out a series of credits against that  
12 115. Many of them arise in the Benevolent Fund  
13 discussion that we just had, but in addition, there  
14 is a \$25,000 rebate from Colonial Downs to the HBPA,  
15 which really arose to help bridge the gap on the  
16 proportion of stake race purses. Overnight purses,  
17 we were about 50,000 apart, and we split the  
18 difference with that rebate.

19 MR. BURNETT: Is that side letter part of this  
20 contract?

21 MR. PETRAMALO: It's attached to it.

22 MR. BURNETT: Is it?

23 MR. WEINBERG: It was submitted with the  
24 contract. I can provide you a copy.

25 MR. BURNETT: I think I saw it. I just want

1 to make sure it's the same one. Okay. Thank you.

2 MR. WEINBERG: The next substantive change  
3 deals with the opening of the backstretch. There is  
4 an interest in attracting as many horses leaving  
5 Florida as possible. So we'll open the backstretch  
6 on May 17th with the idea that it will provide a  
7 place for horses leaving Florida to come to before  
8 they head further north.

9 MR. BURNETT: Do I understand from the  
10 provision -- the changes in that provision that if  
11 the track decides to close the track the day after  
12 the meet closes, that's within its right under this  
13 contract?

14 MR. WEINBERG: That is correct.

15 MR. BURNETT: So it's meant to say not more  
16 than five days as opposed to not less than five  
17 days?

18 MR. WEINBERG: That is true. We are opening  
19 significantly earlier than we have historically.  
20 The idea being that it's -- the backstretch  
21 antidotally empties out very quickly at the end of  
22 the meet.

23 MR. BURNETT: Sure.

24 MR. WEINBERG: So if everyone is gone after  
25 three days, there's no need to keep it open.

1 MR. BURNETT: Okay.

2 MR. WEINBERG: You'll also see a reference to  
3 harrowing of the track during the training period,  
4 morning training period.

5 The next item relates to the provision of a  
6 suite to the HBPA. I think as we discussed, there  
7 are revenue opportunities for Colonial Downs with  
8 respect to that suite on the weekends. As an  
9 accommodation, the suite is available during the  
10 week, and then during the weekends, a table for ten  
11 in the Turf Club, which is also on the fourth floor.

12 The next item is the Racing Committee referred  
13 to in Section 9. We had a Racing Committee in the  
14 past. This just adds a little more formality to the  
15 regularity of its meeting. You'll also see  
16 reference to the fireworks for the 4th of July and  
17 some mechanics of doing demonstrations to make sure  
18 everyone understands what will happen on the fourth.

19 MR. BURNETT: Could you help me with what  
20 quiet fireworks are?

21 MR. STEWART: Well, we're going to demo them  
22 on Thursday, April 30th at four o'clock. They're  
23 pretty.

24 MR. BURNETT: This isn't the light show that  
25 we tried once with limited success. This is

1 something different?

2 MR. STEWART: This is something different. We  
3 had them out here in January, and it's quiet is all  
4 I can tell you. Everybody is welcome. It's  
5 scheduled for Thursday, April 30th at four o'clock.

6 MR. WEINBERG: The next item is the  
7 Benevolence Fund items, which we have discussed and,  
8 again, that's also addressed in the side letter  
9 between the parties.

10 The next item deals with the arbitration  
11 provision in the agreement. As you may recall, last  
12 year there was some discussion about the Interstate  
13 Horse Racing Act, which is required for the Florida  
14 tracks, for Calder in particular. Given the  
15 mechanics of our arbitration clause, whether the  
16 horsemen's denial of that consent was reasonable or  
17 not, would not have been resolved during the course  
18 of the meet. So we made an effort to speed that up  
19 a little bit. Still at 45 days, it's a stretch. So  
20 we're -- that's an item -- a work still in progress,  
21 but we made some progress on that.

22 And then the last change, we specified in the  
23 agreement the backstretch improvement, the  
24 significant backstretch improvement that Colonial  
25 Downs plans to make, which is the replacement of the

1           sprinkler system in the receiving barn. There are a  
2           host of others, but will put us over the \$100,000  
3           payment that will be made during the course of the  
4           year.

5           MR. BURNETT: This is probably an accountant's  
6           question best addressed to Ian, but when I first  
7           heard about this barn sprinkler, I thought of it as  
8           a repair. Doing some of this stuff myself and  
9           knowing the difference between a repair and a  
10          capitalized item in terms of tax implications, it's  
11          actually going to be capitalized or --

12          MR. STEWART: Yes, because it extends the life  
13          of the asset. The asset basically at this point  
14          needs to be replaced. So it's been out there 12  
15          years --

16          MR. BURNETT: The sprinkler is seen as an  
17          asset in and of itself, the system?

18          MR. STEWART: Right.

19          MR. BURNETT: It's not part of the building as  
20          a whole.

21          MR. STEWART: Well, we'll separately delineate  
22          what we spend on the sprinkler.

23          MR. BURNETT: Okay. Thank you.

24          MR. WEINBERG: Those are really the  
25          substantive changes. The language that is noted at

1 the end of the agreement tying the contract approval  
2 to the Benevolence Fund is language that was not in  
3 the '08 agreement. It has been in the prior '02 and  
4 '05 agreements. I apologize for not highlighting  
5 that in the letter, but it had been fairly typical  
6 language in prior agreements.

7 MR. BURNETT: My copy of the contract does not  
8 have that side letter. Might I look at somebody's  
9 copy? For some reason I feel like I've seen it, but  
10 I don't have it in front of me. Thank you.

11 MR. FERGUSON: This memorializes what we're  
12 talking about?

13 MR. BURNETT: In part. Can you or Frank help  
14 me with the -- I just want to understand how it  
15 works. If you spend -- now I think I understand.  
16 If you spend ninety-one three on the sprinkler  
17 system, then \$8,700 gets credited against the  
18 115,000?

19 MR. WEINBERG: If we did not make any other  
20 capital improvements.

21 MR. BURNETT: Right.

22 MR. WEINBERG: That's correct.

23 MR. BURNETT: But if you spend 100 on the  
24 sprinkler system, it's a wash. End of discussion.

25 MR. WEINBERG: Correct.

1 MR. BURNETT: Okay. Any questions? I'm  
2 sorry. Is that all you wanted to tell us about  
3 that?

4 MR. WEINBERG: That is.

5 MR. BURNETT: Fellow commissioners, any  
6 questions about the contract?

7 I have none. Any further comment from anybody  
8 on the contract? Harness horsemen affected in any  
9 way and want to comment?

10 MR. CANAAN: No, sir.

11 MR. BURNETT: All right.

12 MR. WEINBERG: Assuming that there are no  
13 issues with the contract, in the interest of getting  
14 the contract approved today, I think the parties  
15 would be amendable to waiving Section 28 -- let me  
16 make sure I get the section.

17 MR. PETRAMALO: 28-A.

18 MR. WEINBERG: 28-A.

19 MR. PETRAMALO: Page 30.

20 MR. WEINBERG: Page 30 of the contract, which  
21 conditions the approval on the approval of the  
22 Benevolence Fund. We would put this agreement into  
23 place and really live by the terms of our side  
24 letter as to where the Benevolence Fund  
25 ultimately --

1 MR. MILLER: Page 30 what?

2 MR. PETRAMALO: I got page 30 on mine. It's  
3 28-A.

4 MR. MILLER: Do we have the same contract?  
5 Are you looking at the same contract?

6 MR. WEINBERG: Is yours black lined or clean?

7 MR. MILLER: Black line.

8 MR. WEINBERG: Black line, it's 31. On the  
9 clean copy, it's 30.

10 MR. MILLER: So we're to eliminate paragraph  
11 28?

12 MR. WEINBERG: That's right.

13 MR. FERGUSON: 28-A or 29 all together?

14 MR. WEINBERG: 28-A. We want to make it  
15 clear, though, we had a contract in place as of  
16 January 1.

17 MR. BURNETT: It's still unclear to me -- help  
18 me out, because I'm just looking at this side  
19 letter, and the side letter references in multiple  
20 places these funds being paid out of the Benevolence  
21 Fund.

22 MR. PETRAMALO: I think if you look at the  
23 paragraph that precedes the itemization, you'll see  
24 that the credit applies only to the extent that  
25 those funds are paid out of the Benevolence Fund.

1 If they're not, there's no credit, which means we  
2 owe them money.

3 MR. MILLER: That's in the letter?

4 MR. PETRAMALO: Yes. To me, it's quite clear  
5 that if those funds aren't paid by benevolence --  
6 out of the Benevolence Fund and Colonial Downs, in  
7 fact, pays them, we owe Colonial Downs.

8 MR. MILLER: I'm trying to --

9 MR. PETRAMALO: For example, the last sentence  
10 in the first paragraph says, the 115,000 amount  
11 shall be reduced by the following: One, premiums  
12 for jockey insurance that Colonial does not directly  
13 pay as a result of payment of such premium from the  
14 Racing Benevolent Fund. To me, that means if the  
15 Racing Benevolent Fund doesn't pay it, Colonial pays  
16 it, and we don't get a credit.

17 MR. MILLER: I follow that.

18 MR. PETRAMALO: I think the same -- the same  
19 construction follows for paragraph number two.  
20 Three and four don't involve the Benevolence Fund  
21 necessarily.

22 MR. MILLER: We don't have the same qualifying  
23 language for two and three and four.

24 MR. PETRAMALO: The only way to read two is we  
25 get a credit for the amount paid out of the Racing

1 Benevolence Fund for the ambulance. If no money is  
2 paid out of the Benevolence Fund -- from the  
3 Benevolence Fund for the ambulance, we don't get a  
4 credit.

5 MR. MILLER: Well, okay. It says the \$115,000  
6 amount shall be reduced by the following.

7 MR. PETRAMALO: Right.

8 MR. MILLER: Then if you go down to number  
9 two, the amount paid out of --

10 MR. PETRAMALO: The Benevolence Fund, but if  
11 the amount paid out is zero, our credit is zero.

12 MR. MILLER: Well, I don't know if I could be  
13 a lawyer in a courtroom in a case where this  
14 contract is put to the test. I mean, you could --  
15 there's so many ways to interpret it because it says  
16 it shall be paid, and you even put down what you  
17 expect that amount to be that you're going to pay.

18 MR. PETRAMALO: No. It says the amount paid.  
19 It doesn't say the amount shall be paid. It says  
20 the amount paid out of the Benevolence Fund.

21 MR. MILLER: It shall be reduced.

22 MR. PETRAMALO: Yeah, but if the amount paid  
23 is zero, the shall be reduced is zero.

24 MR. MILLER: That's true. That would be  
25 somebody's argument.

1 MR. WEINBERG: Tell me what would be your  
2 argument. I mean, what would be the contrary  
3 interpretation?

4 MR. MILLER: The contrary interpretation would  
5 be that the 115,000 amount shall be reduced by the  
6 following. Whatever amount is paid out of -- the  
7 amount paid, it would read like there was expected  
8 to be some amount paid there.

9 MR. PETRAMALO: We're expecting it, but if he  
10 doesn't come, we don't get a credit for it.

11 MR. MILLER: Well, okay. I mean, if you're --  
12 it's not my problem anyway. It would be your own.

13 MR. PETRAMALO: We signed off on that, and I'm  
14 making that representation that that's what we  
15 intended when we agreed to it.

16 MR. BURNETT: And the parties would agree that  
17 for the moment leaving aside the Benevolence Fund,  
18 that nothing came from the Benevolence Fund. It's  
19 either come out of your hide or your hide, one or  
20 the other, right? This money, either it's paid by  
21 the horsemen one way or the other, or it's paid by  
22 Colonial Downs one way or the other.

23 MR. WEINBERG: Correct.

24 MR. BURNETT: But to the extent there's -- I  
25 guess one of the things that might concern

1 Commissioner Miller and myself, any commissioner  
2 would be that this happens and we don't get an  
3 ambulance or the jockey insurance isn't purchased  
4 because you were supposed to purchase it. No, you  
5 were supposed to purchase it.

6 MR. WEINBERG: Let's be clear.

7 MR. BURNETT: Okay. Thank you.

8 MR. WEINBERG: This contract says, I think  
9 it's June 1, \$115,000 is due from the HBPA to  
10 Colonial Downs, right? Approved by the Commission.  
11 Enforceable contract. June 1, we come to collect.  
12 Frank says, whoa, whoa.

13 MR. BURNETT: I paid this. I paid this.

14 MR. WEINBERG: Right. But if it hadn't been  
15 paid, Colonial Downs is still on the hook to buy the  
16 jockey insurance, pay for the ambulance, you know,  
17 to do everything there.

18 MR. BURNETT: That's what our protected selves  
19 want to hear is that it's going to get purchased.

20 MR. PETRAMALO: Duke can confirm this, but I  
21 believe the first portion of the premium for the  
22 insurance has already been paid.

23 MR. DALE: Actually, the full amount has been  
24 paid.

25 MR. PETRAMALO: The full amount. So we got

1 the insurance.

2 MR. BURNETT: We're feeling better now.

3 MR. STEWART: It doesn't change our  
4 obligation.

5 MR. PETRAMALO: Let them try and collect from  
6 me now, now that they've paid it.

7 MR. WEINBERG: With all due respect, this  
8 discussion has confused obligation versus payment  
9 source. This is purely a payment source.

10 MR. PETRAMALO: The ambulance will be there on  
11 May 17th.

12 MR. BURNETT: All right.

13 MR. MILLER: So you fully understand that if  
14 we don't approve the benevolence budget --

15 MR. PETRAMALO: Yes.

16 MR. MILLER: -- as presented one way or  
17 another, you're going to have to come up with  
18 \$115,000.

19 MR. PETRAMALO: No. We'd have to come up with  
20 90,000.

21 MR. MILLER: Well, whatever.

22 MR. WEINBERG: Right.

23 MR. MILLER: Okay.

24 MR. BURNETT: We have heard from you on the  
25 contract. We have reviewed and asked questions

1 about the side letter. Are there any more  
2 components of the contract that we need to see now  
3 that paragraph 28-A has been deleted by the parties?

4 MR. WEINBERG: No.

5 MR. BURNETT: Anything further?

6 MR. PETRAMALO: No, sir.

7 MR. MILLER: Well, Mr. Chairman, in light of  
8 that, I guess you're ready for a motion?

9 MR. BURNETT: I think we are.

10 MR. MILLER: In light of that and in  
11 accordance with the recommendation of the staff, I  
12 would move that we approve this contract --

13 MR. FERGUSON: I'll second that.

14 MR. MILLER: -- effective as of January 1 of  
15 2009.

16 MR. BURNETT: The approval of the Thoroughbred  
17 Horsemen's Agreement as amended in our discussion  
18 has been moved and seconded. All in favor indicate  
19 by saying aye.

20 NOTE: The motion is made by Commissioner  
21 Miller and seconded by Commissioner Ferguson. All  
22 were in favor. The motion carries.

23 MR. BURNETT: All right. We have approval of  
24 2009 race days, and we have an amendment request for  
25 2009 Standardbred race days. Let's take up the

1 thoroughbred race days first.

2 MR. PETRAMALO: What's the issue?

3 MR. BURNETT: I think we are -- at this point,  
4 we've already approved them in the contract, but I  
5 think we're here to formally set the race days so  
6 there is no question about start and stop. There's  
7 an independent item of the race days.

8 So do we have a motion to approve the 2009  
9 thoroughbred race days as set forth in the contract  
10 between the thoroughbred horsemen and Colonial Downs  
11 that we just approved?

12 MR. PETRAMALO: I'm not sure it's in the  
13 contract.

14 MR. BURNETT: It's not? I'm sorry.

15 MR. PETRAMALO: The dates are June 5th through  
16 July 28th.

17 MR. MILLER: And --

18 MR. PETRAMALO: Forty days of racing starting  
19 on Friday, June 5th and ending on Tuesday,  
20 July 28th.

21 MR. MILLER: I make that motion.

22 MR. FERGUSON: I'll second it.

23 MR. BURNETT: It's been moved and seconded to  
24 approve race days starting June 5th and ending  
25 Tuesday, July 28th. All in favor indicate by saying

1 aye.

2 NOTE: The motion is made by Commissioner  
3 Miller and seconded by Commissioner Ferguson. All  
4 were in favor. The motion carries.

5 MR. WEINBERG: Just for clarity, it is in the  
6 contract in Section 5-F, so I think we're entirely  
7 consistent.

8 MR. BURNETT: Okay. Good.

9 Amendment to the request for 2009 standardbred  
10 race days, is that the --

11 MR. HARRISON: It's just the refiguring of  
12 some Sundays, some Fridays.

13 MR. WEINBERG: When we originally applied for  
14 race days, we were looking to have the opening day  
15 coincide with the opening of the New Kent County  
16 Fair at Colonial Downs. The fair is not going to be  
17 at Colonial Downs this year. So as a consequence,  
18 we had initially planned for three Friday race days.  
19 We'd like only one of those Friday race days, that  
20 being the last Friday of the meet before the  
21 Breeders' Fund. We move those other Fridays to  
22 Sundays, and we'd like to open the meet on Tuesday,  
23 September 8th, rather than September 12th.

24 MR. CANAAN: And that's supported by the  
25 harness association and Dr. Dunavant.

1 MR. MILLER: I move that we approve the  
2 harness racing days from Tuesday, September 8th,  
3 2009, through Saturday, November the 7th, 2009.

4 MR. FERGUSON: I'll second that.

5 MR. BURNETT: It's been moved and seconded  
6 that the amendment -- that the standardbred race  
7 days request be amended as set forth. All in favor  
8 indicate by saying aye.

9 NOTE: The motion is made by Commissioner  
10 Miller and seconded by Commissioner Ferguson. All  
11 were in favor. The motion carries.

12 MR. BURNETT: That takes us to --

13 MR. PETRAMALO: Excuse me.

14 MR. BURNETT: I'm sorry.

15 MR. PETRAMALO: Commissioner or Chairman  
16 rather, I assume then that we will come back at the  
17 next meeting with the benevolence budget?

18 MR. BURNETT: I was going to reach that, but  
19 yeah.

20 MR. PETRAMALO: Oh, I'm sorry.

21 MR. BURNETT: But that was the notion was  
22 unless there was further discussion on it, is there  
23 any reason -- let's just take it up now. Is there  
24 any reason that the discussion with Dr. Dunavant and  
25 the standardbred folks new executive director can't

1 take place between now and our next meeting, and we  
2 can approve the Benevolence Fund then?

3 MR. PETRAMALO: There's no reason why that  
4 can't happen.

5 MR. BURNETT: So we'll expect to see it then.

6 MR. MILLER: That's fine.

7 MR. BURNETT: All right. Good.

8 MR. WEINBERG: Chairman Burnett?

9 MR. BURNETT: Yes.

10 MR. WEINBERG: Colonial Downs had a few other  
11 things to apprise the Commission of. I don't know  
12 if you want to take us now or continue to move  
13 through your items under the stakeholders agenda.

14 MR. BURNETT: Your choice.

15 MR. WEINBERG: There are a couple things that  
16 would be consistent with it as long as we're talking  
17 about the live meet. There is a new promotion that  
18 Colonial Downs will institute with the thoroughbred  
19 meet that Darrell Wood can describe to you called  
20 the Inside Track.

21 MR. WOOD: We met -- a group of us have met  
22 for pretty much over the last two months and tried  
23 to brainstorm and tweak a way that we could create a  
24 hands-on experience, kind of a behind-the-scenes  
25 look for fans, kind of like NASCAR does with the pit

1        infield and with harness, getting people in a sulky,  
2        getting them in the starting car to give them an  
3        experience that kind of creates a wow factor.

4                We've come up with a concept. It lasts  
5        between four and five races that give a group of 15  
6        people an opportunity to visit a barn area, meet  
7        with a trainer for 10 to 15 minutes before and  
8        during the first race. They would witness the  
9        second race here on the patio of the racing office  
10       to get a view of the race back here. They would  
11       then go for the next race to go see a horse -- go to  
12       the gate itself, the starting gate, see the horses  
13       get loaded, and then break off. And they would  
14       finish it up with a trip to the paddock infield and  
15       have a Ferris Allen, a trainer come up and give them  
16       kind of a chalk talk on racing right there called  
17       the Inside Track.

18               It will be limited to a group of 15 people  
19       once a day to start this thing conservatively.  
20       Santa Anita did a similar program this year. We've  
21       kind of taken that a step farther to get the --  
22       again, to create kind of a wow factor and, you know,  
23       kind of see how it goes from that point.

24               If we make it available on Saturdays and  
25       Sundays, it'll cost \$300. We would have a tour

1 guide with the group of 15 people, someone who is  
2 experienced in the equine industry, has been a  
3 seasonal staff member of ours for years, and there  
4 will be a van driver as well, and security as well.  
5 A security person would be the van driver.

6 MR. BURNETT: How are your 15 people selected?

7 MR. WOOD: Right now we're going to sell it  
8 like I do a group party. So you can bring a group  
9 of 25 to a suite; you can bring a group of 100 to a  
10 trackside picnic area; you can bring a group of 15  
11 to this Inside Track experience. The day would  
12 finish in the hands of a fan education person that  
13 would teach them betting, how to read a race  
14 program, and other nuances like that, too. And  
15 we're going to put them in the winner's circle, too.

16 MR. STEWART: We just think it's really a  
17 unique experience. I mean, people come to the  
18 racetrack for years, but you get a whole new view of  
19 what's going on.

20 MR. BURNETT: Absolutely.

21 Do they pay for it? Do they pay for the  
22 experience?

23 MR. WOOD: \$300.

24 MR. BURNETT: You charge \$300 for it?

25 MR. WOOD: Yes.

1 MR. BURNETT: I thought that was your cost.

2 MR. MILLER: A piece?

3 MR. WOOD: No, for the group.

4 MR. MILLER: We're not going to get many.

5 MR. WOOD: But it also presents a good media  
6 opportunity, too, and I think it's a good hype  
7 engine, you know, who knows where this could go if  
8 it takes off.

9 MR. BURNETT: I'm thinking out loud now  
10 because I'm just hearing it. Do we have any  
11 licensing issues in terms of getting people on the  
12 backside? Do we have any insurance notification to  
13 make sure our liability carriers are all cool with  
14 that? Do you need any particular consents from any  
15 owners, trainers, et cetera?

16 MR. STEWART: We've spoken with Vic and his  
17 folks, and I think they're comfortable that as long  
18 as the people are escorted on the backside, that  
19 that's fine. We talked to our insurance carriers  
20 about those issues, and we're all right there.  
21 Obviously, you know, if some trainers and stuff  
22 could help us out, that would be great. I think it  
23 would be good for everybody.

