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VIRGINIA RACING COMMISSION

September 28th, 2010

10700 Horsemen's Road

New Kent, VA 23124

Commencing at 11:08 a.m.

COMMISSION MEMBERS:

Peter C. Burnett, Chairman

David C. Reynolds

Mark T. Brown

Stuart Siegel

COMMISSION STAFF:

Victor I. Harrison, 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 the regular meeting of August 24, 2010	4
3		
4	2. Commissioners Comments	4
5		
6	3. Committee Reports	6
7		
8	4. Executive Secretary's Report	
9	a. Deadline for Submitting Request for 2011 Live Racing Dates	7
10		
11	b. Internet Cafes	8
12		
13	5. Stakeholders	
14	a. Colonial Downs Update on 2010 Harness Meet	25
15	b. Unlicensed ADW operators in Virginia	55
16	c. Request for Approval to Place Account Wagering Terminals	59
17		
18	6. Public Participation	85
19		
20	7. Set Next Meeting -- October 26, 2010	85
21		
22	8. Adjournment	87
23		
24		
25		

1       SEPTEMBER 28, 2010

2               MR. BURNETT: All right. I think we're ready  
3       to go, five minutes late. Call the meeting to  
4       order. Welcome, everybody.

5               The first item of business is the approval of  
6       the minutes from our regular meeting of August 24.  
7       That's under your Tab 1. I noted a couple of minor  
8       typographical errors with Vic already, but does  
9       anybody have any substantive or other changes,  
10      comments, additions, deletions?

11              MR. BROWN: Are you going to make the  
12      corrections now or do you want to just have Vic make  
13      them later?

14              MR. BURNETT: There were only two or three.  
15      One was in the second paragraph on the second page,  
16      on and in before Fredericksburg needs to be -- on  
17      needs to be deleted. I thought that paragraph four  
18      where it said the Commission unanimously approved  
19      the revised list, did not need the two sentences,  
20      all were in favor and the motion carried, I thought  
21      were redundant, ask that those be deleted, and then  
22      in the two paragraphs below that, stall management  
23      and tracking the horses' location, the apostrophe  
24      should be after the "S" as opposed to before the  
25      "S", plural.

1 MR. BROWN: That's just minor stuff.

2 MR. BURNETT: That kind of minor stuff.

3 MR. BROWN: Move to approve.

4 MR. BURNETT: All right.

5 MR. SIEGEL: Second.

6 MR. BURNETT: All right. It's been moved and  
7 seconded. All in favor indicate by saying aye.

8 Note: (Aye.)

9 MR. BURNETT: The minutes are approved.

10 Commissioners comments, any comments from  
11 fellow commissioners? The only comment is I should  
12 turn the recorder on. Hold on a second. Sorry,  
13 Kim.

14 I would like to publically thank the VTA and  
15 other sponsors of the *Secretariat* pre-screenings. I  
16 know Glenn did a ton of work along with his capable  
17 staff to sell out the Tysons Corner venue that I  
18 went to. Frank came attired and was splendid in his  
19 usher's scarlet jacket and showed people to their  
20 seats, even matched some of the folks in the movie  
21 who were wearing similar jackets, but it was a  
22 packed house. The movie was a lot of fun,  
23 particularly for Virginians and Richmond natives to  
24 hear familiar names and do a little remembering of a  
25 pretty spectacular time in horse racing in Virginia.

1 Thank you, Glenn, and if you could just put that on  
2 a couple times a year with new movies all the time,  
3 that would be very helpful.

4 MR. PETTY: You get the movies made, we'll put  
5 on the premieres.

6 MR. BURNETT: I thought you might say that.

7 MR. PETTY: I think there's one coming up in  
8 Richmond October the 7th.

9 MR. SIEGEL: There's one Saturday night in  
10 Richmond, a pre-screening at seven-ten at Movieland  
11 on the Boulevard.

12 MR. PETTY: And in front of you guys, you have  
13 the -- that's the gift bag we gave away with the  
14 crowning jewel being the new Secretariat ball cap.  
15 There's some extra bags up front there for anybody  
16 who wants them.

17 Included in you all's bag, though, is the new  
18 *Mid-Atlantic Thoroughbred*. There's an issue  
19 about -- there's an article rather about Breeders'  
20 Funds in the Mid-Atlantic. I mean, it's the most  
21 depressing thing -- speaking of uplifting and  
22 wonderful, the *Secretariat* movie, that article -- I  
23 think Virginia gets about 250 words, and it's just  
24 grim. So just look at it and be prepared to wave it  
25 around at the General Assembly this winter.

1 MR. BURNETT: Great.

2 MR. PETTY: Glad you enjoyed it. We were  
3 happy to do it. It was fun.

4 MR. BURNETT: One last comment about the  
5 movie. Glenn stood up in front of the assembled  
6 mass and reminded those of us that had some  
7 experience on the backstretch that we should all  
8 suspend our disbelief for the benefit of a Disney  
9 movie because the making of it took a few liberties  
10 with how horses are trained and, in fact, even how  
11 Secretariat was trained.

12 To my knowledge, he stayed in New York most of  
13 his career. I don't think he was trained off the  
14 farm, but they had him in Doswell right there being  
15 trained on the farm, I guess, shipping to a lot of  
16 races. So it helped that Glenn said that because  
17 you didn't find yourself going, oh, that's not  
18 right. That's not right. That's right. I'm  
19 watching a Disney movie.

20 MR. PETTY: It was my third time I'd seen it,  
21 so I had it figured out by then.

22 MR. BURNETT: We won't accuse you of being a  
23 slow learner.

24 All right. Let's move on. We have no  
25 committee reports today, I do not think.

1 MR. HARRISON: No.

2 MR. BURNETT: All right. Executive  
3 secretary's report. Mr. Harrison?

4 MR. HARRISON: Thank you, Mr. Chairman.

5 One thing before I get started, I just want to  
6 introduce George, George Hickman. Many of you know  
7 him already. He's our presiding judge this year.  
8 He got booted up. George is in attendance. He may  
9 have to leave because of live racing starting.

10 MR. HICKMAN: Good morning. Certainly a  
11 pleasure to be here. I live in New Hampshire, so  
12 I'm a few miles away from home. I've really enjoyed  
13 Colonial Downs.

