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VIRGINIA RACING COMMISSION

July 15th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:41 a.m.

COMMISSION MEMBERS:

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

COMMISSION STAFF:

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

ATTORNEY GENERAL'S OFFICE:

Amy K. Dilworth

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1 JULY 15, 2009

2 MR. BURNETT: All right. We'll bring this
3 meeting to order. Our first order of business today
4 is the appeal of Teresa Connelly. We'll take that
5 up before we go into our regular meeting.

6 For the benefit of my fellow commissioners,
7 the status of that particular issue is Ms. Connelly
8 had an offense that was heard by the stewards. The
9 stewards imposed a penalty. Her counsel,
10 Mr. Petramalo, on her behalf asked for a stay, and
11 under our regulations, the stay is determined by the
12 chairman of the Commission and is in effect no later
13 than the following Commission meeting, that would be
14 today, and it's a discretionary stay.

15 I granted the stay conditionally. The
16 conditions of the stay were that Ms. Connelly not be
17 permitted to enter horses either here or at any
18 other racetrack between the time in which the stay
19 was granted and today, at which time we would take
20 up her appeal.

21 In the intervening few days from the time that
22 I granted the stay until today, Ms. Connelly
23 apparently has been able to get her affairs in order
24 and get her horses transferred and, in fact, has
25 returned to her home in Florida. I learned I think

1 it was yesterday that again Mr. Petramalo on her
2 behalf asked that the appeal be withdrawn, and the
3 stay dissolved as moot.

4 Our rules provide that, one, an individual who
5 has had a penalty filed or levied against him or her
6 and has filed an appeal is required to attend the
7 appeal. Secondly, it is discretionary on the part
8 of this body as to whether or not we grant the
9 withdrawal. We can say yes to the withdrawal and
10 leave things as they were when the stewards
11 initially entered their penalty, or we can deny the
12 withdrawal and hear the case on whatever components
13 of it we wish. That's the posture of it as it comes
14 here today.

15 In fairness to Ms. Connelly, she was -- and I
16 think her counsel was as well -- under the
17 impression that this was not going to be heard
18 today, and that she was safe to return to Florida,
19 not worrying that anything further would be done by
20 the Commission.

21 I have prior to the meeting today said that I
22 have certain positions that I would like to share
23 with you all on what I think we should do, but that
24 I don't -- despite it being -- her having returned
25 to Florida at her peril from a legal standpoint, I

1 think fundamental fairness would require that if she
2 wants to be heard, we try to find a way to
3 accommodate her, either at another meeting or by
4 phone or in person.

5 So what I would like to do at this time is
6 first hear from Mr. Petramalo based on my comments,
7 whether I missed anything in what -- in how I
8 described the posture and hear what Ms. Connelly's
9 position is with respect to our granting her request
10 to withdraw her appeal or denying her request. At
11 that point we would have a discussion and vote on
12 that issue, and depending on how that comes out, we
13 would go further or that would be the end of it in
14 terms of what we would do.

15 Mr. Petramalo?

16 MR. PETRAMALO: Let me start off by saying
17 Ms. Connelly returning to Florida was doing so on
18 the advice of counsel, perhaps counsel was
19 misguided, but I had assumed that when she withdrew
20 her appeal, that that would be the end of it.
21 Apparently, you have some question about that, but
22 let me just assure you she meant no disrespect to
23 the stewards or the Commission by returning to
24 Florida.

25 Basically, the suspension put her out of

1 business here in Virginia. So in her own interest,
2 she said, "Can I go back to Florida," where she's
3 from and where she has her farm. And I said, "Yes.
4 I will file the request to withdraw your appeal and
5 that will be the end of it." That's what I did.
6 That's why she's not here.

7 But I would be very interested in hearing what
8 thoughts you might have in mind with regard to this
9 before I take some final position.

10 MR. BURNETT: Sure. Any questions so far?

11 MR. PETRAMALO: So should I notify my
12 malpractice carrier at this point?

13 MR. BURNETT: I think that might be premature,
14 Mr. Petramalo. We'll wait and see if it's a true
15 cause of against you.

16 MS. RICHARDS: I trust you've memorized the
17 number.

18 MR. BURNETT: Ms. Connelly's conduct -- again
19 in fairness to her -- was conduct for which I'm sure
20 she's truly sorry, for which she recognized her
21 wrongdoing, and for which I think she is somewhat
22 embarrassed. It basically arose out of her having a
23 horse in a race that finished the race second, but
24 was taken down by the stewards for interference in
25 the stretch and placed eighth.

1 At the same time, as you all know, the winner
2 also goes to the test barn, and a second horse is
3 chosen at random. As it worked out on that day, her
4 horse was the horse chosen to go to the test barn.
5 The disqualification has no affect on the
6 requirement of the horse to go to the test barn.

7 She apparently -- initially upon looking at
8 the tapes from the apron or elsewhere disagreed with
9 the stewards' assessment of her need -- her horse
10 needing to be taken down and was upset to say the
11 least, and proceeded to come to the backstretch and
12 go to the test barn where her horse was, and demand
13 that she be given possession of her horse, and be
14 taken out of the barn prior to it being tested.

15 Apparently, the insistence was sufficient that
16 the folks at the test barn thought there was going
17 to be some physical violence if they didn't give up
18 the horse, and they did. The horse was apparently
19 taken back to its stall. Ms. Connelly cooled off,
20 and brought the horse back sometime later. I'm not
21 sure how many minutes later she brought the horse
22 back. At that point, the test barn staff didn't
23 think it was appropriate to test the barn -- test
24 the horse, because any chain of custody had been
25 broken.

1 The stewards had a hearing the following day.
2 Ms. Connelly waived her right to counsel and
3 proceeded to have the hearing. The stewards imposed
4 a 45-day penalty to begin on the 5th of July, and it
5 was from that imposition of penalty that she filed
6 her request for a stay that I described earlier and
7 that I acted on.

8 I favor our denying her request for withdrawal
9 of the appeal because I think that the penalty could
10 be improved for the benefit of both the image of
11 racing and for Ms. Connelly herself. And so I would
12 like to see this body deny her request to withdraw
13 and to adjudicate, if you will, her appeal solely on
14 the basis of the penalty that was imposed. And my
15 recommendation on the penalty would be that it be
16 increased from 45 days to 60 days, but with some
17 conditions that could mitigate.

18 Those conditions would be that the first 30
19 days of that penalty would be served starting today
20 through August 15th, and that the second 30 days
21 would be served in -- starting on the first day of
22 our meet in 2010 subject to, however, our waiving or
23 suspending those 30 days on the condition that she
24 successfully complete to our satisfaction an anger
25 management course.

1 This conduct was such that I don't think
2 anybody that was involved with it concluded other
3 than this lady clearly had some problems controlling
4 herself, and that she posed a potential danger at
5 the gate and elsewhere during this tirade, and that
6 the stewards in their many, many years of experience
7 could not recall ever having heard of this happening
8 before. I've never heard of it happening before. I
9 think Mr. Brown has never heard of it happening
10 before.

11 It goes to the core of the integrity of what
12 we do, and I think it sends a bit of a message of
13 deterrence to others, and I think at the same time
14 it offers her an opportunity to come away with a
15 penalty that is net days less than what she got from
16 the stewards if she participates in this anger
17 management course. That's the way I would approach
18 it. That's why I favor retaining the case for the
19 purpose of imposing penalty.

20 MR. MILLER: Retaining the field?

21 MR. BURNETT: Retaining the field, yes.

22 MR. PETRAMALO: Let me briefly respond. Your
23 recitation of the facts was fair, and Ms. Connelly
24 if she were here would not dispute that, but let me
25 point out the following.

1 The very next day after this -- and this is
2 reflected in the statements that you have in front
3 of you, the very next day she went around to all of
4 those folks and apologized for her conduct.
5 Secondly, Ms. Connelly has been coming here to
6 Virginia for at least the last eight years. She
7 brings anywhere from 10 to 20 horses up from
8 Florida. She has a spotless record. She's never
9 been disciplined for anything except a late scratch,
10 a hundred dollar fine.

11 But that aside, I certainly -- I'm certain she
12 wouldn't have any problem with having her right to
13 be re-licensed here in Virginia contingent on her
14 completing some sort of anger management course.
15 I'm certain based on talking to her that that
16 wouldn't a problem, talking to her and her husband
17 by the way, that wouldn't be a problem, but I do
18 have some problems with the suspension that you
19 outlined for the following reasons.

20 I certainly don't think that she would object
21 to the 30-day suspension even if it were to start
22 running today, but the problem is the second part;
23 that is, the suspended 30 days that's dependent on
24 completing anger management, because it's my
25 understanding that that basically would put her from

1 now until next year in a suspended status in
2 Virginia, which puts her out of business completely.
3 She couldn't go anyplace.

4 MR. BURNETT: Not to interrupt you --

5 MR. PETRAMALO: No. Go ahead.

6 MR. BURNETT: It wasn't my intention to do
7 that.

8 MR. PETRAMALO: Okay.

9 MR. BURNETT: I thought the days -- and I've
10 seen this problem in other jurisdictions. Suspended
11 here; suspended everywhere.

12 MR. PETRAMALO: Maybe it could be done this
13 way. A 30-day suspension, which then, quote, cleans
14 up her record here in Virginia, but if she -- as a
15 condition to her coming back to Virginia to get
16 re-licensed, at that point she would have to show
17 that she completed an anger management course.

18 So if she comes back here next June, she
19 better have a certificate with her saying I
20 completed 30 hours at the -- wherever. That I think
21 would be acceptable, something like that.

22 MR. BURNETT: I'll say this. I don't have a
23 bit of problem with that, but I'm not sure it solves
24 your problem based on what I've seen in a couple
25 other jurisdictions. I've just seen these other

1 jurisdictions act a little strange about any kind of
2 a condition of licensure until its granted, that
3 she's out anywhere.

4 MR. PETRAMALO: But what I'm thinking of is as
5 follows. Let's say she's suspended, and I have a
6 different argument that I'll get to later, but let's
7 say for purposes of your proposal that she were
8 suspended today, July 15th through August 15th. At
9 that point her suspension in Virginia is over with,
10 and she's free to go to Delaware or New Jersey, et
11 cetera, and race.

12 I don't think that is impacted by the fact
13 that if she seeks to come back to Virginia and be
14 re-licensed, to renew her license, at that point she
15 has a condition. She has to show completion of an
16 anger management course. That would be my
17 understanding.

18 Now, the -- her problem is compounded without
19 getting into too many complicated facts. By the
20 fact that she not only is a trainer, but she is an
21 owner, and she races in a number of states including
22 New Jersey at Monmouth Park, not as a trainer, but
23 as a owner and co-owner. So what you're doing with
24 her license, even though it's because of something
25 she did as a trainer, may very well in fact

1 disqualify her from having a horse run partially in
2 her name in other jurisdictions. It's for that
3 reason that I wanted to come up with some way that
4 ended her suspension here in Virginia as soon as
5 possible, so she would be free to do all of that.

6 MR. MILLER: Mr. Chairman?

7 MR. BURNETT: Yes.

8 MR. MILLER: I have a question. What is the
9 maximum punishment that could be meted out to this
10 lady?

11 MR. PETRAMALO: That's solely within the
12 discretion of the stewards.

13 MR. MILLER: Well, I'll ask the stewards.
14 What is the maximum that we can do to her?

15 MR. LERMOND: Let me defer to Mr. Chalk.

16 MR. CHALK: We can suspend up to -- I think
17 it's 60 days and a \$10,000 fine, then it goes to the
18 Commission for them to deem whatever penalty
19 necessary.

20 MS. DILWORTH: By the maximum penalty --

21 MR. MILLER: So whatever we deem necessary,
22 what is it we can deem necessary? What's the
23 maximum we can deem necessary?

24 MR. BURNETT: Ms. Dilworth?

25 MS. DILWORTH: The worst thing that could

1 happen to Ms. Connelly is she could have her permit
2 revoked.

3 MR. BROWN: Permanently.

4 MR. BURNETT: I don't think we want to put her
5 out of business.

6 MR. MILLER: Now I'm going to follow-up my
7 question by making a point. I don't know why we're
8 talking about it. To me she got some punishment
9 here, whatever it was, and she's willing to -- as
10 Frank says, she will abide by the 45-day suspension,
11 whatever. She wasn't fined anything, was she?

12 MR. LERMOND: No, sir.

13 MR. PETRAMALO: No.

14 MR. MILLER: To me with the maximum that could
15 be done to her, that's enough to hang over her head.
16 And once she serves her suspension that was imposed
17 here, that clears her and she can go to Florida or
18 California, Nebraska, or wherever, and she can race
19 her horses as an owner and trainer between now and
20 next year. Knowing that if she comes back here next
21 year and participates, common sense would tell me
22 that she would have to have a little common sense to
23 know that if she messed up in any way that, you
24 know, she could suffer some severe consequences. To
25 me that's enough to hang over someone's head.

1 MR. PETRAMALO: Let me say that what I was
2 intending to do this morning and say this morning is
3 almost exactly what you said. I was prepared to
4 come in here this morning and based on my faulty but
5 not negligent belief that the appeal would
6 automatically be dismissed, that she's accepting the
7 45 days.

8 My only argument was going to be that instead
9 of having the 45 days start today, that it start as
10 of July 5th when the stewards originally ordered it,
11 because the stay that commissioner -- that Chairman
12 Burnett granted basically allowed her to stay on the
13 grounds. She was not permitted to do her business.
14 She was not permitted to train and, indeed, she
15 couldn't race in New Jersey or any other state.

16 So I was going to argue that equity says start
17 it on July 5th, but if worst comes to worst, of
18 course, we'd be satisfied with starting today and
19 running 45 days, and that would be the end of it.
20 That was going to be my position until the chairman
21 has made some suggestions, which again are -- we're
22 amenable to, but I don't want to get Ms. Connelly in
23 any position where between now and next year she's
24 in limbo in terms of being able to do her business.

25 MR. MILLER: Well, I'm just suggesting that

1 she wouldn't be in limbo if she --

2 MR. PETRAMALO: No. I mean, under your
3 proposal and my proposal, she wouldn't.

4 MR. MILLER: There would be no limbo to worry
5 about, and other jurisdictions would know. I mean,
6 other jurisdictions would see that she was suspended
7 here for 45 days --

8 MR. PETRAMALO: For 45 days.

9 MR. MILLER: -- for something, whatever it
10 was, and so if she erred or her anger went awry
11 somewhere else, she might get a more severe penalty
12 there because of the 45-day suspension she got here.