24 MR. BURNETT: It sounds like a great way to  
25 get people more involved.

1           MR. STEWART: Well, it's just a different  
2 experience. I mean, if you go to a ball game -- as  
3 a baseball fan, it's one thing to watch the game in  
4 the bleachers. It's another thing to watch the game  
5 front row box seat opposite the on deck circle.  
6 It's just a whole different experience.

7           MR. BURNETT: Okay.

8           MR. WEINBERG: One housekeeping matter, it  
9 relates to Colonial Downs' license for EZ Horseplay.  
10 In an effort to alleviate a log jam in getting  
11 access to MEC content, XpressBet and Colonial Downs  
12 agreed to an amendment to their existing account  
13 wagering service agreement in the termination  
14 provision.

15           Currently, the agreement can be terminated if  
16 the party breaches and fails to cure the breach or  
17 if there were a change in the law that alleviated  
18 the need for a contract with the -- between the  
19 licensee and the horsemen under Virginia law.

20           In light of that new legislative change, we  
21 also agreed to an additional sentence. This has  
22 been shared with the Commission staff, but it in  
23 essence allows either party to terminate the  
24 agreement if a court or another tribunal in a final  
25 judgment determine that the law that goes into

1 effect July 1 would supersede the provisions of the  
2 existing agreement relating to the calculation of  
3 the source market fee. That is cross defaulted to  
4 the TrackNet content license agreement for the MEC  
5 content, but if the XpressBet agreement is  
6 terminated under this provision, the content license  
7 agreement is automatically terminated as well. And  
8 that was the rationale for this amendment.

9 We are under an obligation to apprise the  
10 Commission of any changes in our license  
11 application. This is a change. I don't think it's  
12 a significant one, but nonetheless, we wanted to  
13 call it to the Commission's attention.

14 MR. BURNETT: Let me see if I can regurgitate  
15 that in different words. Do I understand that the  
16 parties are trying to protect themselves against the  
17 circumstance whereby the new law would essentially  
18 impose a rate on XpressBet, but somehow otherwise  
19 leave the remaining contract provisions in place  
20 and, thus, it would be a different deal?

21 MR. WEINBERG: Right.

22 MR. BURNETT: So in the event that a court  
23 says, guess what, your contract at least as to  
24 rates, if it were severing that piece out of it you  
25 raise now, 11 and a half or whatever it is, either

1 party has a right to terminate that agreement at  
2 that time.

3 MR. WEINBERG: Correct.

4 MR. BURNETT: After a court makes that  
5 determination.

6 MR. WEINBERG: Correct.

7 MR. BURNETT: Which could be a long time.

8 MR. WEINBERG: Or it could be another  
9 tribunal.

10 MR. BURNETT: Okay. Tribunal including  
11 arbitrators, et cetera.

12 MR. WEINBERG: Virginia Racing Commission,  
13 yes.

14 MR. BURNETT: Any questions about that  
15 provision?

16 MR. MILLER: No. I think I understand it.

17 MR. BURNETT: I sort of think I do, but -- all  
18 right. That doesn't require any vote. Just a  
19 notice from you that you're doing it, correct?

20 MR. WEINBERG: Correct.

21 MR. BURNETT: Thank you.

22 Anything else? I see a hand going up in the  
23 back. It's somebody attached to XpressBet. Maybe  
24 we should let him comment.

25 MR. SCOGGINS: Greg Scoggins for XpressBet.

1 My only comment is to the extent or for the sake of  
2 the record and clarity that we would be submitting  
3 the same notice as it relates to XpressBet's  
4 license, because this change to the contract  
5 directly affects XpressBet and the condition with  
6 their relationship with Colonial Downs.

7 MR. BURNETT: Okay. Thank you.

8 MR. SCOGGINS: We are in agreement with the  
9 change.

10 MR. BURNETT: Thank you.

11 MR. WEINBERG: I am -- there was -- there is  
12 one matter I would like to comment on, and this  
13 is -- I think you alluded to it earlier about how we  
14 avoid having these protracted contract negotiations,  
15 and I'm happy to comment on that now or save it for  
16 public participation.

17 MR. BURNETT: We started down that path. Go  
18 right ahead.

19 MR. WEINBERG: Well, I understand the  
20 Commission's frustration and the duration it took  
21 for us to arrive at an acceptable contract, but  
22 candidly, that is just a symptom of a larger problem  
23 and that is the lack of a common vision for racing  
24 in Virginia and a common vision among all the  
25 stakeholders, whether it be the Commission, the

1 thoroughbred horsemen, the VTA, the ability to sit  
2 down at the table and try to identify what we agree  
3 on and what we disagree on and try to arrive at what  
4 currently are conflicting visions, but some may be  
5 coalescent around a common vision.

6 I know that the Commission has talked about a  
7 Summit in the past and as economic conditions  
8 worsen, the ability to pay for what might be viewed  
9 as a grand Summit have evaporated, I would  
10 nonetheless encourage the Commission to consider a  
11 scaled down Summit even if it is just many of the  
12 people who are in this room, but I would also  
13 encourage many of the people who are not in this  
14 room to participate. And rather than looking to fly  
15 in a half dozen or a dozen luminaries in the field,  
16 one or two who could help be a resource and guide  
17 the discussion, I would just suggest to the  
18 Commission is something to consider and something  
19 that may be affordable given the current budgetary  
20 status.

21 But I think until we have a common vision,  
22 imposing penalties and deadlines, I personally don't  
23 think it's going to remedy the situation. What  
24 would remedy the situation is the ability to really  
25 come to some common vision of what we want racing to

1 be, and then fill in details behind it.

2 MR. HARRISON: Mr. Chairman?

3 MR. BURNETT: Please.

4 MR. HARRISON: It's come to our attention  
5 recently that -- from DOA that there is some  
6 marketing money that could be spent this year. It's  
7 not just a total cutoff down to zero marketing funds  
8 expended. So we may be able to get creative and  
9 start pursuing some kind of Summit, again, at least  
10 explore talks, exploratory talks.

11 MR. MILLER: I would just like to supplement  
12 what you just said. Even though these are hard  
13 economic times, I think because of the hard economic  
14 times, because of the downturn in the economy, and  
15 especially in horse racing and the gaming industry  
16 universally, it's really more important that we have  
17 a Summit now than it would be if we were in more  
18 flush times. It just adds another problem, another  
19 layer of difficulty to what we face as we look at  
20 the future of racing in Virginia in a downsized  
21 economy.

22 MR. WEINBERG: Right.

23 MR. MILLER: So I would second what you said,  
24 and I think if we can -- whatever funds we can find,  
25 I would certainly urge that it be worked out, and I

1 still believe that there may be some people that  
2 might contribute something toward a Summit. I don't  
3 know. I know that -- all companies are suffering,  
4 but it would be in the interest of people connected  
5 with the racing industry, the gaming industry to try  
6 to assist us in having a meaningful Summit.

7 MR. FERGUSON: Is there a way to change the  
8 contractual arrangement between the horses and the  
9 track that doesn't require legislation from the  
10 state? In other words, instead of working off of  
11 the gross, getting a percentage off of the top or  
12 something like that, is there some way we could  
13 merge these two forces so that the horsemen get a  
14 portion below the NOI instead of above the NOI line,  
15 so that you're working for a common purpose instead  
16 of arguing about the gross?

17 What is glaring to me is the stakes races  
18 versus the overnight purses, those things, things  
19 like that. I mean, you need the stakes money to  
20 attract what you perceive as a higher caliber horse  
21 and better race, like the Virginia Derby or Colonial  
22 Turf, yet the horsemen need -- obviously need more  
23 money for their side. Is there some way to work it  
24 differently so that you get your income at a  
25 different portion, say a stock swap or something

1           like that? Can you do that without legislation from  
2           the senate or from the legislature?

3           MR. WEINBERG: I think all things are  
4           possible. Sometimes it takes a little creativity as  
5           we have done in the central southside region with  
6           those new SWFs.

7           MR. FERGUSON: Well, I think there's enough  
8           talent in this room to sit down and hash something  
9           like that out so that we're not sitting here  
10          nitpicking about mattresses and air conditioners and  
11          things like this. We as a board set policy and hire  
12          and fire the head. I mean, that's -- to me, that's  
13          my version of what a Commission or a board should  
14          do, those two things, so that you guys are now  
15          working with minor disagreements here and there on a  
16          different model instead of the headbanging that's  
17          going on now. You become not only a stakeholder;  
18          you become a stockholder. Does that make sense?

19          MR. WEINBERG: Uh-huh.

20          MR. BURNETT: It seems to me whether or not  
21          that notion in and of itself makes sense, what  
22          certainly makes sense is doing that kind of  
23          thinking, trying to look at this animal in a  
24          different way. The horsemen are famous for, you  
25          know, not wanting to change anything so they can

1 continue to complain about it. So I really welcome  
2 the idea of our looking at some new avenues, new  
3 approaches.

4 I would say this. I think that particularly  
5 if you've got that kind of thinking going on, a one  
6 or even a two-day Summit is probably doomed from the  
7 perspective of coming to any real solid conclusions,  
8 that you've got all this -- that you have a lot of  
9 brainstorming and a lot of ideas and a lot of  
10 avenues that can't really be fully fleshed out.

11 So to lead it with all these creative ideas,  
12 but no real solid plan and I wonder to attempt to  
13 have the best of both worlds whether -- it might  
14 make sense for essentially the talent in this room  
15 with a few local additions to have one or two or  
16 more pre-Summit gatherings that would allow us to  
17 really narrow the issues, and perhaps we would come  
18 up with more than one approach. They being very  
19 different from each other, that we would want to  
20 more fully explore with some outside expert types.  
21 That's just an idea, but I think if we go into it  
22 cold with an agenda on day one, at the end of the  
23 day, one, we'll have had a nice discussion, a lot of  
24 great ideas, but not a whole lot of conclusions.

25 MR. FERGUSON: I think the parameters that

1 have been -- not forced upon you, but the parameters  
2 that have been set about through the legislature,  
3 you're more like two pit bulls being thrown into a  
4 ring. The way the process works now is you're  
5 forced to fight in a ring. I don't think that's the  
6 right way to run a business, quite frankly. You're  
7 the poor pit bull, you're the poor pit bull. I  
8 mean, it's your job to fight, but at the end of the  
9 day, there's a lot of blood all over the floor, and  
10 only the guy that gets rich is Michael Vick. Excuse  
11 me.

12 MR. BURNETT: He's bankrupt, right?

13 MR. FERGUSON: So if we can eliminate that  
14 arena or not eliminate, but alter that arena so that  
15 there's more of a unity instead of a dog fight, I  
16 think it would help the industry dramatically.

17 MR. PETTY: Peter, what you are describing is  
18 the old Virginia Racing Task Force model. There  
19 were really two versions of it. There was the  
20 Racing Commission's version, and then there was  
21 the -- the formal version, then there was the Racing  
22 Commission's informal version and those groups met  
23 at different times in the history of the project,  
24 but they both do the same thing. We met monthly and  
25 they brought together stakeholders, plus people from

1 outside the stakeholder groups, and they met once a  
2 month and they spent a couple of hours brainstorming  
3 whatever the issues were. I think we met at Jim's  
4 office and met every month for six or seven months,  
5 and we hatched the plan for summer racing, for  
6 example.

7 So just going back to something as simplistic  
8 as that in a less formal setting with a bunch of  
9 people in the room, and there was always somebody in  
10 the room that had a crazy idea, but sometimes the  
11 crazy idea is exactly what you're looking for.

12 MR. FERGUSON: Well, the key to that, Glenn,  
13 is you have to have decision makers.

14 MR. PETTY: We did eventually. We did.

15 MR. FERGUSON: You have to have decision  
16 makers there.

17 MR. PETTY: Everybody participated, and it  
18 worked.

19 MR. BURNETT: We kind of take it as a given  
20 right now, but you know, Anne Poulson's work with  
21 that task force really got a lot done, and it  
22 included Maryland in a very big way and we moved  
23 from fall racing to summer racing, and a lot of  
24 major changes. I mean, we changed from even  
25 seriously considering 150 days going right back to

1 26 days. It was a completely different approach.

2 MR. PETTY: Well, think about it. You had at  
3 least two meetings I want to say at Laurel. Robin,  
4 you were probably there.

5 MS. RICHARDS: At least.

6 MR. PETTY: Where you had 25 people in the  
7 room and 12 of them from Maryland and 12 of them are  
8 from Virginia. They were horsemen, they were  
9 breeders, and they were regulators. And you want to  
10 know what? It's never happened since. It probably  
11 never happened before, and it's never happened  
12 since. It's the most logical thing in the world.  
13 If you're trying to have a racing circuit between  
14 two states, what would you do? Put the people in a  
15 room together and have a conversation. It didn't  
16 happen.

17 What Trip is describing is the way this  
18 industry has always resolved its issues. Here's the  
19 pot of money. Let's fight about it. It's historic  
20 from day one. I'm sure when they were out in  
21 colonial times, somebody was arguing about how far  
22 away the church steeple was and what the pot for the  
23 race was. It never has changed.

24 MR. BURNETT: But the other thing that I think  
25 is very refreshing to hear from Trip is -- and I

1 think our task force looked at racing and there were  
2 a whole lot more givens than there were changes.  
3 The relationship between the track and the horsemen  
4 and all that were untouchable essentially. It was  
5 just how are we going to move deck chairs around,  
6 and we did, racing days and the purse amounts and  
7 all that.

8 Trip is going a step further if I'm hearing  
9 him and saying let's imagine structurally a  
10 different relationship, whatever that is, I don't  
11 know, but I think we ought to maybe -- to make some  
12 progress on this -- think about when would be the  
13 best time to have this Summit, the ultimate Summit,  
14 and assume in setting up a time that it's a pretty  
15 high likelihood that we would want to come away with  
16 some kind of a legislative recommendation or that it  
17 would result in a need for some legislative change.  
18 If we wanted it to happen, we'd want to be getting  
19 into that cycle.

20 If we assume that and work backwards, say we  
21 would have two or three meetings leading up to it,  
22 then we probably ought to start tomorrow.

23 MR. PETTY: You could start tomorrow and you  
24 could perhaps invite a national figure to each of  
25 those meetings and maybe you'd kill two birds with

1 one stone. You'd get that input from the national  
2 guy each month as you went along, and then have some  
3 new six hump camel when you were done.

4 MR. BURNETT: Any suggestions on how we move  
5 this ball forward? We need somebody to kind of  
6 carry procedurally, getting the ideas collected,  
7 getting them circulated among people, starting to  
8 put some structure on what we're trying to  
9 accomplish, and it strikes me that your office is  
10 probably the best one to lead that charge, Vic.

11 MR. HARRISON: We can do that. We already  
12 have some preliminary work done from a few months  
13 ago.

14 MR. BURNETT: Okay.

15 MR. HARRISON: We can pick that up again.

16 MR. BURNETT: Maybe we can start by  
17 circulating that work and you giving some thought  
18 suggesting an initial meeting, perhaps -- you know,  
19 we're only six or seven weeks from the meet opening.  
20 So there will be some opportunities hopefully during  
21 the meet, maybe we could even think about having a  
22 Saturday morning meeting of some sort before the  
23 race since people are coming here, catch some folks  
24 that way and those who want to stay for the races  
25 can, something along those lines.

1 MR. PETRAMALO: One suggestion I would add.  
2 To the extent we're talking about the Virginia  
3 racing industry, we should make it clear that we're  
4 talking about the breeding aspect as well as the  
5 racing aspect.

6 MR. BURNETT: I think we start with what our  
7 statutory charge is, and I think we'd all agree that  
8 it includes breeding.

9 MR. PETRAMALO: Because one of the problems in  
10 discussions that have been coming out in the  
11 breeders' committee meetings is we need a long-term  
12 plan about where we're going with breeding or what  
13 we'd like to do.

14 MR. BURNETT: Along some of the thinking  
15 that -- or the new idea -- I mean, I made the  
16 comment to somebody that maybe we ought to be  
17 thinking about merging breeding funds with purse  
18 funds. It sounds crazy, but we need some crazy  
19 ideas out there just to stimulate thinking, you  
20 know.

21 As Trip says, it's a pot of money -- or Glenn  
22 says, it's a pot of money, and everybody is fighting  
23 over it. And as Ian always reminds us, we need to  
24 make the pie bigger, you know, having a Summit that  
25 ends up trying to figure out how to redistribute an

1 already too small pie probably is not a productive  
2 effort.

3 All right. Anything further on that notion?

4 MR. WEINBERG: No. Thank you.

5 MR. BURNETT: Frank?

6 MR. PETRAMALO: No.

7 MR. CANAAN: No.

8 MR. BURNETT: The next item is the change to  
9 the coupling.

10 MR. HARRISON: Peter, before you get to that,  
11 there's food here and there's drink there. So if  
12 you want to eat while we continue to talk, feel free  
13 to do that.

14 MR. BURNETT: I've had the wise suggestion of  
15 taking a short break. Can we reconvene at no later  
16 than 20 of one? Fifteen minutes. How fast can you  
17 eat a piece of pizza?

18 Note: A short recess is taken, following  
19 which the hearing resumes as follows:

20 MR. BURNETT: Let's reconvene, if we may.  
21 Glenn, I went right by you, and I'm sorry. Why  
22 don't we go back to picking up with the distribution  
23 of funds for the 2009 100% Bonus Rule, however you  
24 want to call it. Where are you all at?

25 MR. PETTY: I think Jim's comments were sort

1 of the perfect segway in that this patchwork quilt  
2 is time-consuming and rather inefficient. I think  
3 the whole Breeders' Fund is kind of the microcosm of  
4 this whole project. You have a bunch of different  
5 stakeholders with a bunch of different views of how  
6 it should be done and trying to find our way forward  
7 with limited resources. It's pretty much the same  
8 story. And it -- if I may digress, it reminds me of  
9 early Russian democratic elections. You would  
10 have --

11 MR. FERGUSON: There's no such thing.

12 MR. PETTY: There is and -- there are. Here  
13 in America, we have three people on the ballet, and  
14 in Russia, there's 15 people on the ballet. And one  
15 guy, Vladimir, will get seven votes and Anatoli  
16 would get five votes, and the other thirteen guys  
17 would get two votes or one vote, and then there  
18 would be 8,613 write-in votes that got one vote  
19 each.

20 The explanation of it was that as bad as he  
21 was, Vladimir put together the best consensus and he  
22 rounded up seven of his friends and family to vote  
23 for him and Anatoli got five and the other guys got  
24 two or three, and then 8,613 people each voted for  
25 themselves because they believed that they were the

1 best qualified to do the job.

2 When you go in with this particular issue and  
3 you talk to all the different people that  
4 participate in the Breeders' Fund, some people want  
5 restricted races, some people want stakes races,  
6 because they breed for the market. Some people want  
7 100% Bonus because they breed for the market. Some  
8 people are owners that want this, some people are --  
9 they're all over the map. And their decisions are  
10 driven by, frankly, what horses they have, what's in  
11 front of them. So you get an opinion of what they  
12 want based on what their horses can or can't do.

13 So reaching a consensus on it, I apologize for  
14 the lengthy preface, but at least you've eaten.  
15 Reaching a consensus on it has been difficult. It's  
16 certainly been entertaining and been educational,  
17 but it has been difficult. We had a very long  
18 meeting in our offices, I think it was last week.  
19 We don't have minutes to read, but I can give you  
20 sort of the *Reader's Digest* version without the  
21 *Reader's Digest*. The meeting was lengthy. We had a  
22 large group. We had -- I think -- we did not reach  
23 anything unanimously. We managed to reach some  
24 decisions.

25 The first thing I think we -- and Frank and

1 Robin were there, and Leeann, she was there, and  
2 anybody who wants to supplement my not always great  
3 memory, feel free. The first thing we did reach  
4 consensus on, though, was that the 100% Bonus was  
5 the only thing we'd ever done that made anybody pay  
6 attention to Virginia horses, short of the  
7 Secretariat or, you know, Sea Hero, or Quality Road,  
8 and that the success of that program was borne out  
9 by results of going from 240,000 and 50% awards to  
10 1.1 million and 100% awards, and we spent a lot of  
11 time debating how or why that happened nor  
12 admonishing the folks that missed the call.

13 What we did do is -- and we have done since as  
14 well, and I've got it written down, is look at the  
15 numbers of what happened. Virginia-bred horses and  
16 Virginia-bred Sired horses that competed over there  
17 across the road in 2006 was 121. In 2007, there was  
18 127. In 2008, there was 201. So that's a  
19 substantial increase in Virginia-bred horses showing  
20 up at this meet to run.

21 So we also know that in the years of the 50%  
22 Bonus, which was '06 and '07, we paid 230 awards and  
23 210 awards in '07, and in 2008, we paid 410 awards.  
24 So the number of awards almost doubled. The number  
25 of horses that competed increased 70%, so we all see

1 the end result of the 100% Bonus. So we tried to  
2 then move forward, embracing the concept that the  
3 100% Bonus was a good idea and how do we make it  
4 work as best we can, and so from there we work  
5 backwards. How much money do we have, how much is  
6 available for stakes, how much is available for back  
7 end awards, how much is available for the bonus  
8 program. Long story short, what we concluded after,  
9 I guess, a lengthy debate was we really came up with  
10 three recommendations, one of which now I'm going to  
11 tiptoe around.

12 The first was that we pay 100% Bonus to the  
13 winners and the winners only. I realize that's  
14 completely contrary to what we discussed at the last  
15 Racing Commission meeting, but I got a lot of  
16 feedback from a lot of people in the industry that  
17 have essentially said horse racing is about winning,  
18 and we need to compensate the winners. They weren't  
19 saying they didn't want to compensate the other  
20 guys, you know, they wanted to compensate everybody,  
21 but if you only have enough money to compensate one  
22 group, they would start with the winners.

23 So we looked at the math of that, and the math  
24 didn't work as well as we would have liked it to.  
25 So we decided we needed to cap that not once, but

1 twice. There would be a \$10,000 cap per award and  
2 that there would be an overall cap of \$500,000 for  
3 the whole program.

4 The reasoning was simple. The -- I think 28  
5 of 76 of first place awards last year were more than  
6 10,000. So it was -- and they were 17, 16, 15.  
7 They weren't very many times that we went over the  
8 10,000 threshold, so that wouldn't -- that would  
9 only penalize a minority of folks that won races.  
10 And the \$500,000 hard cap on the whole program,  
11 because that's all the money there is. That one was  
12 fairly simple. So based on the projections that  
13 we've done that we discussed in the past meeting, we  
14 think that number will get us if not to the end of  
15 the meet, but very near the end of the meet.

