

1
2
3
4
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VIRGINIA RACING COMMISSION

November 17th, 2009

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 9:39 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman
Mark T. Brown
David C. Reynolds
Clinton Miller
Stuart Siegel

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

I N D E X

1		
2	1. Approval of the minutes of October 21, 2009 meeting	4
3		
4	2. Commissioners Comments	4
5		
6	3. Committee Reports	6
7		
8	4. Executive Secretary's Report	15
9	a. Adoption of the Final Exempt Amendments to 11VAC10-60-15 (Fee schedule for permit holders) presented by Dave Lermond	
10		
11	5. Stakeholders	
12	a. Colonial Downs -- Review of the 2009 Harness Meet	43
13		
14	6. Public Participation	90
15		
16	7. Set next meeting -- December 16, 2009	90
17		
18	8. Adjournment	90
19		
20		
21		
22		
23		
24		
25		

1 NOVEMBER 17, 2009

2 MR. BURNETT: Good morning. I apologize for
3 the slightly late start.

4 While it's not on the agenda, our first order
5 of business is to welcome Stuart Siegel, to my
6 right, as our new commissioner appointed by the
7 governor, I think, last week.

8 MR. SIEGEL: Last week.

9 MR. BURNETT: And Mr. Siegel is well-known to
10 most folks that are from Richmond and some of the
11 rest of us, in particular for his service to the
12 state already as chairman of the State Lottery Board
13 and his commitment to VCU and other boards here in
14 the Richmond area. We feel very privileged to have
15 him with us and feel confident that all those
16 problems that we've been unable to solve will now be
17 solvable, but no pressure.

18 MR. SIEGEL: Not at all.

19 MR. BURNETT: And with that, welcome. We look
20 forward to working with you, Stuart.

21 MR. SIEGEL: Thank you.

22 MR. BURNETT: The first order of business is
23 the meeting minutes. Any comments or changes?

24 I have one. At the bottom of page 1, it
25 indicates that the motion was approved unanimously.

1 I don't think there had been a motion prior to that.
2 At first I thought that referred to Commissioner
3 Brown's motion, which appears on top of the next
4 page, but I think that's covered in the second
5 paragraph. So I think we can -- I suggest to you
6 that we simply delete the motion was approved
7 unanimously.

8 Any other observations?

9 MR. BROWN: Other than that, I move to
10 approve.

11 MR. BURNETT: It's been moved that they be
12 approved, the minutes be approved. Is there a
13 second?

14 MR. REYNOLDS: Second.

15 MR. BURNETT: It's been moved and seconded.
16 All in favor indicate by saying aye.

17 Note: (Aye.)

18 MR. BURNETT: The motion carries unanimously.

19 The next item of business are commissioners
20 comments. Fellow commissioners, do you have any
21 comments?

22 Mr. Brown?

23 MR. BROWN: Yes, sir.

24 First off, I'd like to say I spent more time
25 down here at this race meet this past year than I've

1 ever had. I must commend everybody on a fine job
2 done as far as the security went. Dr. Harden's crew
3 did a whale of a job. I was a little disappointed
4 in the caliber of some of the drivers we had, but I
5 think the judges did a nice job policing them.
6 Overall I thought the horses I saw looked fairly
7 decent, so I was kind of happy with that, but
8 overall I thought it went off very well from what I
9 saw and heard. So a job well done.

10 MR. BURNETT: I've been hearing exactly the
11 same thing. I understand the backstretch went very
12 smoothly, and that's all about good management and
13 the team that we're looking at right here. So we
14 thank all of you.

15 MR. BROWN: Good job.

16 MR. BURNETT: Any other comments?

17 I'd make a few more about the industry as I
18 did last time, but it would be the same down in the
19 dumps type of comments. I think we all know some of
20 the difficulties we're all experiencing, and I don't
21 think we need to comment further on that.

22 MR. PETRAMALO: We could argue Zenyatta versus
23 Rachel Alexandra.

24 MR. BURNETT: Now, that would be a good
25 argument. You just go ahead and get that match up

1 set up here for us. That might get a little boost
2 right here for Virginia if you could take care of
3 that for us, Frank.

4 MR. PETRAMALO: Did you see the Breeders' Cup
5 Classic? I mean, that was tremendous.

6 MR. BROWN: Oh, she put on a whale of a show.

7 MR. PETRAMALO: It was incredible.

8 MR. BROWN: To do what she did against who she
9 did it against.

10 MR. BURNETT: Amazing.

11 MR. PETRAMALO: And the horse that ran second,
12 of course, won the Virginia Derby.

13 MR. BURNETT: There you are.

14 MR. PETRAMALO: Gio Ponti.

15 MR. BURNETT: All right. Committee reports.

16 Do we have any committees to report today, folks?

17 No.

18 Okay. Executive secretary's report.

19 Mr. Harrison?

20 MR. HARRISON: Thank you.

21 I just want to draw everyone's attention to an
22 event that occurred in the corporate world. Last
23 week, Churchill Downs, the parent company of
24 TwinSpires and, of course, the major participant in
25 the TrackNet Media tracks, they announced the

1 purchase of YouBet. So that's going to be -- it's
2 going to create a force to be reckoned with in the
3 industry with respect to issues relating to source
4 market fees, of course, and host market fees and
5 taking signals and exporters versus importers. So
6 that should probably take two or three months to
7 finalize, but at that point they'll be a serious --
8 a more serious player than they already are. It'll
9 just be interesting to watch and meaningful to see
10 how it plays out.

11 MR. BURNETT: Mr. Harrison, we have heard from
12 some of our stakeholders already that the Churchill
13 conglomerate is a 900-pound guerilla in many
14 respects, and they've had to take some efforts in
15 many fronts to try and level the playing field. Do
16 you have any comment on whether that aggravates that
17 circumstance or could it in some odd way help us?
18 What is the impact on Virginia?

19 MR. HARRISON: In an odd way, it could help
20 us, but it's more worrisome, I think, than not
21 because they do like to brandish their power.
22 Having said that, they are a racing company, which I
23 feel good about. I don't imagine them doing
24 anything that would jeopardize the industry in any
25 racing jurisdiction, even here in Virginia. So I

1 like what I've been hearing from Robert Evans, their
2 CEO.

3 Everything seems like it falls back to the
4 racetrack and the racing. I'm willing to give them
5 the benefit of the doubt at this point, but I know
6 they can be very tough with respect to negotiating,
7 and so it's kind of a double edged sword.

8 MR. BURNETT: Well, let me touch on the racing
9 company piece. You know, Penn National got its name
10 from a racetrack in Grantville, Pennsylvania.

11 Mr. Carlino, who was the CEO and his family had
12 owned it for a very long time, and when they bought
13 Charles Town and were in the process of getting slot
14 machines, they came to the horsemen at Charles Town
15 and said, "We just want to make sure you understand
16 that we are a racing company, and we are seeking
17 some gaming for supplemental income." That was year
18 one.

19 Year two, when he came back, we just want you
20 to understand we're a gaming company, and we just
21 have some racing here that we're supporting. So I
22 liken that a little bit to Churchill, because if I'm
23 not mistaken, aren't they in a big way in favor of
24 slots in Kentucky?

25 MR. HARRISON: Oh, sure. And all their

1 neighboring states -- it's similar to Virginia in
2 that respect. All their neighboring states have
3 slots. The purses are increasing in those states.
4 So Kentucky racing, believe it or not, is in
5 jeopardy.

6 MR. PETRAMALO: Bear in mind, too, that the
7 other two major tracks they own, Calder and
8 Fairgrounds, have slots already.

9 MR. HARRISON: Right.

10 MR. PETRAMALO: I would not be sanguine in
11 saying that Churchill is a racing company. Evans
12 comes from Silicon Valley. Some say he doesn't know
13 which end bites and which end kicks, but I wouldn't
14 say that. It's -- you know, I would be concerned.

15 MR. STEWART: Well, for what it's worth, it
16 seems to me -- to paraphrase what Vic was saying, it
17 falls back to the racetrack. Another way of saying
18 it, it falls back to their racetrack.

19 MR. BURNETT: There you are.

20 I think they're all in favor of racing as long
21 as everybody is adopting the fees that they've
22 decided are fair and if they don't happen to work
23 for you, well, you've got some fixing to do is sort
24 of my sense. I'm sure that's not helpful coming out
25 of the box trying to work out negotiations with

1 them, but I would guess that there's going to be a
2 little rough sledding coming here once they get full
3 control of YouBet.

4 I continue to hope that there would be some
5 way that the industry as a whole could recognize or
6 come up with a formula that would balance importing
7 versus exporting states and that somehow those of us
8 that import signal six, eight, nine, ten months out
9 of the year would not end up being bankrupted or
10 held hostage in one form or another by virtue of the
11 fact that host fees keep raising for the benefit of
12 those that are exporting. They sort of flow to the
13 same group of people in some ways, but depending on
14 what kind of state you're in, you either are on the
15 receiving end of the sword or behind it. I'm not
16 sure what the answer is going to be.

17 Can you help us on when you might next need to
18 be engaging in negotiations with these folks? Is
19 that going to be for licensure in the coming year?

20 MR. STEWART: Well, negotiations with TrackNet
21 are ongoing through the Mid-Atlantic Cooperative.

22 MR. BURNETT: Which has its own issues right
23 now.

24 What about YouBet, they'll have to review
25 their license for this coming year, right?

1 MR. PETRAMALO: Yeah. Everybody is up for
2 renewal come January.

3 MR. BURNETT: Right.

4 MR. WEINBERG: Yeah. I mean, at the next
5 commission meeting, we'll be having the licensing
6 proceedings, I would imagine.

7 MR. BURNETT: Will Churchill be in control of
8 YouBet by that time?

9 MR. HARRISON: No.

10 MR. WEINBERG: They expect to close the first
11 or second quarter.

12 MR. BURNETT: So you want to see if you can
13 negotiate a 10-year contract with them?

14 MR. PETRAMALO: Well, you know, the issue
15 seems to me to -- in its clearest form, it would
16 manifest itself with the relicensing of TVG and
17 TwinSpires, both of whom have source market
18 contracts that expire at the end of this year. What
19 that means is when they come in here in January for
20 their January through December license, they will
21 then have to commit to paying the new statutory
22 10%/1% rates. That's when, you know, the rubber
23 meets the road, what they're going to do at that
24 point.

25 The other companies have a slightly different

1 position because they have extant contracts with us
2 that go on for another few years under a formula
3 that differs, of course, from the statutory rate.
4 That seems to me to suggest that they may want to
5 talk to us about how to resolve the apparent
6 divergence between their contract and what the
7 statute calls for, but the other guys have got no
8 argument, TwinSpires and TVG.

9 MR. BURNETT: Help me with this a little bit.
10 In your view, the new statute will trump the net
11 leftovers to the Virginia formula that we have
12 historically had such that pressures from YouBet,
13 Churchill, TrackNet Media with regard to source
14 market fees and the like or host fees will not
15 simply be passed on such that Virginia's share of
16 the pie is that smaller.

17 MR. WEINBERG: That's correct.

18 MR. PETRAMALO: Yes.

19 MR. WEINBERG: I mean, for licensing
20 purposes -- if I may add a nuance to Frank's
21 observation. For licensing purposes, all of the
22 licensees have to acknowledge they're bound by the
23 new statute.

24 MR. BURNETT: Sure.

25 MR. WEINBERG: Those with existing contracts

1 have a discussion with the horsemen and Colonial
2 Downs saying not withstanding what the statute says,
3 you still owe us a net.

4 MR. PETRAMALO: The difference.

5 MR. BURNETT: Right.

6 MR. PETRAMALO: It's not a frivolous argument
7 on their point. I wouldn't concede much more beyond
8 that, but it's an argument.