14 MR. BURNETT: As a native of Maine,  
15 Mr. Hickman, I never would have recognized your  
16 accent.

17 MR. HICKMAN: They say I come from a different  
18 country, so we join hands. Thank you.

19 MR. BURNETT: No good deed goes unpunished,  
20 and we're glad to see that you've been promoted  
21 upward. Thank you for being here.

22 MR. HICKMAN: Thank you.

23 MR. HARRISON: George has been doing a fine  
24 job. We're happy to have him.

25 My first item is the -- just the gentlest of

1 reminders that the deadline for submitting 2011 race  
2 dates, just raising the issue. It's a deadline  
3 that's set by the Commission, and I don't think  
4 September is too early to start getting the  
5 reminders out there. We can discuss it again in  
6 October and November.

7 MR. BURNETT: Is the date December 1 this  
8 year?

9 MR. HARRISON: If --

10 MR. BURNETT: Typically?

11 MR. HARRISON: -- you say it is, it is.

12 MR. BURNETT: We have not set it then?

13 MR. HARRISON: That's right.

14 MR. BURNETT: Maybe without putting anybody on  
15 the spot today, we could ask at our next meeting to  
16 have the stakeholders give us some of their thoughts  
17 on where they are in talking about these dates and  
18 know that this meet that we just had is going to  
19 require some analysis, and folks are probably going  
20 to want to do some serious thinking about what the  
21 meet looks like next year. So if you can give us  
22 some feedback on what works from all of your  
23 discussions, that would be helpful.

24 Next item?

25 MR. HARRISON: Next item I have is the



1 internet cafes. The attorney general has issued a  
2 legal opinion stating that the operation and its  
3 machines as it was represented to him did not  
4 constitute illegal gambling, and I think the key  
5 phrase there was as it was represented to him.

6 I'm not sure the AG is in receipt of all the  
7 pertinent information and I'm not sure that the AG  
8 actually spoke to the experienced people in his  
9 office, within our industry or within the wagering  
10 industry. I don't know that. I do know that since  
11 that time, there have been a plethora of articles on  
12 openings of these internet cafes, and last weekend a  
13 nice article in the *Virginia Pilot* on the closing of  
14 12 of them. Their Commonwealth's attorney, I think,  
15 and the police came down and shut 12 of them down.

16 It's in the news. It is worthy of discussion  
17 here, at least mention here, and I would assume that  
18 Amy and Frank and their office is -- they're  
19 probably trying to focus or qualify the meaning of  
20 the opinion or the ramifications of the opinion.

21 MR. PETRAMALO: Can you describe how these  
22 cafes work? I've never been in one. I've read  
23 about them, but I'm not quite sure I understand  
24 what's going on.

25 MR. HARRISON: Well, you go in and you buy

1 credit. They're not too dissimilar from the gray  
2 machines that you see at the truck stops. You walk  
3 in and you pay for credit on the machine, and then  
4 you get a -- it directs you to a screen that looks  
5 and acts like a slot machine, and you play that  
6 until your money runs out or until you leave. And  
7 if your money runs out -- and this is where I think  
8 perhaps the legal opinion request fell short. When  
9 you run out of money, you have to put more money in.

10 MR. PETRAMALO: Right.

11 MR. HARRISON: I think in the opinion it  
12 related to -- there was a line in there that said  
13 that you could -- since you could play this game  
14 through the mail and anybody could play it, that  
15 maybe it wasn't illegal gaming. That's how it was  
16 presented to the AG's office. In this case, it  
17 really acts and plays and takes money and disburses  
18 it as a slot machine.

19 MR. PETRAMALO: How do I win? Let's say I buy  
20 \$5 worth of time and --

21 MR. HARRISON: If you get three cherries in a  
22 line, you win.

23 MR. PETRAMALO: No, no. How do I get cash?

24 MS. BOUZEK: Can I?

25 MR. BURNETT: Please. You would know

1 something about this?

2 MS. BOUZEK: You get a card.

3 MR. BURNETT: There we go.

4 MS. BOUZEK: You get a card because we've been  
5 to the ones -- there's four within two miles of our  
6 Martinsville location. There's one that's getting  
7 ready to open up beside -- right next to our  
8 Chesapeake/Indian River location. You go in and  
9 depending on where it is, some you -- every one of  
10 them, you have to show your driver's license and you  
11 get a card. You could put \$5 on it --

12 MR. PETRAMALO: Right. Okay.

13 MS. BOUZEK: -- \$10 on it, \$20 on it. The  
14 first place matched \$5, second place matched \$10,  
15 then you get a free pick. So you go over to the  
16 computer, which I have pictures of, and one place  
17 actually did have a screen that said Internet  
18 Sweepstakes Games, facts, copy, and you had to  
19 actually hit it. All the other places either have  
20 slot machines or Video Poker up.

21 You put it in, and there's two columns,  
22 sweepstakes points, winnings. So your sweepstakes  
23 points are 5,000, let's just say, and each spin is  
24 50 points. Whether you win or lose, those 50 points  
25 come off. If you win, money gets put into your

1 winnings.

2 MR. PETRAMALO: It comes off the computer --

3 MS. BOUZEK: It comes off your points and goes  
4 into your winnings. When you're out of points, you  
5 have two choices. Buy more points or go take your  
6 card and get your money, which we did. I mean, we  
7 did it both ways. We ran out of money, and we went  
8 and got money. We found --

9 MR. PETRAMALO: So if you put in five, it's  
10 possible to take out ten?

11 MS. BOUZEK: Well, we put in ten. We put in  
12 20. They gave us a free ten, so it cost us 20. I  
13 cashed out for 28 playing poker, and he cashed out  
14 for 26 playing poker. We lost. We wanted to leave  
15 as winners and losers to see how they treated us.

16 The one place we went to in Martinsville had  
17 the thing up there that said this is a contest, you  
18 know, here's what you can win --

19 MR. KELLEHER: For two years.

20 MS. BOUZEK: Right. For two years.

21 The last spin was a free spin. This was your  
22 free spin of the day. This was your free spin of  
23 the day. I think I got a penny and you got a dime  
24 or something, but it's like an electronic pull tab  
25 machine because there's a finite amount of winners

1 in a game. It's predetermined how many winners  
2 there are. So the game -- you know, there was  
3 876,000 penny winners, and there was one \$3,000  
4 winner.