16 The second thing we wanted to bring forward,  
17 and Tyler was also there to defend his dog in the  
18 fight, was we wanted to have some additional races  
19 in the condition book for open Virginia-bred races.  
20 Again, highly debated. If you have those horses,  
21 you want them. If you don't, we don't care. And  
22 there was a conversation about can we film, can we  
23 not, but I think it was one of those things we  
24 thought we'd tackle as an experiment and see what  
25 happens.

1           The third thing we discussed was truncating  
2           the stakes schedule, and I'm not convinced now that  
3           we truncated it properly. We chose a race to  
4           eliminate to save \$25,000, and that's -- I think  
5           that's demonstrative of how hard this group worked.  
6           I mean, we were trying to save amounts as small as  
7           \$25,000 to make it work. We hit upon eliminating  
8           the Jamestown because it was the youngest of the  
9           races, and the Jamestown is a two-year-old  
10          Virginia-bred stake. As you know, there's been some  
11          debate in front of this Commission about the  
12          validity of that and the quality of the race. And  
13          so I think we made a -- you know, I don't know that  
14          it was an unsound judgment, but in retrospect, I'm  
15          questioning it because, again, for the feedback I've  
16          gotten.

17                 For the group of people that breed horses for  
18                 the marketplace and for the group of people that buy  
19                 horses in the marketplace, whether it's good for the  
20                 industry and whether it's the right thing or not,  
21                 people like to have two-year-old stakes to point  
22                 for, and they like to have their mares get black  
23                 typed or two-year-old stakes and they like to think  
24                 that that's the easiest place to win a big race is  
25                 with a two-year-old. That's why GR racing is

1 popular.

2 So I have since heard, and I think Frank got a  
3 big dose of it yesterday and I'm sure he'll  
4 supplement me, that if we're going to cut a race,  
5 that's not the race to cut. And at \$25,000, I think  
6 we can probably solve that puzzle some other way, if  
7 necessary. If nothing else, maybe some benevolence  
8 money. So those were the big three --

9 MR. BURNETT: Cut the grooms --

10 MR. PETTY: I'm glad everybody can still  
11 laugh. That's a good sign. Everybody is still  
12 laughing.

13 Those were the three major issues. Now,  
14 there's one other one we're gonna -- we'll slide in  
15 here later, but we want to expand -- it's not  
16 relevant to the 100% Bonus, but at some point the  
17 Commission will have to take action.

18 If you recall last year, we paid --  
19 theoretically, since we haven't actually paid  
20 them -- breeders' awards and stallion awards for  
21 races in the United States, and we amended that to  
22 include the NSA sanction races in Virginia. So if a  
23 horse won at Strawberry Hill or the Gold Cup, the  
24 breeder of that horse would be eligible for a  
25 year-end breeders' award. It was motivated because

1 of the year prior, in '07, the horse that won the  
2 Gold Cup was a Virginia-bred, and the breeder got  
3 nothing for that big win.

4 So all we would advocate -- and in this year's  
5 pool of winners, that represented one horse. One  
6 Virginia-bred horse won a race at -- I don't know if  
7 it was Middleburg or Strawberry Hill or Foxfield or  
8 the Gold Cup, but it was one of the steeplechasers.  
9 We would simply expand that menu to all the NSA  
10 steeplechase races, so those folks that breed  
11 steeplechase horses might also get a return in their  
12 investment. Again, low impact in terms of dollars,  
13 but it makes the program a little more inclusive.

14 So that was the non-100% percent bonus issue  
15 that was also on the table. And that's the -- as  
16 short as I can tell that story. I'm sure everyone  
17 has questions.

18 MR. FERGUSON: I have a question. Where does  
19 the money come from on the steeplechase point to  
20 point races?

21 MR. PETTY: Those guys -- you mean, for their  
22 purposes?

23 MR. FERGUSON: Yeah.

24 MR. PETTY: They raise those purses  
25 themselves, typically through sponsorship dollars.

1 MR. FERGUSON: Sponsorship.

2 MR. PETRAMALO: Well, if you're talking  
3 strictly point to point, the vast majority do not  
4 have any purses. They race for team cups, except on  
5 occasion there are some purses. We run flat  
6 races -- we, the VHBPA, run flat races at those  
7 point to points, and we put up \$2,000 for those,  
8 but --

9 MR. FERGUSON: Do they get the bonus based on  
10 that?

11 MR. PETRAMALO: No. What we're talking about  
12 is NSA sanctioned races, like Strawberry Hill.  
13 That's a sanctioned race by the NSA, and they race  
14 for money in those races.

15 MR. PETTY: What it means is just that  
16 those -- their purse dollars would go into the whole  
17 pool that we use to compare to determine what you  
18 get. So, in other words, \$3,000 you won at  
19 Strawberry Hill would count as the same as the  
20 \$3,000 you won at Laurel or you won at Charles Town  
21 or won here for that matter.

22 MR. BURNETT: The sum total of purses in  
23 steeplechase racing in the United State is about  
24 five million bucks?

25 MR. PETRAMALO: Approximately, yes.

1 MR. BURNETT: And is raised principally by  
2 sponsorship?

3 MR. PETRAMALO: Yeah.

4 MR. BURNETT: They're running over fences.  
5 Point to points are kind of the amateur level, and  
6 the sanctions are the fancy horse, but that's really  
7 the only difference.

8 MR. PETTY: A few more rules.

9 MR. BURNETT: Yeah.

10 Glenn, you've given us three, if not four,  
11 different areas that were of concern and interest.  
12 No unanimous view. Was there any consensus of  
13 what -- I mean, is the committee making a  
14 recommendation to the Commission?

15 MR. PETTY: Yes. The first three items are  
16 what the committee would recommend.

17 MR. BURNETT: We pay winners only with the two  
18 caps --

19 MR. PETTY: Right.

20 MR. BURNETT: -- that we have some more open  
21 Virginia-bred races --

22 MR. PETTY: Yes.

23 MR. BURNETT: -- and the Jamestown be  
24 canceled. Any others?

25 MR. PETTY: Those three. And I would offer in

1 some way or form that we can find a way for the  
2 committee and/or the Commission to let us talk a  
3 little longer about the Jamestown. It's \$25,000 in  
4 the whole picture, and there's just been enough  
5 feedback since that --

6 MR. BURNETT: Help me with how it's -- I  
7 thought it was a \$100,000 race.

8 MR. PETTY: It's a \$50,000 race.

9 MR. PETRAMALO: No, no. 50,000 comes from the  
10 purse account, 50,000 -- excuse me. Twenty-five  
11 comes from the purse account, 25 from the Breeders'  
12 Fund.

13 MR. BURNETT: Was it ever a hundred? Am I --

14 MR. PETRAMALO: Never.

15 MR. PETTY: It was 60.

16 MR. PETRAMALO: It was 60.

17 MR. PETTY: It'd be a better race if it were a  
18 hundred. I mean, people would bring their horses,  
19 but you just don't have the cash, but the breeder --  
20 the breeders' group, the group that breed horses,  
21 especially the commercial breeders, which is about  
22 35% of that crop, that's the carrot on the end of  
23 the stick that brings people to the barn to look at  
24 their horse, and 100% Bonus and being able to run in  
25 the stakes races.

1 MR. PETRAMALO: And it's, quote, black type.

2 MR. PETTY: So it's -- whether you're trying  
3 to move up your mare or you're trying to sell your  
4 yearling. There's a bunch of people that call me  
5 every year, which I'm repeating myself because we  
6 had this when it was first brought up that said, I  
7 bought this yearling. He looks really good. Are  
8 you going to have a two-year-old stake? So that's  
9 what you want people thinking and saying.

10 MR. FERGUSON: So what happened to the  
11 argument about against racing two year olds?  
12 Remember we had that when I first came on the  
13 Commission because they're too young to race.

14 MR. PETTY: It's still around.

15 MR. PETRAMALO: There is sentiment that --  
16 against racing two year olds, but I saw some recent  
17 study that suggested it was probably in the interest  
18 of the horse to race at the two-year-old level.

19 MR. FERGUSON: So the data says it's okay to  
20 race them?

21 MR. BURNETT: I think the middle ground is  
22 that or the explanation is that the weight-bearing  
23 and stressful activities increases bone density --  
24 we have a vet or two here with us -- and the answer  
25 tends to be light racing of two year olds late in

1 the year tend to produce a pretty good three year  
2 old, and I think -- you know, there hadn't been a  
3 Derby winner that hasn't run a two year old ever, I  
4 don't think, something like that.

5 But the thought was that the Jamestown was  
6 occurring in the summer and being a stakes race,  
7 either it was going to be a bunch of horses that  
8 were barely maidens and it would include some  
9 maidens or you're going to have some horses that  
10 were hot housed pretty good to get them there, and  
11 you're just inviting people to push horses too hard  
12 to get to that level of the race in the middle of  
13 the summer. That was sort of what the argument was.

14 MR. PETTY: What we found when we did our  
15 search was historically, and this surprised me,  
16 obviously I'm a horrible researcher and I have  
17 trouble figuring out the trend line as a result, I  
18 thought when you looked at the starts for  
19 Virginia-bred two year olds that they would happen  
20 predominantly in September, October, November, and  
21 December. When, in fact, they happen predominantly  
22 July and August. That surprised me. I just thought  
23 well conventional wisdom says they'll be out later  
24 in the year.

25 But I think to answer your question the best

1 way, Trip, if we raced in Virginia 365 days a year,  
2 and we gave away a million dollars a day in purses,  
3 then we'd be in a position to move the trends and to  
4 move -- and to make policy and to get the industry  
5 to change. Racing 45 days a year for \$250,000 a  
6 day, we don't have any choice but to play with the  
7 status quo. We can't -- it'll be hard for us to  
8 fundamentally change the view of the racing world  
9 with our small window. We could try, but it's going  
10 to be tough.

11 MR. BURNETT: Glenn, make your best  
12 argument -- and it may be this carries the day --  
13 why this particular format is in -- will grow,  
14 sustain, and promote Virginia racing and breeding.  
15 What does this do to advance the cause of Virginia  
16 racing versus the other alternatives that must have  
17 come up in this meeting?

18 MR. PETTY: The biggest single argument is  
19 that it promotes the brand that we're trying to --  
20 we're trying to establish, which is the 100% Bonus.  
21 I'm hoping that this is a one-year situation, and  
22 next year we can go back to running this thing the  
23 way it was designed and expanding it the way we  
24 talked about with, you know, the other components of  
25 it, an auction bonus. I think it allows us to move

1 the brand forward and to move the one thing that we  
2 have that has captured people's attention, which is  
3 the 100% Bonus, to do it.

4 I'll give you an example. Spring Hill Farm is  
5 in the process right now of making eight dozen  
6 Quality Road baseball caps. Maybe you've seen it at  
7 horse hats dot com. It has Quality Road here. It  
8 has their silks here, has Spring Hill Farms,  
9 Casanova, Virginia. That's the one you can buy  
10 on-line, but the one they're having made says 100%  
11 Virginia-bred over here on this fourth panel. And  
12 that's that branding stamp -- I'm not a genius, but  
13 I stayed in a Holiday Inn Express. We're trying to  
14 grab on to the one thing that people have noticed  
15 and keep it in the mix.

16 So then it comes down to how do we do it, and  
17 the best argument I have was the majority of the  
18 people that I -- that responded to me said this is a  
19 winner's game, and we need to fund the winners  
20 first. Like I said, again, we're not opposed to  
21 funding second, third, fourth, and fifth, but if you  
22 don't have that, don't compromise, you know, what  
23 the winner gets. That's really my best argument.

24 The other two components, people want races in  
25 the book because there are some folks that believe

1 those races are going to fill. I don't happen to be  
2 one of them, but we'll put them in the book and  
3 let's see what Tyler can do with them. It's worth a  
4 shot. There's no harm in it. It doesn't  
5 inconvenience him. And I think the stakes race, I  
6 think I've argued as articulately as I can. It just  
7 has appeal for a group of people that fundamentally  
8 do what we want them to do, which is breed horses.

9 MR. PETRAMALO: There was another aspect to  
10 writing Virginia restricted races for the book, and  
11 that is it to a certain extent compensates for those  
12 folks who are getting the bonus under the old  
13 program.

14 MR. BURNETT: Oh.

15 MR. PETRAMALO: Okay. You're not getting a  
16 bonus, but yeah --

17 MR. BURNETT: Here's your shot.

18 MR. PETRAMALO: -- here's your shot.

19 MR. PETTY: And the purse account was kind  
20 enough to say, we'll fund those races because, you  
21 know, if we're funding ten races on a card, we're  
22 funding ten races on a card. It doesn't really  
23 matter what the condition is or how it's written.

24 MR. BURNETT: Was there consensus that there's  
25 \$500,000 to spend on the 100% Bonus, that's kind of

1 where you want to be on that, and then to leave you  
2 with other money for year-end awards and all that  
3 kind of thing and stakes and the races, et cetera.  
4 So with respect to the 100% Bonus, is it fair to say  
5 you all are agreeing we got about 500,000 to spend?

6 MR. PETTY: If anything was unanimous, that  
7 was probably it. That was a logical number and I'm  
8 sure Dave is squirming because he's probably worried  
9 about getting there, which is a fair comment. But  
10 that was -- and everybody was okay with the cap.  
11 You could -- the way the conversation went over the  
12 period of two hours and change, and people would go  
13 back to the idea of paying first through sixth, but  
14 then you would run out of money. When would we run  
15 out of money? We'd run out of money 4th of July  
16 weekend.

17 Everybody -- as Jim Weinberg once very  
18 eloquently recently said to me, everybody wants what  
19 everybody wants, and everybody wanted it to be  
20 perfect. They wanted to do it the right way, but  
21 then they'd say, well, what if we do this and this,  
22 and then you crunch the numbers and go, we run out  
23 of money on Tuesday, July the 16th. And we'd go  
24 okay. We can't do that.

25 So this was a classic compromise where

1 everybody got up and ugh. It's not exactly what I  
2 want.

3 MR. FERGUSON: But you got to keep the 100%  
4 brand, which I think is important.

5 MR. PETTY: And that's the only way we can  
6 keep it, and we had to cheat a little bit on it as  
7 it was. I mean, unfortunately, there's an asterisk,  
8 but in this current economy, a lot of things have an  
9 asterisk.

10 MR. MILLER: Glenn, how far along in the meet  
11 do you think you'll go before you reach the 500,000  
12 cap?

13 MR. PETTY: I think we'll make it.

14 MR. MILLER: All the way through?

15 MR. PETTY: I think there's about a 15% --  
16 there's 15% fewer registered Virginia-bred three  
17 year olds in the 2009 -- for the 2009 meet, you have  
18 the '06 foals, then there were last year. Those  
19 three year olds hit you pretty hard for money  
20 because they're sound and they're fresh, and they're  
21 pointing for this.

22 So I think the fact that we're running 11%  
23 fewer days and 15% fewer three year olds, I think we  
24 might be okay and I also think that somebody --  
25 unfortunately, there is a downside. A few horses

1 won't come because they're thinking, if I'm running  
2 for second, I'm running for 3,000 bucks, where last  
3 year I was running for 6,000. So that may -- you  
4 know, you may feel that at the entry box. You may.  
5 I don't know. I can't judge it.

6 MR. MILLER: Is that \$500,000 cap known  
7 upfront? Is it in the book?

8 MR. PETTY: We're going to put it in.

9 MR. MILLER: So it could happen --

10 MR. PETTY: Tyler is waiting for me to give  
11 him an ad for the book, and I think we're going to  
12 make it very plain that one, two, three. This is  
13 what it is. This is where it stops. This is where  
14 it stops for good.

15 MR. MILLER: One other question.

16 MR. PETTY: Enter today, not tomorrow.

17 MR. MILLER: It's Virginia races. Those are  
18 just for Virginia-bred. And how many of those would  
19 you participate --

20 MR. PETRAMALO: In the first book, there  
21 are -- I think Tyler wrote seven of them.

22 MR. PICKLESIMER: Two a week, basically.

23 MR. MILLER: Two a week.

24 MR. BURNETT: But don't let that necessarily  
25 cause you to draw any conclusions, because Tyler may

1 know or may not have a history, but the filling of  
2 open Virginia races, particularly maiden special  
3 weights has been really tough, has it not,  
4 historically?

5 MR. PETTY: Non-maiden. Maiden races you can  
6 get filled.

7 MR. PETRAMALO: Yeah. We can fill maiden  
8 races.

9 MR. BURNETT: So only maidens get filled?

10 MR. PETTY: Right.

11 MR. BURNETT: I had it backwards.

12 MR. PETRAMALO: For the most part, right.

13 MR. PETTY: And they filled extremely well in  
14 recent years because we overpaid them. Remember the  
15 \$40,000 Virginia-bred maiden race. Well, it did  
16 very well, but if you run it -- I think they'll be  
17 tough to fill. There's not a lot of horses, and  
18 there are a lot of conditions.

19 MR. MILLER: And if you retain the Jamestown  
20 race, then that just means that the 25,000 you were  
21 counting on will be put somewhere else?

22 MR. PETRAMALO: Correct. It'll come out of  
23 somebody else's hide.

24 MR. BURNETT: So it might be 475 instead of  
25 500?

1 MR. PETRAMALO: Well, you wouldn't change the  
2 500.

3 MR. BURNETT: You just juggle it.

4 MR. PETTY: It might be something on the back  
5 end, and what's happened, unfortunately,  
6 historically for us is we had a race not go. We've  
7 had a stakes race not fill.

8 So if John D. Marsh doesn't fill, then the  
9 money just moves from the J. D. Marsh to the  
10 Jamestown. Unfortunately, every year we've had -- I  
11 guess it's the philly race, the three year old  
12 philly race has been hard to fill. So maybe that  
13 will work itself out. If it doesn't, we've got two  
14 hundred grand on the back sitting there, and we have  
15 at some point in the future ADW. So we've got some  
16 future dollars to look at, but we wanted to spend  
17 what we thought we'd have pretty close to in hand  
18 when the meet came around.

19 MR. MILLER: Another last question.

20 MR. BURNETT: Keep going.

21 MR. MILLER: Your re-consensus is that the  
22 Jamestown should be run?

23 MR. PETTY: From my core constituency, and I  
24 think Frank got an earful over in his meeting, I  
25 think so.

1 MR. PETRAMALO: I got two ears full.

2 MR. MILLER: So in both your opinions, that  
3 would be your recommendation here today?

4 MR. PETRAMALO: Yes.

5 MR. PETTY: Yes.

6 MR. LERMOND: Mr. Chairman?

7 MR. BURNETT: Yes.

8 MR. LERMOND: If that is, indeed, the case,  
9 we're going to have a funding issue because we're  
10 only going to have so much money by the end of July.

11 MR. BURNETT: If what is, indeed, the case?

12 MR. LERMOND: If they're going to run this  
13 \$25,000 race, the purse account is going to want the  
14 money.

15 MR. PETRAMALO: It won't go until August.  
16 It's at the end of the meet.

17 MR. LERMOND: I don't think we'll have enough.

18 MR. PETRAMALO: Because of the additional  
19 25,000?

20 MR. LERMOND: Yeah.

21 MR. BURNETT: Which is cutting it fairly fine,  
22 right?

23 MR. LERMOND: I wanted to cap it at 475, so I  
24 don't want to give out anymore --

25 MR. PETRAMALO: If it's a cash flow problem,

1 we could probably find some way to advance the money  
2 to the Breeders's Fund.

3 MR. BURNETT: That might work.

4 MR. LERMOND: That'll work.

5 MR. BURNETT: That's been done in the past,  
6 has it not?

7 MR. MILLER: From where?

8 MR. STEWART: From Colonial Downs, quite  
9 frankly.

10 MS. RICHARDS: No.

11 MR. MILLER: You mean, like a loan?

12 MR. PETRAMALO: Yes.

13 MR. LERMOND: The harness horsemen did it last  
14 year, but they did it out of their own money. It  
15 wasn't purse money.

16 MR. PETTY: Which we're not looking to  
17 reproduce.

18 MR. FERGUSON: But the race will cash flow  
19 itself. The race itself will cash flow?

20 MR. BURNETT: What do you mean by cash flow?

21 MR. FERGUSON: If you have a \$25,000 race, it  
22 will make money. It's just a matter of coming up  
23 with the money --

24 MR. PETRAMALO: Not necessarily.

25 MR. PETTY: It will not necessarily pay for

1           itself by wagering.

2           MR. BURNETT: Ian?

3           MR. STEWART: And Mr. Dale can chime in where  
4 I may misstep here, but I think historically the  
5 money has not flowed from the Breeders' Fund from  
6 the stake to Colonial Downs on a timely manner.  
7 Colonial Downs has basically fronted money for the  
8 Breeders' Fund for these races.

9           MR. DALE: Historically, we've stretched the  
10 purse funding from the partnership account to the  
11 point where the horsemen's bookkeepers had to make  
12 decisions on who got paid and who didn't. That's  
13 something we desperately want to change.

14          MR. BURNETT: We want to avoid that.

15          MR. DALE: The regulations call for the money  
16 to be in the account within 48 hours after the race  
17 is run, and it's just gotten ridiculous. Connie and  
18 Carol struggle it out. They're being forced to make  
19 decisions that they shouldn't have to make.

20          MR. BURNETT: Right.

21          MR. LERMOND: That's why I'm concerned because  
22 I did tell them that we could not get in the same  
23 situations like that this year, either with the  
24 bookkeeper and also borrowing from the harness  
25 money. We want to keep it separate.

1 MR. PETRAMALO: Well, I'm not addressing the  
2 larger issue that you're talking about, but if the  
3 question is where does the \$25,000 come from for the  
4 Jamestown that would normally come from the  
5 Breeders' Fund and it's not in the Breeders' Fund,  
6 we, the VHBPA, from its funds, not the purse  
7 account, will loan the \$25,000 for that purse.

8 MR. FERGUSON: If it doesn't cash flow, what  
9 happens?

10 MR. PETRAMALO: I don't understand what you  
11 mean by cash flow.

12 MR. BURNETT: None of the races make any  
13 money. It's run on a race by race basis. They all  
14 lose money, that's why we have OTBs.

15 MR. FERGUSON: I thought they would make  
16 enough money to pay for the purses.

17 MR. BURNETT: Huh?

18 MR. FERGUSON: They don't make enough money to  
19 pay for the purse?

20 MR. BURNETT: No. That's why you have OTBs.  
21 That's why we only run 45 days a year or 40 days or  
22 less because we cumulate all this money and you get  
23 some of it from the betting on the race, and the  
24 rest you get for betting the rest of the year to pay  
25 the purses.