9 MR. BURNETT: I guess my concern in terms of
10 the ongoing consistency of our product and of racing
11 is that a number of these groups have not shown any
12 shyness about boycotting, and that can be
13 devastating depending on the tracks and the
14 particulars, and I just hope there's some way we can
15 avoid just a cutoff of almost all of our
16 economically important signals.

17 MR. WEINBERG: But they've already done it,
18 let's be clear.

19 MR. BURNETT: Well, not all of them. I'm
20 saying they've demonstrated that they're willing to
21 do that and if you add a few more by virtue of their
22 acquisitions, at some point they're much less.

23 MR. STEWART: It's kind of two pieces to the
24 puzzle. They've boycotted taking our signal from
25 our live product.

1 MS. PETTICOLAS: Right.

2 MR. STEWART: In terms of putting a signal
3 into the parlors, that negotiation is handled
4 through the Mid-Atlantic Purchasing Co-Op. So far
5 we have a contract that's still in effect, though,
6 we're in a dispute with -- the co-op is in a dispute
7 with TrackNet, and right now we're not taking the
8 Churchill or the Fairgrounds meet in our OTBs.

9 MR. PETRAMALO: Are you taking Hollywood Park?

10 MR. STEWART: Yes.

11 MR. BURNETT: Frank is happy now.

12 MR. PETRAMALO: Well, no. That's part of
13 TrackNet, too.

14 MR. STEWART: Well, none of the other
15 Mid-Atlantic Cooperative members are taking that
16 signal either.

17 MR. BURNETT: Right. I mean, that's the free
18 market, I guess, but it's -- you're the folks that
19 characterized them as a 900-pound guerilla, and I'm
20 not inclined to disagree with you. Following that
21 forward, if they just start -- whether it's not
22 taking it or they withdrawing, you know, Jeanna's
23 work is cut out for her in the OTBs. The idea is to
24 have good product for Virginia citizens to go bet on
25 so that we can have good handle and have good

1 racing, et cetera, et cetera. This is spiraling in
2 a direction that I hope we can change.

3 Any other questions on this issue of
4 Mr. Lermond or any of our stakeholders?

5 MR. HARRISON: It's a significant event that
6 we are watching.

7 MR. BURNETT: All right. What else,
8 Mr. Harrison?

9 MR. HARRISON: We're entering the winter days,
10 the short days, and the VRC staff will be
11 endeavoring to review all of our rules, and then
12 recommend proposed changes to those, so that will
13 play out over the next several months. I just
14 wanted to inform everyone of that.

15 We have a Virginia Racing Improvement Group
16 meeting subsequent to this one. I hope many of you
17 can stay. I think we're going to have some folks
18 trickling in over the next hour or so to participate
19 in that, and that's about it.

20 I'll turn it over to Dave. He'll discuss the
21 rule amendment.

22 MR. LERMOND: Thank you, Mr. Harrison. Good
23 morning, Mr. Chairman, commissioners.

24 MR. BURNETT: Good morning.

25 MR. LERMOND: At the last monthly meeting,

1 you'll recall that you voted to adopt the amendments
2 to 11VAC10-60-15, which is the fee schedule for
3 permit holders to the proposed stage in the normal
4 regulatory process.

5 Once that occurred that put that regulatory
6 action into the next proposed stage. The first
7 thing that happens in the proposed stage is its
8 reviewed by Office of the Attorney General. Upon
9 completing her review, Ms. Dilworth informed us that
10 this action is exempt from the Administrative
11 Process Act. I think there were three different
12 code sections that gave us the exemption. So as a
13 result, we can go ahead on a much faster basis to
14 get these fees effective.

15 Given Ms. Dilworth's advice, now what I would
16 like for you to do today is to go ahead and adopt
17 this fee schedule as a final exempt action. To give
18 you a little background, the original action was --
19 we had done away with the fee schedule and replaced
20 it with some verbiage. We thought maybe at the time
21 that was a good way to go.

22 Colonial Downs had some concerns about it.
23 Basically, they thought maybe it might capture some
24 additional people that were not required to be
25 licensed before, and in addition, when the

1 Department of Planning & Budget had their first
2 glance at this action, the analyst said to me, we
3 would kind of like to see you go back to the fee
4 schedule. We think it's clearer. It's -- you know,
5 it wasn't broken. Why fix it? Based on those two
6 things, we decided that we would go back and dig out
7 the old fee schedule and just make some changes to
8 it.

9 Generally, the thought was we were going to
10 increase the fees from \$10 a year to \$50 a year. We
11 did want to make some exceptions. The first was any
12 employee of the unlimited licensee would only be
13 charged a yearly fee of \$25. In addition to that,
14 we felt that the grooms and hot walkers given their
15 financial status that \$50 may be a little too much
16 for them, so we decided to give them a break and
17 only charge them \$25.

18 And then just -- when we were going through
19 the fee schedule, we also looked at the harness side
20 of it. As Mr. Brown can concur, there's a lot of
21 individuals in harness that will be an owner,
22 trainer, and a driver. So with this new fee
23 schedule, that person would have to pay \$50 for each
24 one of those licenses. I contacted some other
25 states, and I found that a few of the states, Ohio,

1 New Jersey, there was maybe one other, that would
2 cut the harness side a break and they would charge
3 one fee for the trainer/driver, and then another \$50
4 for the owner's license. We thought that was a fair
5 thing to do, and so we incorporated that into the
6 changes to the fee schedule.

7 With that, if you have any other questions,
8 I'll be happy to answer them.

9 MR. PETRAMALO: How does that work on the
10 thoroughbred side when you've got people who are
11 licensed as owner/trainers?

12 MR. LERMOND: The owner/trainer would have to
13 pay \$50 for each.

14 MR. PETRAMALO: So it would be \$100?

15 MR. LERMOND: Yeah.

16 MR. BROWN: Mr. Chairman?

17 MR. BURNETT: Yes. Mr. Brown?

18 MR. BROWN: One quick question. I see down
19 here at the bottom, we have horse owner \$50, and up
20 here we have corporate horse owner, you marked out.

21 MR. LERMOND: Right. Some of the ones that we
22 marked out, corporate horse owner, lease, I think
23 there was another one for partnership, those are all
24 going to fall under stable name.

25 So if someone had a partnership before this,

1 the individual members of the partnership would each
2 have to be licensed, and then they would take out a
3 partnership license for \$25. This would also be in
4 case of a lease and the owner corporate, so that
5 those are all -- they're all going to fall under the
6 stable name now. We're still going to capture
7 those. It's just -- that's kind of the way --

8 MR. BROWN: So every individual in that stable
9 is going to have to pay that \$25 is what you're
10 saying?

11 MR. LERMOND: That's correct.

12 MR. BROWN: Okay.

13 MR. BURNETT: Does the night watchmen and
14 other now come under licensing administrative
15 employee, or how does that work?

16 MR. LERMOND: That's correct. We felt that
17 both of those would fit into one of these other
18 categories. We really didn't want to go into other.
19 I don't think we've ever really used it. We're more
20 comfortable having those fit in, whether it's a
21 vendor employee or an employee of the licensee. I
22 think we can fit almost anybody into this schedule.

23 MR. BURNETT: There was an interest expressed
24 on the part of the racetrack to have some input on
25 this entire process. It seems to me today we're

1 learning that the process is changing dramatically,
2 and I don't want to deprive the track of the
3 opportunity to comment on the direction of this
4 effort. And if that catches you by surprise today
5 and you'd like to postpone it for one meeting, it
6 seems to me with the consent of my fellow
7 commissioners that that might make some sense giving
8 the fact that we don't have a meet pressing on us.
9 Is there any reason why -- and, again, maybe it's a
10 moot point, but if we want to postpone this a month
11 that we could? Is there going to be a hardship
12 anywhere for that to occur?

13 MR. LERMOND: If it's approved today, then it
14 will be printed in the *Register* on the 21st of
15 December, and it can go into effect as of January 1.
16 If it wasn't approved today, we would probably have
17 to wait until February 1 or some other time. Since
18 our license is a calendar year license, it just made
19 sense to go ahead and make this change and have it
20 effective as of January 1.

21 MR. BURNETT: Understood. Let's hear from the
22 racetrack as to what they're going to do.

23 MR. WEINBERG: I think when -- with respect to
24 these regulations, they're now in a very different
25 format than when we originally commented on them

1 back in April, but I think our concerns remain the
2 same. They really fall in the nature of two
3 concerns. First, we'd like to understand why we
4 need to, in effect, in some instances two and a half
5 times the fee. Are we -- is the Commission saying
6 we need more revenue, in which case we'd like to
7 understand and make sure that revenue stays in the
8 industry rather than going back in the general fund.

9 Just for a frame of reference, if you took the
10 current \$10 fee and just increased it by the rate of
11 inflation since 1996 when we first had any type of
12 operation where the Commission first would have
13 collected these fees, \$10 adjusted for inflation
14 over that period would be \$14.13. So the \$25 is far
15 in excess of what an inflationary rate or an
16 inflationary adjusted rate would be. That was our
17 first concern.

18 Our second concern is we do think that there
19 is a distinction between the type of employees that
20 Colonial Downs has, and it really depends on what
21 they have access to, but those that by the nature of
22 their job have access to the back side or the racing
23 animal, the jockey room, or the driver's room,
24 totalizer room, the mutuel's room, or the money room
25 deserve probably a higher level of scrutiny than

1 those who are sweeping the floor, working the
2 parking lots, playing hostesses. As a consequence,
3 there should be some distinction between the amount
4 of their permit fee. We would suggest that \$15 be
5 appropriate for folks that don't have access to
6 those areas of the enclosure if, indeed, the
7 Commission is inclined to increase the fee to \$25,
8 so that there would be a distinction between those
9 that for lack of a better term pose more of a threat
10 to the integrity of racing than those that don't.

11 MR. BURNETT: Can you give me some sense of
12 scale of this issue; that is, how many -- are we
13 talking about 30 employees times a \$15 saving, or
14 are we talking 300 employees times a \$15 saving?
15 I'm just trying to get a sense of how many folks who
16 would be in or be out. And to do the other side of
17 my question as well, it strikes me as a business
18 person the -- whether the fee is \$15 or \$25, isn't
19 perhaps as onerous as having to have these employees
20 fill out an application and have their backgrounds
21 checked in and of itself.

22 I mean, it seems to me not very many minutes
23 of a person of Jeanna's talent or anybody else spent
24 on each employee is going to eat up 10 or \$15.

25 MR. WEINBERG: And you're anticipating my

1 second concern.

2 MR. BURNETT: Okay.

3 MR. WEINBERG: And I can give that to you now
4 if that would be helpful. And that is on big days
5 at the racetrack, such as Virginia Derby Day, where
6 there is a hiring of a person for a day or two,
7 you're exactly right. It would be nice to build
8 into the regulations as we're re-visiting them the
9 opportunity to have a day pass, where the screening
10 process is more appropriate and like those who get a
11 one day permit to race at the racetrack, a bartender
12 who's here for Virginia Derby presents a driver's
13 license, pays a reduced permit fee and is authorized
14 to serve drinks in the grandstand. We'd like to see
15 that as part of this fee schedule and have suggested
16 some language to the staff.

17 MR. BURNETT: Well, let me ask a question of
18 Mr. Lermond, if I may.

19 What you provided us today, Dave, is just the
20 fee schedule? Is there more to the exempt action or
21 regs that is a narrative that goes with it that you
22 want to change, or are you leaving everything else
23 exactly the same?

24 MR. LERMOND: We're going to leave everything
25 the same. I believe in the previous section it

1 refers to the fee schedule. Someone could find out,
2 A, if they need to be licensed and, B, what the cost
3 would be.

4 MR. BURNETT: If this Commission wanted to
5 adopt all or some of the suggestions that have been
6 made by Mr. Weinberg, would they also be exempt as
7 this fee schedule is, or is it only the fee schedule
8 that is an exempt action? Would the other things
9 have to go through the APA process?