5 MR. PETRAMALO: Is this something that's  
6 actually coming in off the internet, or is it a  
7 server that's located in the cafe?

8 MS. BOUZEK: Oh, it's a server that's located  
9 in the cafe.

10 MR. PETRAMALO: That generates all this stuff?

11 MS. BOUZEK: It's kept because it's just --

12 MR. BURNETT: Does that cafe buy a disk or  
13 download a program from some central source?

14 MS. BOUZEK: Software.

15 MR. BURNETT: So we're talking about --

16 MS. BOUZEK: It's a software company.

17 MR. BURNETT: And they either get it on-line  
18 or they get it mailed to them, put it in their  
19 server, and now they're in business. Is that fair?

20 MS. BOUZEK: Well, there's several companies  
21 selling to Virginia.

22 MR. BURNETT: Sure.

23 MS. BOUZEK: Some are illegal where you just  
24 load the disk on. Supposedly, there's one company  
25 claiming that it's legal where it's already

1 installed on the machines that you purchase or  
2 lease, but --

3 MR. BURNETT: Let me just understand. You  
4 bring me the server with the software on it, that's  
5 okay, but if I go buy a server and get the software  
6 from you and put it on there, that's not okay?

7 MS. BOUZEK: Because you don't know that  
8 there's -- this company has a patent. This one  
9 company has patent showing that it has a finite  
10 number of games in it with a finite -- with a  
11 determined amount of winners. There's \$400,000 in  
12 this game. As soon as somebody wins \$400,000, this  
13 game is done. A new game starts.

14 MR. BURNETT: And that's somehow supposed to  
15 get them into legality for game playing in Virginia?

16 MS. BOUZEK: Right. The only thing we've not  
17 been able to determine, because the one thing is it  
18 says that you don't have to pay to enter. So we've  
19 not tried to go into a place yet and just say, "I  
20 don't want to pay," and see what happens because  
21 that's a little obvious.

22 MR. BURNETT: Sure.

23 MS. BOUZEK: You know, we didn't want to --  
24 Martinsville is a very small place. We didn't want  
25 them saying, "Hey, there's two people coming

1 around."

2 Lori Lewis is going to a meeting today  
3 at three o'clock in Henry County where they're  
4 bringing this up because we went two weeks ago to  
5 Martinsville where they approved this, and they put  
6 out their -- you know, the locales have said, you  
7 know, you can't have anyone under 18. You can't  
8 have a gun. You can't serve liquor. You have to  
9 close at midnight. They give away free food. You  
10 do all that, there's four places legally up in there  
11 that they know about, and it's going to the city  
12 council in two weeks, we're going to go to that  
13 meeting also.

14 MR. BURNETT: Going to the city council to be  
15 revisited?

16 MS. BOUZEK: Oh, excuse me. You can have a  
17 gun. You can't have a knife. I'm sorry. You can  
18 have a gun.

19 MR. BURNETT: You can bring a gun?

20 MS. BOUZEK: Yeah.

21 MR. BURNETT: No knives?

22 MS. BOUZEK: No knives. No bladed objects.

23 MR. KELLEHER: They can't tell you you can't  
24 bring a gun.

25 MS. BOUZEK: It's illegal for them to tell

1           you --

2                   MR. PETRAMALO: The weapon can't be concealed.  
3           As long as you're wearing it on your hip and it's  
4           visible, it's okay. Is that right?

5                   MS. BOUZEK: Correct.

6                   MR. BURNETT: This is evidence of never take a  
7           knife to a gun fight?

8                   MR. PETRAMALO: Exactly.

9                   MS. BOUZEK: But, you know, it's like they go  
10          and they look for our OTBs because they put flyers  
11          on our OTBs at Hull Street for the one that's two  
12          miles from Hull Street. They're giving away free  
13          food at all the ones in Martinsville.

14                   MR. BURNETT: What is in front of the  
15          Martinsville City Council in two weeks? What issue?

16                   MR. STEWART: It's the local regulations to  
17          set up appropriate zoning for these types of places.

18                   MR. BURNETT: So this would be only -- it  
19          would only affect expansion, essentially, and not  
20          the validity of the license for the ones that exist  
21          to continue?

22                   MS. BOUZEK: Correct.

23                   MR. BURNETT: Has there been any evidence  
24          based on what's taken place in Virginia Beach and  
25          perhaps some activity at the Attorney General's



1 Office and the like that Martinsville might be  
2 reconsidering what they approve?

3 MS. BOUZEK: Well, not yet. The new one just  
4 opened. This week a new one just opened, which is  
5 after the bust, and Lori is there today to see what  
6 they're going to say because Henry County was  
7 supposed to be next, and that's where we are.

8 It was in all the newspapers that these people  
9 are coming from North Carolina, and Henry County is  
10 closer to the border. So they thought wait a  
11 minute. We don't want all these people bypassing  
12 Henry County to get to Martinsville, so now Henry  
13 County is interested in them.

14 MR. PETRAMALO: What do these places look like  
15 inside? I mean, are they just touchscreen  
16 computers, or do they look like fancy --

17 MS. BOUZEK: One place we went to it was so  
18 dark, we couldn't even go to the back because you  
19 couldn't see. One place was as bright as this.  
20 They have about 75 terminals in there. They're in  
21 strip malls. They have fancy machines. They had --  
22 I mean, I can show you the book, if you'd like.

23 MR. PETRAMALO: I'm just curious.

24 MR. BURNETT: Commissioner Reynolds? Jeanna,  
25 Commissioner Reynolds has a question for you.

1 MS. BOUZEK: Yes, sir.

2 MR. REYNOLDS: You said no alcohol?

3 MS. BOUZEK: No alcohol. That's determined by  
4 the locale. In Martinsville, they have said in  
5 order for us to give you a business license, you  
6 cannot serve alcohol.

7 Now, our ABC lawyer said that a locale can't  
8 supercede the state that gives you the ABC, but they  
9 can keep you from getting a license or they close  
10 you down if you have alcohol. So none of these  
11 places have alcohol.