1 MR. PETTY: If your average daily handle is  
2 \$300,000 and you're getting 9% for the purse  
3 account, you're getting 27,000 bucks and you're  
4 giving away 250.

5 MR. FERGUSON: So even the purse --

6 MR. STEWART: Since Mr. Petramalo brought up  
7 the concept of the HBPA fronting money to the  
8 Breeders' Fund, it was my understanding -- and maybe  
9 they can correct me if I'm wrong, that the HBPA is  
10 going to give \$200,000 out of the purse account as  
11 part of this as well.

12 MR. PETRAMALO: That's correct. That's what  
13 Glenn mentioned at the outset.

14 MR. STEWART: He did? I missed that.

15 MR. PETTY: Well, I didn't mention it today.  
16 That has been part of previous discussions, because  
17 it was announced as kind of water under the bridge  
18 several meetings ago, and Frank can tell me when,  
19 they agreed to supplement the Breeders' Fund  
20 \$200,000 to compensate us for the 1.1 million we put  
21 in in 2007, so that there would be some back end  
22 awards for breeders for what happened last year.

23 We usually pay about \$500,000 in back end  
24 awards to stallion owners and breeders, and this  
25 year because of the success of the 100% Bonus, we

1 had zero dollars, and they agreed to help us sort of  
2 balance that out and make things a little better in  
3 the world and considering the \$1.1 million  
4 investment that went into the purse account over  
5 here, it seems like a fair trade. We have -- I  
6 believe we've had this conversation in previous  
7 meetings.

8 MR. STEWART: I've got a couple thoughts on  
9 that. I'd be happy to share them now or later.

10 MR. BURNETT: You can go right ahead and share  
11 them now. We're having this discussion.

12 MR. STEWART: Okay. You know, the stated  
13 objectives of the HBPA in the thoroughbred  
14 negotiations is to find money for overnight purses.  
15 We listened at great lengths in Racing Commission  
16 meetings and in negotiations as to what an important  
17 issue this was for the HBPA. And after much hard  
18 bargaining, we agreed to reduce purses of the Turf  
19 Cup, the All Along, the Virginia Oaks, as well as  
20 give up some of the \$115,000 payment we were due in  
21 order to increase overnight purses and come to an  
22 agreement. We were looking to maximize the funds  
23 available for purses, which includes funds carried  
24 over from 2008. From those funds, maximizing the  
25 amount available for overnights, without doing too

1 much damage to our stakes schedule.

2 Now, along the way, we had suggested  
3 eliminating one or more of the small stakes races in  
4 order to fund overnights. This was rejected by the  
5 HBPA, along with the request that a certain  
6 percentage of the account wagering money that the  
7 horsemen receive be restricted to being used  
8 strictly for purses.

9 Now, obviously, it's kind of clear now why  
10 that happened. While we thought we were trying to  
11 solve one issue, increasing the overnight purses, it  
12 turns out that we were being used to solve another  
13 issue, which is the depletion of the Breeders' Fund.  
14 We find all this out literally the day after we come  
15 to an agreement.

16 Now, I want to add. If you check the record,  
17 you'll find that no one asked Colonial Downs last  
18 year whether the 100% Bonus was a good idea or  
19 whether it was even financially prudent. The  
20 program was initiated by the players in the  
21 industry. So now we have a problem with the  
22 Breeders' Fund. So what's the solution?

23 Well, in my view, it's Colonial Downs. Did  
24 anyone ask? No. It was basically done without  
25 consulting us, and now as Mr. Petty has said, it's

1 basically water under the bridge. I don't really  
2 remember ever discussing \$200,000 going into the  
3 Breeders' Fund.

4 Now, why do I say Colonial Downs is being used  
5 again? The \$200,000 that we use to fund the  
6 Breeders award reduces the purses available for 2009  
7 by \$200,000. 200,000 in additional overnight purse  
8 money is enough to run approximately 13 additional  
9 races. As I've said many times, the key financially  
10 for Colonial Downs is to run more races a day. Each  
11 race on the average generates approximately \$10,000  
12 in live handle and \$100,000 in out-of-state handle.  
13 This equates to approximately \$2,900 per race in  
14 revenue for Colonial Downs. If you multiply that by  
15 13, you get \$37,000.

16 Once again, is \$37,000 life or death for  
17 Colonial Downs? No. However, it's the same old  
18 story. Death by a thousand cuts and, once again, no  
19 one even asked us.

20 Now, the Breeders' Fund facing certain  
21 challenges, and these challenges need to be faced  
22 and dealt with in a straightforward manner in the  
23 context of the Breeders' Fund. The essential  
24 problem is that the Breeders' Fund spent more money  
25 than was planned and, therefore, can't afford to do

1 everything that it would like to do. That is the  
2 consequence of their action.

3 However, racing and Colonial Downs shouldn't  
4 suffer with fewer races and lower purses because of  
5 this issue.

6 MR. PETTY: If I could add a component to  
7 that, which I think bears consideration.

8 MR. PETRAMALO: I would like to respond to  
9 that before Mr. Petty does.

10 MR. BURNETT: Mr. Petty grabbed the floor a  
11 little bit sooner than you did, Frank.

12 MR. PETTY: It's a technical point, and I  
13 don't think it will tiptoe on what Frank is going to  
14 say, but I would point out just to everybody, but  
15 specifically to Colonial Downs, that since the  
16 racetrack has open, the Breeders' Fund has  
17 contributed more than \$7 million to purses for races  
18 that have been run at Colonial Downs and sold in the  
19 simulcast market. The compensation that the  
20 Breeders' Fund has received for those purse dollars  
21 that created those simulcast signal sales is zero.  
22 Not a penny.

23 The fund has never been compensated for its  
24 role. The racetrack puts on the race, the horsemen  
25 put up the purses, and they split the money. But

1 when you start doing the math, which I did the other  
2 day, you count overnight purses, stakes purses, 50%  
3 bonuses and 100% bonuses, all of which are part of  
4 the purse structure, the number came up to over  
5 \$7 million.

6 So the suggestion that we're adding to the  
7 thousand cuts, I think is somewhat balanced on the  
8 fact that we've never been compensated through the  
9 only compensation means that there is, which is  
10 simulcast sales on these races for the history of  
11 Colonial Downs. I think if we did the math, it  
12 might all kind of work out square. I think that's  
13 just an issue. I can certainly understand Colonia's  
14 issue, but we have a similar issue in that we've  
15 been funding races and not been compensated for it.

16 MR. BURNETT: Can you put that on the list for  
17 the Summit?

18 Frank?

19 MR. PETRAMALO: Let's start off by looking at  
20 the equities here. In 2007, the Breeders' Fund,  
21 which accumulates a little more than a million  
22 dollars a year, paid out \$240,000 or paid into our  
23 purse account, that went to these owners' bonuses,  
24 because at that time we were running a 50% Bonus  
25 program. Approximately half a million was paid out

1 by the Breeders' Fund to breeders of horses whether  
2 they ran in one here or any place in the country.

3 In 2008, this 100% Bonus program came into  
4 play. Everybody thought it was a good idea. They  
5 thought we'd spend about a half million. Well,  
6 guess what? We went from \$240,000 into our purse  
7 account to 1.1 million five times, and the result  
8 was the Breeders' Fund was, in effect, bankrupted  
9 because it could not pay out the breeders' awards  
10 that it had in prior years to the tune of half a  
11 million dollars.

12 So we, the horsemen, agreed to take our money,  
13 not Colonial's money, our money, take 200,000 of our  
14 money and give it to them so that they could pay  
15 breeders' awards for 2008 in recognition of the  
16 million point -- 1.1 million that they put into our  
17 purse account.

18 Now, in terms of this proposal that the HBPA  
19 made, it didn't come the other day. It came last  
20 December in response to a request from the Racing  
21 Commission as to where we stood on the status of a  
22 contract and race days and what was going on. I  
23 wrote a memo clearly laying out that 200,000 was  
24 going to be contributed by the HBPA from the purse  
25 money to the Breeders' Fund. That memo went to the

1 Racing Commission, and I believe it went to Jim  
2 Weinberg and Ian Stewart. So it isn't something  
3 that I dreamed up the day after we reached an  
4 agreement with Colonial Downs.

5 But my basic problem with Ian's argument is  
6 the money that we're talking about is the horsemen's  
7 money. It's not Colonial Downs' money. We sit and  
8 negotiate over statutory shares, what's going to  
9 happen from the takeout. We negotiate over shares  
10 of signal sales. We negotiate over shares of ADW  
11 revenue. They get their share. We get our share.  
12 That's our money. And what we decide to do with it,  
13 in this case spend \$200,000 to equitably take care  
14 of the Breeders' Fund, is our business and not  
15 Colonial's business.

16 MR. DALE: Excuse me.

17 MR. BURNETT: Mr. Dale?

18 MR. DALE: It's money that you count when you  
19 say this is what will be available for overnights,  
20 you then take it out and give it to them as well.  
21 It's only one \$200,000, and it's being counted two  
22 places.

23 MR. PETRAMALO: We're not proposing to count  
24 it in two places. When we sit down with our gap  
25 funding money and agree with Colonial as to how much

1 it should be and what the necessary money is going  
2 to be to fund the program or what the total is,  
3 it'll be factored in. We're obviously not going to  
4 count \$200,000 if we've given it to the Breeders'  
5 Fund.

6 MR. DALE: I think it's too late for that.

7 MR. PETRAMALO: Why is it too late?

8 MR. STEWART: All I can tell you is I was at  
9 numerous meetings, and I never heard about money --  
10 that we needed to find money for the Breeders' Fund.  
11 I heard we needed to find money for the overnights.  
12 So we dug deep, we stripped our stakes races, and  
13 low and behold, two days later, we need \$200,000 to  
14 go to the Breeders' Fund. That was just kind of a  
15 revelation, I suppose.

16 MR. DALE: Regardless of the source of these  
17 funds and whose money it is and whose it isn't, the  
18 timing is very important, and I think the  
19 commissioners would be entertained to see how it was  
20 spent out last year in purses and how it flowed into  
21 the thoroughbred checking account. It left Connie  
22 and Carol in a very serious situation, and it's not  
23 going to be -- you know, we push it to get generated  
24 in time to run for it every year and a lot of people  
25 make a lot of assumptions that sometimes are valid

1 and sometimes aren't. And when they aren't, we  
2 suffer.

3 MR. BURNETT: It's tough on the track  
4 operator. Look, I'm sympathetic to exactly what  
5 you're saying, but I think we're talking about two  
6 different issues here. One is a cash flow issue of  
7 funding and timeliness issue, and the other is where  
8 these monies are going.

9 MR. DALE: Well, when they say this much will  
10 be generated by handle for overnights, this much  
11 will be generated by ADW for overnights. When we  
12 look at that pool, and then they go, oh, but then  
13 we'll take 200 of that ADW money and give it to the  
14 Breeders' Fund, it's all the same pool.

15 MR. BURNETT: And that may be true, but let me  
16 point something out. I haven't heard you say thank  
17 you yet for the extra 15 or \$18,000 per day that by  
18 my calculation, correct me if I'm wrong, but  
19 \$1.1 million divided by 40 days is \$27,000 a day.  
20 And so if we're talking about how much we put out  
21 per day, the more of that breeders' money that goes  
22 into purses, the more is put out. Now, is there a  
23 problem with gap funding and paying them timely,  
24 sure. We need to fix that.

25 MR. DALE: Exactly.

1 MR. BURNETT: And I don't have a bit of  
2 problem -- I have no argument with that. We need to  
3 figure out a way that there's money always available  
4 as is statutorily required. We just need to get on  
5 that and figure out a way to solve that problem.

6 MR. DALE: And that's my concern.

7 MR. BURNETT: Here's what sticks in my craw a  
8 little bit for the lawyers in the room. This  
9 document, the horsemen's agreement that covers all  
10 this has a merger clause in it. It says, and you  
11 signed it, that this is the entire agreement among  
12 the parties.

13 Now, what bothers me is you signed the  
14 agreement, you take forever to get it done.  
15 Everybody is at impasses. They're arguing. They're  
16 fussing. They're getting it done. The ink is  
17 barely dry and it's, hey, they weren't supposed to  
18 do that. What I want you to do is point out to me  
19 in this agreement where they weren't allowed to  
20 spend \$200,000 to go towards the Breeders' Fund.

21 MR. STEWART: Oh, they can certainly spend  
22 their \$200,000. The account waging, it is  
23 perfectly within their -- within his purview to do  
24 that. All I'm pointing out is that at the end of  
25 the day, the whole thing was kind of sleight of

1 hand.

2 MR. BURNETT: So what you're really saying is  
3 there was no illegality. It was just bad faith or I  
4 got sneakered is what I'm hearing.

5 MR. PETTY: I think we confirmed that Ian  
6 doesn't read my e-mails. I think that much I've  
7 confirmed today because there has been mention of  
8 this in more than one, and I realize they're  
9 frequently lengthy.

10 MR. BURNETT: Let's agree that we -- Jim,  
11 everybody has had a chance to say something. Go  
12 ahead.

13 MR. WEINBERG: I, having seen all the e-mails,  
14 would just make these observations about trying to  
15 be pejorated, and there were a lot of proposals  
16 pushed back and forth between the parties. Was the  
17 \$200,000 in a proposal, certainly it was.

18 The discussions about alleviating one of the  
19 13 \$50,000, those were heated and often -- are they  
20 in the agreement? No, it's not. This came to  
21 light, and I think Vic will confirm, you know, I had  
22 told him the agreement is in the process of being  
23 signed. This meeting occurred. Candidly, there was  
24 a period of time when it was not clear that the  
25 signing would proceed, but given the observation you

1 just made, how close we were, and the length of time  
2 it took us to get to the agreement you approved, we  
3 thought the more prudent approach was to sign the  
4 agreement, but to make it clear, there are some  
5 grievances that when we come back in May and someone  
6 says, well, gee, that's all the money you can race  
7 for, well, we know how we ended up there.

8 You know, we know it's going to be \$200,000  
9 less. Understand, it is the HBPA's prerogative to  
10 take that account wagering money and do whatever  
11 they would like with it. I think that's just a  
12 conclusion to draw from, that at the end of the day,  
13 we're going to have less purse funds. We just need  
14 to recognize how we got there and not sort of  
15 scratch our head.

16 MR. BURNETT: Again, I think this is more of  
17 what Commissioner Ferguson was saying earlier is  
18 that, you know, here we are doing the pit bull thing  
19 at a certain level, and we need to find a way to  
20 turn our energies in expanding the pie as opposed to  
21 fighting over how we're allocating the pie we have.  
22 I understand all sides of it. It's just difficult  
23 to know what to do about it.

24 Maybe I can carry us off on another question  
25 that I have, and that is this commitment to the way

1 it's always been, winners get paid the big money.  
2 We want to go for winning and everything else, to me  
3 is a bit like, you know, really prizing that first  
4 class ticket on the Titanic, and here we're in the  
5 business that is losing owners daily because  
6 expenses are so high for them to own horses and to  
7 participate in this game, and the few that are  
8 hanging on -- whether it's in their own economic  
9 interest or not. Some people I think speak against  
10 their own economic interest and say, oh, I still  
11 think, you know, we need to pay winners.

12 Part of me says, you know, okay, if that's  
13 what y'all want, then let's give it a try. I agree  
14 that we need to hang onto the brand. The other side  
15 of me says, gee, you know, what's going to help  
16 Tyler fill his gate, what's going to bring people  
17 into the game, what's going to cause some guy down  
18 the road that says, oh, yeah, I see you guys have  
19 been breeding horses. I might like to try that to  
20 try his or her hand at the Virginia racing game.

21 Are you going -- you know, which method of  
22 paying down, the 10% to the winner extra, the 100%  
23 second through sixth is sort of -- is supportive of  
24 that notion. I'm not saying I'm necessarily  
25 championing it. I'm just wondering what

1 consideration was given to it because it's -- these  
2 folks have got to pay their bills, and I'm wondering  
3 what is healthier for the industry.

4 MR. PETRAMALO: There are two things we did in  
5 recognition of that -- that is in recognition of not  
6 spreading it out through the sixth place finish.  
7 One is what I mentioned before, writing Virginia  
8 racing -- Virginia restricted races.

9 The second thing, and I believe this was  
10 Tyler's suggestion that we readily agreed to, is we  
11 we're going to pay through the last place finisher.  
12 Right now you get paid if it's one through six. The  
13 winner gets under the current formula -- I believe  
14 the winner gets 57%, the second is 21, et cetera.  
15 We are going to pay all the way through last place.  
16 So even in an inexpensive race, say a 10 or a  
17 \$15,000 purse, the person who finishes eighth is  
18 still going to get 120 or 150 bucks that at least  
19 covers the jock mount fee and helps with the  
20 shipping. It isn't much, but it's --

21 MR. BURNETT: No, no.

22 MR. PETRAMALO: But we're not insensitive to  
23 the concerns.

24 MR. PETTY: And I would add with the preface  
25 that there's no person or organization in this room

1 that I think other time has worked harder at making  
2 the pie bigger than me and the Virginia Thoroughbred  
3 Association. I can't tell you -- I spent the entire  
4 last two years almost doing that exclusively, and  
5 frankly, we failed miserably at it and need to get  
6 back to what Commissioner Miller suggested not too  
7 long ago and get back on that.

8 And I think at the other end of the spectrum  
9 is that to promote, sustain, and grow this industry,  
10 that is directed at us, and I don't think we've  
11 inflicted a thousand cuts on anybody. I think we've  
12 given and given and given and taken back quite a bit  
13 less than others. And so my group -- and that's  
14 just not my mindset, that's a little bit of my  
15 group's mindset.

16 So you would expect that group to want to  
17 protect back end awards and to want to have stakes  
18 races and want to open races. I wouldn't  
19 necessarily look for that group to have a real big  
20 dog in the fight, not to wear out the analogy, on  
21 the 100% Bonus, but the overwhelming majority of my  
22 members that are breeders are also owners. And when  
23 they put their owner hat on, most of the folks that  
24 I talk to and that I respect that have been in this  
25 thing, I'm not always a big fan of conventional

1 wisdom. I think we spend too much time in the box,  
2 but what I heard from them was that when I win the  
3 race, and whether it was Ferris Allen as a trainer  
4 or it was somebody who was an owner, if I win the  
5 race, then I want the big pay day.

6 I don't want to -- you know, Jill Gordon-Moore  
7 sat with me and what did she say, Frank, she won  
8 \$65,000 in bonus and it cost her \$63,000 to win  
9 them. So if we don't pay the winner a bonus, then  
10 her equation is going to be I won 29,000, but it  
11 cost me 63,000, you know. It's going to devalue her  
12 wins. It's going to ease some of her pain, but it's  
13 not going to help that math. I realize that's one  
14 example. It's going to help somebody else, but  
15 these folks that I heard from --

16 MR. BURNETT: Did you do her math, by the way,  
17 on what it would be under today's formula, the  
18 formula suggested? I'd just be curious --

19 MR. PETTY: I don't know how much she won and  
20 how much she didn't win, but of course, the numbers  
21 are going to change no matter what, but whatever  
22 that 115 or \$16,000 shot she did have was going to  
23 become 1,500 under the 10%/100% second through  
24 sixth, and that was going to change her math in a  
25 way that was going to make what was frankly already

1 frustrating, more frustrating.

2 I heard it again and again and again and  
3 again, and it was the only -- we went through the  
4 survey results in the meeting, and we had ten  
5 different options, seven was the most anybody agreed  
6 upon. We went through the surveys that we had up on  
7 the web, and they were all over the place and they  
8 were up and down. But then when you go out and you  
9 break it down to these two issues that  
10 overwhelmingly people said pay the winner.

11 So it just -- it's a little bit -- part of it,  
12 I think, goes back to basic philosophy. Does every  
13 kid get a medal or does the kid that won get a  
14 trophy? It comes down with certain people to that  
15 sort of -- and it comes down to people in this game  
16 are optimistic and believe they're going to succeed.  
17 That's why they're doing it. This is my  
18 interpretation of it. I mean, I just heard enough  
19 of different stories to try and extrapolate where  
20 they're coming from. And that's where we are.

21 I think -- you know, I ask this Commission all  
22 the time to be cognizant of the mandate to promote,  
23 sustain, and grow the industry. And it's not  
24 promote, sustain, and grow the purse account. It's  
25 not promote, sustain, and grow Colonial Downs, and I

1 realize they're big factors that we need to promote,  
2 sustain, and grow in order to promote the industry.

3 You have to keep the industry in mind. We're  
4 frequently kind of treated like the third-class  
5 citizen who is trying to get everybody's money when,  
6 in fact, we're the backbone of this thing in a lot  
7 of ways and we contributed, contributed, and  
8 contributed. So we're trying to find a fix for our  
9 hard economic issues, and then we need as much as  
10 everybody else to get in the room and find a  
11 long-term plan.

12 MR. BURNETT: Another issue for the Summit,  
13 Vic.

14 MR. HARRISON: I was one of the folks that  
15 voted against the winners only calculation, but my  
16 only point is I worry about this asterisk that's  
17 going to be after the 100%. Currently, there's 37  
18 percentage point spread between first and second  
19 place. Under the second through sixth get a 100%  
20 and at least a 10% bump to the winner, that would at  
21 a minimum be 27% and maybe inch up closer to 37  
22 percentage points, but regardless that's just my --  
23 I'm just saying that. Editorially that's what I  
24 believe, and I think it would bring more people into  
25 the gate and I was outvoted, but whatever we do,

1 we're going to be subject to criticism, I think, for  
2 what we put in the asterisk.

3 So can we really maintain the brand if we put  
4 100% with the asterisk, and then under the asterisk  
5 we have, well, winner only, \$10,000 cap per race,  
6 and when we hit \$500,000, that's it for the season.  
7 You're out of luck after that. You know, how is  
8 that going to impact the sales next year when they  
9 say, well, you know, there was 100% Bonus, but it  
10 wasn't really or if we went second through sixth, it  
11 would be the same kind of thing. It just worries me  
12 that it's not really quite 100%, that this asterisk  
13 is going to get in the way of the marketing of the  
14 100%.

15 MR. PETTY: I think if we can reach an answer  
16 to your question that you believe is credible and  
17 that the Commission believes is credible and  
18 everybody from an integrity standpoint is okay with  
19 the answer, from a marketing standpoint, you know,  
20 to use the Holiday Inn Express, nobody ever asks you  
21 could the guy really do surgery. I mean, marketing,  
22 branding is this big picture stuff. So as long as  
23 we have some disclosures that everybody is satisfied  
24 with, I don't think the market and the customer is  
25 gonna be -- you know, some guy is going to do the

1 math and, yeah, you're right. I only got an 86%  
2 bonus, but it's still double what everybody else in  
3 the world gets.