13 By the way, has anyone ever attended anger
14 management? What is anger management?

15 MR. PETRAMALO: I know they have courses.

16 MR. MILLER: Would anyone admit they've been
17 to anger management? I would like to know the
18 particulars of that, because I've seen people
19 referred to anger management places all the time --
20 not all the time, but I've seen it suggested in
21 court and the people that I know went, they're still
22 as angry as ever. So I don't know.

23 MR. FERGUSON: That comes across to me as
24 being a little judgmental, to make them attend
25 something. If it were alcohol rehab or something,

1 we might have something to talk about, but I agree
2 with you on the anger management end of it. A lot
3 of people just go buy a six-pack of St. Pauli Girl
4 or something, you know.

5 MR. BURNETT: And that makes it better?

6 Let me respond.

7 MR. FERGUSON: I mean, why are we proactively
8 plea bargaining? That's seems to me what the VRC is
9 doing now. We're proactively entering a plea
10 bargain for this lady who's not asked for it. She
11 wants to withdraw an appeal. I mean, getting back
12 to real estate rezoning, if I go into rezoning or
13 something and I withdrawal my rezoning request or an
14 appeal, it ends it right there. So why do we have
15 to force an appeal when she's not asking for one?

16 MR. BURNETT: Well, there's two points here.
17 One, she managed through the granting of a stay.
18 The stewards opposed the stay. I could have said,
19 hey, you got your penalty, July 5th. Too bad. Get
20 out today. I thought that might have been a little
21 bit harsh on the horses, frankly, and on her husband
22 and her children.

23 Frank is a little bit mistaken about the stay
24 not permitting her to train. She could train her
25 horses. She could in the morning go out here and

1 train them all day long. There's nothing that
2 stopped her from doing that. She could not enter
3 horses to run if that's what --

4 MR. PETRAMALO: I don't believe that was her
5 understanding. She didn't get on a horse after --

6 MR. BURNETT: The plain words of the stay are
7 there to be seen. There's no prohibition about
8 anything she wanted to do on the backstretch.

9 Regardless, through the use of the stay, she had
10 managed the classic horseman's effort to reduce the
11 penalty by filing a stay, because instead of being
12 kicked out on July 5th and moving forward, she got
13 to do her business. She got to transfer horses,
14 sell horses, continue to participate here. And now
15 on the 15th, she says, oh, I got my business done.
16 I'm leaving. Jeez, let it start retroactively.
17 That's one point.

18 The second point is this: If it were the kind
19 of offense that someone thought about before they
20 committed it, I wouldn't be so inclined to say let's
21 get her into some anger management. What I take
22 issue with and Commissioner Miller's thinking is
23 that he thinks she's going to think. If she were a
24 thinking person, this wouldn't have happened the
25 first time. She reacted because she didn't have

1 control over her impulses, and I could date
2 Commissioner Miller a little bit from his
3 Commonwealth attorney's duties, but the modern
4 Commonwealth's attorneys frequently send folks to
5 Community Corrections for anger management.

6 They are spousal abusers. They are people
7 that get into fights at work, and draw criminal
8 charges. They are people that get high on drugs and
9 get into violent acts and the like. It is a broadly
10 accepted technique in the Virginia Criminal Justice
11 System to try and reduce impulsive outbursts, which
12 this was an example of.

13 So my thought was --

14 MR. FERGUSON: I have a question.

15 MR. BURNETT: Let me fast forward. She comes
16 back here next year. We haven't done anymore than
17 let her serve her penalty and she has another
18 outburst, and she hurts somebody. Are we going to
19 look back and say maybe we could have prevented
20 that? That's where I'm coming from. I'm trying to
21 be prudent and look forward and say I don't want to
22 look back and regret, and I don't see how eight or
23 ten weeks of an hour a week attending one of these
24 classes, which may well not do anything for her, but
25 it might if it's going to hurt her and imposes a

1 great penalty, and I agree with Frank, that we
2 should not knock out her ability to make a living.

3 MR. FERGUSON: But she's agreed to accept the
4 results of the stewards' ruling, right?

5 MR. PETRAMALO: Correct.

6 MR. FERGUSON: Okay. That's a ruling. I
7 mean, it's done. It's already in place.

8 MR. BURNETT: She's agreed to accept the
9 reduced result of the --

10 MR. FERGUSON: No, the 45 days. She's agreed
11 to --

12 MR. BURNETT: No, no. She didn't have to
13 leave on the 5th of July, Trip.

14 MR. PETRAMALO: Well, let's address that,
15 because I think --

16 MR. FERGUSON: From today.

17 MR. PETRAMALO: -- with due respect, you're
18 being unfair. She is not Steve Asmussen or Todd
19 Pletcher who files an appeal, and they're busted for
20 a drug violation so they can go on training for
21 another three years, not in the least bit. As a
22 matter of fact, what she did was as soon as she was
23 advised by the stewards that she was going to be
24 suspended as of July 5th, the very next day she
25 arranged to transfer her horses to another trainer

1 and went before the stewards and got their approval
2 to do it. She wasn't looking to scam the system
3 here, not in the least bit. The only reason that
4 she was looking for a stay was because she had to
5 deal with some other horses, and she had to deal
6 with child care and a house lease.

7 Now, if you want to say she's taking advantage
8 of the system, well, sure, that's taking advantage
9 of the system, but it's not Steve Asmussen or one of
10 those folks that were caught cheating, right? This
11 is a woman who lost her temper.

12 MR. BURNETT: That's fine. I agree with you.
13 I'm saying we -- her penalty was softened by virtue
14 of the stay. Now she wants to come back and
15 characterize it as the same penalty. All I'm saying
16 to my fellow commissioner is it's not the same
17 penalty. For exactly the reasons you just
18 articulated, her penalty would have been far more
19 severe had it started on July 5th as the stewards
20 imposed it in the absence of the stay.

21 MR. PETRAMALO: I don't agree with that at
22 all.

23 MR. BURNETT: Well, did you advocate it? Why
24 didn't you say let's do it? You made -- I got the
25 letter here. Would you like for me to read all the

1 different things that were going to happen to her?

2 MR. PETRAMALO: Sure. Exactly. Exactly.

3 MR. FERGUSON: Can the 45 days start today?

4 MR. PETRAMALO: Yes.

5 MR. BURNETT: We can do anything we want.

6 MR. FERGUSON: When it starts is academic.

7 MR. BURNETT: Really?

8 MR. FERGUSON: Right?

9 MR. PETRAMALO: Well --

10 MR. FERGUSON: I mean, it can start today. Am
11 I wrong or right?

12 MR. PETRAMALO: It's the difference -- it's a
13 10-day difference. You're right.

14 MR. FERGUSON: Right.

15 MR. PETRAMALO: It's basically academic.

16 MR. FERGUSON: But she has a 45-day penalty,
17 plus the ten days that she hadn't been able to
18 operate; is that correct?

19 MR. PETRAMALO: That's correct.

20 MR. FERGUSON: That's 55 days.

21 MR. PETRAMALO: That's correct.

22 MR. CHALK: She has been able to operate.

23 MR. FERGUSON: Excuse me?

24 MR. BURNETT: Mr. Chalk, let me hear from you,
25 sir.

1 MR. CHALK: She has been able to operate
2 because she was able to go on the backside and train
3 the horses that she owned herself, was here every
4 day. And with your stay that you gave her, it was
5 stipulated she was allowed to go to the barn and
6 take care of her horses and get rid of the horses
7 that she didn't want to take home with her. That's
8 the reason for the stay.

9 But me and Mr. Grove looked down one
10 afternoon, on one of those horses that she had
11 transferred to somebody else, she's down there
12 talking to that trainer and the exercise person, the
13 pony person, which was the trainer she transferred
14 them to, giving them orders across the fence before
15 and after the race.

16 So don't tell me she wasn't active. She was
17 active. And when she found out -- the next race she
18 had a horse in, me and Mr. Grove went downstairs,
19 stood on the side, and she happened to spot us as
20 she walked out the gate going to the paddock, which
21 another horse was in, and she wheeled like this and
22 went back in the grandstand and never appeared after
23 that because she knew she was caught doing something
24 she shouldn't have been doing. So don't tell me she
25 wasn't doing something she shouldn't have.

1 MR. PETRAMALO: Wasn't that the horse she --

2 MR. CHALK: Her days, if you want to stay with
3 the 45, commences now on the 45, and if you want to
4 stipulate that she goes to anger management, that is
5 fine, but don't say she didn't work the system. She
6 did.

7 MR. PETRAMALO: Wasn't that the horse you
8 permitted her to run, though?

9 MR. CHALK: Her new trainer that was
10 transferred that she owned nothing of that horse --

11 MR. PETRAMALO: Right.

12 MR. CHALK: -- she was over there after her
13 days which should have been started and was granted
14 the stay and was leaning across the fence talking to
15 this trainer, who was the pony person.

16 MR. PETRAMALO: Right.

17 MR. CHALK: And I don't know what they were
18 talking about, but she shouldn't have been in the
19 grandstand because she was only allowed to be on the
20 backside.

21 MR. FERGUSON: All right. I have one
22 question. She was given a stay.

23 MR. PETRAMALO: Yes.

24 MR. FERGUSON: Okay.

25 MR. BURNETT: There were stipulations to it.

1 MR. FERGUSON: With a stipulation that -- the
2 stipulations were?

3 MR. BURNETT: That she couldn't run any
4 horses.

5 MR. FERGUSON: Couldn't don't anything?

6 MR. BURNETT: No, no, no. She could be on the
7 backside and take care of her horses, but she
8 couldn't enter or run any horses during that time.

9 MR. PETRAMALO: Here or anyplace.

10 MR. BURNETT: Here or anywhere else.

11 MR. FERGUSON: Did she enter or run her horses
12 during that stay?

13 MR. CHALK: No, she didn't.

14 MR. FERGUSON: Okay. Then that's moot.

15 MR. CHALK: Because she -- the reason that the
16 stay was granted by the chairman was so that she had
17 time to sell some of these horses that she did not
18 want to take back, but she was able to go on the
19 backside acting.

20 MR. FERGUSON: Okay.

21 MR. CHALK: And most people that are suspended
22 are not allowed on the grounds, period.

23 MR. FERGUSON: But she was allowed on the
24 grounds by the stay, right?

25 MR. CHALK: Yes, just the backside.

1 MR. PETRAMALO: Are you telling me that a
2 suspended trainer can't go into the grandstand?
3 Since when?

4 MR. CHALK: That's right.

5 MS. RICHARDS: Yes.

6 MR. CHALK: You're not --

7 MR. BURNETT: You're not allowed in the
8 trailer, period.

9 THE REPORTER: Everyone needs to speak one at
10 a time. You're getting a little out of control
11 here.

12 MR. FERGUSON: Okay. But given that, that
13 muddy area of 10 days, she will accept the 45 days
14 starting today?

15 MR. PETRAMALO: Yes.

16 MR. FERGUSON: Then we're done.

17 MR. PETRAMALO: Exactly.

18 MR. BURNETT: Well, you look at me like this.
19 I'm saying we're not done with a lady that's got
20 some anger management problems. We're not done.
21 That's what I'm saying.

22 MR. REYNOLDS: What would you attribute to
23 anger management? What does she have to do? What
24 is the penalty?

25 MR. FERGUSON: Hang around with me for 50

1 days.

2 THE REPORTER: I'm sorry. I can't hear
3 Commissioner Miller.

4 MR. MILLER: Did you not indicate that she
5 would participate in whatever -- in an anger
6 management program?

7 MR. PETRAMALO: Yes, I did say that.

8 MR. MILLER: She'll do that?

9 MR. PETRAMALO: Yes. We're done.

10 MR. MILLER: We're done.

11 MR. BURNETT: I thought we were, too.

12 MR. MILLER: So as a condition of withdrawing
13 the appeal today, she will comply with the -- how
14 many days from today?

15 MR. BURNETT: Thirty from today.

16 MR. MILLER: Thirty days from today, and she
17 will attend an anger management seminar or whatever
18 they call it?

19 MR. PETRAMALO: Yeah. That's fine.

20 MR. BURNETT: Complete an anger management
21 course to our satisfaction, if you show up and not
22 come back. It's a condition of licensure in the
23 future --

24 MR. PETRAMALO: Correct.

25 MR. BURNETT: -- as we discussed.

1 MR. PETRAMALO: Yes.

2 MR. MILLER: So that's it, isn't it?

3 MR. HARRISON: Mr. Chairman?

4 MR. BURNETT: Mr. Harrison.

5 MR. HARRISON: I don't think you want to be
6 put in a position of reducing, which it seems like
7 you would by 15 days, the stewards initial ruling of
8 45 days.

9 MR. PETRAMALO: You can solve that easily by
10 making it effective on July 5th. That gives her
11 basically a 40-day penalty.

12 MS. DILWORTH: Mr. Chairman, I think we should
13 read into the record your original grant of the
14 stay.

15 MR. BURNETT: Please do if you have it in
16 front of you.

17 MS. DILWORTH: The chairman ruled on July 2nd
18 that the requested stay as to Ms. Connelly is
19 granted on the following conditions.

20 The stay shall be in effect until the next
21 commission meeting currently scheduled for July 15,
22 2009.

23 Number two, Ms. Connelly shall not be
24 permitted to enter any horses at Colonial Downs or
25 any other racetrack prior to July 15, 2009.

1 Number three, no horse owned in whole or in
2 part by Ms. Connelly on or before the date of the
3 alleged offense shall be entered to race at Colonial
4 Downs or any other racetrack prior to July 15, 2009.

5 Number four, the appeal of Ms. Connelly's
6 offense shall be scheduled and heard on July 15th,
7 2009.

8 MR. MILLER: Mr. Chairman?

9 MR. BURNETT: Yes.

10 MR. MILLER: So if we suspend the 45 days
11 retroactive to July the 5th, she attends the anger
12 management course to our satisfaction, presents a
13 certification therefrom as a condition to --

14 MR. PETRAMALO: Re-licensing.

15 MR. MILLER: -- relicensure, so why don't we
16 leave off this part of Peter's proposal that tied
17 into the next year. That wouldn't jeopardize her
18 between now and next year's meet anywhere? I mean,
19 she could -- after the 45-day suspension is over,
20 she can do her thing as an owner and trainer, can
21 she not?