12 MR. BURNETT: Do the ones at Virginia Beach  
13 have them?

14 MS. BOUZEK: None. None of the ones that we  
15 were able to find. We were able to find seven of  
16 the eleven that they busted.

17 MR. BURNETT: They promote just good, clean  
18 fun?

19 MS. BOUZEK: All good, clean fun, donation to  
20 charity. Some of them are called charity centers.

21 MR. BURNETT: Charity starts at home.

22 It strikes me that this issue, Mr. Harrison  
23 and fellow commissioners and stakeholders, is of  
24 sufficient import and momentum at the moment that  
25 maybe we ought to try and figure out how we could

1 have an impromptu or informal committee come  
2 together to figure out how to address this. I think  
3 there are significant legal questions about it and I  
4 know that our counsel is on top of those issues, but  
5 it strikes me there's also some political components  
6 to it.

7 It's interesting from a marketing standpoint  
8 that if some kind of a similar product could be  
9 developed that incorporated horse racing, we'd love  
10 to see that level of interest come flocking towards  
11 any of our outlets.

12 Jeanna has a comment.

13 MS. BOUZEK: Well, that's what -- supposedly  
14 the premise of this is that you're marketing  
15 something, you know, you're bringing them in to  
16 market something, and you're giving them a reward  
17 for marketing. I'm not a computer genius, but there  
18 should be a way that we could use this to market  
19 horse racing. I did want to say that the national  
20 VFW is paying to put these machines into Virginia  
21 private VFWs and they're currently in VFWs, which  
22 are in direct competition with, you know, our EZ  
23 Horseplay machine. It's affecting even them.

24 MR. BURNETT: If we had an ADW platform that  
25 had these kind of games of chance, but they were

1 tied to legitimate horse racing. If you had enough  
2 simulcast signals to work with you, you could give  
3 them the speed of wagering, if you want to call it  
4 that, to these folks. Maybe it could attract folks,  
5 but it seems to me there are a lot --

6 MS. BOUZEK: I think they have tried to tie it  
7 in.

8 MR. BURNETT: I hear you. I just think it  
9 needs to be addressed quickly and it seems to be a  
10 moving target and, you know, I've heard that they've  
11 given away 50-cent phone cards for five bucks, and  
12 the floor is littered with unused phone cards  
13 because that's not why people are there. I would  
14 think -- I can't imagine why it would make sense for  
15 this body to delay having a response to this kind of  
16 activity, and I think we could be accused of being  
17 irresponsible if we didn't address it in some  
18 fashion.

19 Maybe, Mr. Harrison, you could talk with our  
20 counsel and see how quickly we could put together  
21 some group to come up with a concerted plan for how  
22 this should be dealt with. I guess I would invite  
23 the stakeholders to respond to that idea. Is that  
24 something that makes sense to everybody?

25 MR. STEWART: We're certainly willing to

1 participate.

2 MR. BURNETT: I'm trying to come up with  
3 something that particularly Colonial Downs would be  
4 eager to participate in. Is there another way that  
5 this should be addressed? I mean, if it's not much  
6 consequence to our principal stakeholders here --

7 MR. STEWART: I didn't mean it wasn't of any  
8 consequence to us. We've spent a lot of time and  
9 effort studying the issue.

10 MR. BURNETT: Clearly.

11 MR. STEWART: We're still kind of figuring out  
12 exactly what we think the right answer to it is.  
13 We're happy to participate in any group discussion.

14 MR. BURNETT: Again, I meant it when I said I  
15 didn't have any reason why we should delay it, but  
16 there might be. It may be that further  
17 investigation warrants it before we sit down and  
18 start talking about it.

19 MR. PETRAMALO: Let me give you a contrarian  
20 view.

21 MR. BURNETT: Please.

22 MR. PETRAMALO: We might conclude that this is  
23 the greatest thing since sliced bread and put 100  
24 machines right in here, you know -- I mean, it  
25 generates money.

1 MR. BURNETT: I hear you. Clearly, we need to  
2 understand the legal piece of it. We've got plenty  
3 of talented lawyers so we ought to be able to figure  
4 that out.

5 MR. PETRAMALO: I'd be interested in seeing  
6 the attorney general's opinion. Is this published  
7 any place?

8 MS. BOUZEK: It is.

9 MR. PETRAMALO: I'd like to see it.

10 MR. WEINBERG: The codification of sweepstakes  
11 law that was pre-existing in Virginia well before  
12 the current attorney general.

13 MR. BURNETT: And that opinion was only as  
14 good as -- well, it's only applicable to the facts  
15 that it was based on.

16 MR. PETRAMALO: I understand.

17 MR. BURNETT: They are divergent, as I  
18 understand it, from --

19 MR. PETRAMALO: Is that an extra copy?

20 MS. BOUZEK: Sure.

21 MR. BURNETT: Completely divergent from the  
22 practices that Jeanna has just described. So some  
23 might even consider that the attorney general was  
24 snookered a little bit on that opinion based on what  
25 was presented.

1 MR. PETRAMALO: Right. Okay. That's  
2 interesting.

3 MR. BURNETT: There's plenty to look at. I'll  
4 put it that way.

5 So if that's acceptable to the Commission,  
6 we'll have Vic see what he can put together and get  
7 these good minds working on it and see if we can  
8 make some progress.

9 Vic, anything else on that particular subject?

10 MR. HARRISON: No. I'll get together with Amy  
11 perhaps later today or tomorrow and see what we can  
12 come up with.

13 MS. BOUZEK: And if I could just clarify one  
14 more statement because obviously it sounded like I  
15 was against -- you know, the ones that we found are  
16 acting illegally. They're not following this. I  
17 think they're -- from our research, there may be a  
18 way to follow this legally. It's just none of them  
19 are being followed legally right now. So I believe  
20 that with enough research, we may be able to find a  
21 way to do it.