4 So I think if we're upfront, we have a  
5 credible -- the short answer, I don't think it will  
6 hurt the marketing component. I think people are  
7 going to say they're doing their best. They're  
8 trying to do what's right here. They're doing the  
9 best they can, and for the majority of people, they  
10 got their 100%.

11 I think it has to be in big letters, it has to  
12 be disclosed, and we have to make sure everybody  
13 knows it and early and often. When it runs out, it  
14 runs out.

15 MR. BURNETT: Any questions or comments,  
16 gentlemen?

17 Anybody inclined to make a motion?

18 MR. LERMOND: Mr. Chairman?

19 MR. BURNETT: Yes.

20 MR. LERMOND: I don't know if the issue has  
21 been resolved about whether there's going to be six  
22 stakes races or five.

23 MR. PETRAMALO: Correct. The Jamestown issue.

24 MR. BURNETT: Why don't we see what the  
25 consensus of our Commission is on the first and

1 second items, which would be the 100% with an  
2 asterisk and more -- two Virginia-bred races per  
3 week for the eight weeks, correct?

4 MR. PETTY: In the book. That's the key.

5 MR. BURNETT: In the book.

6 For what it's worth, while I like Vic may  
7 disagree or think I disagree on what might be best  
8 for the industry, I think, one, we're going to get  
9 criticized nobody what we do by a certain number of  
10 people on various sides of it, and two --

11 MR. PETTY: We're getting used to that.

12 MR. BURNETT: Yeah. And I think that we  
13 shouldn't be substituting our judgment for that of a  
14 committee that's worked very hard on this and a  
15 bunch of folks that's got a lot of skin in the game,  
16 unless we think it does violence to the mission of  
17 the program we're charged with overseeing.

18 So my inclination would be, fellow  
19 commissioners, to go along with the recommendation  
20 of this committee for the 100% winners only with the  
21 asterisk and two open races a week in the book. I'd  
22 be pleased to hear how the Jamestown can be worked  
23 out. I have my reservations about two year olds  
24 running in August in stakes races, but again, if  
25 that's the wish of the crowd, then I'm not going to

1 get in the way of it.

2 MR. MILLER: Are you making that as a motion?

3 MR. BURNETT: I can make that as a motion.

4 That's fine.

5 MR. MILLER: I'll move that.

6 MR. BURNETT: All right.

7 MR. FERGUSON: I'll second it, but you think  
8 you've got enough money to make that go through,  
9 because of the decreases in the number of  
10 Virginia-breds and the number of race days?

11 MR. PETTY: We put \$200,000 in the back to  
12 cover breeders awards and if we have to borrow from  
13 Peter to pay Paul. The only issue Dave has is the  
14 timing, when the money is available. That's where  
15 it gets tricky.

16 MR. MILLER: Well, could I ask as we discuss  
17 this motion? Well, that would apply to the \$25,000  
18 Jamestown race, too, wouldn't it?

19 MR. PETTY: Yes.

20 MR. MILLER: I think I'll just move that --  
21 unless you want to discuss the Jamestown race more.

22 MR. FERGUSON: Was that part of this motion,  
23 the Jamestown race?

24 MR. MILLER: I'm going to attempt to make it  
25 apart of it, so we can get out of here.

1 MR. PETTY: Duly noted and appreciated.

2 MR. MILLER: I would move that we adopt the  
3 100% Bonus with the asterisk at the open Virginia  
4 races. There's seven of them; is that right?

5 MR. PETRAMALO: Two a week.

6 MR. MILLER: Two a week, and that we retain  
7 the Jamestown stakes race for two year olds.

8 MR. FERGUSON: Well, I have a question. Is  
9 the Jamestown race in the fully executed document  
10 that you signed?

11 MR. PETRAMALO: There's no reference to the  
12 Virginia-bred stakes in the document.

13 MR. FERGUSON: Most documents that I sign --  
14 there's a lot of discussion before and after, most  
15 of the documents I sign say this is the agreement.  
16 No matter what we discussed before or after, is that  
17 qualification -- is that qualifier in this contract?

18 MR. PETRAMALO: No.

19 MR. BURNETT: I think there's no requirement  
20 nor is there any prohibition.

21 MR. PETRAMALO: The only stakes races in the  
22 contract are the Derby, the Turf Cup, the All Along,  
23 the Oaks, and I believe Zeke Ferguson, I think.

24 MR. FERGUSON: Who?

25 MR. PETRAMALO: Zeke Ferguson.

1 MR. FERGUSON: Who's he?

2 MR. PETRAMALO: Some very prominent Virginia  
3 horseman at least from the past.

4 MR. MILLER: Anyway, that's my motion.

5 MR. BURNETT: All right.

6 MR. FERGUSON: Does Colonial Downs have any  
7 comments on that? I mean, is this a killer? I  
8 mean, this comes out of the blue or is this -- I  
9 keep getting back to the document. Are we throwing  
10 something at them that's not in the document?

11 MR. WEINBERG: Throwing? The assumption in  
12 negotiating the agreement was that there were 13  
13 \$50,000 races.

14 MR. PETRAMALO: Twelve.

15 MR. WEINBERG: Twelve.

16 MR. PETTY: And you probably counted the  
17 Jamestown at that point.

18 MR. WEINBERG: Right. We did. We counted the  
19 Jamestown. So the expectation was that the  
20 Jamestown was part of the structure.

21 MR. FERGUSON: So if -- if we go along with  
22 this, what follows? What's the --

23 MR. WEINBERG: We run the Jamestown --

24 MR. BURNETT: It's consistent with their  
25 expectation.

1 MR. WEINBERG: It's consistent with what we  
2 thought.

3 MR. FERGUSON: Where was the money -- in other  
4 words, am I taking skin off your rear-end or --

5 MR. STEWART: The real question is whether  
6 there's money in the account to pay for it.

7 MR. BURNETT: I think that's right. Do we  
8 want to approve this until we -- that particular  
9 race until we know more about the ability to fund  
10 it?

11 MR. PETRAMALO: I don't understand what the  
12 ability to fund is. We before discussed it as a  
13 cash flow problem for the Breeders' Fund; that is,  
14 the Breeders' Fund would need 25,000 by whenever the  
15 race is run at the end of the meet. The  
16 representation I made was, if necessary, the HBPA  
17 will loan the Breeders' Fund \$25,000 to do that.

18 MR. MILLER: That covers the cash flow  
19 problem.

20 MR. PETRAMALO: That's the cash flow problem.

21 MR. MILLER: That's in August.

22 MR. PETRAMALO: Well, the end of --

23 MS. RICHARDS: End of July.

24 MR. PETRAMALO: When the meet ended in August,  
25 it was August, but it would be the end of July.

1 MR. MILLER: The end of July.

2 MR. DALE: But at that time of year, the HBPA  
3 is so tight for cash, that 25,000 would otherwise go  
4 into the purse funding account.

5 MR. PETRAMALO: You don't know the financial  
6 capabilities of the board of directors of the HBPA  
7 without saying more.

8 MR. DALE: Well, if they're going to borrow  
9 that money -- I'm saying from an internal sources,  
10 it'll be very tight.

11 MR. PETRAMALO: We're not borrowing it from  
12 internal sources or at least we're not borrowing it  
13 from money that would otherwise go into the purse  
14 account.

15 MR. FERGUSON: So you're representing that you  
16 have --

17 MR. PETRAMALO: Yes.

18 MR. FERGUSON: Okay. That's all I need.  
19 Second.

20 MR. BURNETT: The motion has been moved and  
21 seconded. All in favor indicate by saying aye.

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

25 MR. BURNETT: Thank you, folks. I'm a little

1 more troubled perhaps than others about Duke's  
2 concern about the flow of money. I think that's  
3 part of an integrity issue, and I'm not pointing  
4 fingers at anybody or talking about cash flow. I  
5 just think we should look at it and make sure  
6 that --

7 MR. PETRAMALO: Let's -- to take a page from  
8 Commissioner Ferguson, let's look at the contract.  
9 What it does is require us to sit down as of May 1st  
10 or whatever and make a good faith determination as  
11 to how much gap funding would be needed and how much  
12 is going to be available to pay purses.

13 MR. BURNETT: That's great.

14 MR. PETTY: It might borrow an extra hundred  
15 grand.

16 MR. BURNETT: Let's have our executive  
17 director hear the results of your May 1 meeting so  
18 that the Commission knows where everybody stands.  
19 If there's an issue, we want to know. If everybody  
20 is hunky-dory, we want to know that too. We'll just  
21 go from there. I don't think we ever want to get in  
22 a situation where folks are accusing us of not being  
23 able to pay timely purses, and I don't know that we  
24 have. I'm just saying we need to keep squeaky  
25 clean, if we can.

1 MR. STEWART: The track has always covered it.

2 MR. BURNETT: Right. And that's the way we  
3 want it and that's the way you've been in the past,  
4 and let's keep it going that way.

5 MR. STEWART: Well, as I said, we're not --  
6 this year, we aren't going to do that.

7 MR. BURNETT: Right.

8 MR. DALE: We're not in a position to.

9 MR. BURNETT: And we're in a new arrangement  
10 that's supposed to cover all that, and so that's why  
11 let's keep a close eye on it and make sure it does.

12 MR. MILLER: Frank we'll cover it personally.

13 MR. PETRAMALO: Yes.

14 MR. STEWART: That's what I heard.

15 MR. FERGUSON: I sent Glenn \$75 yesterday.

16 MR. PETRAMALO: That'll help.

17 MR. BURNETT: All right.

18 MR. PETTY: Duly noted and appreciated.

19 MR. BURNETT: We have Tyler's coupling rule is  
20 the last item other than -- no. We got Brad still.  
21 I don't want to leave him out.

22 MR. FERGUSON: Those poor guys. They've been  
23 sitting back there all day listening to us.

24 MR. BURNETT: Coupling rule. Mr. Harrison, do  
25 you want to set that for us?

1 MR. HARRISON: Okay. The racing secretary has  
2 proposed the uncoupling or deletion of language in  
3 the current rules that require the coupling of  
4 horses as one betting interest that share common  
5 ownership and common training -- excuse me, common  
6 trainers, and I think what this rule revision does  
7 is allows the racing secretary the freedom to  
8 uncouple those horses with respect to the training  
9 position. Is that right, Tyler?

10 MR. PICKLESIMER: Yeah. Different owners is  
11 just that, different owners. They're not going to  
12 be coupled whether the trainer owns a piece of one  
13 of them or not. It's just -- you know, if it walks  
14 like a duck, it's a duck. It's, you know, different  
15 owners.

16 There's also a little addition here, in a  
17 stakes race, allowing us to separate singular  
18 entries in a stake of 50,000 or more. Again, giving  
19 us, you know, another betting interest, maybe some  
20 increase handle, a little bit more money for the  
21 horsemen association and the stake.

22 MR. BURNETT: Let me --

23 MR. HARRISON: Do you want me to expand a  
24 little?

25 MR. BURNETT: If you like to, that would be

1 great.

2 MR. HARRISON: It is my feeling that there is  
3 oversight enough from the stewards stand and from  
4 the Racing Commission, and over the totalizator and  
5 the racing itself, that the bettors don't need to  
6 be, quote/unquote, protected from themselves with  
7 respect to trying to ascertain the strategy of a  
8 trainer that has two horses in a race. I think that  
9 that's part of the handicapping process. I think  
10 that even inexperienced handicappers or bettors that  
11 are just playing numbers or colors of horses,  
12 they -- this will be transparent to them, except  
13 that if they select that horse and one of these two  
14 are trained by the same horse -- by the same  
15 trainers, and the horse happens to win, and they  
16 selected the correct one.

17 I'm just saying that the benefits of creating  
18 the additional wagering interest here far outweigh,  
19 in my opinion, any negative impact that might be had  
20 on an inexperienced bettor that might not understand  
21 that this trainer has two animals in a race. I  
22 definitely think the experienced handicapper or the  
23 experienced bettor understands that this is a speed  
24 horse, and this is a closing horse, and that the  
25 speed horse is probably in there and he may not be

1 around at the end of the race and that the closing  
2 horse will. That's all part of the handicapping,  
3 and that's just basic handicapping.

4 I'd say, you know, maybe 85% of the players at  
5 the racetrack will understand that regardless of  
6 whether or not these two horses are coupled as a  
7 wagering interest or not.

8 MR. PICKLESIMER: It gives us, you know,  
9 another tool that a lot of other jurisdictions have,  
10 you know, Kentucky, California, Florida, New York is  
11 a little different. They have to have, I think, the  
12 same owner, different owner, like a million dollars  
13 to split, but New York is special.

14 MR. MILLER: In any event, even for the  
15 unsophisticated bettor, the program always -- I  
16 mean, it's there --

17 MR. PICKLESIMER: Yeah.

18 MR. MILLER: -- in black and white. I look at  
19 it -- as Vic says, you know, myself and my wife,  
20 when we go to a race, we don't figure our bet on who  
21 the jockey is or who the owner is. My wife goes by  
22 the name of the horse or the color of the horse or  
23 whatever, and the fact that -- we can see there's  
24 three horses in the race or two horses in the race  
25 being trained by the same trainer or two by the same

1 owner. We see it. It's right before us.

2 MR. PETRAMALO: I think I agree with Vic  
3 entirely, but there's even more empirical evidence  
4 to support the rightness of Vic's view.

5 Here's the history of the rule. Up until the  
6 2008 meet, if you had a common owner or a common  
7 trainer, they had to be coupled. Prior to the meet  
8 last year, we changed the trainer rule. So a  
9 trainer who had two horses in the race did not have  
10 to be coupled, and we ran all 2008 with trainers  
11 with two horses being uncoupled.

12 What Tyler has proposed I think is a slight  
13 modification that importantly in a stakes race gives  
14 Tyler the opportunity not only to insist that a  
15 trainer run uncoupled, but that an owner run  
16 uncoupled. That's the new feature, that he can  
17 uncouple where you have common ownership.

18 The other less important, but it's a feature  
19 nonetheless because it's a change, is in the past if  
20 the trainer did not want to be uncoupled, he could  
21 say no, no, no, I want to be coupled, and there's a  
22 reason for doing that. I won't bore you with the  
23 explanation, but the change now doesn't permit the  
24 trainer to do that unless there are more than eight  
25 betting interests in a race.

1 MR. PICKLESIMER: Actually, we struck that  
2 eight betting interest.

3 MR. PETRAMALO: Oh, I like that. You took it  
4 out?

5 MR. PICKLESIMER: It just -- it gives  
6 basically the -- subsection six gives us the  
7 permission to split a different owner entry. If we  
8 struck it completely, you know, we wouldn't be able  
9 to display it.

10 MR. PETRAMALO: Okay.

11 MR. PICKLESIMER: But, you know, basically,  
12 that's sort of commonplace everywhere now. It's  
13 going to become pretty helpful to the dirt races,  
14 you know, a guy has got two in there trying to make  
15 a go, you know.

16 MR. BURNETT: I'll tell you what my difficulty  
17 with it is. I know the trend is to do more of it,  
18 but here we are in an industry that everybody thinks  
19 is corrupt. We're contributing to the notion,  
20 incorrect in my view, that letting horses be  
21 uncoupled lets trainers play games and not that  
22 anybody would think a trainer or an owner would play  
23 games with a race, but I think it puts the wrong  
24 image out there.

25 That said, I also think it helps you fill

1 races and that's what makes the world go round. So  
2 I'm torn between the two positions, but I'll -- I  
3 think I'm going to defer to the judgment of my  
4 fellow commissioners. If they're not that bothered  
5 by it, I guess I won't be either. We can see what  
6 it does.

7 MR. FERGUSON: The amateur -- as an amateur  
8 bettor, I can't even understand the racing form.  
9 I've never heard of coupling until today, so it  
10 doesn't affect the guys on the street like me. And  
11 if it doesn't affect the guys on the street like  
12 Clint or me who bet, you know, colors or trainer  
13 names, things like that, and then the guy that --  
14 the professional gambler we'll call him, it doesn't  
15 affect him because he knows better. No harm, no  
16 foul.

17 MR. PICKLESIMER: You know, we're not gonna --  
18 this isn't a fair meet, you know. There's a  
19 different caliber of horsemen, you know.

20 MR. FERGUSON: Vic has to explain a racing  
21 form to me every time I go to a race, so it doesn't  
22 affect me as an amateur.

23 MR. MILLER: This is an amendment to the  
24 existing. I move that we adopt the proposed  
25 amendment. If it doesn't work out, we can re-visit

1 it sometime in the future.

2 MR. FERGUSON: Second.

3 MR. MILLER: We'll see how it goes.

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

5 All in favor indicate by saying aye.

6 NOTE: The motion is made by Commissioner  
7 Miller and seconded by Commissioner Ferguson. All  
8 were in favor. The motion carries.

9 MR. BURNETT: There you go. Tell us how it  
10 works out, Tyler.

11 MR. PICKLESIMER: All right.

12 MR. BURNETT: All right. Brad's turn.

13 MR. SCOGGINS: He just left. He's trying to  
14 catch his flight.

15 MR. PETTY: Mr. Chairman, I'm happy to fill  
16 his space until he gets back with a quick item.

17 MR. BURNETT: Did we not vote on the Breeders'  
18 Fund?

19 MR. PETRAMALO: Yes, we did.

20 MR. PETTY: There's a Virginia-bred horse  
21 scheduled to participate in the Kentucky Derby, and  
22 we are putting together a little bit of a public  
23 relations campaign to benefit him. He has a  
24 Facebook page, and he has a Twitter page. He has  
25 some hats coming and we're working on reaching into

1 various pots of money and trying to find ways to  
2 promote the fact that a Virginia-bred horse in the  
3 Derby. If he wins, he would be the first  
4 Virginia-bred horse since 1993 when Sea Hero won,  
5 and he would be the fifth Virginia-bred horse in the  
6 history of the Derby to have won the race.

7 I bring it up because we may come hat in hand,  
8 Vic is in the loop, at some point asking for some  
9 help paying for some of this. It's hard to say no  
10 when you have this kind of opportunity.

11 MR. BURNETT: Only come back hat in hand.  
12 Have a hat to give away.

13 MR. PETTY: Yeah, but I bring it up today for  
14 this reason. At some point a reporter will call you  
15 and ask you about this hopefully, especially if you  
16 win, and if an intrepid reporter asks you, and he  
17 should, why more Virginia-bred horses aren't running  
18 in races like this, then you have the perfect  
19 opportunity to have the conversation about making  
20 the pie bigger because that's the answer. At some  
21 point of our PR campaign, that will be a component  
22 of it. The reason there's not more Quality Road in  
23 the big races is because our Breeders' Fund is  
24 small, we don't breed as many horses, and it's  
25 because we have this pari-mutuel industry that is

1 stifled by restricted legislation.

2 MR. BURNETT: Right.

3 MR. PETTY: We will get around to the pie  
4 growing part of the conversation at some point. So  
5 just be aware when someone asks you that, that's  
6 part of the answer.

7 MR. BURNETT: Right.

8 MR. PETTY: If we paid more guys more money,  
9 there would be more of these.

10 MR. BURNETT: If they take the handcuffs off.

11 MR. PETTY: Yes.

12 MR. BURNETT: Speaking of -- we almost  
13 adjourned.

14 MR. BLACKWELL: Right.

15 MR. BURNETT: Talk to us about advanced  
16 deposit account wagering.

17 MR. BLACKWELL: First of all, I appreciate the  
18 time today to speak to you. It's really a number of  
19 issues that I want to speak to.

20 MR. BURNETT: For the record, Brad Blackwell.

21 MR. BLACKWELL: I'm sorry. Brad Blackwell on  
22 behalf of TwinSpires. Thank you.

23 MR. BURNETT: I'm sorry.

24 MR. BLACKWELL: That's okay.

25 I did want to speak to a number of issues

1 today. One is to provide the Commission an update,  
2 where we are in the licensing process; two is to  
3 probably provide a little bit of an overview or  
4 summary of account wagering because I think there's  
5 so many times when account wagering providers get up  
6 here and we say we have an agreement in place. It's  
7 been approved. We fly back home. I just want to  
8 make sure that the Commission is aware of kind of  
9 how account wagering works. And I apologize if I  
10 oversimplify things or maybe go into some issue that  
11 you may already know, and I promise to be quick.

12 And then third, the reason I'm here is to make  
13 sure that the Commission is respectfully aware of  
14 its current obligation under the temporary license  
15 statute, and so I just want to make sure the  
16 Commission is aware of that. I've had numerous  
17 conversations with staff and thought it would be a  
18 good idea to get before you today to do all of those  
19 three things.

20 So, first of all, in terms of the history of  
21 where we are right now, I'm sure you will recall  
22 that TwinSpires was essentially forced to request a  
23 temporary license at the December 17th, 2009 [sic],  
24 Virginia Racing Commission meeting. As a result of  
25 not having a hub agreement in place with Colonial

1 Downs, the licensee.

2 Virginia is the only state that I'm aware of,  
3 and I deal with a lot of Racing Commissions and  
4 handle account wagering on behalf of TwinSpires  
5 throughout the country, but Virginia is the only  
6 state that I'm aware that requires a licensee to  
7 have an agreement with a competitor, an in state  
8 competitor, because TwinSpires does not compete with  
9 Colonial Downs. TwinSpires does compete with EZ  
10 Horseplay. We're competing for customers in the  
11 same market, and the Virginia Racing Commission  
12 essentially licenses us to do business in this  
13 market.

14 A big part of what account wagering does is  
15 that it provides a forum to send race signals  
16 throughout the country so that people can wager on  
17 various products, and so we carry a number of  
18 signals to various markets throughout the United  
19 States. And really what account wagering does is it  
20 provides, one, a convenience factor to people who  
21 want to wager on horses.

22 In fact, when I was over in the Virginia  
23 Racing Commission offices, I saw an advertisement  
24 for EZ Horseplay, which said if you're home sick, if  
25 it's bad weather, you're on vacation or at work, it

1 provides a mechanism to wager on horse racing. So  
2 it's providing value to the horse racing industry,  
3 because as we have seen, fewer people are probably  
4 going to racetracks. We have a younger generation  
5 of people who are more probably in tune with using a  
6 computer than they are going to a racetrack.