22 MR. PETRAMALO: Yes.

23 MR. MILLER: Well, I move that that's what we
24 do.

25 MR. REYNOLDS: I second.

1 MR. BURNETT: All right. It's been moved and
2 seconded. Any further discussion? All in favor
3 indicate by saying aye.

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

7 MR. PETRAMALO: Let me make sure that I give
8 her correct advice this time.

9 Her suspension runs from 45 days beginning on
10 July 5th.

11 MR. MILLER: Correct.

12 MR. PETRAMALO: And that as a condition of her
13 being re-licensed in Virginia in the future, she
14 will have to present a -- some sort of proof, a
15 certificate satisfactory to the Commission that she
16 had attended successfully an anger management
17 course.

18 MR. MILLER: Correct.

19 MR. BURNETT: Correct.

20 MR. PETRAMALO: AIG Insurance Company.

21 MR. HARRISON: Peter?

22 MR. BURNETT: Yes.

23 MR. HARRISON: Attended -- how did you phrase
24 it, attended successfully?

25 MR. PETRAMALO: Yes.

1 MR. HARRISON: Is that the same as saying
2 completed?

3 MR. FERGUSON: Completed.

4 MR. HARRISON: I think there's some wiggle
5 room there.

6 MR. BURNETT: All I want is the discretion to
7 hear what the -- that she passed the program.

8 MR. MILLER: Well, the one thing --

9 MR. BURNETT: Not that she went in and kicked
10 everybody's butt and got kicked out of there.

11 MR. MILLER: The one thing I do -- they do get
12 something to show that they completed it. It's just
13 like attending a safe driving course.

14 MR. PETRAMALO: Safe driving course or doing
15 community services for purposes of probation,
16 they're standard forms for all that.

17 MR. MILLER: She'll have to present that prior
18 to being re-licensed.

19 MR. BURNETT: We just want to see something
20 more than a St. Pauli Girl certification.

21 MR. FERGUSON: I would think that she's
22 totally embarrassed at this point and --

23 MR. PETRAMALO: She is.

24 MR. FERGUSON: -- she'll come back with a
25 different attitude.

1 MR. BURNETT: Hope so. Hope so.

2 All right. That concludes our Teresa Connelly
3 matter. We'll move into our regular meeting.

4 Approval of the minutes of the regular meeting
5 of July -- June 17th, I'm sorry, at Tab 2. Have you
6 all had a chance to look at those lengthy minutes?

7 MR. BROWN: That's what they are, lengthy.

8 MR. BURNETT: Any corrections, changes,
9 comments?

10 MR. FERGUSON: I make a motion that we approve
11 the minutes.

12 MR. BURNETT: It's been moved that we approve.
13 Is there a second?

14 MR. REYNOLDS: Second.

15 MR. BURNETT: It's been seconded by
16 Commissioner Reynolds. All in favor indicate by
17 saying aye.

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

21 MR. BURNETT: Next item, Commissioners
22 Comments. Fellow commissioners, any comments?

23 Perhaps we've used up our comment section in
24 our earlier endeavors. We'll move on.

25 Committee reports? Any reports from marketing

1 or other committees? Breeders?

2 MR. REYNOLDS: No money, no action.

3 MR. BURNETT: No money, no action from the
4 marketing committee. It's a short report.

5 Executive secretary's report, Mr. Harrison?

6 MR. HARRISON: Thank you, Chairman Burnett.

7 With respect to the minutes, the transcripts
8 of our monthly meetings are now available on-line on
9 the VRC website. So you won't see seven pages of
10 minutes any longer. You know, I can be a little
11 more -- we can be a little more general in our
12 presentation of the minutes. We will pay particular
13 care to the agenda and to the minutes, but not quite
14 so comprehensive with respect to the minutes since
15 the actual transcript will be and are posted
16 on-line. That puts more pressure on Melissa.

17 MR. PETRAMALO: Are they archived?

18 MR. HARRISON: Through January. Through
19 January of 2009.

20 MR. PETRAMALO: Very good.

21 MR. BURNETT: The idea is to get them out
22 there, you know, within a week or so, and I think
23 they come to us electronically such that we can move
24 them right over and post them on the website.

25 MR. PETRAMALO: That's an excellent idea.

1 MR. BURNETT: We had an inquiry from a
2 Virginia racing fan that wanted to follow the
3 meeting more closely or wanted to follow what went
4 on sooner after the meeting than the minutes were
5 available, and --

6 MR. PETRAMALO: Excellent idea.

7 MR. BURNETT: I think the statute provides
8 that the minutes -- the actual transcript are our
9 true minutes and that a summary is all right. I
10 just would encourage fellow commissioners and myself
11 to delve into those transcripts when there's an
12 issue there of some importance.

13 Next item?

14 MR. HARRISON: The next item, I just want to
15 give you a quick update on the 100% Virginia Bonus.
16 Through the first 30 days of the meet, we've given
17 away \$337,000, which averages out a little over
18 \$11,000 per performance, \$11,237. Multiplying that
19 out over the last ten days, we should come in
20 barring anything wild and unusual at about \$450,000
21 for the program for this year.

22 MR. PETTY: Under budget.

23 MR. BURNETT: Under budget.

24 MR. HARRISON: Under budget.

25 MR. PETRAMALO: Well, let's spend it.

1 MR. BURNETT: Yeah. That's good news and bad
2 news, right?

3 MR. PETTY: It'll go to somebody. It just
4 moves.

5 MR. HARRISON: I wanted to make a quick
6 comment on the legislation for 2010. Coming down
7 through the Secretary of Commerce & Trade to the
8 agencies, there's an August 28 deadline for getting
9 any bills, proposals through my office to C&T up to
10 the governor's office. I think one of the comments
11 made in our working group meeting on June 25th is
12 that perhaps this year we take a hiatus from
13 legislative proposals, although I will make a
14 comment that if we want to and we can do it in the
15 next few weeks, take a look at last year's Omnibus
16 Bill or some of those provisions in the Omnibus
17 Bill, I wouldn't be too objectionable to that. I
18 don't think it would take too much work.

19 I think the thrust of the hiatus --
20 legislative hiatus this year was more towards
21 alternative gaming and things like that. I think
22 the comments -- Peter, you made the comment I think
23 at the meeting.

24 So anyway, I just wanted to throw that out
25 there. There's about a five-week deadline on

1 getting anything through the governor's office.
2 That doesn't preclude you all from finding any
3 sponsor as you did last year with your legislation,
4 but if you want to re-visit the Omnibus Bill
5 provisions, I'm perfectly happy doing that.

6 MR. BURNETT: Let me add one comment to that.
7 Mr. Miller from his political background and our
8 capable lobbyists that are here know far better than
9 I do how this really plays out, but it's an
10 interesting situation where a lame duck governor and
11 the Secretary of Commerce & Trade are asking for
12 suggestions for an administration package that will
13 essentially be promoted presumably by the next
14 governor. It'll be all put together and ready to go
15 and sent down to the legislature, and all the
16 drafting and everything else, and then we get a new
17 governor and maybe the governor supports some of it,
18 all of it, who's to say.

19 I think it would be a good discussion for us
20 to have in the working group as to whether or not it
21 makes sense to put a lot of energy into that, or
22 whether we might be better off trying to figure out
23 some ways that we can get the new governor and
24 presumably his new Secretary of Commerce & Trade to
25 get the ground running on matters of importance to

1 us. I just think it's something we --

2 MR. FERGUSON: I spoke to Creigh Deeds last
3 week, and he's most supportive of everything we're
4 doing here.

5 MR. BURNETT: He knows counsel for Colonial
6 Downs fairly well, having worked with him and it
7 would just be wonderful if -- on that basis alone,
8 if he were our next governor regardless of the
9 politics, we know who we would be dealing with
10 there.

11 MR. PETRAMALO: We still have to have an
12 election, though, right?

13 MR. BURNETT: Oh, that's right.

14 MR. FERGUSON: Minor thing. We'll get over
15 that.

16 MR. BURNETT: Next item, Mr. Harrison?

17 MR. HARRISON: Okay. The Racing Summit
18 Working Group. We had the first meeting on
19 June 25th in Fredericksburg. It was attended by 11
20 of us, and the minutes of that meeting or the notes
21 of that meeting are about to be distributed to
22 everybody that's part of the original e-mail group,
23 which I think there's about 40 individuals on that
24 list.

25 I had created a document based on my own notes

1 of the meeting and we went back and forth with the
2 chairman on that, and then we got another set of
3 notes from Mr. Weinberg, and so I just have to
4 collate that and get it out to the group.

5 I did want to apologize. We left there --
6 some of us left there with the understanding on
7 June 25th that there would be a follow-up meeting
8 scheduled after this meeting today, and others of us
9 left that meeting with the understanding that a
10 meeting would be scheduled perhaps two weeks after
11 this meeting or two weeks prior to our next meeting,
12 just to keep them separate.

13 So I know that some of you are here today to
14 participate in such a meeting, and I believe we can
15 informally discuss a lot of issues that arose during
16 our June 25th meeting after this meeting today,
17 after this meeting concludes.

18 The issues -- the way the day played out, I
19 felt it was a productive first meeting. We
20 addressed the legislative and non-legislative ways
21 to expand the wagering handle here in Virginia to
22 promote racing, and we identified that we should
23 have the input of horse players, meaning bettors,
24 and that we perhaps should get some legislative
25 representation on the group to the extent that we

1 could. We also discussed the participation of the
2 Farm Bureau perhaps, greater participation on their
3 part on the removal of the need for a local
4 referendum with respect to additional SWFs and
5 alternative gaming, ADW versus AWFs -- SWFs, and the
6 scheduling of additional meetings.

7 We also I believe finally settled on a name
8 for the group, which would be the Virginia Racing
9 Improvement Group. We took the word summit out of
10 there, because we may never actually get to the
11 summit. We may just simply have these working group
12 meetings, and they may be productive enough.

13 Peter, do you want to comment on that?

14 MR. BURNETT: My thought was that to the
15 extent we're trying to improve Virginia's posture,
16 that we ought to say so, and I think from a
17 political -- I'm looking at Chris and Jerry. I'm
18 thinking that to the ears of a politician that it
19 sounds like we're trying to do something good, and
20 it might be a little bit helpful. That was the only
21 thought to it really.

22 The summit issue, it's more than just planning
23 for a single summit. I think this group has turned
24 into a group that wants to take a very comprehensive
25 look on how a non-alternative gaming racing program

1 that is not year-round can take its best hold in the
2 marketplace, and how we can find a way to succeed
3 against some pretty substantial odds. And it's
4 going to take all of us working hard for more than
5 just the preparation of a summit. I think it's
6 going to be an ongoing effort, so that was the
7 thinking behind it.

8 Jim, you might have some comment on that as
9 well.

10 MR. WEINBERG: I think that's an accurate
11 summary of our goal.

12 MR. HARRISON: Okay. So with respect to a
13 follow-up meeting to today's discussion, logically I
14 think that a late August date would be good with the
15 end of the thoroughbred race meet and folks being on
16 vacation in early August, I think that perhaps the
17 final week of August would be the best date, but we
18 can discuss that. I'll send out an e-mail and blast
19 everybody with a couple of optional dates and
20 locations.

21 The final two items I have are the approval of
22 the amounts of the Breeders Fund contract with the
23 VTA and with the VHHA. They are proposing no
24 changes from last year's amounts. The
25 administration of the Thoroughbred Breeders Fund is

1 approximately \$190,000, and the administration of
2 the Harness Breeders Fund are \$50,000 annually. The
3 parties are here if you wish to pepper them with
4 your questions, but I would recommend that you
5 approve the requested dollar amounts.

6 MR. BURNETT: One question, Mr. Harrison.
7 This April 2nd, 2009, memo from Mr. Dunavant is
8 requesting a payment of \$12,500, that's consistent
9 with 25 percent of the 50,000?

10 MR. HARRISON: It is.

11 MR. BURNETT: Is that what it amounts to?

12 MR. HARRISON: Yes. Annualized it's \$50,000.

13 MR. BURNETT: Why don't we take them one at a
14 time. Since I started with the one that's second on
15 the agenda, any questions, gentlemen, about the VHHA
16 contract? As I understand it, there's a request
17 that it be continued at \$50,000 a year that it's
18 been at for some time.

19 MR. BROWN: I make a motion that we approve
20 it.

21 MR. BURNETT: The chair seconds. All in favor
22 indicate by saying aye.

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

1 MR. BURNETT: All right. That is approved.

2 Glen, I know you've been struggling pretty
3 hard with the VTA budget and how to deal with some
4 of the changes that have been going on in your
5 organization driven by the market. Do you want to
6 make any comment at all about your budget request
7 prior to our discussing it and voting on it?

8 MR. PETTY: I would just say -- Glen Petty,
9 Executive Director of the Virginia Thoroughbred
10 Association. In theory, or I should say in a
11 vacuum, I would like to reduce our contract by
12 15 percent to reflect the reduced amount on
13 thoroughbred wagering. That would seem to be a
14 logical approach to me and a way to, you know, share
15 the pain that's going on.

16 Unfortunately, our financial viability is such
17 that to do so at this particular time would add
18 insult to injury in a financial way that I can -- if
19 you want to know all the numbers and talk about all
20 that, I'm happy to delve into it. So what I'm
21 asking the Commission to do is bear with us and let
22 us continue down the road we're going, and we'll
23 continue to work to make the fund bigger and the pie
24 bigger and we'll do what we can to pay our way.

25 But that's really all I can -- I mean I can --

1 our biggest fundraiser is off 70 percent. Our
2 membership is down. It's the same -- we've got the
3 same issue that everybody else has got. Since we
4 have no wiggle room in our whole program to start
5 with, we're probably looking at a 60 or \$70,000 hole
6 at the end of the year with the contract at the
7 current amount. So if we reduce it, the hole is
8 deeper and how do we get out of it, or if we survive
9 it is a real issue.

10 MR. BURNETT: I have one question, Glen. Your
11 primary fundraiser is the stallion auction, which
12 I've participated in many times. It nets you
13 \$35,000. Is that after all of your staff expenses
14 and advertising and everything else?

15 MR. PETTY: Yeah, that's exactly it. The
16 unfortunate thing is that last -- in 2008, it netted
17 us 115,000. I think in 2007, it was 125; the year
18 before that, it was 150. We've gotten too good at
19 what we do, and the stallion managers have realized
20 that we're better used as an agency than as, you
21 know, a charity. So they've figured out now instead
22 of giving us seasons to sell and giving us all of
23 the proceeds or half of the proceeds, they give us
24 seasons to sell on a 10 percent commission.