22 MR. BURNETT: All right. We'll move to  
23 stakeholders.

24 MR. HARRISON: Peter, I'm sorry. I had one  
25 other quick issue.

1 MR. BURNETT: I'm sorry. Go ahead.

2 MR. HARRISON: Included in your booklets is an  
3 updated SWF, hours of operation. When it was  
4 originally submitted to me earlier this month, it  
5 didn't exceed the ten percent requirement that we  
6 have in place for approval from the Commission, but  
7 I received one a few days ago from Jeff, wherein,  
8 the activity on Sundays is a 16 percent increase in  
9 hours. So they're increasing hours on Sundays at  
10 some of their facilities and in Scott County, I  
11 believe, on Wednesdays and Thursdays as well. So I  
12 would -- you know, I appreciate the increase in  
13 hours, and I would recommend that you -- somebody  
14 make a motion and you approve it.

15 MR. BURNETT: I don't know that we are  
16 required legally to approve expanded hours. I think  
17 we asked informally that we be provided notice and  
18 this wonderful form that really gives tremendous  
19 detail, and I don't think we've got any members that  
20 are going to argue against expansion.

21 MR. BROWN: No. Definitely not.

22 MR. BURNETT: Thank you for telling us about  
23 it. That's good news, that we're getting more hours  
24 of operation. I think that would be a good thing at  
25 this point.



1 Does that end your report?

2 MR. HARRISON: It does.

3 MR. BURNETT: Thank you.

4 We're going to move to stakeholders.

5 Dr. Dunavant has asked to be heard, and we're going  
6 to -- because he may have to go over to the races,  
7 we're going to ask him to speak to us first to  
8 accommodate his schedule.

9 DR. DUNAVANT: For those of y'all that don't  
10 know me, I'm Charlie Dunavant, and I'm the president  
11 of the Virginia Harness Horse Association. We  
12 arrived here a couple weeks ago and, you know, we've  
13 always taken pride in this facility and the  
14 first-class racing. I was quite embarrassed at the  
15 condition of the backstretch when I arrived here as  
16 were my fellow horsemen.

17 We agreed to come a week later rather than our  
18 contract says we can come 14 days prior to racing to  
19 help Colonial save money, and we agreed to come  
20 seven days before racing and leave within seven days  
21 to give them two weeks to cut expenses.

22 When I got here, the grass was knee high  
23 everywhere. I had horsemen complaining at the dorms  
24 that snakes were crawling out of the grass onto the  
25 sidewalks. The trash cans apparently hadn't been

1 emptied since the thoroughbred meet. They emptied  
2 one several days later and an awful stench and  
3 maggots and things fell out on the dorm sidewalk.  
4 The bathrooms had not been cleaned. There were  
5 shower heads missing. The dorm rooms had mold in  
6 them. The kitchen wasn't open and when it was open,  
7 there were cobwebs hanging along the wall, you know.

8 My people feel that maybe Colonial Downs is  
9 trying to make our harness meet look a little bad.  
10 They have a plan to reduce our number of days and  
11 send our meet to fair races at Woodstock and at the  
12 State Fair.

13 The things that they were doing that my  
14 horsemen felt like made us look bad, for 12 years,  
15 in the past, we had a teller and a betting machine  
16 in the kitchen. On opening day, that morning, they  
17 removed the betting machine. There was nowhere to  
18 bet on the back side. I don't know how much that  
19 cost us in handle, but it certainly didn't help us  
20 any. They have put one in -- I can't remember if it  
21 was Saturday or Sunday after I raised Cain, and we  
22 still -- we don't have a teller. On Saturday, that  
23 machine wasn't working and nobody got here to get it  
24 open until after the first race and this morning  
25 they brought in a second machine. I've been

1 hollering about that. I don't know whether it was  
2 because I was going to make this talk this morning,  
3 they decided to put in the second machine, but I was  
4 quite incensed about removing the machine on our  
5 first day of racing.

6 This past weekend -- well, when we started,  
7 the fair was here and it was open. On Saturday, it  
8 was a hundred degrees. I had people coming to a  
9 suite. Colonial Downs' personnel was inside the  
10 building with the doors locked and wouldn't open the  
11 doors until 30 minutes before post time. Ever since  
12 we started here, it's always been an hour before  
13 post time. I told people to be here at twelve  
14 o'clock, come get your program and get in the suite,  
15 what have you. They made them stand out in the heat  
16 both Saturday and Sunday. Sunday afternoon, after I  
17 complained, they sent out a memo that they were  
18 correcting that. From now on, they'd be open an  
19 hour before post.

20 Last year in some meetings that we had with  
21 the judges and with trainers and owners, drivers,  
22 talking about things that we felt -- safety issues  
23 and things that needed to be done, we got back to  
24 them that in our paddock -- I don't know if any of  
25 you have even been in our paddock pre-race. Well,

1 we have five races in there. We've had one little  
2 TV right up by the paddock judge's office. People  
3 go up there and watch that to see when to get ready  
4 to warm up. I told him, I said, look, we need TVs  
5 in the back. It's 50 yards from one end of that  
6 thing to the other, and they agreed to do that.  
7 Well, the TVs were there when we got here, but the  
8 first week, they had never been hooked up. I had to  
9 raise Cain to get them plugged up. Our feeling was  
10 they had a year to get them up here. We raced a  
11 week without having them.

12 The things that I'm bringing before you today,  
13 you know, my people feel as if they're being treated  
14 a little bit second-class compared to the treatment  
15 that thoroughbred horsemen get when they get here,  
16 whether it's because with the EZ Horseplay proposal  
17 that Colonial Downs presented to us that we declined  
18 to participate in as the thoroughbred people. They  
19 made a remark in one of the meetings that what could  
20 they do to penalize the harness horse people and  
21 reward the thoroughbred people for participating in  
22 that.

23 We had a meeting with them that I sent  
24 representatives from the VHHA at their time and  
25 place that they set the meeting, and all the

1 management didn't attend that meeting. My  
2 representatives told them we didn't have any problem  
3 with helping with those machines, but we needed to  
4 know more about administrative costs, and I  
5 believe -- how long ago has that been?

6 MR. WOOLNOUGH: That was in the summer.

7 DR. DUNAVANT: That was in the summer. They  
8 haven't gotten back to us with that.

9 So there are things that I'm very upset about,  
10 and I think those sort of things make my handle look  
11 bad. I don't know what percentage. We don't do  
12 near the handle nationwide or in Virginia that the  
13 thoroughbreds do, but we do have a viable industry  
14 and we do approximately 20 percent of the handle.  
15 We would like to be treated better than I feel like  
16 we've been treated.