7 So account wagering, one, provides a mechanism  
8 to distribute these signals widely, and it also  
9 appeals to a younger customer base where it's more  
10 technology driven. We have a lot of our older  
11 customers at Churchill Downs Racetrack that just do  
12 not want to play account wagering. They don't want  
13 to mess with the computer. They don't know about  
14 the computer. They would prefer to go to the track,  
15 but this really appeals to a younger customer. It's  
16 something that we invested money in. We tried to  
17 produce a innovative product that we think will  
18 appeal to people, that will drive people to this  
19 industry. I know there's been a lot of talk today  
20 about what this industry can do to grow the nickel  
21 instead of fighting over the same nickel, and I  
22 think this is one way we can do this.

23 All reports show that account wagering is  
24 really the only growing segment of our industry. So  
25 that's why I'm really concerned with the direction

1 that Virginia is going, I'll get to that later, with  
2 regards to what's happening with account wagering.

3 So, anyway, TwinSpires, as you know, we're  
4 currently under a temporary license. At the  
5 December 17th, 2009 [sic], Virginia Racing  
6 Commission meeting, the Commission basically ordered  
7 TwinSpires and Colonial Downs to try to reach an  
8 agreement by January 1st. If we were unable to do  
9 that, then we were required to go to mediation.

10 So we have gone through that process. We went  
11 to mediation. Mediation was unsuccessful. And to  
12 be honest, I was really disappointed with that  
13 process because my expectation was that the  
14 mediation would really bring the parties together.  
15 I think this is what the Commission intended. Bring  
16 the parties together, have them try to work towards  
17 a middle ground to where we can reach an agreement  
18 and not be in this position today.

19 I really did not get the feeling that Colonial  
20 Downs went into that mediation with that in mind nor  
21 did I feel they made a good faith effort to try to  
22 reach an agreement and, in fact, they did not come  
23 off of their starting point at all. Their request  
24 of TwinSpires was to pay the same rates that we'd  
25 been paying for the two years, plus pay an

1 additional \$200,000. That was their position, and  
2 they did not move off that stance. So the mediator  
3 quickly wrapped up the mediation and said, you know,  
4 I'm sorry. I just think we're wasting our time, you  
5 know. I'll report that mediation was unsuccessful.

6 So that's kind of where we are right now.  
7 TwinSpires is currently operating under a temporary  
8 license, and we really feel that Colonial Downs has  
9 been focused on something else besides negotiating  
10 in good faith with us. I'm sure the Commission is  
11 aware that there was a house bill recently passed  
12 which dictates a 10% statewide source market fee to  
13 be split between the racetrack, and the horsemen,  
14 and then also imposes a 1% Breeders' Fund fee on  
15 account wagering providers operating in the state  
16 for every wager taken, and then there's also a half  
17 a point that goes to the Virginia Racing Commission  
18 to handle the oversight responsibilities. Virginia  
19 was already one of the least profitable account  
20 wagering states in the country. Now with this new  
21 statute, they are the least profitable account  
22 wagering state out there. I can go through some  
23 numbers later on to really emphasize the direction  
24 that this is taking.

25 I think what's going to happen is that this is

1 going to cut off or at least stymie the growing  
2 segment of our industry. I think that's going to be  
3 bad for the industry as a whole. I think it's going  
4 to be bad for Virginia racing specifically, and I  
5 know that's your responsibility is Virginia racing.  
6 So I definitely wanted to bring that to your  
7 attention.

8 The other thing that I wanted to walk through  
9 is that under the statute, this temporary license  
10 statute, and I've got some copies for the  
11 Commission. I've highlighted some provisions to  
12 make them a little bit easier to read and I've also  
13 added some comments in red, kind of go through my  
14 thought process. And I'll distribute this.

15 MR. BURNETT: Thank you.

16 MR. BLACKWELL: As you'll see -- as I  
17 discussed, we went through the mediation and  
18 basically the statute states that -- and if you look  
19 at the first highlight in red, I'm going to read the  
20 next highlights written in black, which says if  
21 during the term of the temporary license, the  
22 parties are unable to reach agreement through  
23 mediation, then the Commission shall, and I'll  
24 emphasize the word shall because in law this is  
25 accepted to mean must or is obligated to, it's not a

1 permissive term here, specify the percentage of the  
2 total gross handle of wagers placed with the  
3 advanced deposit wagering applicant from within the  
4 Commonwealth to be paid by the applicant to an  
5 unlimited licensee and representatives of the  
6 recognized majority horsemen's group.

7 So at this point, I just want to point --  
8 again, respectfully point out to the Commission that  
9 I think you right now have an obligation since we've  
10 been through an unsuccessful mediation, which is  
11 documented by Exhibit A to what I just handed out,  
12 Exhibit A is the mediator's report, which shows that  
13 we attended the mediation on a certain date as  
14 requested or actually as required by the Commission,  
15 that mediation was unsuccessful in resolving the  
16 issues between TwinSpires, Colonial Downs, and the  
17 horsemen's group. So I think right now the  
18 Commission has the obligation to set this rate.

19 The statute goes on to talk about how this  
20 race will be determined. It talks about what the  
21 Commission can consider, which are, among other  
22 factors, the contractual agreements that other  
23 advanced deposit account wagering licensees have  
24 with an unlimited licensee and representatives of  
25 the majority horsemen's groups. So that was one of

1 the things that I wanted to point out, kind of where  
2 we are right now.

3 Now, I kind of want to take a step back and  
4 just look kind of at the economics of account  
5 wagering in Virginia. As I mentioned, prior to this  
6 new statute, which takes place July 1st, Virginia is  
7 one of the least profitable states for someone to  
8 conduct account wagering in. If you look at 2008,  
9 there's basically a 20.4% tax takeout rate.

10 Hopefully, everyone understands that, but I'll kind  
11 of go over it. Basically, of the wagers that are  
12 placed, 20.4% comes down to kind of industry  
13 participants, the rest of it goes back to paying  
14 winning wagers from customers.

15 So if you go back and look at 2008, these are  
16 kind of TwinSpires' numbers, which I'll kind of  
17 round up or -- to be a little bit more being simple,  
18 but a host track, the track who was putting on the  
19 show that was wagered upon, averaged about 5.7 of  
20 the takeout or 28% of the dollars available to pay  
21 industry participants. TwinSpires paid an 8.7  
22 source market fee, so 8.7% of the wagers went back  
23 to Colonial Downs and their horsemen, which  
24 represented 43 percent of the available money that  
25 could go to industry participants. As I mentioned

1 before, a .5 percent went to the Racing Commission,  
2 and TwinSpires itself kept 5.5% of those wagers  
3 which amounted to 27%.

4 So we have the host track, who was putting on  
5 the show that was wagered upon, got 28% of the  
6 available money, Colonial Downs and their horsemen  
7 got 43% of the available money, and TwinSpires, who  
8 is bringing those races to Virginia residents,  
9 paying marketing costs, paying tote costs, paying  
10 video screening costs, paying website hosting costs,  
11 paying for our call center located in Oregon so that  
12 wagers may be taken, paying for a customer service  
13 center in Lexington, Kentucky, to handle any issues  
14 with the website, all those expenses are deducted  
15 from the 5.5%.

16 On the other hand, Colonial Downs and the  
17 horsemen here had to spend zero dollars on those  
18 wagers and had to really put forth zero effort for  
19 those dollars. So this is, again, to put into  
20 perspective of kind of the way account wagering  
21 looks right now in Virginia.

22 The other thing that I'd like to point out  
23 that TwinSpires and other account wagering providers  
24 do is that we also take the Colonial Downs signal  
25 and distribute it throughout the country. In 2008,

1 our numbers show that over 86% of the wagers we  
2 received took place outside the Commonwealth of  
3 Virginia. We were distributing that signal on  
4 behalf of Colonial Downs, so the overwhelming  
5 majority of those wagers were taking place outside  
6 the Commonwealth.

7 One other thing that I would like to point out  
8 is, as I mentioned, TwinSpires and other licensees  
9 in Virginia are competing with EZ Horseplay. So EZ  
10 Horseplay is not really subject to this source  
11 market fee because essentially they would be paying  
12 themselves. The other thing is -- so they're not  
13 subject to that same cost. The other thing is if  
14 you look back at 2008 and EZ Horseplay has enjoyed a  
15 significant less cost for host fees. If you look at  
16 it on a track by track basis, and I won't take you  
17 through that, but just, for example, one track. If  
18 you look back at 2008, EZ Horseplay paid a 3.6% host  
19 fee for Santa Anita races. TwinSpires on the other  
20 hand paid 8% for that same content. That same  
21 content was made available through account wagering  
22 to Virginia residents. So a Virginia resident  
23 wagered through EZ Horseplay on a Santa Anita race  
24 that returned 3.6% to Santa Anita and their horsemen  
25 who were putting on the show. If they wagered

1 through TwinSpires, they returned 8.0% to Santa  
2 Anita and their horsemen.

3 So as you can see, and some of this may be  
4 hard to follow, but the economics are really out of  
5 whack and unfair. And when we first entered this  
6 state, the Commonwealth two years ago, we started  
7 with zero customers. We just launched TwinSpires.  
8 We were up here -- I think it was probably April of  
9 2007. We got our license. There was some  
10 difficulty in getting the license because we had to  
11 deal with Colonial Downs in order to enter the  
12 market, so we had to have an agreement in place.

13 So as we were going through that process, we  
14 finally accepted the terms. It was similar to terms  
15 that we were told other account wagering providers  
16 were operating under, and then we were told that we  
17 could not enter the state, we would not receive a  
18 license until we also agreed to make our content  
19 that was associated with Churchill Downs available  
20 to the Colonial Downs/EZ Horseplay system,  
21 essentially our competitor.

22 So we tried to keep those issues separate. We  
23 had no problem with providing that content to EZ  
24 Horseplay. We feel that the industry is best-served  
25 by broad distribution, and it's well-documented that

1 Churchill Downs along with Magna, and through the  
2 joint venture, TrackNet Media, has tried to make  
3 racing available as broadly as possible. So we've  
4 gone through dealing with the issues of certain  
5 tracks, including our own at one point, were part of  
6 exclusive agreements that were not available to all  
7 account wagering providers.

8 So we have gone through that process. We've  
9 made our signals available, and then this was  
10 essentially used against us later, where Colonial  
11 Downs basically said, you know, they would not sign  
12 a hub agreement with us because host fees were going  
13 up, and they wanted to blame that on Churchill  
14 Downs, that there was never a real positive to being  
15 associated with racing signals, but there was only a  
16 negative because host fees were going up, which we  
17 felt had been dictated by market forces.

18 So, again, my purpose here today is, one, to  
19 kind of provide a little bit more light on account  
20 wagering because, again, I think most meetings I've  
21 been apart of, we kind of roughly talk about whether  
22 someone is approved or not approved, but to provide  
23 a little bit more detail about what it takes to run  
24 an account wagering provider. It's not just a phone  
25 system. It's not just a computer. There's a lot of

1 hard costs associated with it, and Virginia has not  
2 been a very profitable state to operate in. When  
3 you're dealing with those types of margins, it makes  
4 it difficult to really re-invest in a particular  
5 state, to advertise in a particular state, and we  
6 think that really stifles the ability to grow this  
7 market and to create more dollars for the industry.

8 And, again, the second thing I wanted to do  
9 was point out where I feel we are at this point. I  
10 feel like the Commission has an obligation to set a  
11 hub rate as the statute says, that this hub rate  
12 that would be set by the Commission would basically  
13 be for a year term after the one year temporary  
14 license, and so we feel that this rate would be set  
15 through the end of 2010. At this point, I'm more  
16 than happy to answer any questions.

17 MR. FERGUSON: Brad --

18 MR. BLACKWELL: Yes.

19 MR. FERGUSON: -- do you need Colonial Downs  
20 to exist? Do you need -- can you exist without  
21 Colonial Downs?

22 MR. BLACKWELL: When you say we, you're  
23 talking about TwinSpires, the account wagering  
24 provider?

25 MR. FERGUSON: TwinSpires, yeah.

1 MR. BLACKWELL: As long as we -- no, we don't  
2 need Colonial Downs to exist in order for us to have  
3 account wagering. For TwinSpires to operate, we  
4 operate in Virginia pursuant to a license.

5 MR. FERGUSON: Because they have the franchise  
6 to do horse racing in Virginia?

7 MR. BLACKWELL: Right. There's -- through the  
8 statutory obligation, we're -- under the current  
9 statute, we have to have an agreement in place with  
10 a licensee before we have satisfied our statutory  
11 requirements for a license.

12 MR. FERGUSON: So the state has said that you  
13 must have an agreement with Colonial Downs --

14 MR. BLACKWELL: Correct.

15 MR. FERGUSON: -- to exist?

16 MR. PETRAMALO: And the horsemen.

17 MR. FERGUSON: And the horsemen.

18 MR. BLACKWELL: Correct.

19 MR. MILLER: What are you paying now under  
20 your temporary --

21 MR. BLACKWELL: We are paying 8.3% of all  
22 wagers. One of the other things is -- and I'm glad  
23 you brought that up. Under our previous agreement,  
24 and I assume other agreements are like this, there  
25 was a concept in place where the ADW provider,

1 Colonial Downs, would essentially share in the pain  
2 of host fees going above a certain percent because  
3 it's obviously accepted that host fees can go up, so  
4 that neither party was hit with it because this  
5 is -- I think it's oversimplifying how this  
6 typically works is to say 8.3%.

7 I think staff can probably weigh in on this,  
8 but it's a little bit more complicated than that.  
9 It's not just 8.3%. I don't think everyone is tied  
10 to a certain percent. That was what all ADW  
11 companies averaged out to last year, and I think you  
12 basically took what was paid in source market fees  
13 and did a mathematic formula to realize what was the  
14 average. So that's not truly what probably the  
15 average is today.

16 MR. MILLER: Pardon my ignorance --

17 MR. BLACKWELL: Sure.

18 MR. MILLER: -- but where does the 8.3% go  
19 today?

20 MR. BLACKWELL: Today that 8.3% would be paid  
21 to Colonial Downs, who I think share that with their  
22 horsemen. That goes directly to Colonial Downs.  
23 They share that -- I think, and Ian can -- or  
24 someone else from Colonial Downs can verify, but I  
25 think that they split that 50/50 with their

1 horsemen.

2 MR. MILLER: One other question. This may  
3 have nothing to do with any --

4 MR. BLACKWELL: Sure.

5 MR. MILLER: Nothing to do with anything, but  
6 I was just intrigued by the fact you are paying --  
7 again, you're paying Santa Anita eight --

8 MR. BLACKWELL: We're paying more than that  
9 now, but in 2008, we were paying 8% compared to --

10 MR. MILLER: Colonial Downs was paying?

11 MR. BLACKWELL: -- 3.6%, but again, they can  
12 verify that that was --

13 MR. MILLER: Is there some explanation for why  
14 the deviation?

15 MR. BLACKWELL: I don't know that there's an  
16 explanation, but I think that basically they're  
17 considered a regional ADW. So because they're a  
18 regional ADW, they're only accepting wagers in their  
19 region in Virginia. They were just afforded that  
20 because they were associated with a racetrack, and  
21 typically I think they were receiving the same brick  
22 and mortar rates for -- because they were at the  
23 racetrack, and they said, hey, this is just an  
24 extension of the racetrack, and so they received  
25 more favorable rates.

1 MR. PETRAMALO: Can I ask a question of Brad?

2 MR. BURNETT: Yes.

3 MR. PETRAMALO: I was under the impression  
4 that the Virginia Racing Commission had issued a  
5 six-month temporary license that expired on  
6 June 30th of this year with a fixed rate of 8.4%.

7 MR. BURNETT: 8.3.

8 MR. PETRAMALO: 8.3?

9 MR. BURNETT: I got the minutes right here.  
10 Six-month license effective January 1 through  
11 June 30th, 8.3%.

12 MR. BLACKWELL: That's correct.

13 MR. PETRAMALO: And your requirement or your  
14 request today is that from July 1st through 2010  
15 that the Commission issue a second temporary license  
16 at a hub rate to be determined?

17 MR. BLACKWELL: No. I'm pointing out to the  
18 Commission that a provision in the statute has been  
19 triggered, that it clearly states that if during the  
20 term of the temporary license, which I think we'll  
21 all agree we're under right now --

22 MR. PETRAMALO: Correct. Correct.

23 MR. BLACKWELL: -- and I've attached as  
24 Exhibit B minutes of the December 17th, 2009 {sic},  
25 VRC meeting, which says we were granted a temporary

1 license. So if during the term of a temporary  
2 license, the parties are unable to reach agreement  
3 through mediation -- we sat through mediation. We  
4 were unable to reach an agreement through mediation.  
5 So that's taken place. The Commission shall -- and,  
6 again, I don't think there's any argument as to  
7 whether that's a -- provides permission. I think it  
8 provides -- clearly provides obligation that they  
9 shall specify what the source market fee would be,  
10 that's been triggered. So I don't think there's  
11 anything that takes the Commission outside that  
12 obligation.

13 MR. WEINBERG: There was a subsequent meeting  
14 and action by the Commission in February post  
15 mediation. The Commission received the mediator's  
16 report, took action, and set the rate at 8.3  
17 pursuant to the statute.

18 MR. LERMOND: I believe the rate was set  
19 before the mediation took place.

20 MR. BURNETT: I thought it was.

21 MR. BLACKWELL: It set at the December 17th  
22 meeting.

23 MR. WEINBERG: Excuse me. We came back from  
24 mediation. We requested to be heard on the baseball  
25 arbitration provision. This Commission ruled that

1 that provision was not applicable, that it was going  
2 to set a rate based upon the preceding sentence and  
3 did so. Mr. Blackwell wasn't here.

4 MR. BLACKWELL: No. I was not privy to that  
5 being an agenda item.

6 MR. WEINBERG: But it was on the agenda, and  
7 it was done. I did not bring the minutes with me,  
8 but I'm fairly confident that either at the January  
9 or February meeting, this Commission reconvened and  
10 accepted the mediator's report and took action  
11 pursuant to the statute.

12 MR. BURNETT: I don't dispute your  
13 recollection, although I recall there being some  
14 discussion of giving Mr. Blackwell the opportunity  
15 to speak about this issue. If I'm not mistaken, I'm  
16 looking at the mediator's reporter right now, we did  
17 not have in front of us the two things that the  
18 statute requires, which are the last offer and all  
19 that information, so we couldn't do that if we  
20 wanted to.

21 MR. WEINBERG: Well, with all due respect, you  
22 elected not to. I was prepared to provide you that,  
23 but this Commission ruled that that was not  
24 applicable in this instance, that the preceding  
25 sentence was.

1 MR. MILLER: Question.

2 MR. BURNETT: Please.

3 MR. MILLER: Jim, are you suggesting then that  
4 TwinSpires is locked in at 8.3% for an additional  
5 one-year term from -- this says from the one-year  
6 term of the applicant's temporary license, but the  
7 temporary license ended in six months instead of a  
8 year.

9 MR. LERMOND: It could be a year if they  
10 extended it.

11 MR. WEINBERG: I am absolutely disagreeing.  
12 This Commission elected to give TwinSpires a  
13 six-month license. That's what it -- which it did  
14 at its -- I'm sorry. I believe it was at its  
15 February meeting and has taken action under the  
16 statute. So continuing -- I apologize. I don't  
17 have the statute in front of me, but my recollection  
18 is the ability to renew that license is assuming  
19 that mediation or negotiations are continuing, but  
20 we have been through the ongoing part, the  
21 negotiations, the mediation, it has ended, and the  
22 Commission awarded a six month -- a license that  
23 terminates June 30th at 8.3%.

24 MR. LERMOND: We did that in the December  
25 meeting. It's right here in the minutes.

1 MR. WEINBERG: No. I suggest to you -- with  
2 all due respect, you came back. You had the  
3 mediator's report. Commissioner Miller made the  
4 suggestion should we call Mr. Blackwell. There was  
5 some discussion of Mr. Blackwell's absence from this  
6 meeting. I'm sorry. I don't have the transcript.

7 MR. CANAAN: I think that was February.

8 MR. PETRAMALO: Well, it had to be February  
9 because I was not at that meeting.

10 MS. RICHARDS: Frank wasn't there.

11 MR. PETRAMALO: The mediation was on February  
12 2nd in Richmond.

13 MR. WEINBERG: Right. The report was  
14 published before the meeting because I remember  
15 forwarding it to Mr. Harrison before the meeting.  
16 If you have the transcript of the February meeting,  
17 I think it will --

18 MR. FERGUSON: So based on that?

19 MR. WEINBERG: Well, I would suggest to you --  
20 my reaction is I disagree with about 85% of  
21 everything Mr. Blackwell has said. If you are  
22 asking me what is the procedure, I believe this  
23 Commission have taken final action, the 30 days for  
24 appeal has run, and if it is inclined to reconsider  
25 the license application, I would suggest an informal

1 fact-finding conference needs to be scheduled and  
2 the parties need to be heard.

3 MR. MILLER: Okay. So you are suggesting that  
4 as of June 30th of this year, their license as an  
5 ADW; is that right?

6 MR. BLACKWELL: Yes.

7 MR. MILLER: Provider ceases in Virginia?

8 MR. WEINBERG: Correct.

9 MR. MILLER: They can no longer operate in  
10 Virginia.

11 MR. WEINBERG: They can come to the  
12 Commission.

13 MR. MILLER: They can come back and ask for a  
14 license.

15 MR. WEINBERG: They do not need a contract  
16 with Colonial Downs. The statute makes it clear.  
17 You pay the rate set forth in the statute. You get  
18 a license. So the infirmity that Mr. Blackwell  
19 complained about is gone. Don't have to talk to us.  
20 Don't have to talk to the horsemen.

21 MR. MILLER: And they would be tied to the  
22 statutory rate that the legislature set in the last  
23 session or whatever session of the General Assembly  
24 it was, which is?

25 MR. PETRAMALO: Ten percent.

1 MR. MILLER: Ten percent.

2 MR. BLACKWELL: Ten percent, plus 1% to the  
3 Breeders' Fund, plus a half percent to the  
4 Commission. So essentially 11 and a half of the 20  
5 that's available would go to Virginia in some form  
6 or fashion.

7 I will state for the record that we, one,  
8 question the validity of the statute and the way it  
9 works. We think it has serious constitutional  
10 issues with it. So I think that no one is surprised  
11 by that. I'm sure that others will agree in that  
12 stance.