10 MR. LERMOND: The suggestion that Mr. Weinberg
11 gave us was actually in a different chapter. It was
12 in Chapter 50. Normally, when you have a different
13 chapter, they like you to have it as two separate
14 actions. I combined two chapters one time three
15 years ago, and I got severely slapped on the wrist
16 by the *Register*.

17 I'd like to add a couple things. One is this
18 all came about last fall. The governor directed all
19 agencies, he wanted each agency to have one
20 productive measure. We're required to have
21 different performance measures, but they felt it was
22 important that each agency come up with a
23 productivity measure. The DMV used a similar one
24 that we did, the cost of each license.

25 I've always felt -- I had felt, you know, we

1 spent a lot of money issuing these licenses, and I
2 can tell you for the last five years all I've heard
3 is, wow, 10 bucks. What a great deal. I can't
4 believe it's this cheap in Virginia.

5 The first analysis with the fiscal year '07,
6 the cost per license was \$64 per license to issue.
7 The following year I did another analysis, it went
8 down to 58. We're still taking measures to cut
9 these costs, and I believe we'll probably have them
10 below 50 maybe by the following -- the next time I
11 do this analysis after the next fiscal year.

12 In relation to the other states, I mean these
13 fees are going to bring us pretty much in line with
14 the exception of Pennsylvania and, of course, you
15 may be familiar with West Virginia's low fee, I
16 think it's \$5 or \$10, but this would bring us in
17 line with most of the states. You know, the state
18 doesn't want us to make money on issuing licenses,
19 but they don't want us to lose money at the same
20 time. The ideal situation would be a break even.
21 So we're doing all we can to reduce our costs, but
22 at the same time, these fees have been the same for
23 12 years, and we just feel that this is something
24 that we wanted to do at this time.

25 MR. BURNETT: It strikes me that the

1 governor's office spells productivity F-E-E to take
2 a page out of Senator Potts' book.

3 Mr. Miller?

4 MR. MILLER: Mr. Chairman, I would ask Dave an
5 elementary question. Go through what you do -- if I
6 come in or John Doe comes in and I want a license
7 that's any of these things, what is it you do
8 regarding me? What's the first thing you do?

9 MR. LERMOND: We're going to find out what
10 kind of application you're here for, whether it's an
11 owner, trainer, whether it's your first time or it's
12 a renewal application.

13 MR. MILLER: And then I tell you.

14 MR. LERMOND: You'll fill out the application,
15 you'll bring it up to the desk, the clerk will put
16 your information into the system.

17 MR. MILLER: Okay. When the clerk puts the
18 information into the system, what happens? Is there
19 a way in the system to check whether or not I've
20 been arrested in New Mexico for selling drugs?

21 MR. LERMOND: If you've done something in
22 another jurisdiction, if you're a bad guy, there may
23 be a flashing message that says, "Do not license
24 this guy," but the background checks, and we're
25 required to do those, are through fingerprints that

1 are taken by our staff.

2 MR. MILLER: You do a background check for
3 every one of these things listed here, even a pony
4 rider?

5 MR. LERMOND: Every five years, we take
6 fingerprints for these people.

7 MR. BURNETT: Who pays for the fingerprints?

8 MR. LERMOND: The applicant.

9 MR. BURNETT: How much does that cost?

10 MR. LERMOND: Thirty-seven dollars. And
11 that's just a wash for us. That's exactly what the
12 state police charges us for each fingerprint.

13 MR. BURNETT: For the long-terms, if you will,
14 the career types, we should add \$7 per year to this
15 fee as to what it's actually costing them; is that
16 fair?

17 MR. LERMOND: That's fair.

18 MR. MILLER: And then after you do the
19 background check or after you put it into the
20 system, then what else do you do?

21 MR. LERMOND: We'll take their picture if they
22 don't like the picture that they had the year
23 before, and we'll issue them a badge.

24 MR. MILLER: You have the cost of taking a
25 picture --

1 MR. LERMOND: Right.

2 MR. MILLER: -- the cost of creating a badge,
3 the cost of the paper and printing --

4 MR. LERMOND: That's correct.

5 MR. MILLER: -- for whatever license that they
6 get --

7 MR. LERMOND: Uh-huh.

8 MR. MILLER: -- and those are the things that
9 you say are costing whatever it is?

10 MR. LERMOND: Correct. It's just basically
11 the salaries of the people that are involved in the
12 process and the materials that they use.

13 MR. MILLER: Okay. I'm just trying to picture
14 in my mind why someone needs to be licensed to be
15 a -- some of these things. It just seems to me to
16 be so minor. I mean, why would they even need a
17 license? Is it because the statute says that
18 everyone that works on this site has to be licensed?

19 MR. LERMOND: Yes, sir. It's a reflection of
20 what the statute says.

21 MR. MILLER: It's so general that, you know,
22 if I'm Woody Guthrie working my way across the
23 country and I come back home and I want to make
24 enough to buy a few meals, go see a show, I
25 understand you have a job opening. I could work

1 three or four days. I still have to be licensed
2 under that statute.

3 MR. LERMOND: That's correct.

4 MR. MILLER: Okay.

5 MR. HARRISON: Mr. Chairman?

6 MR. BURNETT: Yes. Doc?

7 DR. HARDEN: There's also an element of
8 certification in there. Anybody associated with,
9 for instance, a pony rider or a farrier or a
10 dentist, equine dentist, we have to verify that
11 they've got the credentials and skills --

12 MR. MILLER: Oh, yeah. I understand that.

13 DR. HARDEN: -- for that job.

14 Now, somebody sweeping the parking lot, that's
15 a different story, but everybody involved with
16 racing has a credential area that we have to make
17 certain --

18 MR. MILLER: What I was getting at, you know,
19 is you have people that are not of that caliber, and
20 I am a guy that -- my talent is sweeping the parking
21 lot or shoveling horse manure, you know, but still I
22 have to be licensed because of the statute.

23 MR. HARRISON: Peter, we'd happy to work on
24 the day pass or the day license or the three-day
25 license as you had proposed earlier. It's in a

1 different chapter, so we want to move forward with
2 this one. Like I say, we're glad to work on that.
3 We think it's a good idea. We're going to be
4 looking at all of our rules over the winter, not to
5 exclude that one for sure.

6 MR. MILLER: So you're saying it's under a
7 different chapter?

8 MR. HARRISON: Yes.

9 MR. LERMOND: It's in the section for
10 temporary employee, three or less days or whatever.

11 MR. STEWART: May I ask a question?

12 MR. BURNETT: Please.

13 MR. STEWART: In coming up with the \$58, I
14 assume that you took the salary of whoever the
15 person was there and divided it by how many licenses
16 you issued?

17 MR. LERMOND: I added up all of these total
18 costs and divided it by the number of licenses that
19 were issued. Roughly 4,000 licenses are issued each
20 year.

21 MR. STEWART: But I assume that the salary of
22 whoever that person is was part of the computation?

23 MR. LERMOND: It is, but in some cases, I
24 didn't take a full salary. I think in Mr. Roney's
25 case I may have taken 40 percent or 50 percent

1 because not all of his time -- he has to do the
2 investigation part of it, but he certainly has other
3 duties. I tried to apply it as fairly as I could
4 because I wanted an accurate reflection of what it
5 was costing us. I'm just as curious as the
6 governor's office is.

7 MR. STEWART: Well, hypothetically, if you
8 issued half as many licenses, would you still have
9 that same person working there?

10 MR. BURNETT: The breaking points aren't at
11 the same place. If you had twice as many, they
12 might work a little harder, but you wouldn't need
13 two.

14 MR. STEWART: You need one, though, right?

15 MR. BURNETT: You always need that one. And
16 so the question is where is the breaking point where
17 you start changing things.

18 MR. STEWART: Most of the time when you're
19 looking at stuff like this, what you're looking at
20 is marginal costs, what's the cost of the next
21 license, and usually that wouldn't include the
22 person that's going to be there whether you're
23 issuing, you know, one license or ten licenses, but
24 you still need that one person there.

25 So I would -- I have no idea what the numbers

1 are, but I'd be willing to guess that the marginal
2 cost of each additional license is substantially
3 less than \$58.

4 MR. LERMOND: We're not going to get any
5 additional licenses by this action. We're still
6 going to probably have the same 4,000 licenses each
7 year, maybe less.

8 MR. BURNETT: One other thing that's missing
9 here is whether or not the original license fee
10 reflected the actual cost of doing it, whether that
11 was a winner or loser, whatever it was.

12 I wonder -- I got to say, you know, well, the
13 lawyers in the room all know that our -- we all get
14 excited with the Virginia State Bar when they want
15 to increase our dues by \$25 to protect clients or
16 something like that, and everybody just goes crazy.
17 I've always been a little bit mystified by how easy
18 it is for us to charge people \$300 an hour or \$500
19 an hour, then yell like hell when you have to pay 25
20 bucks to the state under our regulatory system.

21 These numbers aren't that a big number, but
22 they're obviously generating a little controversy
23 here. And I would suggest that in spite of the fact
24 that it may be an inconvenience, and I'm not hearing
25 that it's more than that waiting a month, that we

1 let folks submit in writing what their thinking is
2 about where this should go.

3 Perhaps, Dave, you could provide to the track
4 or others that are interested your analysis and how
5 much each of these things cost, we can talk about it
6 at the next meeting, and everybody has their chance
7 to think about it and have their say, and we'll vote
8 on it one way or the other. I'm suggesting that to
9 fellow commissioners. If you want to move ahead
10 today, that's fine, too.

11 MR. MILLER: Could I ask one other question
12 before we take up your suggestion?

13 MR. BURNETT: Please.

14 MR. MILLER: Of all these things listed here,
15 Ian, how many -- does the track pay a lot of these?

16 MR. STEWART: No. We do not pay any of those.
17 We made that decision years ago. After the first
18 meet, we got a bill for \$30,000 or something like
19 that.

20 MR. MILLER: So each pony rider, each person,
21 that's up to them, and they're expected to pay for
22 it out of their pay and so forth. So really the
23 track doesn't pay any of these on behalf of anyone.

24 MR. STEWART: Actually, we pay it on behalf of
25 one person. We have a rule that anybody that

1 invests more than 20 million dollars in our
2 business, we will pay their license.

3 MS. DILWORTH: Mr. Chairman?

4 MR. PETRAMALO: Good to know.

5 MR. MILLER: Good to know, yeah.

6 MR. PETRAMALO: May I ask two questions?

7 MR. BURNETT: Do you have any questions?

8 MS. DILWORTH: No, I'll say -- go ahead,
9 Frank.

10 MR. PETRAMALO: Following up on the early one,
11 the current license fee for a trainer in
12 thoroughbred is \$10 and an owner is \$10.

13 MR. LERMOND: That's correct.

14 MR. PETRAMALO: Is a person currently licensed
15 as an owner/trainer, does that person pay \$20?

16 MR. LERMOND: Yes.

17 MR. PETRAMALO: So what you're proposing isn't
18 a change other than the amount?

19 MR. LERMOND: For the thoroughbred, yes.

20 MR. PETRAMALO: So instead of \$20, they'll be
21 paying \$100.

22 MR. LERMOND: In the case of harness where
23 there's an owner, trainer, driver.

24 MR. PETRAMALO: No. I understand that.

25 MR. LERMOND: Correct.

1 MR. PETRAMALO: The second question is of the
2 4,000 licenses that you've issued, ballpark what
3 percentage are simply renewals as opposed to new
4 ones.

5 MR. LERMOND: I'm not sure.

6 MR. PETRAMALO: The reason I was asking is is
7 the process to renew any less expensive than the
8 process when somebody comes in the door for the
9 first time?

10 MR. LERMOND: For us?

11 MR. PETRAMALO: Yeah.

12 MR. LERMOND: No, it isn't. The only
13 additional fee is the \$37. As I said before, that's
14 just a wash with the state. That's exactly what
15 they charge us.