17 Now, I have a couple issues that are not  
18 Colonial Downs' issues that are issues with the Race  
19 Commission. There's a rule that stipulates that  
20 harness horsemen cannot be on that racetrack  
21 training without an ambulance sitting out here.  
22 We've got a lovely, wide, safe, beautiful track.

23 When the ambulance is not here, we have to jog  
24 down a jog path down here that is 10,000 times more  
25 dangerous than that big horse track. There are

1 ravines 50 to 60 feet deep. There's one little  
2 thin, pine board, one rail fence that's knee high.  
3 It is extremely narrow and we've got horses coming  
4 both ways. If there's an accident down there and  
5 somebody goes through that fence, somebody is going  
6 to be killed. I carried Commissioner Brown down  
7 there a week ago Thursday and let him jog a horse  
8 just to see how dangerous it is.

9 Insurance-wise, you know, they told me, well,  
10 for insurance, it's in the rule. If somebody gets  
11 hurt down that path because they couldn't get on  
12 this track, I think it's going to be more than an  
13 insurance issue. I don't know what has to be done.  
14 Minnesota had a dual purpose track and had to have  
15 an ambulance during jogging. They rescinded that  
16 rule. Other than here, no other harness track has  
17 an ambulance present during training.

18 When they're having qualifying races or when  
19 we're racing, yes, the ambulance does a good job.  
20 They follow us around, but I'm in far more danger of  
21 dropping dead of a heart attack or being in a car  
22 wreck coming in here than I am getting hurt during  
23 training on this nice, big track. I would like the  
24 Commission to look into that. That will also help  
25 Colonial Downs with the expense of paying that

1 ambulance to sit out there during training hours,  
2 and it will free up that track so that my people can  
3 get on it all the time.

4 The other issue I have with the Commission was  
5 the change in the paddock rule. They tightened up  
6 security in the paddock and my people do not have  
7 any problem with tightening up the security, but we  
8 got here in an unusually hot time. There were no  
9 provisions made. My people have to stay in that  
10 paddock. Some from the first to the last race.  
11 There was no water. They were not allowed to leave  
12 and come to the kitchen, and it created quite a  
13 hardship. I was not aware of that. After I was  
14 aware of that, the VHHA got chests and put water in  
15 them with ice and had it for my people and we  
16 started putting out candy.

17 In the past, for the past 12 years, the owners  
18 and trainers have been able to leave that paddock,  
19 come to the kitchen, get something to eat or drink,  
20 and we've got to have one little small TV back there  
21 to see. People like to watch their horse leave.  
22 They come out on this apron in front of the kitchen,  
23 see the horses go by, run back in the kitchen, and  
24 watch the rest of the race on the TV. They're not  
25 allowed to do that now.

1           Now, my suggestion was let's make that kitchen  
2 part of the paddock, shut the race office off, run a  
3 fence somewhere. Security is fine, but it's quite a  
4 hardship on my people seeing their horses race and  
5 being shut up in a hot paddock where they can't get  
6 any food or water.

7           Those are the issues that I would like to  
8 bring before the Commission for the Commission to  
9 rule on. I would like to say that we have got an  
10 abundance of horses here. There's over 400 on the  
11 grounds, more came in last night, not counting our  
12 ship-ins. We're racing 10 to 11 races with full  
13 competitive fields, and the racing has been very  
14 good.

15           I think Mr. Woolnough made it plain of the  
16 VHHA's position in a meeting with some commissioners  
17 concerning racing at Woodstock and at the State  
18 Fair. We support that as long as it does not take  
19 away from days at Colonial Downs. Colonial Downs  
20 does not go along with that supposition, but we  
21 agreed this year to race 28 days, a reduction of two  
22 weeks from our past meet due to the economy and to  
23 try to help their bottom line. That's not in stone.  
24 I hated to do that. I thought that was a bad  
25 precedent, and we intend to ask for more than 28



1 days for 2011.

2 We are racing for more money than any state  
3 that's not supported by casino/slot machine revenue.  
4 The horses that we have here, I can decrease my  
5 purse structure and race more days, and they will  
6 come. I feel like it's the horsemen association's  
7 responsibility to try to get horses here, and we  
8 have done that. I need some help with trying to  
9 make our meet, optimize our handle, and I feel that  
10 management has done things that have hurt us in that  
11 field. That's why I'm bringing it before the  
12 Commission today. Thank you.

13 MR. BURNETT: Thank you.

14 DR. DUNAVANT: If there are any questions,  
15 I'll be glad to answer them, but I've got to go and  
16 get ready to race some horses. I would like to  
17 encourage every one of you to stay here and watch  
18 this card. I think you'll see some good races.  
19 There's some horses here, and you'll enjoy it. I  
20 invite you to also go down my jog track and look  
21 over that little fence into those ravines, and you  
22 will see what I'm talking about with the safety  
23 issue.

24 MR. BURNETT: Before you leave, let's see if  
25 you agree with me on this. Most of what you have

1 told us with respect to what you found, what the  
2 horsemen found when they arrived are issues that --  
3 I'm not saying they shouldn't be ignored, need to be  
4 addressed, but they're behind us in terms of there  
5 being any emergent need to deal with them right now.

6 Likewise, on the other side of the time line,  
7 the days issue is going to get well meted out as the  
8 applications come in for the coming year, and we  
9 will have that discussion as to what is appropriate  
10 and the like in the way of days.

11 The two outstanding items that come to the  
12 Commission are the paddock rule in terms of seeing  
13 if there is some way that we can mitigate that  
14 difficulty for owners and the like being stuck in  
15 the paddock, and I think we can ask our executive  
16 secretary to have a look at that and see what we can  
17 do. Obviously, the meet is ongoing. So to the  
18 extent we can address it quickly, that's more  
19 helpful.

20 What is of primary concern to me is this jog  
21 track, and you may not like my conclusion based on  
22 what you described, but my conclusion first before  
23 we even talk about the ambulance situation is no  
24 training on that jog track, period. If it's that  
25 dangerous, we shouldn't be allowing it. What you

1 described as an environment, it should not be  
2 permitted at Colonial Downs. It sounds to me, as  
3 you've described, as an accident waiting to happen.