25 So while the gross, for example, continues to

1 rise, we're now running a stallion auction that's
2 pushing a \$400,000 gross number, but our net
3 continues to shrink because of various market
4 factors, and because these guys have figured out I
5 don't need to give them something. They're pretty
6 good at selling seasons I can't sell, and I'll just
7 give them a little. The minimum now is \$400 per
8 transaction, but we probably spend \$30,000 in
9 advertising this thing. So we're in the process of
10 re-inventing it again. Long story short.

11 MR. BURNETT: Well, my thought was for six
12 months of effort to come up with \$35,000 strikes me
13 in some respect as a waste of time.

14 MR. PETTY: Yes.

15 MR. BURNETT: That said, eliminating that
16 program, besides the impact on the breeders who have
17 patronized it for so long, would also impact some
18 loyal and longtime employees of your organization,
19 correct?

20 MR. PETTY: No question.

21 MR. BURNETT: So it's just not parting with
22 the 35,000, it's also saying goodbye to some people
23 that rely on that income to support their families.

24 MR. PETTY: It was 25 -- I'd say in any given
25 year, it's 25. As low as 25 and as high as 40

1 percent of our overall budget. Of course, we've
2 made cuts everywhere we can with the exception of
3 staffing, and I think after the meet I'm going to
4 have to change that as well. I'm trying -- we're
5 trying to keep the folks that work for us eating,
6 you know, but there's a point where math is math.

7 MR. BURNETT: Right.

8 MR. PETTY: So everybody here in the room is
9 singing the same song, just with different numbers
10 and different issues.

11 MR. BURNETT: Any questions of Mr. Petty or
12 anything -- any questions of Mr. Harrison with
13 respect to this issue, gentlemen?

14 MR. PETTY: I would add one thing. I'll speak
15 to it at the point of the meeting -- during public
16 participation, but I wanted to tell you about
17 something that's going on in the region.

18 I was at a meeting in Delaware Park last
19 Tuesday. I'm now at the point that Mark McDermott,
20 who is the Executive Director for the Pennsylvania
21 Thoroughbred Breeders, now seems to enjoy telling me
22 that he submits his budget in total to the Racing
23 Commission, and they write him a check for it.

24 I think he enjoys that job, knowing that we
25 don't enjoy that luxury and couldn't, you know. We

1 can't afford it even if we did, but it's just kind
2 of comical that Pennsylvania and other states
3 continue to -- now realize that and razz us a little
4 bit about it.

5 MR. BROWN: Correct me if I'm wrong, didn't
6 they have some sort of glitch show up this past week
7 that they might lose a lot of that money?

8 MR. PETTY: Yeah. They're now having a debate
9 over the definition of certain alternative gaming
10 dollars, and who gets what first and how things are
11 funded. They've got issues of their own, believe
12 me. They're just different issues.

13 MR. PETRAMALO: I think that the \$200 million
14 horse industry development fund, the state is now
15 looking to take back a hundred million. What a
16 surprise.

17 MR. BURNETT: They had an excellent precedent
18 in West Virginia before they ever got started.

19 MR. PETRAMALO: Exactly. They want to keep
20 their rest areas open.

21 MR. BURNETT: When you tie in with a
22 politician, you know, be careful.

23 All right. If there are no further questions,
24 do we have a motion to approve the requested budget?

25 MR. BROWN: I'll make a motion that we approve

1 the budget for the Virginia Thoroughbred
2 Association.

3 MR. BURNETT: The chair seconds. Any further
4 discussion? All in favor indicate by saying aye.

5 NOTE: The motion is made by Commissioner
6 Brown and seconded by Commissioner Burnett. All
7 were in favor. The motion carries.

8 MR. BURNETT: Come now to the stakeholders.
9 Colonial Downs update on the 2009 Thoroughbred Meet.

10 MR. WEINBERG: Mr. Stewart will deliver the
11 report.

12 MR. BURNETT: Thank you.

13 MR. STEWART: Good morning.

14 MR. BURNETT: Good morning.

15 MR. STEWART: We've completed 30 days of
16 racing so far, and the overall results have been
17 pretty good. Through Monday, attendance is up a
18 little over three percent; live handle is up
19 slightly. Wagering at the track on other races
20 around the country is up 16 percent. Horses per
21 race are averaging 8.8 versus 7.9 last year. We've
22 run more races. Races are up -- we had 14 more
23 races in the first 30 days this year versus the
24 first 30 days last year.

25 Purses are down. Purses on the run rate, if

1 you include the Derby and the Oaks, is about
2 \$185,000 a day versus 209 a day, and sale of our
3 signal is down 36 percent.

4 As you know, TrackNet Media is boycotting our
5 meet. After seeing the results of the June VRC
6 meeting, YouBet joined in the boycott. The impact
7 of these actions is a little difficult to gauge as
8 overall wagering in the country was down 17 percent
9 in June, but simplistically their actions may
10 account for a 19 percent reduction. This represents
11 money that could have been wagered on Colonial
12 Downs, that was probably wagered on other tracks
13 instead.

14 While much was made at the last meeting that
15 the parties attempt to gain potential leverage in
16 negotiations, there's no question as to which party
17 is actually exerting leverage in this situation.
18 The actions of YouBet and TrackNet are obviously in
19 response to the new account wagering law which went
20 into effect July 1st.

21 Over the last several months, I've attempted
22 to explain the gravity of the situation, that
23 Colonial Downs and the horsemen faced in dealing
24 with an oligopoly such as TrackNet Media. The issue
25 is both complex and simple at the same time. I

1 believe I failed due to my effort to concentrate on
2 trying to explain the complexity of the issue as
3 opposed to focusing on the simplicity of the issue.
4 Therefore, today I'm going to spend a couple minutes
5 focusing on the simplicity of the issue.

6 The simplicity of the issue is this. Account
7 wagering generates significant amounts of revenue.
8 Is it in the best interest of Virginia racing that
9 the vast majority of that revenue created by
10 Virginians, wagering in Virginia to benefit tracks
11 and horsemen in other states or to benefit tracks
12 and horsemen in Virginia? The revenue from the
13 money wagered is going to go to someone.

14 You might know that the representatives of
15 TrackNet last month were not arguing that they
16 needed the lower rates in order to meet their rising
17 operating costs. In fact, with their internet
18 model, they can add revenue without adding
19 significant cost.

20 They said the increase in host fees was driven
21 by the horsemen's desire to receive more revenue.
22 What they didn't say or at least didn't say very
23 loudly was that the TrackNet Media tracks split the
24 increased revenue with the horsemen. The horsemen
25 get more, so the TrackNet Media tracks get more, and

1 Virginia gets less.

2 Now, I've talked a lot about TrackNet Media
3 over the last several months, but who are they and
4 why do they need more money? Why are their needs
5 more important than Virginia's needs? So let's
6 explore this for a minute.

7 I've said many times that TrackNet is a joint
8 venture between Churchill Downs and Magna, but today
9 I think it would be helpful to drill down a bit
10 further. Let's look at the individual tracks that
11 are benefiting from this increase in revenue
12 starting with Churchill Downs. Churchill Downs is
13 home to the Kentucky Derby, the most famous horse
14 race in the world. They have a very real chance in
15 the near future of getting slot machines to support
16 their racing operation in Kentucky. Do they need
17 the money more than we do?

18 Churchill Downs also owns the Fairgrounds
19 racetrack in New Orleans, which has slot machines.
20 Even with slot machines, does the Fairgrounds need
21 the money more than we do? Churchill Downs owns
22 Calder racetrack outside of Miami. Calder is
23 approved for slot machines. It's currently building
24 a casino. Instead of supporting Virginia racing,
25 should we help to pay for their casino?

1 Churchill also owns Arlington Park Racetrack
2 in Chicago. The third largest city in the United
3 States with over 90 million people in the metro
4 area. Do they need the money?

5 Now let's turn to Magna. Obviously, they are
6 bankrupt, and they do need the money. However,
7 should we pay for it? Let's look at their assets.
8 Gulfstream Park has slot machines. Remington Park
9 has slot machines. Lone Star Park is in Dallas, the
10 fourth largest metro area in the country with over
11 six million people. Santa Anita is one of the most
12 famous tracks in the country. Thistle Downs is
13 about to get slot machines. Should we take less so
14 these tracks can have more?

15 Then there's Maryland. We're all aware of the
16 problems and missed opportunities involved in that
17 situation. Is Maryland more important than
18 Virginia?

19 There are also some TrackNet tracks not
20 affiliated with either Churchill or Magna, such as
21 Oaklawn Park and Hoosier, both of which have slot
22 machines. Are they more deserving?

23 The final analysis, the money generated from
24 account wagering by Virginia is going to go to
25 someone. It's not going to be eaten up by operating

1 costs. Clearly, the TrackNet Media tracks have far
2 more sources of funds than we do. Their model of
3 raising host fees is essentially predatory. They
4 will continue to erode our revenue.

5 In order for racing to survive and prosper in
6 Virginia, the playing field has to be level. We
7 have to have a model that secures the future for
8 Virginia, and that is exactly what the new account
9 wagering law is designed to do.

10 MR. BURNETT: Any questions, gentlemen?

11 MR. PETRAMALO: I would like to join in those
12 remarks, but add a practical concern. Because of
13 the boycott, we are suffering not only monetarily,
14 but perhaps in the long run we may suffer from
15 horses not coming here.

16 Let me explain the following. We have
17 probably more horses from the State of Florida here
18 than we've had in the past. We have a lot of horses
19 from the State of Kentucky. We have horses from our
20 neighbors in Maryland. It's not an exaggeration to
21 say that not a day goes by that a trainer or owner
22 doesn't come in this building and say, "How come I
23 can't watch races in Florida when my horses are
24 running at Colonial Downs?" The same thing in --
25 the same thing in Maryland. And I have to explain

1 to them, well, here's the story. And after they
2 roll their eyes for the fifth time, I say, "Go get
3 an account with TVG," because that's the only way
4 you can watch racing in Virginia if you're in one of
5 those big states that supplies us all the horse
6 races. It's really hurting us with the horsemen who
7 want to come and race here.

8 MR. FERGUSON: Is this a classic corner
9 drugstore versus the Walgreens and the CVS? You
10 can't compete because you're the locally owned
11 drugstore?

12 MS. RICHARDS: No.

13 MR. WEINBERG: I think it's more complicated
14 than that.

15 MR. FERGUSON: We just don't have the
16 horsepower to do it.

17 MR. STEWART: Well, they own the supply chain
18 is essentially what happens.

19 MR. PETRAMALO: That said, I think the law
20 creates some equipoise. To look at it crassly,
21 they've got the leverage now because they're
22 boycotting our signal, and it's going to cost the
23 horsemen's purse account, as well as Colonial,
24 substantial dollars, but come January 1st, where
25 there's going to be in my opinion no doubt that if

1 those folks want to be re-licensed to do business in
2 the Commonwealth of Virginia, they're going to have
3 to start paying 10 percent in a source market fee,
4 and one percent into the Breeders Fund, and a half
5 percent to the Racing Commission. Then we're going
6 to have the leverage because believe me, they're
7 going to come back and say, well, you know, we can't
8 really do it at this price. We've faced that
9 before, and we've resolved it before.

10 If you recall, we had a company doing business
11 here called AmericaTab, which ultimately was
12 purchased by TwinSpires. They were doing business
13 without a license, and we got together with them and
14 tried to negotiate a contract, and we finally got
15 one, but their pitch to us was the same pitch that
16 you heard last month from Scott Daruty and TrackNet.
17 Gee, we have to pay high fees to get this premium
18 content. He was talking about paying Santa Anita
19 eight or nine percent or Gulfstream or something
20 like that. He didn't tell you that they only paid
21 three or five percent to the vast majority of the
22 run of the mill tracks.

23 But AmericaTab came to us with that problem.
24 What we did was basically negotiate two rates with
25 them. They paid us a source market fee at one rate

1 for the premium content that they had to pay extra
2 for, and they paid us a higher rate for the run of
3 the mill content that they didn't have to pay
4 premium for. We went forward in our YouBet
5 litigation that ultimately was resolved, and we
6 resolved that on the same basis. We looked at their
7 economics. They looked at our economics. We said,
8 okay, here's where we come out on that. That's what
9 we did.

10 Now, what we have now with regard to TrackNet
11 is a statutory commandment that gives us the
12 opportunity to say, well, here's the starting point.
13 You folks have got a lot more leverage because you
14 control content and distribution that we don't, but
15 we have a law saying if you want to do business in
16 Virginia, this is what it's going to cost us.

17 So come January, if I were a smart aleck, I
18 would say that it's payback time, but I'm not going
19 to say that. In January, we will -- in my opinion,
20 we will have the upper hand and we're going to have
21 to come to some sort of solution. We tried to
22 broker a solution for this meet. Both Ian and I
23 were on the phone with Scott Daruty trying to come
24 up with a solution, and they didn't want -- they
25 didn't want to solve anything for this summer. They

1 said no, no, no, no. We want a long-term deal.
2 Obviously, you couldn't do something like that
3 within a matter of days. So they said, okay, we
4 won't take your signal. They got their friends --
5 in my opinion, their friends at YouBet to do the
6 same thing. And that's how the boycott came about.

7 MR. FERGUSON: Is that legal, Frank?

8 MR. PETRAMALO: I don't know.

9 MR. FERGUSON: Is it legal to --

10 MR. PETRAMALO: The only thing I know about
11 anti-trust is I'm a defendant in an anti-trust
12 lawsuit, so I don't know.

13 MR. BURNETT: Let me ask a question. You've
14 got to start with two assumptions. One, assume that
15 none of these major national ADW providers, the
16 licensees that we have now, are willing to do
17 business in Virginia at 11 and a half percent. Just
18 assume that. If that's what they've got to pay,
19 they'll take a pass and move out of Virginia.
20 They'll say forget the Virginia market.

21 MR. PETRAMALO: Uh-huh.

22 MR. BURNETT: And assume that the legal answer
23 to this rebate question on the 10 percent to the
24 track is yes, you can give a rebate. Let's assume
25 that the legal eagles look at that and say yup, you

1 can do that. How are we in any different position
2 than where we were before we passed the statute?
3 Because it seems to me the statute we had before,
4 you either worked out a deal at a number that both
5 parties could agree to or the ADW provider hit the
6 bricks because he didn't have a license.