16 MR. PETRAMALO: For example, I renew my
17 owner's license. So I send in my \$10 or this year
18 \$50, do you go and do a background check on me
19 again?

20 MR. LERMOND: No, only if it's been five years
21 or more.

22 MR. PETRAMALO: All right. So I had my prints
23 five years ago, I paid the 37 bucks and the \$10, and
24 you went through the whole process that made up this
25 average of \$58 a license, but for the following --

1 for the subsequent four years, all I did was send in
2 my money and you did basically nothing except send
3 me a license, correct?

4 MR. LERMOND: Correct.

5 MS. RICHARDS: Do you not also honor other
6 states for their fingerprints?

7 MR. LERMOND: We did start that this year.
8 It's something that for whatever reason we hadn't
9 done in the past, where someone had fingerprints in
10 another jurisdiction, we'll honor those as long as
11 that jurisdiction fills out the appropriate form and
12 sends it to us. People have been happy with that.

13 MS. RICHARDS: It's part of the national
14 compact, right?

15 MR. LERMOND: And also if you're a compact
16 member, you also -- you don't have to pay the
17 fingerprint fee in each jurisdiction. It's part of
18 what you pay to be a member, I believe.

19 MR. BURNETT: What's the -- you know, when you
20 put Frank's in there to renew him and the screen
21 starts flashing, isn't that a current background
22 check of some sort that's automatically happening?

23 MR. LERMOND: It is. And that's really
24 through RCI because they've got a database --

25 MR. BURNETT: All right. So it goes back to

1 that database. So it's just a question of whether
2 he's done something funny in another jurisdiction
3 because before it was put into our own industry
4 database, not NCIC; is that right?

5 MR. LERMOND: And we pay a fee here to be part
6 of that RCI database.

7 MR. BURNETT: And I assume that's included in
8 your --

9 MR. LERMOND: Yes, sir.

10 MR. BURNETT: -- list of costs?

11 MR. MILLER: Mr. Chairman, now getting back to
12 your suggestion.

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

14 MR. MILLER: If I may make a comment on that,
15 but first I have some questions.

16 MR. BURNETT: Please.

17 MR. MILLER: Your licenses, if I come in and
18 get a license in June, is that just for the balance
19 of the calendar year, or does it run from June to
20 June for me?

21 MR. LERMOND: It's for the balance of the
22 calendar year.

23 MR. MILLER: So everything is based on the
24 calendar year.

25 Okay. If we were to not vote on this, if you

1 don't get this into the *Register* to go into effect
2 January 1, what happens to the -- for the month of
3 January? Let's say it doesn't go into effect until
4 February 1, would it cause any great harm come
5 January 1st to have an unlicensed period?

6 MR. LERMOND: Most of the people that would be
7 affected -- in other words, most of the people that
8 would re-apply in January would be the OTB employees
9 of Colonial Downs, because all of their licenses are
10 going to expire December 31st. The people that are
11 going to participate in horse racing, correct me if
12 I'm wrong, probably won't apply until March or April
13 or May.

14 MR. MILLER: But if we haven't acted on this,
15 when they come in in January for renewal, what would
16 you have to charge?

17 MR. LERMOND: We'd have to charge them \$10.

18 MR. MILLER: Ten dollars for the whole year.
19 Therefore, they would get out of paying it. That's
20 the only thing that kind of -- you know, that raises
21 a question about not getting this into effect by
22 January 1 is some people would be able to take
23 advantage during the month of January to get a
24 lower --

25 MR. BURNETT: Right. Of the 4,000 licenses,

1 how many of them are in this category of OTB
2 employees roughly? Five hundred?

3 MR. LERMOND: Jeanna, do you know offhand?

4 MS. BOUZEK: Six hundred.

5 MR. STEWART: Can't be that much.

6 MR. LERMOND: OTB employees that would renew
7 in January.

8 MS. BOUZEK: We all renew in January. It's
9 not just OTB employees. It's all of us at the
10 track.

11 MR. BURNETT: So about 15 percent of the
12 total. We got one person saying 15 percent, and the
13 other one saying it's got to be less. It's not more
14 than 15 percent. Fifteen percent or less.

15 MR. PETRAMALO: We know approximately 2,000
16 are thoroughbred owners and trainers of the 4,000.

17 MR. BURNETT: Well --

18 MR. PETRAMALO: That's how many we carry on
19 our list as actively licensed by the Racing
20 Commission.

21 MR. BURNETT: I just want to see if I can get
22 the scale of this thing. Let's just say they're all
23 administrative employees for the most part, a \$15
24 increase times 600 people. If I'm not mistaken,
25 we're talking about \$900 here. Lawyers, have we

1 spent that already just talking?

2 MR. PETRAMALO: I think it depends on the
3 lawyer.

4 MR. BURNETT: In your case, only half an hour.

5 MR. MILLER: Mr. Chairman, in light of that,
6 because of the questions raised, I think we
7 shouldn't push through on this today. I mean, if
8 they want more opportunity to examine it, I think
9 they ought to be given that opportunity. It's
10 not -- if that's the kind of figures we're talking
11 about, it won't do any irreparable harm to defer
12 this for at least our next meeting in my opinion.
13 That's just my opinion. I realize in this day and
14 age that for every opinion, there's three different
15 ones readily available.

16 MR. BURNETT: Can we label this the Virginia
17 Racing Commission's contribution to the stimulus of
18 Colonial Downs' employees for next year?

19 MS. DILWORTH: Mr. Chairman, if I just might
20 add.

21 MR. BURNETT: Yes, ma'am.

22 MS. DILWORTH: There is an exception in the
23 statute for the permit requirement, and I don't know
24 to what extent the Commission has exercised its
25 discretion to waive the permit requirement in the

1 past, but the statute says the Commission may waive
2 the permit requirement for any person who possesses
3 a valid permit or license to participate in the
4 conduct of horse racing in another racing
5 jurisdiction and participates in horse racing in
6 Virginia on nine consecutive racing dates.

7 MR. BURNETT: So that would work for an
8 employee in another state getting a day pass, but it
9 won't help with the parking lot sweeper or the host
10 on Derby Day. Am I hearing that correctly? Is
11 everybody hearing that the same way? You would have
12 to have a license in another state as a basis for
13 our exercising our discretion to waive it.

14 MS. DILWORTH: Yes.

15 MR. WEINBERG: That was the Pat Day Amendment.

16 MR. LERMOND: That's correct.

17 MR. BURNETT: All right. Do we need a motion
18 to defer?

19 MR. MILLER: Well, I move that we defer
20 action -- I mean, will this help you all if we do
21 that? I mean, do you all have more to add, or are
22 you going to try to seek more information or --

23 MR. WEINBERG: I think we're going to try to
24 respond to the questions that we got asked today of
25 quantifying what is the differential between those

1 who we're suggesting pay 15 and those who pay 25 and
2 what it means. I think that would be helpful for
3 the Commission to have.

4 MR. MILLER: Okay. Then I move that we defer
5 this to the next meeting.

6 MR. BURNETT: Do we get a second?

7 MR. BROWN: I'll second it.

8 MR. BURNETT: It's been moved and seconded.
9 All indicate by saying aye.

10 Note: (Aye.)

11 MR. BURNETT: Motion carries.

12 I assume, Jim, that in addition you'll provide
13 us your thoughts on day passes and we can see if the
14 day pass legislation can also be exempt. We may
15 have to move on a separate track somehow because we
16 don't want your other wrist slapped, but I think it
17 seems to make a lot of sense.

18 MR. LERMOND: We may be able to put the
19 temporary employee right on the fee schedule. I'll
20 have to defer to Amy.

21 MR. BURNETT: But I'm not sure if that solves
22 the issue of --

23 MR. LERMOND: Twenty-five versus 15.

24 MR. BURNETT: Or the duration of the pass. In
25 other words, if you want to go through all that

1 background and licensing. It isn't just -- if we
2 said a day person, five bucks. They've still got to
3 fill out the application, still got to get
4 fingerprinted, all these things they have to do --

5 MR. RONEY: No, not fingerprints.

6 MS. BOUZEK: No fingerprints.

7 MR. BURNETT: No fingerprints. I would just
8 like to have some sense of what someone has to do to
9 be permitted to sweep the parking lot one day of the
10 year. Let's get a balance there for whatever we're
11 doing in terms of our efforts and what they're
12 paying and what the risk to racing is for that
13 function to go either unlicensed or low license or
14 low investigated. That's my thing. I just want to
15 be clear about that.

16 All right. Anything further on this
17 particular subject? We did a good job beating that
18 to death, didn't we?

19 MR. REYNOLDS: Yeah.

20 MR. BURNETT: Stakeholders, Colonial Downs
21 review of the 2009 harness meet.

22 MR. STEWART: Okay.

23 MR. BURNETT: Mr. Stewart?

24 MR. STEWART: Jim's got a little handout here
25 that I'll refer to as we go along.

1 We completed our 2009 harness meet with the
2 Day of Champions held on Breeders' Cup Day. We had
3 a 36-day meet. Attendance averaged 367 people per
4 day. This is down from last year's average of 509
5 per day and the 613 per day average in 2007.

6 However, in 2008 and 2007, the New Kent County Fair
7 was held during the harness meet. So if you take
8 the fair days out of the calculation, the average
9 attendance in '08 was 363 and in '07 it was 457.

10 Now, if you further take out Breeders' Cup
11 Day, which in 2009 represented 10 percent of the
12 total attendance for the meet, the attendance
13 comparisons are 338 in 2009, 341 in 2008, and 440 in
14 2007. For example, on Tuesdays this year, the
15 average attendance was 160, and on Wednesday it was
16 207. If you factor out the horsemen and the other
17 people who got in for free, less than half of those
18 actually paid to attend.

19 The per capita wagering on live races was a
20 little over \$56 this year versus about \$49 in '08
21 and \$48 in '07. However, a more realistic
22 comparison is to once again factor out the New Kent
23 County Fair from the figures. After doing that,
24 it's \$56 versus \$66 in '08 and \$63 in '07.

25 The per capita simulcast wagering at the

1 track, which is people at the track wagering on
2 other races around the country, was \$23 this year
3 versus about \$22 in '08, and \$22.60 in '07. Once
4 again if you factor out the fair and the Breeders'
5 Cup, which tends to distort the results, the
6 comparison is \$19 in '09 versus \$28 in '08, and a
7 little over \$25 in '07.

8 Our out-of-state handle was down as well.
9 This year we averaged about \$72,000 per day versus
10 106,000 in '08, and 119,000 in '07. It's down
11 46 percent from the peak of 133,000 in '06. The
12 decline of 32 percent from '08 to '09 was due
13 primarily to two factors that I personally would
14 rate as equally responsible. First, there's the
15 overall decline in wagering nationwide due to the
16 economy, and then there's the continued boycott of
17 our signal by TrackNet.

18 We ran 373 --

19 MR. BURNETT: Can I stop you there, Ian, just
20 to ask you a question on this previous line? Am I
21 right that you're down about 40% at -- on
22 out-of-state handle per day between '08 and '09, '08
23 was 105,000 and 71,000 in '09? So I'm thinking
24 that's about -- maybe it's a little less than that,
25 30 to 35 percent, something like that.

1 So you're saying national wagering generally
2 is down 17 percent or so and that the boycott cost
3 us an equal amount?

4 MR. STEWART: That's my --

5 MR. BURNETT: Roughly 15, 18 percent each.

6 MR. STEWART: That's my analysis, yes.

7 MR. BURNETT: Okay. Thank you.

8 MR. STEWART: We ran 373 races this year in 36
9 days versus 376 races in 34 days last year. We had
10 a couple more days and a couple fewer races. Our
11 purses averaged \$47,000 a day. Last year they
12 averaged \$64,000 a day. That's a decline of
13 26 percent. The Day of Champions is for
14 Virginia-bred horses. If you dig a little deeper
15 and take the Day of Champions out of the numbers,
16 you get a more accurate reflection of what's
17 happening on a daily basis. In 2009, without the
18 Day of Champions, our daily purse was a little over
19 38,000, 38,594, versus 51,100 a year ago. Our
20 average horses per race was 8.3 in '09 versus 8.6 in
21 '08.