4 DR. DUNAVANT: It is.

5 MR. BURNETT: Insurance or no insurance or  
6 anything else. And maybe your suggestion of not  
7 having an ambulance when there's no speed work, for  
8 lack of a better term, going on is reasonable and  
9 within a standard of care for most racetracks of  
10 this quality around the country and maybe the  
11 Commission should consider that, but what's in front  
12 of me this minute and is of great concern to me and  
13 the reason I'm raising it before you leave is this  
14 almost disaster that's occurring daily apparently on  
15 the jog track here right now.

16 What happens if we say today no training on  
17 that jog track?

18 DR. DUNAVANT: You've got to leave that  
19 racetrack open when the ambulance isn't there for my  
20 people to jog because those horses have got to move.

21 MR. BURNETT: Okay. I understand what you're  
22 saying.

23 MR. SIEGEL: What do our professionals think  
24 of that as a possibility and what the risks are?

25 MR. BURNETT: I'm sorry?

1 MR. SIEGEL: I don't know whether Dr. Harden  
2 has an opinion about that or Vic does.

3 MR. HARRISON: Well, my opinion  
4 notwithstanding, we have a rule that states that  
5 anytime horses are on the track, either racing or  
6 exercising, there is a human ambulance present.

7 MR. SIEGEL: I realize what the rule is, but I  
8 think he's asking for the rule to be --

9 MR. HARRISON: Changed.

10 MR. SIEGEL: -- changed in that regard.  
11 Apparently, it's up to this body.

12 MR. HARRISON: We'll look at that. Yes, of  
13 course. We'll look at that.

14 MR. BURNETT: Is that a rule of racing that we  
15 have the ability to change on an instant basis?

16 MR. SIEGEL: Well, I don't know. The way  
17 Charlie explained it, it's up to us, but maybe it's  
18 not.

19 MR. BURNETT: Well --

20 DR. DUNAVANT: I don't know.

21 MR. BURNETT: -- there's rules of racing we  
22 can change in there and they're in effect when  
23 passed, other regulations require the rule-making  
24 process.

25 MR. SIEGEL: But we're not sure about this

1 particular regulation?

2 MR. BURNETT: I'm not. Just to be clear, is  
3 the reason that the ambulance is not on the  
4 racetrack is because somebody has been hauled away  
5 and you're waiting for it to come back?

6 DR. DUNAVANT: No. It's a money issue.

7 MR. BURNETT: It's a money issue.

8 So how many days a week is the ambulance on  
9 the track?

10 DR. DUNAVANT: It's there every morning except  
11 Thursdays.

12 MR. BURNETT: So Thursday is disaster day on  
13 the jog track?

14 DR. DUNAVANT: Exactly.

15 MR. BURNETT: The other six days of the week  
16 are covered in an appropriate fashion?

17 DR. DUNAVANT: Well, it's open until eleven  
18 o'clock. We have people that after eleven -- and we  
19 have people going up and down there. We have some  
20 people jogging a horse and leading a horse, and it's  
21 extremely dangerous. In years past, I have had  
22 them -- the judges announce that there will be no  
23 leading the horse during hours that the racetrack is  
24 open.

25 Now, some people have horses, they get exited

1 on the main track and they'll jog them up and down  
2 there, but it is entirely dangerous.

3 MR. BROWN: I agree.

4 MR. BURNETT: We can help you enforce the  
5 standards that you are setting forth, I think.  
6 There's a number of ways we can do that,  
7 particularly with the cooperation of Colonial Downs  
8 in terms of the inappropriate use of the jog track.  
9 One day when there isn't an ambulance on the  
10 racetrack sounds to me like a money issue that needs  
11 to be looked at and figured out. Do we know what  
12 the cost of that is?

13 MR. STEWART: The ambulance is \$75 an hour  
14 plus.

15 MR. BURNETT: Plus?

16 MR. STEWART: It's minimum of four hours.

17 MR. BURNETT: So it's \$300 a day for an  
18 ambulance.

19 MR. STEWART: For four hours.

20 MR. BURNETT: That's what I'm saying. Is that  
21 what you use it for, for four hours? Is that when  
22 it's there, seven to eleven?

23 DR. DUNAVANT: Yes, seven to eleven. We have  
24 to be off by then. If we didn't have to comply with  
25 that rule, I wouldn't need horses on this jog track.

1 People could -- I mean, they could leave the track  
2 open until twelve o'clock and give them another  
3 hour.

4 MR. BROWN: I wouldn't leave it open after  
5 twelve.

6 DR. DUNAVANT: No, no. It doesn't need to be  
7 open after twelve, but I mean --

8 MR. STEWART: Charlie, you did say that  
9 they're actually exercising out there now in the  
10 afternoon as well, right?

11 DR. DUNAVANT: Yes. Yes. And it's dangerous.

12 MR. BURNETT: That's why I say with the  
13 enforcement and we can ask our stewards to get on  
14 top of that and be paying attention in the morning  
15 as to what's going on on the back side, and they  
16 have, to my knowledge, no authority to enforce that.

17 DR. DUNAVANT: It's one thing -- in my  
18 opinion, and I'm not by myself. I mean, some  
19 horsemen will be upset that I essentially had that  
20 shutdown, but it is a dangerous situation.

21 One of my best horses, we couldn't get on the  
22 track Friday. I was incensed. I jogged him down  
23 there. A groundhog ran across that little narrow  
24 place, and he spun around and tore a tendon. He's  
25 done for the year. It about threw me out and

1 through the rail and I said, hey, this has got to be  
2 remedied.

3 MR. SIEGEL: It seems to me, though, that if  
4 we do shutdown the jogging track without dealing  
5 with the other issue, we're penalizing them even  
6 further. It seems to me that we need to do this  
7 simultaneously and, again, I'm not sure whether it's  
8 within our bailiwick to make that change or even  
9 whether it's appropriate to make that change, but we  
10 need to try to do something.

11 MR. BURNETT: Well, I agree with you. I don't  
12 know that's within our power and budget to be adding  
13 an ambulance, but I think we should try to get to  
14 the bottom of that as quickly as we can.