13 The second thing I would like to say is that,  
14 one, I was not privy that action had taken place in  
15 February. I was aware that and was at the meeting  
16 in December where a six-month temporary license was  
17 issued at a rate of 8.3%. No change has been made  
18 since that point. We engaged in conversations with  
19 Colonial Downs as required by the Commission. We  
20 attended mediation as required by the Commission. I  
21 was informed by Mr. Weinberg at the mediation that  
22 he would merely inform the Commission that mediation  
23 was unsuccessful. There was no discussion of taking  
24 any type of further action. So if something  
25 occurred, you know, again, I don't think that this

1 process has demonstrated a good faith effort by  
2 Colonial Downs. I think what it's shown is a desire  
3 to basically push TwinSpires out of the market.

4 There was -- in December, there was a request  
5 to deny us a license in general, and as you may  
6 recall, we discussed the consequences of that, one,  
7 we had the ability to request a hearing if that took  
8 place and, two, if we were denied a license and  
9 unable to take wagers, then our customers would  
10 migrate to other places, including EZ Horseplay.

11 So it's obviously, you know, an attempt, you  
12 know, to put us out of business, put us out of the  
13 state. Under the new statute, which they have  
14 pushed, leaves nothing for account -- an  
15 out-of-state account wagering provider. I'm sure  
16 that Mr. Scoggins on behalf of XpressBet can  
17 basically speak to the economics of that as well.

18 And that's where I suggest respectfully  
19 that -- I'm really concerned with the direction of  
20 Virginia racing because I think you're taking  
21 companies, out-of-state providers who are investing  
22 in the technology, investing in websites, investing  
23 in things that are going to drive customers to our  
24 store and you're basically forcing them out of the  
25 market or you're decreasing the margins to the point

1 where they cannot do that. They cannot compete with  
2 things.

3 As I will also point out, there will be other  
4 forms of wagering that we will be competing with in  
5 the future. There's already discussions of online  
6 poker in California right now, and right now account  
7 wagering is the arm of the industry that has the  
8 opportunity to compete with these other forms of  
9 interests and account wagering is obviously  
10 returning, you know, money to the industry. I don't  
11 think anyone will dispute that. When I go back and  
12 look and we went from zero customers and zero  
13 dollars in 2007 to 2008, we paid, you know, about  
14 \$720,000 to Colonial Downs.

15 MR. FERGUSON: So I'm hearing two things. You  
16 now do have the right to work outside of the  
17 parameters. You could cut a deal directly with the  
18 Virginia Racing Commission, is that --

19 MR. BLACKWELL: No.

20 MR. FERGUSON: And pay ten point something  
21 percent, or are you still forced to go through  
22 Colonial Downs?

23 MR. BLACKWELL: Right now we're currently  
24 operating under the current statute, and so that's  
25 what we're dealing with today. I feel that, you

1 know, right now regardless of what's happened in a  
2 separate meeting, I think the Commission has an  
3 obligation whether they -- I wasn't there to  
4 understand if it was properly explained. I wasn't  
5 there to understand what took place. I'd be more  
6 than happy to read minutes and try to catch up, but  
7 I still think that it does not take away the  
8 obligation.

9 MR. MILLER: Let me see if I can boil this  
10 down to what our choices are here today.

11 MR. BLACKWELL: Sure.

12 MR. MILLER: One choice would be, and correct  
13 me if I'm wrong, I'm not saying this is the choice  
14 we made, but let me know if this is off the wall.

15 One choice is what you're suggesting is in  
16 accordance with the statute that is now written and  
17 in light of the statute that was passed that becomes  
18 effective July 1, what you are seeking here today is  
19 that the Virginia Racing Commission set a hub rate  
20 for you today under the old statute that would run  
21 for one additional year as a, quote, temporary,  
22 unquote, license for an additional year at whatever  
23 hub rate we would set --

24 MR. BLACKWELL: Correct.

25 MR. MILLER: -- regardless of the statute that

1 was passed that goes into effect July 1.

2 MR. BLACKWELL: Right.

3 MR. MILLER: And in that event, what we would  
4 be doing is deferring your -- make your objection  
5 for an additional year because in an additional  
6 year, you know -- well, in an additional year,  
7 you'll be back saying, you know, that statute that  
8 was passed that goes into effect July 1, 2009, is  
9 unconstitutional, et cetera, et cetera, et cetera.  
10 Right?

11 MR. BLACKWELL: Right.

12 MR. MILLER: So that's your best case scenario  
13 today if we set a hub rate that's satisfactory --

14 MR. BLACKWELL: Well, right now I guess we're  
15 operating under the current state, and I was never  
16 under the impression -- and I've had numerous  
17 conversations with staff -- that anything had  
18 changed. We were still operating under a temporary  
19 license. This obligation does not go away. The  
20 fact that maybe the Commission chose not to take  
21 action does not alleviate the obligation. It does  
22 not say you have a certain --

23 MR. MILLER: You're asking us to comport with  
24 the statute.

25 MR. BLACKWELL: Absolutely.

1 MR. MILLER: That's the law.

2 MR. BLACKWELL: Absolutely. I don't think it  
3 has a -- again, I wasn't privy to this meeting to  
4 know what was discussed, if the Commission  
5 discussed, well, we think shall means something  
6 else. I don't know what, but I think when you read  
7 the statute, it's very clear what the Commission's  
8 obligation is.

9 MR. MILLER: Can I just continue?

10 MR. BURNETT: Please.

11 MR. MILLER: I would point out that that would  
12 be your best case scenario, and then your worst fear  
13 scenario under that, even under -- if we operate  
14 under today's statute and do what you suggest, set a  
15 hub rate today that would run for an additional year  
16 to keep you as a temporary licensee under whatever  
17 hub rate we set today --

18 MR. BLACKWELL: Right.

19 MR. MILLER: -- for an additional year --

20 MR. BLACKWELL: Right.

21 MR. MILLER: -- would be that the Commission  
22 would say, okay, we're going to set a hub rate for  
23 this additional year, but in light of the fact the  
24 Virginia legislature has passed a law that goes into  
25 effect July 1 --

1 MR. BLACKWELL: Right.

2 MR. MILLER: -- that sets forth what they  
3 describe as an equitable, fair rate --

4 MR. BLACKWELL: Right.

5 MR. MILLER: -- for out-of-state providers,  
6 that we as the Commission feel that we should take  
7 cognizance, judicial notice, whatever you want to  
8 call it of what that wise legislature did, because  
9 they always know what's best --

10 MR. BLACKWELL: Right.

11 MR. MILLER: -- and therefore, we would just  
12 simply impose what they set forth in the statute  
13 that goes into effect July 1. And then you go on  
14 the attack immediately instead of waiting for one  
15 year, I would suggest, because we would be setting  
16 an 11 and a half percent rate and to say that's  
17 what -- you know, that's the heart -- the moral soul  
18 of Virginia has spoken. We're just going to pass it  
19 on.

20 MR. BLACKWELL: Right. And I appreciate your  
21 comments, Commissioner Miller, and I would like to  
22 say two things on that. One, I would disagree that  
23 the 11 and a half percent as I mentioned before and  
24 alluded to, I disagree that that is an equitable and  
25 fair percentage.

1 MR. MILLER: Don't take me wrong.

2 MR. BLACKWELL: Right. I understand.

3 MR. MILLER: I certainly don't contest that.

4 MR. BLACKWELL: My second point is the statute  
5 is also clear, and I'll read from it again. In  
6 setting this rate, the Commission shall consider  
7 among other factors, and granted that's wide open,  
8 but the contractual agreements that other advanced  
9 deposit account wagering licensees have in place.

10 So I think, you know, you're required to take  
11 a look at that, and I think the thing is I felt like  
12 TwinSpires has been kind of singled out, as I  
13 mentioned, and Mr. Weinberg can, you know, disagree  
14 with 85% of what I say and maybe I'll increase that  
15 factor here, but I really felt like Colonial Downs  
16 did not want us to have a hub agreement.

17 Now, why would they not want us to have a hub  
18 agreement? Only two things make logical sense,  
19 because I think we bring value to this market. I  
20 think we bring a strong brand name. I think we  
21 bring a quality product that Colonial Downs has  
22 benefited greatly from. In fact, they've benefited  
23 economically more than we have from our own product,  
24 our own connections in this industry. So that  
25 doesn't make a lot of sense. It's one of two

1 things. Either they want to eliminate us as  
2 competition and have people use their EZ Horseplay  
3 system or they were wanting to keep us from having a  
4 hub agreement so that we are subject to this new  
5 statute come July 1.

6 I just don't feel like they put forth a good  
7 faith effort. To me, they held out. They didn't  
8 want us to have an agreement, and they weren't  
9 required to give us an agreement. There's nothing  
10 that requires them to have an agreement, but this  
11 has been a problem in the past, and I think that's  
12 why this statute is in place.

13 There is people here with a lot more history  
14 on this subject that I am. I've been, I guess,  
15 coming to these meetings for about two years now,  
16 but this language was in place before. I almost had  
17 to use it the first time we tried to get a license  
18 here because I could not get a hub agreement, then I  
19 had to use it two years later.

20 So I think this statute is in place to prevent  
21 someone like a TwinSpires, who's coming in, who's  
22 been a good corporate citizen, you know, for two  
23 years, who has paid their way, has grown their  
24 business, who's invested in the industry, from being  
25 held out of the market and also held out at rates

1 that are unfair. I think there's many things in  
2 this statute that were well thought out, and I think  
3 that this statute is in place to allow someone to  
4 come in and not be held -- kept out of the market.  
5 That's the statute that we have before us today.  
6 Again, I could disagree with, you know, whether it  
7 should be in place all together, but that's what I  
8 have before me and the only thing that I can discuss  
9 in front of this Commission today.

10 MR. MILLER: To save some time, should we  
11 consider today or shortly or sometime within the  
12 next few weeks time frame, if we were to decide that  
13 we agreed with you, that you should be granted under  
14 this statute --

15 MR. LERMOND: Right.

16 MR. MILLER: -- that one year additional  
17 temporary license, this is directed at -- the 8.3%  
18 is an accurate reflection now of the average of what  
19 various out-of-state ADW providers are paying.

20 MR. LERMOND: When I gave you the 8.3% in  
21 December, that was based on the first three quarters  
22 of 2008. That was the most current information I  
23 had because I calculate it quarterly.

24 MR. MILLER: So you would look at that again.

25 MR. LERMOND: I may look at it again, but I

1 think the statute says that you have two choices.  
2 A, the advanced deposit account wager's applicant  
3 best offer or the best offer of the unlimited  
4 licensee.

5 MR. BURNETT: Gentlemen, let's get some focus  
6 on this. The statute may be well thought out and  
7 all the nice things that Brad has been saying about  
8 our legislature, but they were thinking ahead of me  
9 because I'm having some difficulty reconciling a  
10 couple of sentences in this statute, and I'll  
11 preserve my criticism of those who write them for  
12 another time, but help me with this.

13 In the -- it says if during the term of the  
14 temporary license -- we granted a temporary license.  
15 If during the term of a temporary license, the  
16 parties are unable to reach agreement through  
17 mediation, the Commission shall specify a  
18 percentage, all right, et cetera, et cetera, et  
19 cetera, to be paid. In doing so, we shall consider  
20 these various factors of the contractual agreement,  
21 right? That sounds like some discretion that we  
22 give -- you know, come up with some number that's  
23 fair. It sounds like it's a charge to be equitable  
24 to me, then the following sentence says that the  
25 percentage shall be the best offer made by either,

1 one or the other. Now, which is it? Those two --  
2 help me out.

3 MR. WEINBERG: This is what was determined in  
4 February. I can only --

5 MR. BURNETT: Thank you.

6 MR. WEINBERG: That what was applied was C.  
7 Not what you're looking at in A. That if a  
8 temporary license is granted, which is what the  
9 Commission decided to do, then the temporary license  
10 shall pay to the Commission the one-half based upon  
11 the average. That was the Commission's conclusion  
12 in February, that C applied. Not the sentences you  
13 just read.

14 The interpretation then was at the conclusion  
15 of this temporary license, if the parties still have  
16 not reached an agreement during the term of the  
17 temporary license, then for the renewal license,  
18 this baseball arbitration provision applies.

19 MR. BURNETT: For the second six months?

20 MR. WEINBERG: Whatever the term the  
21 Commission decides it shall be.

22 MR. BURNETT: Help me now.

23 MR. WEINBERG: Well, then the -- well, no.  
24 Then you have to give a one-year license, because  
25 that's what the last sentence of A says.

1 MR. BLACKWELL: Once you have unsuccessful  
2 mediation.

3 MR. WEINBERG: No. That is not what the  
4 Commission --

5 MR. LERMOND: Once the year is up.

6 MR. WEINBERG: Once the first temporary  
7 license expires.

8 MR. FERGUSON: Which is June 30?

9 MR. WEINBERG: June 30.

10 MR. CANAAN: And the reason it was June 30 is  
11 at the February meeting, you had received a  
12 legislative report on a pending house bill that may  
13 take effect July 1st. So you specifically said, oh,  
14 if that happens, we need to go to June 30.

15 MR. BURNETT: Because it's a six-month  
16 license?

17 MR. CANAAN: Correct.

18 MR. WEINBERG: That's right.

19 MR. CANAAN: Because there may be a new  
20 statute July 1st, and we'll cross that bridge when  
21 we get to it.

22 MR. BURNETT: Yeah. And maybe those of you  
23 that are involved with the legislature and  
24 interpreting what -- you know, how they write, I'm  
25 not sure I understand in plain English what it

1 means, shall be effective for one year from the  
2 one-year term of the applicant's temporary --

3 MR. FERGUSON: It made the assumption that we  
4 gave them a one year temporary.

5 MR. LERMOND: Six-month term, correct.

6 MR. BURNETT: It says from the one-year term  
7 of, is it from the beginning of the one-year term or  
8 from the end of the one-year term? I know which way  
9 each side wants to read that, but it's opposite ends  
10 of the spectrum. To me, it just invites multiple  
11 interpretations.

12 And is the one-year term of the applicant's  
13 temporary license, does that mean the sum of two  
14 six-month licenses? Is that what we're talking  
15 about?

16 MR. BLACKWELL: Right.

17 MR. BURNETT: There is no single license. He  
18 got one six-month license, and he gets another  
19 six-month license. You have two licenses during  
20 that period of time, and they refer to it as a  
21 one -- a one-year term of the applicant's temporary  
22 license in the singular. There never was a one-year  
23 term.

24 MR. BLACKWELL: If I may --

25 MR. BURNETT: To me, it's not well-written and

1           it just makes it that much more difficult for us to  
2           work with.

3           MR. BLACKWELL: To me, the spirit of the  
4           statute, it talks about, you know, a six month and  
5           it talks about a one year. It talks about an  
6           additional one-year term. So essentially in this  
7           situation, it provides -- again, I think the spirit  
8           of this is to keep someone from being kept out of  
9           the market. And that's clearly, you know, what is  
10          going on now and now it's complicated by the fact  
11          that there is a statute out there that provides an  
12          even greater economic advantage to Colonial Downs  
13          here.

14          MR. FERGUSON: Does the state of Virginia have  
15          the right to keep you out of the market?

16          MR. WEINBERG: Can I -- I mean, we've been  
17          accused of bad faith I think half a dozen times. I  
18          would like to respond to our motivation.

19          MR. MILLER: I don't think -- does anyone want  
20          to hear a response to that motivation?

21          MR. WEINBERG: Okay. Fair enough.

22          MR. MILLER: I always assumed -- when I was a  
23          judge, I always assumed, you know, you have the  
24          complete and absolute mirror image counter argument  
25          to everything he says.

1 MR. WEINBERG: Fair enough.

2 MR. BURNETT: What I would like to focus on,  
3 gentlemen, particularly given the late hour is what  
4 this Commission's obligation is, if any, today.

5 MR. FERGUSON: That's why I asked the  
6 question.

7 MR. BURNETT: What obligation do we have and,  
8 Brad, through no fault that I'm prepared to weigh  
9 against him was unaware or was not here, and I will  
10 read you the note in the minutes from the February  
11 meeting.

12 A discussion ensued about the TwinSpires  
13 temporary license. Mediation was held on  
14 February 2nd that did not result in a settlement.  
15 Chairman Burnett made a motion to continue the  
16 temporary license of TwinSpires until July 1st, the  
17 date of the new ADW legislation ostensibly goes into  
18 effect. The motion was seconded by Commissioner  
19 Miller and carried unanimously.

20 Just so everybody knows where we stand, we as  
21 a Commission in February said TwinSpires got a  
22 license at 8.3% from now until June 30th -- well,  
23 July 1st here.

24 MS. BOUZEK: If I can say in March,  
25 Mr. Weinberg stated that that needed to be changed

1 to June 30th.

2 MR. BURNETT: I think the only thing we  
3 changed, so we don't send Vic across the way again.

4 MR. WEINBERG: I think if you checked the  
5 transcript, Mr. Canaan made that observation, that  
6 it should be June 30th.

7 MS. BOUZEK: Or one of the two lawyers.

8 MR. BURNETT: Made that observation in  
9 February?

10 MR. WEINBERG: In February.

11 MR. BURNETT: And apparently we ignored him,  
12 how could we have done that?

13 MR. CANAAN: I can't believe it.

14 MR. PETTY: First it's ever happened.

15 MR. WEINBERG: My impression is that the  
16 Commission has no obligation to do anything today.  
17 It has granted its license, a temporary license. If  
18 TwinSpires wants to file an application for a new  
19 temporary license or an extension of a temporary  
20 license, I suppose the Commission could entertain  
21 that between now and June 30th.

22 MR. BLACKWELL: If I may --

23 MR. WEINBERG: But I would suggest to you  
24 after June --

25 MR. PETRAMALO: Well, let me make a couple of

1 observations. First of all, it's clear that my  
2 hiking in the Himalayas in February completely  
3 screwed up everything because I missed that meeting.

4 MR. BURNETT: You would have fixed it.

5 MR. PETRAMALO: I would have fixed it.  
6 Seriously, it's interesting. It's interesting  
7 that -- the point that Brad raises is very  
8 interesting and maybe -- I would suggest the  
9 Commission doesn't need to do anything today, which  
10 is not to say that that is denying Brad's request,  
11 but maybe you ought to ask for formal written  
12 position papers from the parties because this is the  
13 first time that I've even thought about this as an  
14 issue that Brad is raising, and then you can take it  
15 from there. And at the very least, we could take it  
16 up at the next meeting after everybody had the  
17 opportunity to read in writing what everybody else  
18 has to say on the issue.

19 MR. BURNETT: When you say position papers,  
20 you're speaking of legal position --

21 MR. PETRAMALO: Yeah.

22 MR. BURNETT: -- as opposed to last offers and  
23 all that?

24 MR. PETRAMALO: No, no. Legal positions.  
25 What the legal status is of the temporary license

1 with regard to TwinSpires -- the issue with regard  
2 to TwinSpires.

3 MR. FERGUSON: That's why I want to get back  
4 to my question. Is the state of Virginia required  
5 to let you operate in the state of Virginia?

6 MR. PETRAMALO: If they meet the licensing  
7 requirements.

8 MR. FERGUSON: They're required.

9 MR. PETRAMALO: Oh, yeah. Possession of a  
10 license issued by the Virginia Racing Commission is  
11 essential in order to operate in the state of  
12 Virginia.

13 MR. FERGUSON: We're required to give him a  
14 license?

15 MR. PETRAMALO: Only if he meets the licensing  
16 requirements.

17 MR. CANAAN: Yeah, if he meets the statutory  
18 requirements.

19 MR. FERGUSON: We are required, not we have  
20 the option to --

21 MR. PETRAMALO: No.

22 MR. FERGUSON: -- or we may.

23 MR. PETRAMALO: If they meet all of the  
24 criteria under the statute, you're required to  
25 license him.

1 MR. FERGUSON: It's like zoning only easier.

2 MR. PETTY: Excuse me?

3 MR. FERGUSON: It's like zoning only easier.

4 MR. PETTY: If I may also point out, one issue  
5 also on this is -- all these issues about who should  
6 charge what and repayment will be resolved either  
7 between the parties or through the statute or  
8 whatever at some point, but what concerned me when  
9 we went through this process about temporary  
10 licenses is if Commissioner Miller's best case  
11 scenario for TwinSpires were to unfold, then  
12 TwinSpires would, by the virtue of having this  
13 temporary license, avoid making any contribution to  
14 the Breeders' Fund until whenever it expired in  
15 2010.

16 I think that is a weapon that every company is  
17 going to come in and endeavor to use in order to not  
18 have to pay the Breeders' Fund 1% and having sat  
19 here through one hundred million dollars of ADW with  
20 no contribution -- TwinSpires, for example, had they  
21 been required to pay that 1% when they first got  
22 their license would have contributed \$100,000  
23 roughly. They paid 700,000 to the horsemen and  
24 Colonial. If you do the math, it would be about a  
25 hundred grand to the Breeders' Fund.

1           In their current license, beyond the  
2 parameters of the recently enacted legislation, I  
3 think they have an opportunity to say, "We don't  
4 have pay until our temporary license has completely  
5 expired." I think other companies will come in here  
6 and try similar strategies. I just throw that out  
7 to further muddy the waters.

8           MR. BURNETT: I can add a little clarity to  
9 some of this. Jerry did point out that the motion  
10 should be through June 30. I amended my motion to  
11 say until the statute takes effect if the governor  
12 signed it. So I think the motion as it stands from  
13 the February meeting was through June 30th at  
14 midnight.

15           We also said that -- I'm quoting, if I  
16 understand the motion, we will continue the status  
17 quo through July 1, at which time we anticipate that  
18 the new statute either as it currently stands or as  
19 amended by the governor or legislature will go in  
20 effect and that we specifically in this ruling  
21 provide the opportunity for TwinSpires to come back  
22 to us and petition for any change they deem  
23 appropriate as a result of this ruling.

24           So that was what I was remembering, that we  
25 were trying -- because Brad wasn't here, we wanted

1 to provide him and his company the opportunity to  
2 come here and say, you missed it. You should have  
3 done it differently under the statute, which  
4 essentially is what I'm hearing today.

5 MR. BLACKWELL: Right. And if I may,  
6 Chairman, I have a copy of the December 17th meeting  
7 minutes, and I was reflecting back upon those, I was  
8 at that meeting. And in issuing the temporary  
9 license, the motion that you made, Chairman, was  
10 that we be granted a six-month temporary license,  
11 and there was two conditions. One, that we try to  
12 work something out before January 1st; the second is  
13 that we would participate in mediation.

14 Then the motion went on to state that if  
15 mediation was unsuccessful, then the Commission will  
16 determine whether to revoke our license. It didn't  
17 talk about taking other steps. So I think at the  
18 February meeting, the Commission was merely  
19 following up with the motion that was passed in  
20 December, to acknowledge that the mediation was  
21 unsuccessful and decide whether you were going to  
22 revoke our license at that point in time.