22 As you can see, statistically there's
23 virtually no good news here. The truth is if you
24 look at the last ten years, it's kind of hard to see
25 any significant progress at all. We are running

1 essentially the same meet for smaller purses in
2 front of fewer fans. While we have economized and
3 operated more efficiently, our revenue has continued
4 to fall as well. So our loss per day for a harness
5 race in 2009 was approximately \$19,000. In 2001, it
6 was \$17,000.

7 Now, I don't think this reflects a lack of
8 effort on anyone's part. We have seen harness
9 tracks without alternative gaming stop racing or go
10 out of business such as Rosecroft, Jackson up in
11 Michigan, and Saginaw. Others are barely hanging on
12 such as the Ohio tracks as they pray for slot
13 machines. The new harness tracks have opened or
14 reopened such as Chester Downs, Running Aces, Vernon
15 Downs, they all have alternative gaming. Other
16 tracks have been given a new lease on life from
17 other forms of gaming such as the Meadows and
18 Yonkers.

19 The year over year comparisons that I just
20 reviewed with you evidence that we are in an era
21 with a steadily shrinking handle pie. It is
22 unrealistic for any of the stakeholders in this
23 state to expect to retain the status quo in absolute
24 dollar terms. To maintain your absolute amount of
25 dollars of a shrinking pie actually means increasing

1 your relative share at the expense of another
2 shareholder. The horsemen's share is obviously
3 represented by the money set aside for purses, which
4 varies by handle. It is also represented by the
5 money spent on live racing, which has remained
6 absolutely the same or increased.

7 Now, live racing does not generate a profit.
8 This is not a situation unique to Colonial Downs,
9 but is pervasive throughout the industry. We've
10 discussed in the past how to possibly make live
11 thoroughbred racing profitable through a boutique
12 meet with major event days. Unfortunately, with
13 respect to harness racing, I'm frankly at a loss as
14 to how to make live harness racing profitable.

15 As I noted, the horsemen's purse money share
16 of the pie is self-adjusting because it's based upon
17 handle levels. As you can see from the commission
18 reports, thoroughbred handle has declined 17 percent
19 in '09 in the OTBs and harness handle has declined
20 20 percent. Recognizing the reality of the
21 situation, thoroughbred days in '09 were essentially
22 reduced from 45 to the financial equivalent of 35.
23 Harness days in '09 grew from 34 to 36. Each
24 additional race day increases in absolute terms the
25 dollars spent on the expenses of live racing. We

1 believe it is now time for some proportionate
2 reductions. To look at it another way, standardbred
3 handle through October 31st represents 18 percent of
4 the overall combined OTB, account wagering, and live
5 handle. Yet, the cost of the harness meet
6 represents 38 percent of the cost of the combined
7 thoroughbred and harness meets. The cost of the
8 harness meet is disproportionate to its
9 proportionate share of the revenue.

10 Now, we're going to be talking about race days
11 next month. It's not my goal this morning to
12 discuss race days, but as we examine race days,
13 Colonial Downs is looking at other possibilities to
14 reduce costs. One thing we're considering would be
15 to only open the grandstand on weekends. The
16 savings in the cost of cleaning the building alone
17 would be \$1,800 per race day. There would also be
18 savings in payroll and security costs. We will lay
19 out a detailed plan for this in our race day
20 request.

21 It is easy to say that the industry is
22 changing. That really isn't news to anybody. The
23 challenge is can we change the models we are
24 operating under fast enough in such a way that we
25 can survive the experience. We'll have some plans

1 for you to consider next month on that front.

2 That's kind of a segway into a little bit
3 different topic, but on the same family, if you
4 will. As you are well aware, last week Churchill
5 Downs acquired YouBet.com, which they plan on
6 combining with their existing TwinSpires account
7 wagering platform. TwinSpires, as you may remember,
8 also includes the old AmericaTab account wagering
9 company, which Churchill acquired several years ago.

10 After this acquisition, Churchill Downs will
11 control a little over 44 percent of the account
12 wagering handle in Virginia based on the October
13 numbers, and TrackNet will control virtually all of
14 the premium content that ADW companies use in
15 Virginia. In short, Churchill's market domination
16 will continue to grow.

17 In December, the applications for account
18 wagering licenses are due and they will be one of
19 the primary topics at the December racing commission
20 meeting. Back in August, I spent some time talking
21 about account wagering and how it fit into the
22 overall industry in Virginia. I would like to spend
23 a few minutes revisiting this topic this morning. I
24 realize that three of the commissioners have heard
25 some of this before, but I think it's important for

1 those who have not heard to hear it this morning,
2 and I would also like to provide some updated
3 information.

4 So in looking at account wagering, the
5 fundamental question is this. What is the purpose
6 of account wagering? It's been stated many times
7 that the purpose of OTBs is to support live racing,
8 so I don't believe it's a stretch to conclude that
9 the purpose of account wagering is to support live
10 racing as well.

11 If account wagering -- if ADW companies are to
12 support live racing, then what is their fair share
13 of the handle to pay towards live racing. The
14 answer is between 11 and 11 and a half percent based
15 on today's cost structure. Let's review how I come
16 to this conclusion.

17 I think the easiest way to explain the
18 significance of this is to go back to the very
19 beginning. Suppose at the beginning, before there
20 was Colonial Downs, there were two companies that
21 wanted to conduct pari-mutuel wagering in Virginia.
22 One company wanted to build a series of buildings
23 where customers could go to wager with live tellers
24 as well as eat and drink while watching races on
25 television. For simplicity's sake, we'll call this

1 the OTB company.

2 The other company's business plan was to allow
3 people to stay at home and wager on races on their
4 computer while watching them on their computer or on
5 their own television. For simplicity, we'll call
6 this the ADW company.

7 So both companies submit their business plans
8 to the racing commission, neither of which includes
9 live racing in Virginia. They both realize live
10 racing does not generate operating profits and is
11 capital intensive. Since live racing is a
12 pre-requisite for pari-mutuel wagering in Virginia,
13 there is now a problem. Each company understands
14 that live racing requires a huge capital investment
15 and rarely is profitable. However, both companies
16 want to execute their pari-mutuel wagering business
17 plans because these are profitable. So both the ADW
18 company and the OTB company will have to conduct
19 live racing either separately or jointly together.

20 Now, given the large capital investment
21 required, why build two tracks when you really only
22 need one, so they move to the conducting live racing
23 jointly model. At that point the question is, how
24 much of the live racing cost should each company
25 bear? One equitable answer would be to prorate the

1 cost based on handle.

2 Now, obviously, we can't go back to the
3 beginning. However, I think the basic principles
4 remain true today. Today there are five licensed
5 account wagering companies and one OTB company. All
6 of them are in the pari-mutuel wagering business.
7 The question is, who is responsible for conducting
8 and paying for live racing? It just so happens that
9 historically the OTB company has to bear the cost of
10 live racing. When account wagering, ADW handle was
11 insignificant, perhaps that made some sense.
12 However, we have reached the point where ADW handle
13 is very significant and is growing all the time.
14 Therefore, I think it stands to reason that the ADW
15 companies should bear their proportionate share of
16 the cost of the live racing facility and the live
17 racing. So, how much is that?

18 In 2009, live thoroughbred racing had a net
19 cost before pari-mutuel taxes and the Breeders' Fund
20 1 percent of approximately \$933,000. While I don't
21 have the final figures for November, I estimate that
22 live standardbred racing for '09 had a net cost
23 before pari-mutuel taxes and the Breeders' Fund 1
24 percent of approximately \$660,000. The year-round
25 operation and maintenance of the New Kent racing

1 facility has a net estimated '09 cost of about
2 \$2,042,000. In addition, the cost of the facility
3 including periodic improvements spread over a number
4 of years in the form of depreciation is another
5 \$1,250,000. This is a live -- total live racing
6 cost of \$4,885,000 annually before the pari-mutuel
7 taxes and Breeders' Fund. This represents --

8 MR. BURNETT: What's that last number, Ian?
9 I'm sorry. Four million what?

10 MR. STEWART: \$4,885,000 before pari-mutuel
11 taxes and the Breeders' Fund and the purse fund.
12 This represents the direct costs of these operations
13 net of the revenue they generate. These costs do
14 not include any of our general office and
15 administrative costs, such as my salary, our
16 accounting department, the money we pay
17 Mr. Weinberg, or anything that is not directly part
18 of the live racing operation.

19 MR. BURNETT: If you don't mind, just so I can
20 stay with you on this. That facilities cost as you
21 defined what you left out, give me an example of
22 what you put in. Does the parking lot sweeper get
23 included in there and the janitorial service and
24 miscellaneous painting, that sort of thing?

25 MR. STEWART: All the repairs and maintenance

1 to the building.

2 MR. BURNETT: Okay.

3 MR. STEWART: Utility cost of the building,
4 real estate taxes.

5 MR. MILLER: Insurance.

6 MR. STEWART: Insurance.

7 MR. BURNETT: That's 2,042,000?

8 MR. STEWART: Yes.

9 Now, live racing also requires purse money.
10 The figures I just quoted include the purse money
11 generated by the live racing operations, but that's
12 only a small fraction of the total purse money
13 required. In addition to the money included
14 previously from the live operations, another
15 \$7,169,000 in purse funds was required from the OTBs
16 and the account wagering companies in '09. This
17 brings the total estimated cost of live racing in
18 '09 before taxes and the Breeders' Fund to
19 approximately \$12,054,000 annually. If you prorate
20 this amount based on '09 estimated total combined
21 OTB and account wagering handle, it comes to 7.06%
22 of handle.

23 Now, this brings us to pari-mutuel taxes. The
24 total estimated pari-mutuel tax bill for 2009 is
25 \$3,597,000. This supports the racing commission,

1 provides incentives for the localities that allow
2 pari-mutuel wagering. In my opinion, if there were
3 no pari-mutuel taxes paid in Virginia, there would
4 be no live racing in Virginia. With no live racing,
5 there would be no pari-mutuel wagering.

6 Of the total pari-mutuel tax bill, the OTBs
7 paid 89 percent of it. The OTBs pay on the average
8 2.64 percent combined to the state, the locality,
9 and New Kent County. While the statutory amount for
10 the account wagering companies is only half a
11 percent, there's no reason why they should be given
12 preferential tax treatment. They are regulated by
13 the VRC just like the OTBs and should, therefore,
14 bear their proportional cost of regulation for both
15 themselves and the live meets.

16 Unlike the OTB companies -- OTB company, the
17 account wagering companies have not invested money
18 in Virginia facilities; they don't employ Virginians
19 other than XpressBet's Mr. Scoggins; and I have
20 rarely seen any Virginia media advertising. There
21 is no justification to give these account wagering
22 companies preferential tax treatment given their
23 lack of investment in Virginia. Fairness would say
24 that they should pay their proportional share of the
25 total pari-mutuel tax bill. If they did so,

1 everyone would pay a 2.11 percent rate. Currently,
2 Colonial Downs subsidizes the account wagering
3 companies pari-mutuel tax burden and the source
4 market fee should reimburse Colonial Downs for this
5 subsidy.

6 In addition, it's been determined that
7 everyone should contribute equally one percent of
8 handle to the Breeders' Fund. If you combine all of
9 these amounts -- the cost of the live racing, taxes
10 and the Breeders' Fund -- it comes to 10.17 percent
11 of handle. The legislation requires a combined rate
12 of 11 and a half percent be paid. A year ago, live
13 racing costs were higher due to among other things,
14 more thoroughbred race days with higher purses. The
15 11 and a half percent was probably very close to the
16 actual cost last year when the law was passed and
17 will very likely be close again in 2010 if live
18 racing costs remain the same with handle continuing
19 to fall.