7 In this case, the -- what my assumption is, 11
8 and a half percent is the equivalent of not having a
9 license. If I've got to pay 11 and half percent, I
10 might as well not have a license. How are we
11 really -- what progress have we made there? I know
12 it's a fallback to a certain extent to say, well,
13 look, you know, we'll help you out, but if you
14 can't -- if we can't come to a deal, it's 11 and a
15 half percent, but that's not much fallback if they
16 say, 11 and a half, we're going home. Then we've
17 just shot ourself in the foot, haven't we?

18 MR. STEWART: I think the part you have to
19 focus on is the vast majority of the host fees from
20 racetracks other than TrackNet Media is three
21 percent. Basically, we get about 11 percent in our
22 current deals, so it's not the 11 percent that's the
23 problem. The problem is the other racetracks that I
24 just enumerated all want -- instead of three
25 percent, they want nine percent. Next year they're

1 going to want ten, or the year after that, they'll
2 want 11.

3 MR. BURNETT: I understand that. But there's
4 a reason that y'all pay 12 or 15 percent for the
5 Kentucky Derby, and there's a reason that nobody
6 wants to bet on East Podunk nothing thoroughbred
7 horses from someplace out in Kansas. There's a
8 reason that Arlington Park is a valuable signal
9 because the betting public likes it. Isn't that
10 free market in a sense? I'm not trying to take
11 sides so much here, but just say they can be a
12 guerilla because everybody wants them.

13 MR. STEWART: They're a guerilla because
14 there's 20 of them.

15 MR. WEINBERG: I mean, in my personal view,
16 it's a three-way conversation, and the dialogue has
17 gotten skewed by one party under the current
18 structure. There are the tracks and the horsemen
19 who set the host fees, they're the intermediaries
20 for the national ADW providers, pure -- not to
21 segregate them, but TVG and YouBet don't have
22 affiliated tracks with them, and there are importing
23 states like us.

24 Under the current arrangement, it all worked
25 while the three were playing together, but the

1 horsemen and the tracks over here have said we want
2 more of the pie. And under the current system, they
3 can take more of the pie unilaterally, and we, the
4 third party, bear the brunt of every dollar they
5 take. We take one less dollar.

6 The parties in the middle say, "We don't care
7 who we pay it to. It's all the same to us." And
8 until you bring those parties in the middle into the
9 conversation, I don't think you're going to resolve
10 what's going to happen to an importing state like
11 us.

12 MR. PETRAMALO: I don't think that's quite
13 accurate. You're being too objective there, because
14 parties one and parties two are in effect the same
15 as Ian pointed out.

16 MR. WEINBERG: Right. Well, that's how it's
17 been corrupted in my view. Manipulate is a strong
18 word, but if you took our existing formula and you
19 saw, well, how can we take from the importing state
20 and move more chips to our side of the table. They
21 figured out a way. Let's raise the host fees. That
22 will do it.

23 So unless we want a place at the table, the
24 only way we're going to get there is to statutorily
25 impose a source market fee or statutorily impose a

1 maximum host fee, which is what California does. I
2 mean, it's the same issue. Two different
3 approaches, but it yields the same result.

4 MR. BURNETT: Where I get a little wrapped
5 around the axle is it's the importing state,
6 exporting state. I think if we had 70 or 80 days of
7 racing a year, at least that end of the table would
8 be saying something very different about these host
9 fees. They would want -- they would find a way to
10 defend the increased host fee because they're
11 getting half of them, and it's because they are in
12 our environment, such a small piece of the overall
13 pie that the horsemen don't focus on the host fee
14 piece of it because the other fees are so much more
15 important to our existence. Does that make sense?

16 MR. WEINBERG: I don't dispute that if you're
17 in an exporting state, sure. And I'm a horsemen,
18 absolutely. The racetrack is getting free rides on
19 the horsemen's advocacy.

20 MR. BURNETT: On some level. Really, to me
21 the problem is we have lumped year-round programs
22 into the same pot and methods of negotiation as
23 part-time live racing programs, essentially
24 importing states, and the importing state comes out
25 the loser under those fee structures because they're

1 so heavily weighted towards paying the expenses of
2 the racetrack and purses.

3 I'm not saying -- it just seems that's the
4 reality. I just don't know what the solution is.
5 We've got two very talented lawyers sitting behind
6 you in this discussion. Don't look back now, Greg.

7 MR. PETRAMALO: Were you talking about Greg?

8 MR. SCOGGINS: I was saying the same thing.

9 MR. BURNETT: Listen, I don't want to put you
10 on the spot, but if either one of you want to jump
11 into this conversation, I think for me it's very
12 educational for us to have these discussions because
13 every time we have even the same discussion, I learn
14 something and it's helpful to figure all this out in
15 trying to work towards Virginia's solution to this
16 problem.

17 MR. SCOGGINS: I've got a couple of points
18 that relate to the TrackNet comment as well as
19 XpressBet. So given that I might be a little bit
20 more lengthy because of those two subjects, I would
21 defer to Mr. Perini so he doesn't have to wait for
22 my comments to end.

23 MR. PERINI: I'm Dan Perini. I'm with
24 YouBet.com.

25 I think the first point I would like to

1 address is not exactly to your question, but related
2 to some of the discussion that came up earlier, and
3 it has to do with YouBet's actions with Colonial's
4 signal following the last meeting. I would just
5 like to clarify that our treatment of the Colonial
6 signal has nothing to do with TrackNet's actions in
7 this regard or what happened at the last Racing
8 Commission meeting.

9 As you all know, ultimately we decided to stop
10 offering the Colonial signal to our customers. We
11 are loathe to do that, but felt that in this case we
12 simply didn't have any other good alternative in
13 light of all the circumstances.

14 Regarding your specific question, there's been
15 a lot of comments here I can address, but I'm not
16 sure that it's going to be that productive to go
17 through them point by point. I'm not sure what the
18 best solution is in the long run. We certainly feel
19 that -- you know, we resolved this from YouBet's
20 perspective in the short run when we, you know,
21 entered into our contract. Apparently, that's
22 become an issue as well.

23 We are in somewhat a different position than
24 TrackNet and are even in a different position than
25 TVG in certain respects. We have neither a

1 racetrack or a cable outlet with which to help us in
2 our position. So I probably would let Greg speak a
3 little bit more to the TrackNet situation. That
4 seems to be the highlight of the discussion.

5 MR. PETRAMALO: Well, let me ask you a
6 question. You said not taking the signal or cutting
7 out the signal had nothing to do with TrackNet or
8 the last meeting. Why aren't you taking the signal?
9 Why isn't YouBet taking the signal?

10 MR. PERINI: Well --

11 MR. PETRAMALO: It's a simple answer.

12 MR. PERINI: Yeah. I think it's rather
13 obvious. I mean, we entered into a multi-year
14 contract with yourself --

15 MR. PETRAMALO: Correct. Another year to go
16 until 2010.

17 MR. PERINI: Yeah. And there's been an effort
18 to subvert that by going to the legislature without
19 any prior discussion with us to try to eviscerate
20 that contract despite that we entered into a
21 settlement agreement and a contract. So it's
22 difficult for us to engage in a partnership with a
23 track and distribute their signal under those
24 circumstances.

25 MR. PETRAMALO: Well, you've got a contract

1 that takes you through 2010, and you have certain
2 obligations under that contract, as do we. Why
3 don't you rest on your contract rights and say,
4 well --

5 MR. PERINI: We intend to, but it's been made
6 clear to us that there will be an effort in the --
7 you know, by the other side to not live with that
8 contract. So are you willing to live under the
9 terms of that contract through 2010?

10 MR. PETRAMALO: Certainly through 2009.

11 MR. PERINI: But not through 2010.

12 MR. PETRAMALO: Well, in 2010 you've got a
13 statute that --

14 MR. PERINI: You're answering my question for
15 me.

16 MR. PETRAMALO: No, I don't think so.

17 MR. BURNETT: But isn't there something that
18 is a bit -- you know, when I partner with somebody
19 in an endeavor and he or she gives me his word that
20 we're going to do it this way, and then that other
21 party goes out and finds a way to subvert the
22 contract, do I want to do business with you or with
23 that person anymore?

24 In other words, it's a different story from
25 where I sit in everyday business, and maybe there

1 are reasons for there to be exceptions here, that in
2 the integrity of two parties shaking hands on a deal
3 that at a minimum you should say, yeah, we had to go
4 put this statute in place because we needed it for
5 this and that, but a deal is a deal, and our deal is
6 good with you until it's over as we originally
7 intended it.

8 And if the legislature says we can't do that,
9 that we've got to charge you the full ten percent,
10 then I guess we've got to do it and, you know,
11 you've got to understand we're looking at the
12 long-term when we pass the statute. But to the
13 extent that that's not the case, hey, our deal
14 stands just the way it always was through the end of
15 the contract, then we'll talk about whether it goes
16 up or not.

17 I'm troubled by that. That a deal is a deal.
18 When I shake hands with somebody, I intend to keep
19 my end of the deal and it strikes me that on this
20 contract basis, you haven't done that.

21 MR. PETRAMALO: Whoa. Wait a minute. How do
22 you say that?

23 MR. STEWART: Let's talk about who subverted
24 what.

25 MR. BURNETT: It's double breaches.

1 MR. PETRAMALO: Tell me how we're not living
2 up not to our contract.

3 MR. BURNETT: Have you agreed that the terms
4 of the contract between you and any ADW providers
5 should remain the same regardless of the statute
6 through the termination of the contract you entered
7 into, the deal you shook hands on? Let's just
8 assume --

9 MR. STEWART: The very same people have --

10 MR. BURNETT: Well, no. Wait. Wait. Wait.

11 MR. STEWART: -- found a way to subvert the
12 contract.

13 MR. BURNETT: Excuse me. Excuse me, sir. I'm
14 going to dismiss you from this meeting if you don't
15 attend to the --

16 MR. STEWART: Excuse me.

17 MR. BURNETT: Thank you.

18 Would you answer the question, please? I'll
19 give you a chance, Ian, but just hold on.

20 MR. PETRAMALO: Yes.

21 MR. BURNETT: There may have been other
22 breaches, which Ian is about to tell us about. I
23 want to know whether you guys have been willing to
24 keep your end of the bargain throughout regardless
25 of the statute.

1 MR. PETRAMALO: The answer is yes, but I don't
2 want to be cute because the contract between the
3 horsemen and YouBet simply says we divide half. So
4 we aren't party to the contract that you are talking
5 about.

6 With that aside, I would agree with you, that
7 there is -- there is a serious concern going forward
8 that -- well, I've stated this to Scott Daruty among
9 others. I think I said it publicly. There's an
10 interesting questioning; that is, on January 1st in
11 my opinion YouBet is statutorily required to pay
12 10 percent, one percent, and a half percent under
13 the new law. I don't think there's any doubt about
14 that, but at the same time they have a very strong
15 argument to come back to say, well, wait a minute.
16 It's true we have to pay this state imposed fee, but
17 we have a contract with you. So you owe us the
18 difference between ten percent and what our contract
19 calls for, eight and a half percent. That's where
20 we are.

21 MR. BURNETT: Okay. So this is consistent
22 with your view that you can rebate, that --

23 MR. PETRAMALO: Of course.

24 MR. BURNETT: -- you can make this contract
25 have the same terms through its termination at such

1 time as you might go forward and renegotiate a new
2 contract?

3 MR. PETRAMALO: Absolutely. And that's what I
4 told the Commission last time. Account wagering
5 money comes to Colonial Downs, and it comes to the
6 horsemen. Last year the horsemen got -- oh, about
7 1.2 or 1.3 million dollars. We chose to take all of
8 that money and put it in the purse account. We're
9 not obligated in any way to do that. We could have
10 taken 300,000 and gone out and bought marketing --
11 use it as marketing, et cetera.

12 MR. BURNETT: Sure. Sure.

13 MR. PETRAMALO: We can use the money anyway we
14 want. So if we get our five percent share of the
15 ten percent and decide that, well, we want to pay
16 YouBet to do some promotional work, fine. I don't
17 see any problem with that, but what I'm suggesting
18 is come January 1st because of the extant contract
19 that is out there with YouBet and the statutory
20 requirement, the parties are going to have to sit
21 down and work out their differences, and what I
22 suggested before may be one way of fixing it. We
23 now have this two-tier contract with YouBet, where
24 they had to pay a little more for premium tracks.
25 We gave them a break on the source market fee. It's

1 not --

2 MR. BURNETT: I'm a little bit lost, and I
3 think Ian is going to give me the answer to this,
4 but I'm a little bit lost as to why there's any need
5 for any renegotiation. If a deal is a deal and you
6 shook hands on it, why aren't you just saying,
7 because we do have the ability to rebate, the
8 numbers are going to stay the same YouBet or whoever
9 until the end of your contract? You're going to pay
10 exactly the same amount you've always paid.
11 Assuming there's been no other issues out there, why
12 is there a need to negotiate?

13 MR. PETRAMALO: Well, because they're going to
14 be automatically giving us five percent, the
15 horsemen, or they're going to give us a combined ten
16 percent, and they're going to want some of it back.

17 MR. BURNETT: You have the right to rebate,
18 but that formula is already set. It's nothing to
19 negotiate. Assuming it's seven percent, that
20 they're paying seven percent, why aren't you just
21 saying your rebate is three percent, end of
22 discussion?

23 MR. PETRAMALO: They're not paying a set
24 source market fee. It's a source market fee that's
25 net of variables. One of the variables is what my

1 good friend Ian keeps pointing to, the rising host
2 fees. That's a variable.

3 MR. BURNETT: That's what you say needs to be
4 negotiated is how to deal with this rising fee,
5 that's what kicks in the need to negotiate?

6 MR. PETRAMALO: That would be one of the major
7 points that needs to be negotiated, yes.

8 MR. BURNETT: I understand your point. Ian,
9 please. Go ahead.

10 MR. STEWART: I think the problem is we cannot
11 maintain the status quo. The status quo changed
12 when the host fees started increasing. Once the
13 host fees increased, our share went down. They took
14 more. So who didn't live up to the contract?
15 They're the ones that changed the host fees, not me.
16 I don't control them.