23 MR. BURNETT: I think that was our intention.  
24 I think that was our intention was to continue the  
25 statute quo.

1 MR. BLACKWELL: Right. Right. And so I  
2 disagree with Mr. Weinberg that that February  
3 meeting was anything other than that, and it seems  
4 like the minutes that you were reading back into the  
5 record did not reflect any further action or  
6 contemplation of what the statute requires. And  
7 that's why initially I was going to be on the agenda  
8 last month and actually trying to make an effort to  
9 work out something with Colonial Downs during that  
10 time through TrackNet Media and we were  
11 unsuccessful, once again, in trying to reach some  
12 type of hub agreement.

13 MR. MILLER: Mr. Chairman?

14 MR. BURNETT: Please.

15 MR. MILLER: Following up on what Glenn -- I  
16 think Glenn just stated. And since you highlighted  
17 the portion in there where we indicated that  
18 TwinSpires should have the opportunity to come back  
19 to present whatever they want to present to change  
20 the circumstances that we imposed on them before or  
21 accept or whatever they were going to do, I suggest  
22 that we set for our next meeting in May for further  
23 discussion of this matter and that hope -- and  
24 TwinSpires in the meantime and that Colonial Downs  
25 in the meantime, anyone -- any other party in the

1 meantime present us with legal briefs as to what  
2 they think this Commission -- candidly, what this  
3 Commission must do or what this Commission should  
4 do.

5 MR. FERGUSON: Would Commissioner Miller be  
6 willing to be a mediator?

7 MR. MILLER: No. I can't even get my daughter  
8 straightened out.

9 MR. BURNETT: Well, I agree with Mr. Miller.  
10 I'm concerned about this question of what affect the  
11 statute, new statute going into effect on July 1  
12 will have on existing contracts, which is one class  
13 or group of ADW providers, and then that class of  
14 one, TwinSpires with its temporary license will go  
15 up until the second before the statute goes into  
16 effect. And what, if any, action we can take prior  
17 to July 1 may affect either one of those or both of  
18 those classes and what action we can or can't take  
19 after July 1.

20 I think, Jim, you said earlier, I'm noticing  
21 in the transcript that it was your view that after  
22 July 1, we would probably divest of any jurisdiction  
23 to make any decision about these licenses outside of  
24 what's said in the statute. I just think it's  
25 something that we -- I think Commissioner Miller is

1 appropriately anticipating that this could turn into  
2 something of a hornet's nest of why not and try and  
3 deal with it now before July 1 rather than make it  
4 that much more difficult after July 1.

5 MR. FERGUSON: So any agreements we have would  
6 be grandfathered after July 1?

7 MR. BURNETT: That's the question.

8 MR. PETRAMALO: Well, that's interesting,  
9 because then you would -- it would seem to me have  
10 to expand the scope of the interested parties.  
11 You'd have to request a brief or a position paper  
12 from all the currently licensed ADWs in addition.

13 MR. MILLER: You know, that's a good point,  
14 Frank. I'd like to hear from every licensee.

15 MR. PETTY: There's only three.

16 MR. MILLER: Well, whoever they are. I would  
17 like their observation about what this legislature  
18 did.

19 MR. BURNETT: I was listening with one ear  
20 while I was reading the transcript and, Glenn, I  
21 thought I was hearing him say others would come in,  
22 and I think --

23 MR. PETTY: I certainly would if I were them.

24 MR. BURNETT: Trying to hold the contract in  
25 place until it expires.

1 MR. PETTY: Until it expires, that's what I  
2 would do.

3 MR. MILLER: Because they're going to want to  
4 know what -- how this is going to eventually affect  
5 them. So I would suggest that we give them  
6 notice --

7 MR. BURNETT: I'm looking down towards our  
8 counsel for perhaps drafting that notice and request  
9 to all.

10 MR. PETRAMALO: You've got XpressBet, YouBet,  
11 TVG, EZ Horseplay is already here, and TwinSpires.

12 MR. MILLER: We'll have to set it up as a  
13 formal notice for a formal hearing with counsel and  
14 all that.

15 MR. BURNETT: If need be, we can e-mail back  
16 and forth to craft what we believe the precise legal  
17 questions are that we would like the applicants to  
18 address.

19 MR. MILLER: Yeah.

20 MS. DILWORTH: Yes, I can do that.

21 MR. BURNETT: You can propose that to us. We  
22 won't make any changes.

23 MR. PETRAMALO: Interesting.

24 MR. BURNETT: Yes, sir. Mr. Scoggins?

25 MR. SCOGGINS: Greg Scoggins with XpressBet.

1 I have a formal question more probably for counsel  
2 than for the Commission, and that is what would be  
3 the formal basis for the request by the Commission.  
4 I haven't heard of any formal proceeding that would  
5 be at issue. I mean, there's no parties joined at  
6 this point.

7 MR. BURNETT: The controversy had --

8 MR. SCOGGINS: It's not a contested case for  
9 purposes of the various pleadings that Commissioner  
10 Miller has raised. In other words, I would see it  
11 more as each party state their case and put it in  
12 front of us and let us cogitate over it as opposed  
13 to there being some kind of formal proceeding over  
14 which you could mandate, subpoena, do things of that  
15 nature.

16 MR. PETRAMALO: I kind of agree with that. My  
17 suggestion was we just get the ball rolling in terms  
18 of finding out what the position is of each of the  
19 affected parties before you have to make a decision  
20 of whether or not to go forward with formal  
21 proceedings, et cetera.

22 MR. BURNETT: What is the longest notice we  
23 have to give for a formal hearing? Thirty days?

24 MR. WEINBERG: If you're doing an informal  
25 fact-finding conference, I think it's reasonable

1 notice. I'm not sure. It's no more than 30 days.

2 MR. BURNETT: Right. If that's the case, it  
3 strikes me that we could burn that bridge when we  
4 get to it at our next meeting and just see where we  
5 are from looking at these legal briefs, and then at  
6 that point after looking at all this, we feel  
7 compelled to have a formal hearing, we could still  
8 get one in June and issue a formal ruling if that's  
9 indicated.

10 MR. PETRAMALO: I'm not familiar with the  
11 state procedures, but isn't it just simply a matter  
12 of the Commission writing a letter to each one of  
13 its licensees saying this statute is passed. We'd  
14 be interested in hearing from you what affect, if  
15 any, it has on your existing license and your  
16 contract with Colonial and the horsemen? Can't you  
17 do that?

18 MS. DILWORTH: Yeah. I think we can do that.

19 MR. BURNETT: I think we can do that.

20 MS. DILWORTH: I think that it would probably  
21 be more appropriate to simply invite comments or  
22 invite legal basis on which each entity, if they so  
23 wish to express an opinion, as to the statute's  
24 affect on them and argument in support of that, but  
25 I will say that the attorney general's office has

1 looked at it and does have its own analysis as well.

2 MR. BURNETT: It's a head start. Good. That  
3 will be helpful.

4 Greg?

5 MR. SCOGGINS: I guess I'm still puzzled by  
6 the fundamental question, which is you're going to  
7 seek input from folks, and then to what end?

8 MR. FERGUSON: You're looking for a spark?

9 MR. SCOGGINS: No. I can tell you what our  
10 position is going to be today, and I can provide you  
11 with the information. My question is with the  
12 benefit of whatever writings we submit, whatever  
13 writing Colonial submits on behalf of itself and EZ  
14 Horseplay, et cetera and so forth, what's the end  
15 game?

16 MR. FERGUSON: To help us.

17 MR. BURNETT: Well, come July 1 will we not be  
18 urged to take or sometime into July urge when the  
19 first payment is due, when it doesn't constitute 11  
20 and a half percent, I think someone is going to be  
21 urging us to lower the boom on those that don't pay  
22 the 11 and a half percent, at which point we'll have  
23 to make a decision on.

24 MR. SCOGGINS: There's any number of  
25 scenarios, but at that point in time you'll be faced

1 with a formal hearing again, and there will be all  
2 of the presentation of the evidence again. I think  
3 it would be a bit of a duplication of effort on your  
4 part to have an informal discussion on this with all  
5 that information only to be overwhelmed with it yet  
6 a second time when it comes to an issue of legal --  
7 that has binding legal impact.

8 It's one thing for us to engage in discussion  
9 of, well, we think it might be this. We think it  
10 might be that. Obviously, the AG's office has an  
11 opinion that hasn't been shared yet, and that's  
12 appropriate because it's part of legal advice.  
13 Colonial has a view they haven't shared yet. We've  
14 kind of shared our view, but it's one thing to talk  
15 about it in context of a friendly discussion. It's  
16 another thing to talk about it in context of a  
17 contested legal case that has implications that  
18 affects contracts that are already in place.

19 MR. MILLER: Mr. Chairman?

20 MR. BURNETT: Go ahead.

21 MR. MILLER: If the other providers don't want  
22 to participate, we certainly do have a -- we have an  
23 issue before us right now with TwinSpires. It's  
24 important to TwinSpires. And so I think if -- I  
25 think we need to set a hearing for May as to

1 TwinSpires' request. I mean, obviously, they're  
2 requesting an extension of a temporary license; is  
3 that not correct?

4 MR. BLACKWELL: A request for the Commission  
5 to follow its statutory obligation to set a rate for  
6 one year past the one-year temporary license.

7 MR. MILLER: As they interpret this statute,  
8 so we're going to set a hearing on that motion, on  
9 that request, aren't we?

10 MR. BURNETT: I don't have a problem with  
11 that.

12 MR. MILLER: So what I'm suggesting, he's  
13 going to have his lawyers come in with their stuff,  
14 I assume Colonial Downs will want -- they can either  
15 respond or not respond with their stuff, Frank can  
16 participate with his stuff if he wants to, and  
17 anyone that doesn't want to participate, feel free  
18 not to, but we're going to have to make a decision  
19 on TwinSpires.

20 MR. BURNETT: Well, go to the other class of  
21 ADW providers or licensees out there, it strikes me  
22 that this is the closest the litigant is going to  
23 getting an advisory opinion and from a tribunal.

24 MR. MILLER: Exactly. They can either  
25 participate or not.

1           MR. BURNETT: They will give them a head start  
2 on -- and maybe they can talk us out of a position  
3 that the attorney general has helped us with or talk  
4 us into something, but it seems like it might help  
5 you as much as hurt you, but proceed as you be so  
6 advised.

7           MR. MILLER: Mr. Scoggins says there's no  
8 issue. There may be no issue for you at this  
9 particular time, but seeing what's been raised by  
10 TwinSpires, if I were your attorney and I saw this  
11 coming up on the docket of the Racing Commission, I  
12 would certainly want to intervene in some fashion to  
13 participate in this hearing.

14           MR. SCOGGINS: Please don't misunderstand my  
15 statements as someone who's running away from a  
16 fight. There is a real issue out here that affects  
17 TwinSpires potentially in a much different way than  
18 those who have licenses, permanent licenses in place  
19 for this year. The extent to which your ruling as  
20 it affects TwinSpires' license on our licenses will  
21 be considered, and to the extent we feel the need to  
22 either intervene or file amicus briefs or things of  
23 that nature, then we will do what we feel is  
24 appropriate.

25           There is a separate issue that probably from

1 the standpoint of -- for all the benefit of the  
2 lawyers, there's probably some collateral estoppel,  
3 res judicata issues that wouldn't apply because you  
4 don't have identity of parties such that any ruling  
5 as it applies to TwinSpires, may not necessarily  
6 apply to us, although it would be informative to us  
7 to see where you all are going. So we may choose a  
8 different course than to participate in the  
9 proceeding based on what we feel is our best  
10 judgment. YouBet, obviously, I'm not going to speak  
11 for them, they have that same decision to make, as  
12 does TVG.

13 MR. HARRISON: Mr. Chairman?

14 MR. BURNETT: Please.

15 MR. HARRISON: Isn't it true, though, at some  
16 point all of the out-of-state ADW providers are  
17 going to have to make a decision whether or not  
18 you're going to continue to do business here in  
19 Virginia by paying the 11 and a half percent? Even  
20 if you get a temporary extension and your contract  
21 runs through another two years or however long it  
22 amounts to, at some point that's going to be the  
23 bottom line, that's going to be where the rubber  
24 meets the road. Just to put it in perspective,  
25 right?

1           No longer does there need to be a contract in  
2 place after July 1st between the ADW providers and  
3 the unlimited licensee here. Really, as long as  
4 they're willing to pay the 11 and a half percent,  
5 the 10%, and the 1%, and the half percent, they can  
6 do business here as an ADW provider as long as they  
7 pass our requirements.

8           MR. SCOGGINS: I think Vic makes a good point,  
9 which is the 800 pound guerilla sitting in the room,  
10 and that is when and if as it relates to each  
11 individual ADW provider, the law mandates that they  
12 pay 11 and a half percent back to the state, seven,  
13 8, 9%, 6% to the host track, so that they're left  
14 with one and a half percent leftover, do they remain  
15 in the state -- in this state in the current form  
16 that they are? Does the 1% to the Breeders' Fund  
17 materialize? Does the 10% source market fee  
18 materialize?

19           I see it as an opportunity for us between now  
20 and January 1 to revisit the whole wisdom of whether  
21 that was the right way to approach it, potentially  
22 coming up with alternative language before January 1  
23 comes, assuming -- making an assumption on my part  
24 that may prove to be mistaken, that the effective  
25 date of the legislation doesn't take place until new

1 licenses are issued as of January 1.

2 MR. BURNETT: July 1, you mean.

3 MR. SCOGGINS: No, no. The effective date is  
4 July 1, but we have a license that was issued  
5 effective January 1 of this year. So the question  
6 is to what extent this July 1 effective date impacts  
7 a license that was granted -- that started on  
8 January 1 of this year.

9 MR. FERGUSON: That's the grandfather  
10 question.

11 MR. BURNETT: Right.

12 MR. SCOGGINS: Yeah. It's a grandfather  
13 question of different magnitudes depending on the  
14 contractual --

15 MR. BURNETT: And in fullness of all the  
16 discussion included is the provider, the licensee's  
17 decision whether or not to live with what they may  
18 perceive as an onerous source market fee or fight  
19 the statute.

20 MR. SCOGGINS: There are numerous options --

21 MR. BURNETT: There are basically three  
22 choices or four.

23 MR. SCOGGINS: There are numerous options  
24 available to an ADW provider once they are hit with  
25 the reality of the statute's obligations, whenever

1 that may be.

2 MR. BURNETT: Whenever that may be.

3 MR. SCOGGINS: So the question becomes to the  
4 extent of growing the pie, as we've talked about,  
5 what is necessary? Is there a different approach  
6 that needs to be taken even as to the statute that  
7 would prevent us not from -- that would eliminate  
8 the risk that not only is the pie being distributed  
9 in an inequitable fashion, but is shrinking because  
10 if my recollection is correct, there was about  
11 \$50 million in ADW handle last year through 2008,  
12 that overall handle in Virginia has grown larger as  
13 a result of the ADW handle. To the extent that you  
14 lose any of that handle, you lose tax money, you  
15 lose money to the track and the horsemen, and you  
16 will lose Breeders' Fund money to the extent that  
17 the statute applies to that.

18 MR. PETRAMALO: Let me make a final comment  
19 here under category of "Don't Cry For Me Argentina."  
20 TwinSpires and XpressBet to a lesser extent are  
21 crying because they have to pay 11 and a half  
22 percent to support the Virginia horse racing  
23 industry, but ask them what they pay in source  
24 market fees in the other 38 states where they  
25 operate, it's either zero or substantially -- and

1 I'm underlying that, substantially less than five  
2 percent.

3 So go someplace else and make money, put it in  
4 your pocket, come to Virginia and make a little  
5 money, don't complain.

6 MR. WEINBERG: Can I just make a procedural  
7 request? If the Commission is to order a  
8 fact-finding conference for May, in the past we have  
9 set procedures of when parties need to file written  
10 documents and responses thereto. It would be  
11 helpful just to have some calendar out there so that  
12 things aren't filed at the last minute, and there's  
13 not an opportunity to really digest them.

14 MR. BURNETT: I'm unclear whether we agreed we  
15 were going to do the fact-finding root at our  
16 next meeting.

17 MR. WEINBERG: I misunderstood. I thought we  
18 started down that. With respect to the TwinSpires'  
19 request to extend a license, that that was being  
20 subject to a -- what is called a formal hearing.

21 MR. BURNETT: You need some brief reply dates.

22 MR. WEINBERG: That's all I'm suggesting.

23 MR. MILLER: In other words, they're going to  
24 set forth their best case in writing, and then  
25 you're going to respond and they're going to put

1 your best case in writing. They're going to  
2 respond, right?

3 MR. WEINBERG: Right.

4 MR. MILLER: So you want to --

5 MR. BURNETT: Mr. Blackwell, what's the  
6 earliest date you can submit your initial brief?

7 MR. BLACKWELL: I'll have to -- I'll get back  
8 to you on that, Mr. Chair.

9 MR. BURNETT: What we want to do, I think, is  
10 allow 10 days at least for Colonial Downs to  
11 respond, five days for you to rebut, and seven days  
12 for the Commission to receive and distribute and the  
13 commissioners read all the briefs. So if you do  
14 that math --

15 MR. PETRAMALO: Eight days from today.

16 MR. BURNETT: It's on you pretty hard is what  
17 I'm saying.

18 MR. BLACKWELL: We can move quickly.

19 MR. BURNETT: Okay. Good. Thank you.

20 MR. BLACKWELL: We're prompt in our position.

21 MR. BURNETT: Great.

22 Does that satisfy the need?

23 MR. WEINBERG: That's fine.

24 MS. DILWORTH: Can you just go over what the  
25 dates are then? We have five weeks from today.

1 MR. BURNETT: If we work backwards from the  
2 May date, we might as well the next date. We  
3 haven't done that.

4 MS. DILWORTH: May 20th.

5 MR. BURNETT: The next meeting is set for  
6 May 20th. By May 13th, the reply -- the rebuttal,  
7 if any, from Churchill shall be in the hands of the  
8 executive secretary of the Racing Commission by  
9 May 8th. The brief --

10 MR. BLACKWELL: I'm sorry. What's the --

11 MR. BURNETT: I'm working backwards.

12 MR. BLACKWELL: Okay.

13 MR. BURNETT: So any rebuttal brief would come  
14 five days, Colonial Downs' brief would be five days  
15 prior to that, so that would be by the 8th, and then  
16 your opening brief would be ten days prior to that,  
17 which is April, 28th, April 29th, something like  
18 that.

19 MR. PETRAMALO: Twenty-eighth.

20 MR. BURNETT: April 28th. Do those dates  
21 work?

22 MR. BLACKWELL: Luckily, May is a slow month  
23 for us.

24 MR. BURNETT: Yeah. There's nothing going on  
25 in May. You can go in the office on May 2nd or

1 whatever the Saturday is, the first Saturday in May.

2 MR. MILLER: April 28th and May 8th and

3 May 13th.

4 MR. BLACKWELL: So April 28th is our position.

5 MR. PETRAMALO: Correct.

6 MR. BLACKWELL: And I should submit that to  
7 commission staff?

8 MR. BURNETT: Submit them to Vic and if you  
9 would indulge me at least, if you would e-mail me a  
10 copy when you send it, I'd just like to start  
11 reading it as soon as I can.

12 MR. BLACKWELL: Sure.

13 MS. DILWORTH: Just for your reference, the  
14 lawyers, the statute that applies to informal  
15 fact-finding proceedings is Virginia Code Section  
16 2.2-4019.

17 MR. BURNETT: Any further business to conduct  
18 today? Mr. Scoggins has something further to say.

19 MR. SCOGGINS: Mr. Chair, in reference to the  
20 comments that Commissioner Miller made, a  
21 possibility of any other interested parties  
22 participating in the process, is there a deadline by  
23 which amicus briefs or intervening briefs should be  
24 submitted?

25 MR. BURNETT: How about if we give you the

1 opportunity to read both of the -- the briefs of  
2 both parties and you submit by amicus brief in the  
3 same time frame that we're requiring Mr. Blackwell  
4 to submit rebuttal.

5 MR. SCOGGINS: That'd be fine.

6 MR. BURNETT: That does that work for you?

7 MR. SCOGGINS: That would be fine.

8 MR. STEWART: In difference to Commissioner  
9 Miller, I won't expound on how we got here and why  
10 we're here today and where we are, but I do look  
11 forward to the opportunity to do that at a future  
12 time.

13 MR. BURNETT: Thank you.

14 MR. MILLER: We'll have to be sure that the  
15 other provider, the ADWs licensees are notified.  
16 Mr. Scoggins knows and Brad knows, but --

17 MR. BURNETT: YouBet.

18 MR. HARRISON: TVG.

19 MR. MILLER: Let them know what we're doing  
20 and give them an opportunity to respond. Give them  
21 the, I guess, so they'll be able to respond after  
22 rebuttal.

23 MR. BURNETT: They can respond at the same  
24 time, amicus or other briefs. If they want to be  
25 friend of the Commission, they can file them.

1 MR. HARRISON: Our letter will go out to all  
2 the ADW providers.

3 MR. BURNETT: Okay.

4 MR. CANAAN: The letter is going to be --  
5 explain that it's a notice for an informal  
6 conference to act on TwinSpires request --

7 MR. BURNETT: Only.

8 MR. CANAAN: -- only. Gotcha.

9 MR. BURNETT: That's the only matter before us  
10 right now.

11 MR. CANAAN: Correct.

12 MR. BURNETT: We're just giving Greg a free  
13 ride.

14 MR. SCOGGINS: Which I choose or choose not to  
15 join. One question, will the issue -- I assume that  
16 the issue will be stated in the notice as to what is  
17 being decided by the Commission or what it will be  
18 debating?

19 MR. BURNETT: Yes, although I would read that  
20 broadly from where you sit because I think there's  
21 overlapping issues on whether what happens July 1.

22 MR. SCOGGINS: Right.

23 MR. BURNETT: For what's that worth. So, I  
24 mean, I just can't imagine that we're not going to  
25 hear some discussion of what jurisdiction this

1 Commission has after July 1 with respect to any  
2 licenses.

3 Are we adjourned, folks? I'm sorry to say  
4 this isn't a record, the length of the meeting.  
5 Some of the people that have been here a lot longer  
6 know that some of them in the old days went to  
7 midnight, didn't they, Jim?

8 MR. WEINBERG: They did.

9 MR. FERGUSON: I move that we adjourn.

10 MR. BURNETT: Second.

11 Note: The hearing concluded at 3:11 p.m.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 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 April 15th, 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 April, 2009.

---

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011