20 Now, there's no question that 11 and a half
21 percent is a significant amount of handle to pay for
22 live racing in Virginia. However, that is basically
23 what it currently costs. There's no reason why
24 companies with account wagering business models
25 should be treated any differently than companies

1 with OTB business models.

2 Now once upon a time, it was often that
3 Colonial Downs had a monopoly in Virginia. I don't
4 think anyone can say that today. Account wagering
5 represents 28 percent of the total wagering in
6 Virginia through October 31st. Now, in my view, it
7 is time to recognize the reality of the situation in
8 which we find ourselves. Live racing is expensive
9 and the cost of it should be allocated fairly among
10 the entities which benefit from it. I believe the
11 legislation that was effective July 1st, 2009, and
12 will govern the grant of licenses next month does
13 exactly that.

14 MR. MILLER: Mr. Chairman?

15 MR. BURNETT: Yes, sir.

16 MR. MILLER: Could you provide that statement
17 to Mr. Harrison so that we can then put it on-line
18 and distribute it to -- or maybe not on-line, but
19 actually make physical copies to provide for the
20 members of the Commission? I mean, I would like to
21 have it. I don't know whether they would or not.

22 MR. STEWART: Sure.

23 MR. MILLER: Could you do that?

24 MR. STEWART: Absolutely.

25 MR. BURNETT: Can I ask you a question or two?

1 MR. STEWART: Absolutely.

2 MR. BURNETT: I'm trying to get apples to
3 apples here, and I know that's part of your
4 analysis. First, just so I understand the trending,
5 if you will, some of these costs are fixed costs
6 essentially, I take it. So, for example,
7 depreciation to cover your building costs, if
8 through some miracle handle jumped -- I'm going to
9 make it easy, it doubled. This 10.17 percent of
10 handle, that wouldn't get cut in half necessarily,
11 but it would get substantially reduced, would it
12 not?

13 MR. STEWART: Yeah. If you were to -- it's
14 the same ole story. If you were to hold live racing
15 costs where they are and you were to increase
16 handle.

17 MR. BURNETT: Right. That's what I'm talking
18 about, but when you increase handle, there are some
19 additional costs to deal with.

20 MR. STEWART: It adds more to the purse
21 fund --

22 MR. BURNETT: Right.

23 MR. STEWART: -- how many days you race and
24 things like that.

25 MR. BURNETT: That's a factor. Sure. And the

1 building might suffer more wear and tear, might
2 require more maintenance, might require more people
3 to do this or do that, whatever it is, to generate
4 that handle. I just wanted to get a feel for that.

5 Using this number, what jumps at me and this
6 may be an inappropriate conclusion here or I'm just
7 not understanding the numbers, if we have a blended
8 take-out rate, and I think this is where my problem
9 is, of 20 percent. My question is -- and it's
10 costing 10.17 percent to put on this whole show,
11 where's the other 10 percent going?

12 Now, somebody has to pay your salary,
13 obviously, and some of that, but there's got to be
14 other -- either my number on that blended take-out
15 is way too high, because we don't make that much
16 money on the ADWs as we do on live wagering, or it
17 strikes me there's a whole lot of money going
18 someplace else that all -- from what you've just
19 shown us are only half of what you take in. Where's
20 the other half going?

21 MR. STEWART: The other half? Forty percent
22 of that other half goes to signal fees to other
23 racetracks.

24 MR. BURNETT: Okay. I'm just saying --

25 MR. STEWART: If you want --

1 MR. BURNETT: -- why isn't that in your
2 calculation, signal fees to other racetracks?

3 MR. STEWART: That's not a live racing cost.

4 MR. BURNETT: Live racing only, okay.

5 MR. STEWART: Then you've got the expenses of
6 running an OTB.

7 MR. BURNETT: All right.

8 MR. STEWART: So, I mean, there isn't anything
9 left.

10 MR. WEINBERG: The Breeders' Fund is not in
11 there.

12 MR. STEWART: Yeah. The Breeders' Fund is in
13 there. The two big numbers you're missing, if you
14 want to start from a 20 percent take-out on an OTB
15 wager --

16 MR. BURNETT: Sure.

17 MR. STEWART: -- then 10 percent of it goes to
18 pay for live racing, if you will, and then four
19 percent goes to signal fees, and the other four,
20 five, six percent is basically eaten up in operating
21 costs.

22 MR. BURNETT: All the various operating costs
23 that go with it, because you've already picked up
24 the tax in there and all.

25 MR. STEWART: Yes.

1 MR. BURNETT: Okay.

2 MR. MILLER: When you say all the other
3 operating costs, of what?

4 MR. STEWART: Of the OTBs. When I talk about
5 operating costs in this analysis, I'm just talking
6 about live racing.

7 MR. BURNETT: Okay. Did you consider any
8 other models just to -- you know, devil's advocate,
9 advocating against your own, have you -- for
10 example, can the ADW folks make a credible argument
11 that they shouldn't have to contribute on the same
12 level or at all to live racing?

13 I'm sure they don't make the latter argument,
14 but my sense is the ADW people would say, wow, you
15 know, we pay a reasonable amount towards that, but
16 you know, live racing is different, and for these
17 reasons live racing should be -- the cost of it
18 should be borne more by others than by our
19 contribution. We shouldn't pay a pro rata share,
20 those kinds of arguments. Have you -- if we had
21 some people in the room who took issue with what you
22 are saying and what's wrong with your formula and
23 what you laid out here, what would they say and what
24 would the basis of it be?

25 MR. STEWART: I'm not sure. I think a large

1 part of their argument is always that they have to
2 pay large fees in signal fees to support live racing
3 in other states, but that boils back down to the
4 import/export discussion. So if you accept that
5 argument, then basically what you come down to is
6 that by virtue of Colonial Downs being first in
7 building this racetrack, they get to take an
8 inexpensive ride on our racetrack because I don't
9 think there's anybody in this room that believes
10 that without that racetrack out there, you would
11 have account wagering in this state.

12 MR. PETRAMALO: That I think is the key
13 point --

14 MS. RICHARDS: Right.

15 MR. PETRAMALO: -- that the ADW companies
16 would contest. The premise of Ian's presentation
17 was ADW companies only exist in Virginia because
18 there is pari-mutuel racing which Colonial Downs has
19 paid for and, therefore, you the ADW companies need
20 to support that. They would reject that premise
21 completely and say, you know, so what. You guys
22 have live racing, we take your signals, and we pay
23 for your signals. We pay you five percent or
24 whatever to take your races and take bets on them,
25 and so what. You should be happy. That's their

1 view.

2 MR. BURNETT: They might also take the
3 position, correct me if I'm wrong, that stranger
4 things have happened than to have a racetrack go out
5 of business for purposes of live racing, but there
6 continued to be ADW in the state that has no other
7 racing. Politically we know that that's not a
8 likely scenario in Virginia. From this perspective,
9 what's wrong with that? We've got too many
10 racetracks. Let's have a few high quality
11 racetracks and minimal racing and all the rest, then
12 we got the -- you know, then we're over populated
13 with racetracks and they're in the wrong locations,
14 et cetera, et cetera, et cetera, all the arguments
15 we've heard in the past. So their argument in some
16 respects would be that's not our problem. We're
17 national outfits and you got some idiosyncrasies
18 there in Virginia and we can't fix them, maybe you
19 can, maybe you can't, but we have a national model,
20 fit or get lost. Is that fair?

21 MR. WEINBERG: I think I heard that before.

22 MR. BURNETT: Have you really?

23 MR. SIEGEL: What happens in other states? Is
24 there a precedent for this?

25 MR. STEWART: Well, in other states, oddly

1 enough, I think that we have been reasonably
2 assertive, for lack of a better word, in
3 establishing what a fair price for account wagering
4 companies to pay in this state. We're probably
5 better off than most of the other states.

6 MR. BURNETT: For Mr. Siegel's benefit, and
7 correct me if I'm wrong on this, not that many
8 states even regulate the advanced deposit account
9 wagering, let alone charge -- dictate a source
10 market fee. So the typical model for ADW is for the
11 company to come into Iowa, draw a circle around
12 Sioux City of 35 miles or around where there's a
13 racetrack and say we'll pay you three and a half
14 percent of whatever is wagered from that market
15 because that's the cannibalization factor, and we're
16 compensating you for that. Other than that, we'll
17 just not pay anything out to the rest of the state.
18 We get it all for free.

19 In Virginia, we dictated that the entire state
20 is the source market, so they've got to pay
21 regardless of where the bet is made and whether
22 anybody had any intention or possibility of going to
23 Colonial Downs to spend their money. Is that fair?

24 MR. WEINBERG: That's fair. I think
25 California is probably the closest analogy. I think

1 they arrive at the same result, but get there by a
2 different path by limiting the amount of host fees
3 that can be charged with the consequence that the
4 same number of dollars or the same percentage of
5 dollars remain in California, and they put caps on
6 what the ADW providers can basically charge as their
7 fees.

8 MR. BURNETT: For everybody's benefit and the
9 market, why don't you go back through the
10 distinction between a -- did I say the market? I
11 meant the record. The distinction between a source
12 market fee and a host fee.

13 MR. WEINBERG: Okay. On a simplistic view, a
14 host fee is paid to the track that is conducting the
15 racing. So if a race is emanating from New York,
16 there's a host fee paid to that track in New York.
17 If there is a customer wagering on that track in
18 Virginia through an account wagering provider, that
19 account wagering provider pays a source market fee.
20 The source being the source market for the wager to
21 Colonial Downs and the horsemen. They split that
22 fee 50/50.

23 What has candidly happened in the industry is
24 TrackNet has been successful in amalgamating content
25 or signals from those tracks across the country.

1 So, whereas, customarily a track may charge a three
2 percent host fee, that host fee is now five, seven,
3 or eight percent. That host fee has a direct affect
4 upon the amount of the source market fee because
5 under our agreements with the ADW providers, the ADW
6 providers deduct off the top what they have to pay
7 in host fees.

8 In some situations that host fee amount is
9 capped at three and a half percent and above that
10 amount the ADW provider on the one hand and Colonial
11 Downs and the horsemen on the other hand split the
12 cost of that increased host fee, but the consequence
13 has been as host fees go up, Virginia source market
14 fee goes down. And so dollars that were once in the
15 state have now migrated depending upon who you're
16 looking at into the host track that broadcasts the
17 race and in part the ADW provider, and Churchill is
18 particularly complicated because it owns a number of
19 tracks and host fees typically are split between the
20 horsemen and the track owner. So as a host fee
21 doubles from three percent to six percent, the
22 horsemen and the track are splitting that increase.

23 Churchill Downs' case, it in essence is paying
24 itself. TrackNet -- I'm sorry, TwinSpires takes the
25 wager, pays an increased host fee to Churchill

1 Downs. Ultimately, those dollars came out of the
2 Virginia stakeholders' pocket and that is where the
3 rub is occurring.

4 So January -- July 1st, 2009, legislation was
5 implemented that just said the source market fee is
6 ten percent in Virginia, and whatever the host fees
7 are, they are, but if you want to conduct business
8 in Virginia as an ADW provider, the source market
9 fee is ten percent.

10 MR. BURNETT: What I think has been
11 interesting is that in the '80s, 90 percent -- 85 to
12 90 percent of all revenues generated for racing were
13 generated from live racing on the track. So just 30
14 years ago, 25, 30 years ago, almost all the money
15 came from people going to the racetrack physically
16 and plunking their \$2 down across the window.

17 With the advent of the Interstate Horse Racing
18 Act and simulcast wagering, now it's about 85 or 90
19 percent most of the racetrack's revenue comes from
20 bettors who aren't at the racetrack. They're at
21 someplace else. They're in an OTB in California.
22 They're in a racetrack in Texas. They're in a --
23 they could be in Europe. They could be anywhere.