17 MR. BURNETT: Again, I'm not arguing with you.
18 I just want to understand the position. Your view
19 is that they control the host fees --

20 MR. PETRAMALO: Absolutely.

21 MR. BURNETT: -- and that they increased them
22 in violation of at least the spirit of the contract,
23 if not the letter of it, which you in turn use as a
24 justification to say, okay, you guys want to change
25 the terms. We've got a basis for changing the

1 terms, too. We need to re-negotiate this thing. Is
2 that a fair way of looking at it?

3 MR. STEWART: All I'm saying is if the issue
4 is who didn't live up to the terms of the contract,
5 who subverted the contract, I would submit that the
6 folks that raised the host fees subverted the
7 contract.

8 MR. BURNETT: That's the point I want to
9 understand as to where this is going.

10 MR. PERINI: I have difficulty understanding
11 how YouBet raised the host fees.

12 MR. STEWART: No.

13 MR. PETRAMALO: No. You're the good guy in
14 this.

15 MR. BURNETT: You're in the middle.

16 MR. PETRAMALO: You're the good guy.

17 MR. BURNETT: You probably didn't know it, but
18 you're the good guy.

19 MR. PERINI: Is that on the transcript?

20 MR. BURNETT: Let's defer to Glen for a
21 second. He wants to offer something.

22 MR. PETTY: Two points as I sit here and
23 listen to this. First is that going back to Ian's
24 simplicity/complexity argument, because of the legal
25 complexities, we lost the simplicity. In fact,

1 YouBet is an ally in this fight because of the -- in
2 the TrackNet Media situation. They're sort of an
3 ally of ours because they're having the same.

4 But more -- but I wanted to more importantly
5 address, when we talk about where this legislation
6 came from or what motivated it, let us not lose
7 track of the fact that the Breeders Fund was a
8 player in that process. YouBet can do business in
9 Virginia, as can TVG, as can TwinSpires, as can
10 Colonial Downs because we passed pari-mutuel
11 wagering that has the mandate to promote, sustain,
12 and grow the native horse industry. The way we do
13 that in Virginia is through the Breeders Fund.

14 We've conducted over a hundred million dollars
15 of account deposit wagering or advanced deposit
16 wagering in Virginia without compensating the
17 Breeders Fund. I understand that YouBet probably
18 doesn't want to pay the Breeders Fund, and that TVG
19 and XpressBet and everybody else doesn't, but again
20 we are re-dividing the pie. So I understand that.

21 But the reason they can do business here in
22 the first place is to promote, sustain, and grow the
23 industry, and we're watching all this wagering move
24 from the traditional format to ADW, and we're being
25 left behind. And in spite of what you see on these

1 walls, you know, the breeding industry in this
2 fabulously traditional state is dying while we're
3 coming up with new ways to promote wagering, but it
4 has to compensate the fund. It has to.

5 No one was coming to the table. I stood in
6 front of this board. You guys heard me give this
7 speech for five years. How are we going to fix
8 this? Nobody had an answer. TVG didn't have an
9 answer. Colonial didn't have an answer. The HBPA
10 didn't have it. I didn't have an answer. YouBet
11 didn't. No one had an answer.

12 So part of this bill -- I just want to make
13 sure everybody remembers that, whether or not it was
14 an attempt by whatever party to circumvent whatever
15 contract, I can't speak to, but I can tell you there
16 was a lot of people and a lot of votes in the
17 General Assembly and a lot of support for this bill
18 because it compensated the people who promote,
19 sustain, and grow the industry.

20 I know that's another complicating factor, but
21 I just want to make sure that's on the record, and
22 everybody understands that's part of what happened
23 here.

24 MR. BURNETT: To make it even simpler, it just
25 put the one percent on every bet in Virginia, as

1 opposed to just some of the bets in Virginia.

2 MR. PETTY: And I'm sure no one wants to pay
3 it. I understand that. If I were in their shoes, I
4 wouldn't want to pay it either.

5 MR. BURNETT: Yes, ma'am, Jeanna.

6 MS. BOUZEK: Jeanna Bouzek, Vice President of
7 Operations for Colonial Downs. Everybody else got
8 to talk about their piece of the pie. Nobody has
9 said anything about the OTBs. I just would like to
10 state how account wagering has affected the OTBs.

11 Colonial Downs had a huge marketing campaign
12 with EZ Horseplay so that we could say, you know, we
13 want people coming to the OTB, and Dave and I have
14 had this conversation before, why do we send people
15 to account wagering, because they can't be in a site
16 all the time. They're on vacation. They're in the
17 office. They're home sick. So we did this huge
18 campaign where if you can't be, you know, in our
19 sites, you can wager.

20 Well, a day doesn't go by that I don't have a
21 customer hanging up on me or screaming at me when
22 I'm on site because EZ Horseplay now doesn't have
23 these -- you know. So I've got to do the same thing
24 he does and say, well, when you're not here, go to
25 TVG. Well, guess what? Those guys aren't coming

1 back to the OTBs, and that's why the numbers are as
2 low as they are in the OTBs.

3 So account wagering has hurt -- this dispute
4 has hurt OTBs also, so I just wanted to put my piece
5 of the pie in there.

6 MR. BURNETT: Thank you.

7 MR. PETTY: It's an important piece.

8 MR. BURNETT: It is.

9 MS. BOUZEK: That's what's keeping the horse
10 racing alive, you know. It's becoming very hard.

11 MR. BURNETT: It has.

12 MS. BOUZEK: And every day someone hangs up on
13 me.

14 MR. BURNETT: Mr. Scoggins, just go ahead and
15 put this all together for us so we can understand
16 it.

17 MR. SCOGGINS: Greg Scoggins on behalf of
18 XpressBet and MEC. In response to your question, I
19 don't know that I can. I guess I'd like to start
20 out with a few remarks because in some respects, I
21 see this appropriately so from the perspective of
22 folks in Virginia as a venting session, and I
23 understand where they're coming from.

24 Three or four years ago, the horsemen's groups
25 started communicating with one another about ways in

1 which to ensure that horsemen receive their fair
2 share of the pari-mutuel dollar. I was at a meeting
3 in Chicago five years ago I think it was. Frank, I
4 don't know if you were at that meeting or not, but
5 there were members of the HBPA there, TOC, THA, and
6 others, and they were at the beginning stages of
7 discussing the upside down business model that had
8 grown from the simulcasting market. Not just ADW,
9 but off-track wagering and inner-track wagering.

10 At that time, certainly from my perspective, I
11 saw the train coming in the sense that you're going
12 to have this discrepancy, this disparity between
13 those states, which at the time were California,
14 Florida, Kentucky, Maryland, where they have a lot
15 of racing, very popular, a lot of people want to bet
16 on it, and those horsemen rightfully so wanted to
17 ensure that to the extent people are betting on
18 their signal that they're getting their fair share.
19 They're getting what they need to ensure that they
20 can continue racing in their states. And I
21 understand and totally recognize that as a valid
22 concern from their perspective.

23 On the flip side, there are the states like
24 Virginia, and to some extent Illinois even though it
25 has year-round racing, and other states, Ohio where

1 their product is not as popular, and they have to
2 deliver on what they can bring and that they were
3 going to get hurt by the decision of those states
4 that were what we call export states charging higher
5 host fees.

6 Fast forward three or four years, MEC got into
7 the account wagering business for a couple of
8 reasons. One, it's a growing business. It's a
9 growing segment of the industry. Two, the tracks
10 also recognize that the model is upside down. And
11 if you read articles from Fred Pope and others,
12 there was a recognition that the simulcast business
13 model was upside down. The tracks also at every
14 jurisdiction, but certainly in those that had more
15 leverage because of the popularity, recognized that
16 they're paying or receiving too little, particularly
17 from certain segments of the business of the
18 industry.

19 At the time those segments were identified
20 as -- by MEC as being proper targets of trying to
21 get a more fair rate that recognized the reduced
22 cost associated with distributing a signal were ADWs
23 and the rebates, the rebate houses. Their ability
24 to provide a signal, Ian has said this, I agree with
25 much of what he said. The cost of producing and

1 disseminating wagering product through an ADW is
2 cheaper due to the absence of bricks and mortars and
3 things of that nature, and payroll and whatnot, and
4 the ability through the economies of scale to
5 distribute their wagering opportunities over a
6 larger population.

7 MEC recognized -- and this is before TrackNet.
8 This was a MEC issue. That because of those
9 economies of scale and because of the harm that
10 rebate companies were doing to drive bettors out of
11 the U.S. and through these rebate shops, which
12 that's a discussion for another day, that there
13 needed to be an adjustment in the pricing.

14 So we started increasing rates to companies
15 like YouBet and to those like AmericaTab at the time
16 and XpressBet. Not to TVG, primarily because
17 XpressBet and TVG were in a fight over content. One
18 didn't want to take the other for various reasons.
19 If you want me to, I can go into that greater, but
20 it was a longstanding dispute that ultimately
21 resolved, I'd say, this year as a result of a number
22 of contractual situations changing.

23 MEC increased their rates for Santa Anita, et
24 cetera, to three, four, five percent. More than in
25 the past to be sure, but not to the heights of what

1 we're seeing today. And I don't think Ian would
2 challenge me on this, the other thing that MEC did
3 was it recognized that there are costs associated
4 with brick and mortar wagering, and there are
5 operations such as EZ Horseplay, I think it was
6 Colonial PhoneBet at the time, Philadelphia Park, a
7 state-based regional business, where there wasn't a
8 national competition for access to that signal.

9 Therefore, they would offer the -- what we
10 call the brick and mortar rate, which were lower,
11 three or four percent on average for the content
12 including Santa Anita, and charge a higher rate,
13 four, five percent, for that content through a
14 national ADW provider, but Colonial Downs received a
15 benefit through its EZ Horseplay of the same rates
16 that it was paying at the OTBs and at the track.
17 That was the MEC model pre-TrackNet, pre-THG.

18 I am a little fuzzy on the details relative to
19 what happened immediately after TrackNet, but
20 TrackNet was formed not too far before the
21 horsemen -- their discussions started to mature.
22 There were various efforts to move into the ADW
23 market in a pre-pricing structure. Ultimately, last
24 spring I think it was, Frank, early in the spring,
25 maybe it was at the end of 2007, where the

1 thoroughbred horsemen's group came together, and
2 they proposed a one-third, one-third, one-third
3 model.

4 Whereby, they thought a fair allocation of
5 ADW, the first area that they have focused on or
6 they focused on was ADW, that the fair distribution
7 of handle was one-third to the horsemen, one-third
8 to the tracks, and one-third to the ADW provider.
9 If you're looking at a 20 percent takeout, which is
10 kind of the industry average, that means roughly six
11 to seven percent to each of those three groups.

12 There was some discussion that took place
13 between TrackNet and THG and within the MEC
14 community within tracks as to how that one-third to
15 the horsemen and that one-third to the track was to
16 be divvied up, how much of that was to be host fees
17 to the tracks and the horsemen that were running the
18 race, and how much of that was to be used for source
19 market fees. The export track horsemen and the
20 export tracks -- and I would say to a large extent
21 the export horsemen in export states like Florida
22 and California, they said we want more of that
23 one-third than what you're giving. Some I think
24 even advocated or were willing to advocate that they
25 did not support source market fees at all. That

1 discussion evolved.

2 I would probably believe that to some extent
3 that was a function of input from Frank Petramalo
4 and from Bob Reeves from Ohio. And that's to
5 their -- I'm saying that to their credit. They were
6 the small state tracks trying to let everybody
7 understand the bigger picture of import versus
8 export states. I'm sure Frank and Ian can clarify
9 any points if I misstate them. I certainly do so
10 unintentionally.

11 We were at about a three, four, five percent
12 rate for the MEC tracks. Subject to or pursuant to
13 the discussions that THG had with not only us but
14 other tracks, those rates jumped two, three, four
15 percent, and TrackNet's rates went. There was a
16 yearlong fight between THG and the Churchill Downs
17 folks over what that should be, and because the
18 horsemen exercised their rights under the Interstate
19 Horse Racing Act to cut off a track's ability to
20 send its signal to other jurisdictions in order to
21 create a leverage point to try to get to the track
22 to understand that they needed to charge more for
23 their rates, they needed to give more to the
24 horsemen, et cetera and so forth. So that fight
25 waged on for the year, last year. Unfortunately,

1 folks like Frank Petramalo found themselves as
2 defendants in lawsuits because it was not a pretty
3 fight.

4 At the end of the day, the allocation formula
5 kind of settled out such that the better tracks were
6 commanding six, seven, eight percent. I believe
7 NYRA is at eight and a half percent for the ADW, and
8 I will not hesitate to say that NYRA is not a member
9 of TrackNet. NYRA is a highly sought after signal.
10 They run Aqueduct. They run Belmont. They run
11 Saratoga, one of the prime summer meets in the
12 country. They are not a member of TrackNet. They
13 are not negotiated -- TrackNet does not negotiate on
14 their behalf, and they came out with one of the
15 highest rates early on.

16 Keeneland is not a member of TrackNet.
17 They're a very highly sought after signal in the
18 springs and the fall. Del Mar, another prime summer
19 meet, is not a member of TrackNet to my knowledge.
20 Tampa Bay Downs, a small track that runs in the
21 wintertime through the efforts of their horsemen. I
22 think they're charging seven percent to the ADWs.

23 Now, let's be clear. I'm talking about ADWs,
24 not necessarily brick and mortar. There are
25 differences. There was a recognition on the part of

1 people -- (phone rings) I hope that's not me. My
2 apologies.

3 There is a recognition on the part of several
4 tracks that there is a different cost of doing
5 business out of brick and mortar sites versus
6 non-brick and mortar. So the rates are going up,
7 not just through TrackNet sites, not through
8 TrackNet tracks, but throughout the industry. And
9 that's part of the recognition on the part of host
10 tracks and host horsemen, and they feel that's
11 necessary.

12 I think we are at a tipping point. I think
13 maybe one could even argue that the host tracks and
14 host horsemen have gone too far. I certainly have
15 been a party to discussions within our organization
16 where that subject has been brought up, and I think
17 it has forced tracks and horsemen and states that
18 are import states like Virginia to take action to
19 try and level the playing field and respect for
20 their own state.

21 Those discussions have taken place in
22 Colorado. They've taken place in Oregon, New
23 York -- even New York, Kentucky, elsewhere where
24 they have said we've got to figure out or we'd like
25 to look at ways in which the tracks in our

1 jurisdictions can be protected from too much money
2 leaving the state.

3 That being said, there is not a state for
4 which I am aware other than the State of Idaho that
5 mandates a source market fee of the size as
6 Virginia. Quite frankly, even Virginia is higher
7 when you take into account the Breeders Fund fee
8 than Idaho. It's among the highest in the state --
9 amount the highest in the country.