24 MR. PETRAMALO: They could be sitting on the
25 beach with a laptop.

1 MR. BURNETT: Yeah. They're on their laptop.
2 They have an account. They've opened an account
3 with YouBet or whoever. They're sitting there
4 typing away or they're on a telephone or something
5 doing it. And historically that was thought to be
6 found money. So the racetrack said, oh, geez, we're
7 just so lucky to have all this money coming in. We
8 get most of our money from live handle, but we've
9 got this other stuff going on, so we're only going
10 to charge -- we'll just charge three percent of the
11 handle on that for us to take.

12 Well, when the numbers flipped, instead of
13 getting 90 percent of the money out of 20-cent
14 dollars, 20 cents out of every dollar that was bet,
15 90 percent of the money was coming from that. Now
16 90 percent of their action with only a 30-cent
17 dollar or a 3-cent dollar, so they've got much lower
18 volume from which to operate.

19 The horsemen, interestingly and ironically,
20 started the push to say, you know, guys, we've got
21 to do better in selling our signal to take care of
22 horsemen at these tracks. You've got to charge a
23 higher host fee, get more money when you're selling
24 the signal. Forget that three percent. Let's get
25 it up to five percent, six percent, seven percent,

1 because few people are coming to the racetrack. So
2 we need y'all to charge more for the signal so that
3 the horsemen can do better in places like Churchill
4 Downs and year-round racing locations, but what we
5 would like to think of as an unintended consequence
6 or an unthought of consequence is that in a place
7 like Virginia where are nine, ten months out of the
8 year our OTBs are or year-round our OTBs are buying
9 those signals from other people. Instead of paying
10 three percent dollars for those signals, we're now
11 paying six percent for those signals on every
12 dollar, and it's cutting into what's available to
13 run our Virginia operations. So the advent and
14 extreme popularity of ADW combined with increased
15 host fees for a state that usually buys signals,
16 most of the time buys signals have squeezed us down
17 to this pie that Ian articulates is getting smaller
18 every month.

19 Did I miss anything on that, Jeanna? You're
20 right on top of these numbers.

21 MS. BOUZEK: You hit the nail right on the
22 head.

23 MR. PETRAMALO: You know, I think there's
24 something else that you ought to bear in mind. It's
25 kind of a footnote to Ian's presentation, that is

1 the premise of his presentation, and that is when
2 we're talking about account wagering, we're talking
3 about wagering over the internet or wagering by
4 telephone.

5 Generally speaking, wagering over the -- well,
6 gambling over the internet is unlawful under federal
7 law. It violates the Criminal Wire Act, and it also
8 violates the 2006 Unlawful Internet Gaming Act. The
9 only thing that saves these ADW companies is
10 something called the Interstate Horse Racing Act,
11 because as long as they fall within the ambit of
12 that act, then their operations are legal, because
13 the Interstate Horse Racing Act is an exception to
14 both the Wire Act and the Unlawful Internet Gaming
15 Act, but the Interstate Horse Racing Act is premised
16 upon pari-mutuel being lawful in the state and being
17 regulated by a state agency such as your agency
18 here.

19 So without pari-mutuel wagering -- excuse me,
20 the pari-mutuel wagering at Colonial Downs and its
21 regulation by this Commission, those folks couldn't
22 come in here and take Virginia customers on-line and
23 on to wager any place, period.

24 MR. REYNOLDS: But they are or they were doing
25 that before. I don't understand --

1 MR. PETRAMALO: That's why we sued them.

2 MR. REYNOLDS: Okay. If we stop live racing,
3 what's prohibiting them from running YouBet, which
4 is going to dramatically increase their business
5 with ADWs? What are you going to tell YouBet now,
6 that it's illegal?

7 MR. BURNETT: We'd have to bar pari-mutuel
8 wagering, because I think -- I would say we would
9 become a Birmingham, Alabama. They start a
10 racetrack. It went to hell in a handbasket, but
11 they retained their commission. They retained the
12 right to have pari-mutuel wagering in the state. As
13 far as I know, they continue to generate purse money
14 and income money that they spend at some other
15 racetrack.

16 MR. PETRAMALO: Commissioner Reynolds, I think
17 the argument from the ADW company would be if
18 Colonial Downs shuttered the racetrack and no longer
19 conducted racing, but as long as the statute was
20 still there that would permit somebody else to come
21 in and open up a racetrack and have pari-mutuel
22 wagering, they would argue that as long as
23 pari-mutuel wagering is on the books and lawful in
24 Virginia, even though nobody is conducting it, they
25 can come in and do business here.

1 MR. REYNOLDS: And that's my question to Ian.
2 Ian says if we don't have live racing, then we can't
3 have ADW.

4 MR. STEWART: I wasn't saying that from a
5 legal standpoint. I was just making a point that I
6 think -- I don't think that the Birmingham situation
7 would be tolerated very well in this state.

8 MR. BURNETT: Politically, correct.

9 MR. WEINBERG: I think the reference is a
10 political one, that absent live racing, the
11 tolerance for gaming in Virginia has not been very
12 strong and that it's not a far reach to say if
13 there's not an opportunity for live racing, there's
14 not going to be an opportunity for pari-mutuel.

15 MR. REYNOLDS: How do you restrict that
16 opportunity to YouBet six months from now?

17 MR. STEWART: I think the time frame would be
18 a little longer. It would probably take a year for
19 it to run through the legislature, I got to believe.

20 MR. BURNETT: You mean if we were to stop live
21 racing and YouBet just wanted to continue to do
22 business?

23 MR. REYNOLDS: Yeah.

24 MR. BURNETT: I think that falls in the hands
25 of prosecutors, and we've seen what difficulties

1 there was when they were openly active without a
2 license from us declaring us to have an
3 unconstitutional statute or whatever their defenses
4 were. We had some trouble trying to get prosecutors
5 to go after them. The interesting part of it being
6 or the difficult part of it being, it's one thing to
7 prosecute YouBet, the big corporate bad guy that's
8 coming in and stealing from Virginia, but you've got
9 the other side of the equation, which is a Virginia
10 citizen who's participating in the illegal bet,
11 which is a felony. So the prosecutor is going to be
12 put in the position to have to go after both in all
13 likelihood or at least use the bettor as a witness
14 who might be taking the Fifth or have to be
15 immunized or something to be able to make a case.

16 Yes?

17 MR. MILLER: Is live racing the key or the
18 opportunity for live racing? The statute now, we
19 have opportunity for live racing. If you were to
20 shut down live racing, as long as the statute
21 remains the same, they can carry on. So the statute
22 would have to be changed to remove the opportunity
23 for live racing before the betting would be -- the
24 gaming would be illegal.

25 MR. WEINBERG: I think that's right

1 politically, although not to get hung up on
2 technicalities, the statute still says you need a
3 license.

4 MR. MILLER: So if there were no licensee,
5 that would be the key then, if you were to give up
6 your license to conduct live racing.

7 MR. STEWART: I mean, if the Racing Commission
8 didn't give YouBet a license, they couldn't operate.

9 MR. MILLER: No. I mean, if Colonial Downs
10 were to -- if you were to come in tomorrow, you
11 decided that we're shutting down the track. Here's
12 our license to be the sole licensee in Virginia.
13 Therefore, no live racing, no licensee, then would
14 that end it? Would that end the opportunity to
15 carry on pari-mutuel betting in Virginia?

16 MR. WEINBERG: Not as long as this commission
17 grants an ADW provider a license.

18 MR. MILLER: I'm not making myself clear, I
19 guess. In order to have pari-mutuel betting, you
20 have to have racing or an opportunity for racing.

21 MR. WEINBERG: Right.

22 MR. MILLER: You can't just have pari-mutuel
23 betting in Virginia; is that correct?

24 MR. WEINBERG: That's the way the current
25 statute is set up.

1 MR. MILLER: So if we don't have racing in
2 Virginia, we don't have live races running, and we
3 don't even have anyone licensed to run a race, would
4 that end the opportunity for pari-mutuel betting?

5 MR. PETRAMALO: I don't think so, because the
6 statute when it was amended in 2003 to permit
7 account wagering specifically defines account
8 wagering as a form of electronic wagering and makes
9 it subject to regulation by this Commission.

10 MR. MILLER: Separate and apart from the
11 racing part?

12 MR. PETRAMALO: Yes.

13 MR. MILLER: Okay.

14 MR. PETRAMALO: I think so.

15 MR. WEINBERG: I think you're right. I think
16 generally the structure of the statute is there are
17 three forms of pari-mutuel wagering allowed in the
18 Commonwealth. There's wagering on live racing,
19 which happens at the racetrack, there's wagering on
20 simulcast racing, which happens at the racetrack and
21 at the satellite wagering facilities, and there's
22 account wagering which can happen anywhere
23 electronically.

24 The first two, if you don't have live racing,
25 you can't have satellite facilities. Those two were

1 coupled to go hand in hand, but under the current
2 statute, we could have no live racing and no
3 simulcast -- no SWFs and still have account
4 wagering.

5 MR. BURNETT: Depending on how you wanted to
6 interpret the statute, and I think you'll agree with
7 me that all of the statutes presume a licensee for
8 live racing, including the ADW statute which
9 provides for that division between -- it assumes
10 that the licensee is to receive some of the 11 and a
11 half percent.

12 MR. PETRAMALO: Right.

13 MR. BURNETT: One might argue that if you
14 don't have that licensee there, then it defeats the
15 entire ADW -- the statutory scheme except
16 Mr. Petramalo would argue that that just defaults
17 that other five and a half percent to his horsemen.

18 MR. PETRAMALO: Well, no, quite the opposite.
19 The ADW companies I think would take the position
20 that since there's no live racing --

21 MR. BURNETT: We don't have to pay it.

22 MR. PETRAMALO: -- we don't have to pay it.
23 There's no horsemen's group, and there's no track.

24 MR. BURNETT: Right.

25 MR. PETRAMALO: Sure. It goes in our pocket.

1 MR. BURNETT: Right. That's another way of
2 looking at it. Sure.

3 Now, Glenn is over here cringing as we're
4 sitting here, you know, preparing the eulogy of live
5 racing in Virginia, but he's had his share of
6 depressing knowledge of 51 foals this year, which
7 doesn't speak well for the Virginia-bred program of
8 live racing in the next couple, three years, and
9 it's probably only going to trend further downward.
10 We probably ought to think about concluding this
11 meeting and moving over to the Virginia Racing
12 Improvement Group meeting because that's what we're
13 drifting into here pretty easily, but you may have a
14 comment on the record given this discussion.

15 MR. PETTY: I don't know where the 51 foal
16 mark comes from because Ned Evans will produce 75
17 himself, so I don't know where that -- I heard that
18 floated around a little bit.

19 MR. BURNETT: It was in the *Blood Horse* and
20 reported by the Jockey Club.

21 MR. PETTY: That's from early registration,
22 but we'll see how our statistics shake out. I don't
23 think it's quite that dire, but it certainly has
24 been trending, as you said, in the wrong direction,
25 but I think Ian's point about one without the other

1 was both political and historic. This is how it
2 came to be.

3 I always said that I think what the ADW
4 companies would argue is we shouldn't participate in
5 the cost of your meet because we don't participate
6 in the profits. We don't participate in the
7 revenue. Churchill, which makes money on part of
8 their live racing, you know, probably doesn't
9 understand the way it works. And that's the whole
10 issue. They don't understand how it is for the
11 importer.

12 And part of the problem is, we're the only
13 state really like this. Virginia is really kind of
14 a lone wolf on this whole thing. Arkansas is a
15 little bit similar. They have a short meet. They
16 have enough population demographic to bet enough
17 money for it to matter, but other places that are
18 like Virginia are Wyoming or Idaho or places that
19 don't have a population to make a difference to the
20 wagering companies.

21 So we're kind of stuck out there on our own.
22 That's part of the problem. I don't think the
23 industry or the media or anybody understands our
24 problem as it's developed because the racetracks
25 want this, the horsemen want this, and we end up in

1 this place.

2 MR. REYNOLDS: Glenn, I'm looking at this
3 thing and what I'm hearing them say is they've got
4 nothing to lose by not having live racing here.

5 MR. PETTY: That's correct.

6 MR. REYNOLDS: Now they're going to have
7 YouBet pick up their business in Virginia.

8 MR. BURNETT: As long as we're operating.

9 MR. REYNOLDS: You're going to have to prove
10 that they're doing it illegally --

11 MR. BURNETT: Right.

12 MR. REYNOLDS: -- and who has the stomach for
13 that.

14 MR. BURNETT: Right.

15 MR. HARRISON: Peter?

16 Interestingly, some racing jurisdictions turn
17 a blind eye towards account wagering, some major
18 ones like Florida, they neither condone it nor
19 prohibit it. They know it's going on in the state,
20 but they don't regulate it. On the other hand,
21 they're not doing anything about shutting it down.
22 It varies from racing jurisdiction to racing
23 jurisdiction.

24 MR. STEWART: I would say, for what it's
25 worth, I don't think we have to write the eulogy for

1 live racing here. We just have to establish a fair
2 way to allocate the funds. There's plenty of money.
3 I wouldn't say there's plenty of money. There's
4 enough money. There's enough money. It just has to
5 be allocated properly.

6 MR. REYNOLDS: Then why should they accept
7 this 11 percent? They're going to say that's too
8 much.

9 MR. PETRAMALO: It seems to me they have a
10 number of options, the ADW companies, in light of
11 our new statute. The first one obviously is they
12 can stop doing business in Virginia, pull up stakes
13 and say, okay, we're not going to -- it's costing us
14 too much. We're not going to pay the 11 percent.
15 We're going to go away. I don't think that's
16 likely. The handle probably within the next year or
17 two is going to be 40 to \$50 million a year of the
18 ADW companies here in Virginia. That's not chump
19 change.

20 The second thing they can do is mount some
21 sort of legal challenge in one of two ways, either
22 by bringing some court action under various theories
23 about how we're doing something that is destructive
24 of interstate commerce or whatever. Leave it up to
25 lawyers, they'll come up with something.

1 Alternatively, they can go to our legislature and
2 say, whoa, you folks made a big mistake last year.
3 Let us tell you what the truth is. You better
4 change that law. So that's the second option.

5 The third option, it would seem to me to be to
6 sit down with the stakeholders and try to work out
7 some kind of deal. If they think that -- I mean,
8 they have some leverage, obviously. You got the
9 800-pound guerrilla controlling all of the content
10 that it's selling here in Virginia that we live on
11 for most of the year. At the same time that
12 800-pound guerrilla owns a couple of these ADW
13 companies that it doesn't want to pay 11 percent
14 for.

15 Now, a rational business mind would say, hey,
16 let's sit down and talk turkey. That hasn't
17 occurred so far. We tried to entice them along
18 those lines during the summer meet when they were
19 boycotting our signal and much to our detriment, I
20 might say, they weren't interested. So that's the
21 way it seems to me, it made sense to look at the
22 problem.

23 MR. BURNETT: Well, leaving out these
24 conglomerations and left pocket to right pocket type
25 of problems which are there, looking at it from the

1 ADW perspective -- I'm not trying to defend them.
2 I'm just saying this is the pitch they were making.
3 I think we've heard it from Greg. If they're in a
4 state where there are 20-cent dollars coming out and
5 these guys have got to operate, and they're paying a
6 six percent source market fee -- paying a six
7 percent host fee to buy the signal, and then they've
8 got to pay Virginia 11 and a half percent source
9 market fee.

10 Now, before they, you know, pay their first
11 electric bill back at the office, they've got 60 and
12 a half cents out of 20 gone for fees and they've got
13 to operate on three, three and a half cents to pay
14 salaries, do advertising, distribution, blah, blah,
15 blah, blah. To me you've got to be in a big bucks
16 environment to make that work.

17 MR. PETRAMALO: But it's like the grocery
18 store, though. When you go to the grocery store,
19 their margin on meat might be 10 percent. Their
20 margin on cereal might be three percent. Their
21 margin on other stuff, household goods, may be 20
22 percent. That's the way the ADW companies work,
23 because for the most part, the big guys are doing
24 business in about 35 to 38 states. And guess what?
25 In about 30 of those states, they're paying zero in

1 terms of a source market fee.

2 So that 20 percent take-out, you take off the
3 top a quarter of a percent that they send to Oregon
4 where they hub, and then you take out maybe five
5 percent for host fee, so they're sitting there with
6 15 percent.

7 MR. BURNETT: Just to do the analogy, you're
8 suggesting that because you're getting your meat
9 really cheap, you should also reduce the price of
10 the milk?

11 MR. PETRAMALO: No. All I'm saying is --

12 MR. BURNETT: You're saying that we should
13 get -- we should in some way be the beneficiary of
14 the fact that other states don't charge the way we
15 do.

16 MR. PETRAMALO: What we're saying is we're
17 selling meat. In West Virginia, they're selling
18 cereal. You're making money in West Virginia
19 because the cereal is cheap. You come to Virginia,
20 it's costing you more because meat is more
21 expensive.

22 MR. BURNETT: It's the same product in both
23 states.

24 MR. WEINBERG: Right. I guess to use your
25 analogy, you're only looking at one supermarket,

1 right? You're looking at them operating one store,
2 and I think under Frank's analogy, they're operating
3 35 stores.

4 MR. PETRAMALO: Yes.

5 MR. BURNETT: You're saying if you're going to
6 have a grocery store in New York City, you've got to
7 expect to have more overhead.

8 MR. PETRAMALO: Yes.

9 MR. WEINBERG: Right. I think under your
10 scenario, yes, you build some sympathy for those
11 numbers as you articulated them just looking at one
12 store. Frank's point is they operate --

13 MR. BURNETT: Yeah. Yeah.

14 MR. WEINBERG: -- 34 other stores and they're
15 making a lot of money.

16 MR. BURNETT: I understand that, but the
17 indisputable fact about that argument is we're
18 saying because you're making money in other states
19 and they're not smart enough to charge you what they
20 should charge you like we're smart enough to do, you
21 should pay us probably a little bit more than is
22 fair.

23 MR. WEINBERG: Well, no.

24 MR. BURNETT: You couldn't operate as a
25 company nationwide paying 11 and a half percent to

1 every single jurisdiction where you do business.
2 You would agree with that?

3 MR. PETRAMALO: No. I wouldn't agree with
4 that at all.

5 MR. BURNETT: Tell me why.

6 MR. PETRAMALO: Absolutely not.

7 MR. BURNETT: Tell me why.

8 MR. PETRAMALO: When Chuck Champion was
9 running YouBet, he got up at more conferences than I
10 can remember and said, look, we can live on a two
11 percent margin. If we have the volume, we can live
12 on two percent margin.

13 MR. BURNETT: That's what I said, big bucks.
14 You've got to have the volume.

15 MR. STEWART: I mean, it's a classic internet
16 business model, and it's -- I guess the buzz word is
17 scalable. I mean, you can just keep cranking the
18 revenue through the same cost base.

19 MR. BURNETT: So your view is that --

20 MR. STEWART: There's only one computer.

21 MR. BURNETT: -- they pay a six percent host
22 fee and 11 and a half percent source market fee
23 everywhere they did business, these companies would
24 still be profitable.

25 MR. STEWART: If they had enough volume.

1 MR. BURNETT: No. Right now.

2 MR. STEWART: Well, the issue here, though, is
3 their choice is do we go into Virginia or not.

4 MR. BURNETT: That's right.

5 MR. STEWART: That's a choice they have to
6 make.

7 MR. BURNETT: I agree.

8 MR. STEWART: So if they go into Virginia and
9 they pick up another three points to their bottom
10 line, you know, it's free three points. They're
11 going to do.

12 MR. PETRAMALO: Ask yourself this.

13 MR. BURNETT: I'm not talking about
14 practicality. I'm just looking at theoretically how
15 they justify their business loss.

16 MR. PETRAMALO: If as a result of Churchill
17 buying YouBet, they combine YouBet with their own
18 TwinSpires and they control 44 percent of the
19 account wagering market nationwide, can they live on
20 a margin of two or three percent? My answer would
21 be yes, because of the volume --

22 MR. WEINBERG: Peter --

23 MR. BURNETT: So they're wildly -- publically
24 traded and wildly profitable right now. They should
25 be, right?

1 MR. REYNOLDS: That's their logic. In
2 negotiating, I don't want to give away that much. I
3 don't want to pay this 11 percent.

4 MR. PETRAMALO: Oh, sure.

5 MR. REYNOLDS: I don't have to stay in
6 Virginia.

7 MR. BURNETT: That's their --

8 MR. PETRAMALO: Yeah. We say, well, it's been
9 nice knowing you. If they want to go, let them go.
10 That's our negotiating position.

11 MR. BURNETT: Glenn has some observations.

12 MR. PETTY: I think the bluff call here, and I
13 don't know how you would do this. I don't know if
14 the Commission could do it. What you need to know
15 is two things, and let's just use YouBet since we're
16 talking about them. What states do they do business
17 in and what source market fees do they pay in those
18 states. That would be -- it would enlighten
19 everyone.

20 The second thing is if you take 100 percent of
21 their handle, what racetracks do those bets come
22 from, and what is the host fee for those tracks. I
23 mean, are they paying six percent on half the bets
24 or three percent? Because once you understand that,
25 then you hit Frank's point. They may be crying we

1 can't possibly live on three percent here while
2 they're making 20 percent in 30 other states, but if
3 you don't have that information, it's a poker game,
4 who can bluff who out of what.

5 MR. BURNETT: And that's before you introduce
6 the trending as well. Three years ago we were
7 talking about host fees in the three percent range,
8 now we're talking about at them four and seeing them
9 go to five and six and on big races 10, 12, you
10 know, you name it depending on what --

11 MR. PETTY: If you knew what their pie looked
12 like, how much of it was Hollywood, how much of it
13 was NYRA, how much of it was Churchill, how much of
14 it was Mid-Atlantic, then you could really tell what
15 the cost structure really was versus the blue chip,
16 black chip, you know, the bluff game.

17 MR. BURNETT: It's pretty clear to me -- it's
18 again like lawyers. It's always the guy across the
19 street that's making all the money.

20 MR. PETTY: I think I know who's not making
21 all the money.

22 MR. BURNETT: That's what they say.

23 MR. WEINBERG: But there is just one final
24 point.

25 MR. BURNETT: Please. Sure.

1 MR. WEINBERG: Also, in your model or in the
2 model that we were working under with the contracts,
3 the ADW providers had no incentive to negotiate
4 better host fees because it was a pass off. It
5 wasn't really coming out. And so this model of a
6 fixed source market fees says go out, you guys have
7 the volume, you have the relationship, go negotiate
8 the best host fees that you can.

9 MR. BURNETT: I hear you.

10 All right. Let's close, yes. Does any member
11 of the public wish to address the Commission?
12 Seeing none, I'll move to the next item.

13 The next meeting is December 16th. Does that
14 work for everybody? That's the usual Wednesday.

15 Closed meeting, if any. I'm unaware of any
16 need for a closed meeting.

17 Do we have a motion to adjourn?

18 MR. MILLER: So move.

19 MR. BURNETT: The chair seconds. All in favor
20 say aye.

21 Note: (Aye.)

22 MR. BURNETT: We're adjourned.

23 Note: The proceedings concluded at 11:25 a.m.

24

25

CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on November 17th, 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 24th day of November, 2009.

Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011