10 MR. PETRAMALO: What about California?

11 MR. SCOGGINS: California's source market fee
12 varies. I would have to go back and look at how
13 that is, but they have the cap for ADWs, a host fee
14 of 3.5 percent. So it's designed to try and balance
15 the -- or strike the balance, but --

16 MR. PETRAMALO: But don't they have a host fee
17 that at times is as high as 11 percent -- I mean,
18 source market fee in California?

19 MR. SCOGGINS: I'm not in a position to debate
20 that point.

21 MR. PETRAMALO: No. That was my
22 understanding.

23 MR. SCOGGINS: That could very well be. I
24 will say that in California, you have a market that
25 is extremely high for all the ADWs. And to some

1 extent, it's a lost leader, but there's also the
2 issue that you have such volume in that state and a
3 four and a half, five and a half percent hub fee
4 rate, which is what is generally paid in the State
5 of California and that the ADWs walk away with after
6 paying the various fees they're required to pay,
7 that there is more economic justification for doing
8 that.

9 If that were the rate that ADWs had to take
10 across the country, they would not be able to do
11 business because the volume and the efficiency were
12 such that, yes, we do have to rely on host fees or
13 ADW fees that are higher in other states in order to
14 make up for losses we sustain in those states where
15 the fees are too high.

16 If you look at Virginia and you look at a 11
17 and a half percent source market fee and you look at
18 a 20 percent takeout, you're looking at eight and
19 half percent leftover. If I'm left with five to six
20 percent to the host track and you look at the
21 one-third model, it doesn't work because you're left
22 with eight and a half percent, minus the five
23 percent host fee, that's three and a half percent.
24 That's the lowest in the country. Without question,
25 it is the lowest in the country, and it's certainly

1 not one-third of 20 percent.

2 So at the end of the day, this effort on the
3 part of Colonial Downs and the horsemen, which is
4 understandable, I do not begrudge their efforts, but
5 it has skewed the table so far in the direction that
6 is out of step with where everybody else is going
7 and where I think this industry needs to ultimately
8 land, that it creates a real problem for this state
9 and does put at risk the state's ability to promote,
10 sustain, and grow its native industry because it's
11 going to drive the economics probably in a worse
12 direction than what they had hoped to achieve with
13 the legislation that they enacted.

14 The points you made earlier, Chairman Burnett,
15 we have had discussions with Colonial directly or
16 indirectly or TrackNet has. We have -- I don't like
17 to negotiate contracts in the public, but I think
18 there is a certain level of candor that's required
19 so that we all have the proper context.

20 We have proposed an arrangement very similar
21 to what Mr. Petramalo has described that from his
22 perspective -- and I know he's not speaking for
23 Colonial, and he may not agree with my
24 characterization of what we proposed, but that to
25 keep the economic terms as it relates to XpressBet

1 the same throughout the course of its contract,
2 which extends through the end of 2012, and we have
3 been told that there is no interest in that.

4 Now, there are other elements to that
5 arrangement as it relates to host fees and things of
6 that nature. I can't comment to those, primarily
7 because I don't know the details and I don't want to
8 speak to that, but I don't believe that those
9 rates -- I believe that the discussion on the rates
10 are such that they are more favorable to Colonial
11 Downs than they would be to a track other than
12 Colonial Downs.

13 I will also say that as it relates to the
14 current situation, XpressBet is not in violation of
15 its agreement with Colonial Downs. We have a
16 provision in our contract that says that we will
17 make sure that MEC sells its content to Colonial
18 Downs, its ADW, and I think -- is it just ADWs, Jim,
19 or is it --

20 MR. STEWART: Just the ADW.

21 MR. SCOGGINS: We have arranged for that to
22 happen. There was some delays. There was some
23 frustrations as a result of those delays, I
24 acknowledge that, but those are at rates that are
25 lower than the national average, and we certainly

1 extended an offer that would have allowed Colonial
2 to go at a lower than the national average. I think
3 right now you may be at the national average.

4 That's for reasons that I don't need to belabor my
5 remarks any longer to discuss, but I do think that
6 there is a need to recognize that, yes, we have a
7 Virginia focus here, and it's appropriately so.

8 There is a broader discussion going on. There
9 is a broader dynamic going on that is having an
10 affect on Virginia because the way the national
11 market is shaking out. It's inevitable. It's
12 regrettable. I hope that we can bring things back
13 to a level of rationality that me as Greg Scoggins
14 would think to be a better scenario. I don't know
15 whether that will occur, but at the same time, I
16 think it is unfair for any party to be treated in a
17 way that -- I believe in win, win, wins, and I
18 believe that there is a win, win, lose here going
19 on.

20 I recognize that the Virginia folks disagree
21 with this, but I think that at the end of the day
22 given our experience and trying to resolve it in a
23 manner similar to what Frank described, given our
24 inability to solve that, it puts me -- and it makes
25 me concerned that this legislation is not going to

1 be used in the manner that it's been described as a
2 possibility. We have not reaped the benefits of
3 those suggestions, and I am concerned that you will
4 have a negative impact on racing. I think that at a
5 minimum you will see signals not available to ADW
6 customers, because it is unprofitable to offer NYRA
7 at 15 percent takeout, at an eight and a half
8 percent host fee, and a source fee of 11 and a half
9 percent. If you do the math, we've got to take
10 money out of our pocket to do that.

11 We did have a mechanism -- we do have a
12 mechanism in our agreement much the same way as what
13 was described in YouBet, although its processed in a
14 different way, where XpressBet shares some of the
15 pain of the higher host fee. We had a cap of a host
16 fee of "X" amount and as it exceeded that, each
17 of -- XpressBet and Colonial Downs shared that
18 amount. So there were provisions in there to
19 address the expanded sides of host fees.

20 So I know I have taken up a lot of the
21 Commission's time. I apologize for that. I wanted
22 to make sure that from TrackNet's and XpressBet's
23 position, though, that you understood, you know,
24 where we were coming from and what we were
25 responding to in the national and the state-based

1 realms.

2 MR. BURNETT: Let me ask you one question.
3 The ADW providers that are linked to tracks, two of
4 them are, your employer being one, to the extent
5 that they have control over their host fees, they
6 entered into an agreement with the good folks in
7 Virginia and the host fee is "X". Just pick a
8 number, five, and then as it goes along, it's like,
9 oh, geez, sorry guys. I know we've got a formula,
10 expenses have been high. We've got to move to six
11 and a half on our host fee. Gee, guess what?
12 That's a point and a half that comes out of your
13 pocket, Virginia.

14 Why isn't it fair for them to say, you know,
15 you haven't kept your end of the bargain. You
16 haven't -- we had a handshake. We had a deal.
17 You're not being a fair partner in this with us, and
18 we because of that have the right to fight back. We
19 don't have a lot of tools in a small state, but one
20 of them is our legislature. Why from just a
21 fairness standpoint is -- what's wrong with that
22 argument on their part from your perspective?

23 MR. SCOGGINS: I don't challenge the logic
24 behind the argument. It's the old act and react
25 scenario. If something happens to you that makes

1 your economic condition less favorable, then it is
2 natural for someone to say, "I've got to figure out
3 a way to equalize that scenario."

4 Stepping aside from there, there are -- the
5 old tired phrase in this whole discussion, there are
6 complications as it relates to the agreement that
7 only lawyers can love, and that is XpressBet is the
8 contracting party with Colonial Downs. XpressBet
9 made certain requirement -- or has made certain
10 commitments as had Colonial Downs. XpressBet in our
11 judgment has met all of those commitments.

12 I recognize that XpressBet is affiliated with
13 a company that also owns racetracks and that has
14 caused -- due to factors that are not XpressBet.
15 XpressBet did not ask -- and believe me, XpressBet
16 if it were by itself and even internally said, "Why
17 are you guys raising rates so high? You're cutting
18 into our margins," because we're in situations,
19 whether it be in Virginia or California, where we're
20 not able to make the kind of margin that we need to
21 make.

22 And so there is pressure on XpressBet when the
23 host fees go high, and we do try to make our
24 concerns known to the track side of the discussion.
25 We're not asking Santa Anita to raise its rates to

1 what it is. Santa Anita in order to sell its signal
2 to us is being required by its horsemen to sell it
3 at that rate. If we ask our horsemen, "Horsemen, we
4 want to sell Santa Anita to XpressBet and TVG at
5 four percent," they're going to say, "Don't worry
6 about selling it." And the Kentucky horsemen have
7 done that, and the Florida horsemen have done that.

8 So, yes, there is a certain level of
9 participation by the track side of MEC because it's
10 not -- you know, tracks do benefit from the horsemen
11 saying you have to take a certain fee, but the
12 reality is is that XpressBet has not caused MEC to
13 do that. In fact, XpressBet is better off if MEC
14 didn't go to the seven percent from the rates that
15 it was at before. That jump from four to seven was
16 a function of the THG issues that ultimately
17 resulted in that.

18 So from an XpressBet perspective, it has met
19 its obligations and, yes, there may be an indirect
20 subversion if someone wants to use that term, but I
21 don't think it's any more problematic. I think it's
22 less of a problem than Colonial Downs who is a
23 direct partner to the arrangement saying, okay, now,
24 XpressBet, we're going to try and create a situation
25 that's going to totally turn upside down your

1 economic arrangement that we had, because we're
2 going to stick you not in a position where you're
3 going to have to take home four percent. You're
4 going to be taking home in some cases zero percent.
5 I think it's a matter of degrees rather than A
6 versus B.

7 MR. BURNETT: Thank you.

8 MR. PETRAMALO: Brief response.

9 MR. BURNETT: Mr. Weinberg was wanting to
10 respond next. Do you want to yield to him, or do
11 you want to go now?

12 MR. WEINBERG: I'll yield to Mr. Petramalo,
13 the articulate Mr. Petramalo.

14 MR. PETRAMALO: With regard to Greg's
15 representations about THG's role and what its
16 proposals were, let me just say that I disagree so
17 it's on the record.

18 Secondly, I understand his final remarks here,
19 but you have to simply respond by saying the same
20 guy, the same corporation owns Santa Anita and
21 XpressBet. So it's a little artificial to say, gee,
22 we at XpressBet don't like Santa Anita raising those
23 fees or Gulfstream. The same guy is taking all the
24 money in his pocket.

25 Third point, final point before Jim, Greg has

1 put much of the responsibility for the raise in host
2 fees on the horsemen. That's not entirely correct.
3 If responsibility -- prime responsibility has to be
4 placed somewhere, it's on Churchill and the
5 Churchill tracks. This is a little complicated, but
6 let me explain it.

7 Greg was accurate when he said the THG, the
8 national groups proposal was one-third to the
9 tracks, one-third to the horsemen, one-third to the
10 ADWs. It was Churchill, the Churchill side of
11 TrackNet that rejected it. Churchill's position was
12 we solved economics by raising host fees. I might
13 say that the Magna side pretty much was in agreement
14 with the horsemen that one-third, one-third,
15 one-third made sense, but it was the Churchill folks
16 who were holding off and wouldn't agree to any such
17 thing.

18 Their response was we've got to raise the host
19 fees. That was the impetus for raising host fees.
20 Of course, the horsemen said, yeah, that makes sense
21 to us. Let's raise the host fees. And if you're in
22 an exporting state like California or Louisiana, you
23 say yeah, there you go. But that's how that all
24 came about.

25 But I agree with Greg that it's a complicated

1 problem, but at the same time, it seems to me that
2 it is one that is subject to resolution if you have
3 reasonable people who are willing to sit down and
4 come to some compromise, but let me suggest that
5 it's not helpful to that process for us to be
6 sitting here -- when I say us, I'm talking about
7 Virginia horsemen and Colonial Downs being subjects
8 of a boycott. That's not conducive to negotiations.
9 That's a problem.

10 MR. BURNETT: Mr. Weinberg -- or any
11 questions?

12 MR. REYNOLDS: Go ahead.

13 MR. WEINBERG: I was going to make some of the
14 same observations as Frank. I mean, I agree when we
15 talk about fairness, uniformity, those are -- sound
16 like very nice simple concepts that as we delve into
17 the unique circumstances of each ADW provider are
18 very difficult and more complex, I believe, than
19 just who's doing what to whom and who's being fair
20 to whom.

21 Greg is right. This is a little bit of a
22 venting session because I don't have the answers for
23 you, but it has been frustrating for Colonial to
24 talk to TwinSpires in November and say, look, if you
25 want to negotiate an extension of your ADW

1 agreement, we need to bring TrackNet into the
2 discussion as well, and be told that's not possible.
3 And then five months later, to see a coordinated
4 action where we -- basically, they're holding the
5 gun and all the bullets and saying, now we'll talk
6 to you.

7 You can talk about fairness. I think as
8 Mr. Daruty observed at the last meeting, it depends
9 where you sit. From our seat, we tried in our view
10 to reach a fair agreement and were basically told we
11 don't know each other. We can't talk to you in that
12 way, and told now they hold all the cards.

13 I think you asked about this paradigm. When
14 we talk about increasing host fees, there is an
15 implicit assumption there that we haven't really put
16 on the table and may not be able to talk about, but
17 that is host fees get split 50/50. The horsemen are
18 asking for an increase. Well, then the track gets a
19 free ride. If the track asks for an increase, the
20 horsemen get a free ride.

21 In the past Virginia has been asked to fix
22 that by saying, look, we, the ADW provider, whether
23 it be AmericaTab, YouBet, pick your ADW provider, we
24 have to pay this fee, this host fee over here so we
25 can't pay your source market fee. So we have

1 adjusted. We said, okay, on that track, you pay
2 this source market fee. On that track, you pay this
3 source market fee.

4 So the last time we were here, there was some
5 concern about uniformity of treatment between the
6 track, the horsemen, and the other ADW provider. I
7 would suggest to you that that's impossible because
8 they're all in a different position. If we try to
9 apply a uniform rule to every ADW provider, the
10 results are going to be unfair. So the ability to
11 vary rates depending on fees has been critical to
12 getting to where we are.

13 With that said, we need someone to stand up
14 and say the pendulum has swung too far on host fees,
15 and if it continues to swing this way, there's not
16 going to be anything left for a state like Virginia
17 because we're seeing a migration out of the SWFs to
18 ADWs, unless we find a way to bring all the parties
19 to focus on it.

20 So Mr. Scoggins sees a crisis that he thinks
21 may hurt Virginia. From where we sit, we have the
22 attention of people we didn't have before to talk
23 about things we need to talk about.

24 MR. BURNETT: I guess -- I don't want to
25 prolong this conversation. It's very helpful to me.

1 I wasn't expecting an answer or a solution. If it
2 were achievable, I think we would have done it
3 sooner.

4 MR. SCOGGINS: Then why did you ask?

5 MR. BURNETT: Because I wanted to hear your
6 bias, Greg.

7 It seems like we are awfully close as an
8 industry to this one-third, one-third, one-third
9 that the horsemen came up with a long time ago. In
10 some respects, what's gotten us off track is that
11 these sort of disguised arrangements of a source
12 market fee and who's getting what. I just wonder if
13 we simply followed the money and said it doesn't
14 matter what you get it from, but horsemen are only
15 getting a third. It doesn't matter, racetrack,
16 whether you're getting it or how you get it, you're
17 only getting a third, and the ADW, you're getting a
18 third, but it seems we perverted that system a
19 little bit.

20 MR. WEINBERG: I would respectfully disagree.

21 MR. BURNETT: Okay.

22 MR. WEINBERG: It just reinterprets the
23 debate, because within each of those groups, there
24 are two parties. You're going to have the Virginia
25 horsemen talking now to the California horsemen.

1 The California horsemen saying we should get, you
2 know, four-fifths of that, and we're going to be
3 talking to the California track. And they're going
4 to say, well, of that seven percent, we think we
5 should get six percent and your source market fee
6 should be a percent. So the --

7 MR. BURNETT: You're saying it shifts the
8 fight to among the horsemen, for example, and then
9 tracks get dragged into it and the ADWs, so we're
10 back to where we started.

11 MR. WEINBERG: Well, the ADWs are out of it,
12 right?

13 MR. BURNETT: At that point.

14 MR. WEINBERG: At that point they've got their
15 six and two-thirds and they're happy, but the
16 horsemen and the tracks -- it removes them from the
17 middle of the discussion that I described before,
18 right?

19 MR. BURNETT: Right.

20 MR. WEINBERG: And maybe it opens the flow of
21 the discussion in a little more direct way, but I
22 don't think it addresses the fundamental problem,
23 which is still who gets what and how we strike a
24 fair balance.

25 MR. STEWART: The reality is if you were to

1 divorce XpressBet and TwinSpires from TrackNet Media
2 and they were stand-alone ADW companies such as TVG
3 and YouBet, they're basically kind of in the middle.
4 You got one side, the racetracks that are selling
5 them the signal. You have to buy the signal from
6 them, and they're jacking up the price. You got big
7 bad Colonial Downs over here that wants a big pile
8 too, and they're sort of stuck in the middle.

9 Well, the way the model works now is the
10 people that are selling the signal, their number is
11 fixed. They won't take a penny less. Mr. Scoggins
12 needs what he needs to keep the lights on, so we're
13 left with what's leftover. And that's the model
14 that I have a hard time accepting.

15 MR. BURNETT: And for whatever reason, that's
16 the way all of these ADW contracts are structured,
17 right? It's Colonial and the horsemen get what's
18 leftover --

19 MR. PETRAMALO: Correct.

20 MR. BURNETT: -- to put it in a real simple
21 fashion.

22 Mr. Reynolds?

23 MR. REYNOLDS: I have thoughts about -- I keep
24 hearing the word fairness. To me this is really a
25 basic business economic thing. The exporting states

1 have the product that people want and pay for and so
2 forth, and demand -- continue to demand more.

3 There's nothing fair about it.

4 And the states, the importing states don't
5 have that power, don't have that market strength
6 behind them, and this is going to keep going on.
7 It's complicated further by what you were just
8 talking about. There's three parties involved in
9 each one, and they're all -- they will all be
10 different or can be different.

11 MR. PETRAMALO: You know, Commissioner
12 Reynolds, it was working fairly well until a new
13 form of wagering, on-line wagering came about,
14 because while it's true we are a big importer, we
15 also export.

16 So what was going on between racetrack to
17 racetrack worked fairly well. We, in effect,
18 swapped signals. We'd sell our signal to Maryland
19 for three percent. They'd sell theirs to us for
20 three percent, and it was kind of equipoise because
21 all the money was staying in the horse industry, and
22 horsemen are peripatetic, you know. They go all
23 over. You can't just say you're a Virginia horsemen
24 because I race in Maryland, too. So it was working
25 fairly well.

1 The problem came about when you got an ADW
2 that had nothing to do with the horse industry that
3 was setting up there. That's what made everybody
4 start thinking, well, does this economic model make
5 any sense where an ADW is up there say paying three
6 percent for a signal, and then keeping 17 percent,
7 none of which went into the horse industry. That's
8 what we really gave rise to the problem.

9 MR. SCOGGINS: That would be TVG, which was
10 the initial operator.

11 MR. PETRAMALO: Yeah.

12 MR. SCOGGINS: And it goes back to some
13 comments that Mr. Daruty made in terms of going
14 through the history of how ADW evolved and MEC, and
15 it goes back to my points about why MEC got in the
16 game of ADW was because there was a view that three
17 and a half percent, which was the standard rate that
18 TVG was paying as a host fee was too small given
19 their cost of operation and the inequities that it
20 was creating for the producers of the show.

21 MR. BURNETT: Which also enabled rebating,
22 which is a whole different issue and is more
23 harmful.

24 MR. SCOGGINS: And to that extent, I agree
25 with Frank in the sense that the three percent model

1 was working well with the domestic inner-track
2 exchange, but it created a real problem and an
3 opportunity for companies like off-shore and even
4 on -- you know, domestic rebate companies, because
5 it created this nice spread of money that they could
6 use to make money with themselves and attract
7 bettors to their operation, because they could give
8 a portion of the takeout back to their bettors. So
9 the net takeout that a bettor was putting a bet on
10 was less than 20 percent. It might have been 15.
11 It might have been 10 percent.

12 MR. BURNETT: And it wreaks havoc on
13 Virginia's operation.

14 MR. SCOGGINS: It drives handle out of the
15 U.S. pari-mutuel horse industry supporting
16 businesses. The ADWs, to the extent they're paying
17 the source market fees and host fees, obviously the
18 tracks and the OTBs, it was pushing the thing out of
19 the market.

20 So I would suggest that while the three
21 percent market was working well under the domestic
22 exchange, it was due for a change as well. I
23 believe there was some effort to look at the
24 simulcasting pricing market as well, not just in the
25 context of ADW, but in the broader context of all

1 exchange of signals.

2 MR. FERGUSON: That was a market correction?

3 MR. SCOGGINS: Yes, sir.

4 MR. FERGUSON: It was just a market
5 correction.

6 MR. SCOGGINS: That's right.

7 MR. FERGUSON: I'd hate to say it, but I mean
8 it looks like the Virginia horse racing business
9 model is just not sustainable the way it's going.

10 MR. REYNOLDS: That's right.

11 MR. FERGUSON: To bring it down to the retail
12 level again, this morning I stopped in Williamsburg.
13 There's some doughnuts up there by the way for
14 everybody. Went to go to the Ukrop's, who opened up
15 just next door to a Farm Fresh. Well, the Ukrop's
16 was closed. And so I go into the Farm Fresh. I
17 said, "What happened to the Ukrop's?" They said,
18 "We ran them out of town. Put their tail between
19 their legs."

20 It's just a hard core fight with that
21 business, you know, and to run Ukrop's out of town
22 is pretty darn hard to do. They're a great Virginia
23 business, but Farm Fresh just slaughtered them. I
24 appreciate your business model because the way I see
25 it, it gives more of a vertical integration of your

1 business.

2 MR. SCOGGINS: That's right.

3 MR. FERGUSON: It put Colonial Downs in a
4 position where they have to go to the legislature
5 now to get paid, and you have to impose a tax in
6 other words to get paid.

7 MR. BURNETT: Or worse yet, Commissioner
8 Ferguson, it puts them in a position to have to go
9 to the legislature to get to a level bargaining
10 field, where they can negotiate effectively --

11 MR. FERGUSON: Right. Right.

12 MR. BURNETT: -- let alone get paid, I think
13 is what you were saying.

14 MR. FERGUSON: But like Greg said, they did
15 what they had to do.

16 MR. BURNETT: I agree.

17 MR. FERGUSON: You pick your poison with the
18 11 and a half percent rate, and I think that has to
19 shake out.

20 MR. SCOGGINS: And the sellers of the signal
21 has demonstrated by some of the things that have
22 happened through TrackNet, that may happen in a
23 broader context, will they have the ability to
24 respond likewise.

25 MR. FERGUSON: So this is an

1 informational-type meeting. There's really nothing
2 we can do as a Commission at this point, is there?

3 MS. BOUZEK: No, but while all this is going
4 on, customers who are unique customers are getting
5 very frustrated with the industry, which I'm sure
6 they have in the past, but it's at an all-time high.
7 Just look at the numbers. I mean, we're now above
8 the national average in how much we're doing at the
9 OTBs, because our bettors are frustrated with the
10 industry and what's going on.

11 MR. SCOGGINS: As an industry, we are very
12 good at holding the gun in the wrong direction when
13 we fire. It's usually back at ourselves.

14 MS. BOUZEK: They don't want to hear about all
15 of this.

16 MR. FERGUSON: I mean, is the brick and mortar
17 OTB model sustainable or even workable?

18 MR. SCOGGINS: I would suggest with the
19 technology it's jeopardized.

20 MR. WEINBERG: And I think -- if we continue
21 our discussion from the working group, that's
22 precisely what we were talking about of how we adopt
23 the model that maybe is a little more flexible, a
24 broader distribution.

25 MR. FERGUSON: Sure.

1 MR. BURNETT: That's an excellent segway for
2 us to move on. Commissioner Reynolds has another
3 engagement that he has to move on to.

4 Note: Commissioner Reynolds departed from the
5 hearing.

6 MR. BURNETT: We need to take care of items
7 six and seven, and we do have a short closed meeting
8 that we need to take care of. Is it folks pleasure
9 to have -- can you wait around just a few minutes to
10 discuss the working group when we come out of that
11 session?

12 Any public participation? We've had a fair
13 amount already.

14 MR. PETTY: Very briefly. Two things.

15 MR. BURNETT: It better be.

16 MR. PETTY: I was in a meeting last week at
17 Delaware Park, which I've already referenced, the
18 heads of Pennsylvania, New Jersey, New York,
19 Maryland, and Virginia Breeders Associations, and
20 the point of that I'll bore you with later, but it
21 got me thinking that it might be something this
22 Commission would consider is organizing a meeting of
23 that nature, bring Delaware and West Virginia to the
24 table, again we had trouble with that, of the Racing
25 Commission to the point of sitting down and talk

1 about some regional -- just get some issues on the
2 table and start kicking around solutions. I don't
3 know if you'll solve the day-to-day distribution
4 puzzle, but we had this conversation and Vic and I
5 talked about it briefly.

6 I think it would be great if somebody, and why
7 not Virginia, take the lead on that because what we
8 really got out of that meeting was we should have
9 done this before, and we should do it more often.
10 I'll throw that out there.

11 The second thing I wanted to touch briefly is
12 I wanted to publicly thank Frank for displaying the
13 Virginia-bred champion posters. It turns out to be
14 a great gallery for them, and it reminds me of how
15 much even our shrinking industry can accomplish and
16 I want to point out one thing to sort of have it on
17 the record.

18 You look around the room here and you see this
19 group of horses. Researcher started in Charles
20 Town. He's now a graded stakes winner. He's
21 running in a \$100,000 stake over the weekend.
22 Two-year-old champion Charitable Man was fourth in
23 the Belmont. Casanova Move has made a graded stakes
24 place. Winchester won the grade one Secretariat
25 stakes, you know, you can't find the right name and

1 the right race any better than that.

2 But on 4th of July weekend, something happened
3 and I don't know that it's ever happened before, and
4 I can't quite figure out how to research it, but I'm
5 still working on it. In the \$300,000 Prioress
6 Stakes at Belmont Park, Virginia-breds finished
7 first and second. I know of no other time that a
8 Virginia-bred -- Virginia-breds have finished
9 one/two in a grade one stakes race.

10 I can think back to Secretariat and Riva Ridge
11 running one/two in the Marlboro Cup, and while they
12 were both owned and bred by the Meadow Stud of
13 Virginia, Riva Ridge was a Kentucky-bred. I can't
14 find in my 30 years of experience, and questionable
15 memory I will admit, where that happened and outside
16 of Florida-breds and Kentucky-breds, no other state
17 may have ever run one/two state bred in a grade one
18 stake.

19 So I just wanted to point that out that even
20 with all this other stuff going on in the room, we
21 still have the right ground and the right people,
22 and we still can produce a good horse.

23 MR. BURNETT: Absolutely.

24 MR. PETTY: Two good horses.

25 MR. BURNETT: Next meeting August 19th,

1 gentlemen, is that acceptable?

2 Let me make a motion for a closed meeting.
3 Pursuant to Virginia Code Section 2.2-3711(A)(7), I
4 move that the Commission convene a closed meeting
5 for the following purpose, consultation with legal
6 counsel employed or retained by a public body
7 regarding specific legal matters requiring the
8 provision of legal advice by such counsel.

9 Is there a second?

10 MR. BROWN: Second.

11 MR. BURNETT: All in favor say aye.

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

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

18 MR. BURNETT: I hereby certify that pursuant
19 to Virginia Code Section 2.2-3712 that to the best
20 of each member's knowledge, one, only public
21 business matters lawfully exempted from open meeting
22 requirements under the Virginia Freedom of
23 Information Act and, two, only such public business
24 matters as were identified in the motion convening
25 the closed meeting were heard, discussed or

1 considered by the Commission in the closed meeting.

2 Roll call vote.

3 It's a roll call vote. Mr. Brown?

4 MR. BROWN: Aye.

5 MR. MILLER: Aye.

6 MR. BURNETT: Mr. Ferguson, do you have an
7 aye?

8 MR. FERGUSON: Aye.

9 MR. BURNETT: The chair votes aye. That
10 concludes that matter. Thank you very much.

11 Do we go right into working group? I guess I
12 should adjourn our meeting. Is there a motion for
13 adjournment?

14 MR. MILLER: So move.

15 MR. BURNETT: Second. Adjourned.

16 Note: The hearing concluded.

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CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on July 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 22nd day of July, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011