15 That said, when you have a dangerous activity  
16 going on, I'd rather see them suffer a difficulty,  
17 an inconvenience than -- I mean, it's bad enough to  
18 have a horse be out for the year, all of us know  
19 what that's like. It's no fun at all, but what if  
20 it was Charlie that couldn't come here today because  
21 he's up in the hospital.

22 MR. SIEGEL: Well, I don't disagree with that  
23 at all, but what I'd like to try and do is to deal  
24 with it all.

25 MR. BURNETT: Yes, yes.



1 MR. SIEGEL: If we have to shut it down for a  
2 day or two until we make whatever changes we're  
3 going to make or deal with the situation, that's  
4 fine, but for the rest of the meet, I think it would  
5 be a hardship as well.

6 DR. DUNAVANT: It would. They've got to be  
7 able to get their horses exercise.

8 MR. SIEGEL: Right.

9 DR. DUNAVANT: And in my point is we are  
10 extremely safe without that ambulance sitting there.

11 MR. BURNETT: We hear you. I don't think  
12 we're in a place to give you an answer this minute.

13 DR. DUNAVANT: The rule -- there's a big  
14 difference in galloping a thoroughbred horse out  
15 there with a rider on his back and our people in a  
16 cart.

17 MR. BURNETT: I am much more familiar with  
18 thoroughbred racing, but I've been around plenty of  
19 harness stuff for a long time. I'm inclined to  
20 accept your representation, but I'd like to hear  
21 what others think as well. Not to take anything  
22 away from it, but we've got several issues here.  
23 One is what is the fundamental safety issue. Two is  
24 what is our capacity legally to change a rule on an  
25 instant basis or on a longer basis.

1           So what I would say to you today is we hear  
2           you, and we will move as quickly as we can to  
3           address this issue. We'll ask Vic to make it his  
4           priority as soon as this meeting is over to start  
5           counseling with our capable attorney and to come up  
6           with a solution that you can circulate and see what  
7           the commitment of all of us here is to try and solve  
8           this problem, if that makes sense.

9           DR. DUNAVANT: Thank you.

10          MR. BURNETT: Mr. Petramalo, an aficionado of  
11          harness racing as well as thoroughbred racing --

12          MR. PETRAMALO: Listen, I grew up on a harness  
13          track. I love harness racing.

14          As I understand it, we've got what, seven  
15          weeks left in the meet? October and half of  
16          November?

17          DR. DUNAVANT: This is our second week. We've  
18          got five weeks.

19          MR. PETRAMALO: You've got five weeks. So  
20          that's five Thursdays. We're talking about \$1,500  
21          to have an ambulance there for five Thursdays.

22          MR. BURNETT: Correct. It's a \$1,500 problem  
23          at the moment going that direction. There's still  
24          going to be push back on closing that jog track  
25          whether the ambulance is there or not.

1 MR. PETRAMALO: Oh, no, no. I agree. I'm  
2 saying to myself \$1,500 versus a dangerous jog  
3 track. I mean, that's a no-brainer.

4 MR. BURNETT: Exactly.

5 MR. SIEGEL: If that's the only issue, then --

6 MR. BURNETT: It's usually a no-brainer to  
7 everybody except the person who's writing the check,  
8 and I don't know who's supposed to write that check.  
9 All I'm saying is that that's going to be the issue  
10 and we need to look at it.

11 DR. DUNAVANT: I don't know where you would  
12 check to get the precedent that was set in  
13 Minnesota. They had a similar thing where a  
14 thoroughbred rule applied, and it was rescinded for  
15 harness. It's the same everywhere but here.

16 MS. DILWORTH: May I --

17 MR. BURNETT: If it can be -- excuse me one  
18 minute. If we can do it, my preference would be to  
19 go the safer route and have qualified people there,  
20 if we can do it. If we can do six, it would be nice  
21 to be able to do seven and as Frank says it's a  
22 \$1,500 problem at the moment, but we need to look at  
23 it and just decide what to do.

24 Amy?

25 MS. DILWORTH: I just wanted to clarify. Is

1 the rule that we're speaking of -- I think the  
2 executive secretary and I understand that it's 11  
3 VAC 10-20-190(C)(8)? And that rule requires that  
4 there be one human ambulance and one equine  
5 ambulance at all times during racing and training?

6 DR. DUNAVANT: Yes.

7 MS. DILWORTH: And the problem is that the  
8 track is not insured to allow training to be taking  
9 place without an ambulance present?

10 MR. SIEGEL: Is that a question?

11 MS. DILWORTH: That's a question.

12 MR. STEWART: I don't know the answer to that.

13 MR. BROWN: Well, let me look at it from a  
14 different perspective from what your rule says. I  
15 mean, there's a difference between training and  
16 jogging --

17 MS. DILWORTH: Okay.

18 MR. BROWN: -- or just the exercise part.

19 MS. DILWORTH: Okay.

20 MR. BROWN: I mean, the jogging is very slow.  
21 As long as there's not a trailer, so to speak, it's  
22 a fairly safe game.

23 MS. DILWORTH: This rule doesn't apply to this  
24 situation --

25 MR. BROWN: It shouldn't apply to that

1 situation.

2 MS. DILWORTH: -- that Dr. Dunavant raised.

3 DR. DUNAVANT: I'm hard of hearing.

4 MS. DILWORTH: This rule doesn't apply to the  
5 situation that you are talking about, right,  
6 Dr. Dunavant?

7 DR. DUNAVANT: Well, I've been told that it  
8 does.

9 MS. DILWORTH: Okay.

10 DR. DUNAVANT: In other words, we're not  
11 allowed on this racetrack without an ambulance  
12 sitting there, but we have to go on a much more  
13 dangerous situation with no ambulance.

14 MR. SIEGEL: I think we've heard that.

15 MR. BURNETT: Yeah. We understand that.

16 MR. SIEGEL: I think the question is the word  
17 training --

18 MR. BURNETT: Yeah, what does that mean.

19 MR. SIEGEL: -- you interpret that to conclude  
20 jogging. My guess is when it was written, it might  
21 have, but if you really want to stretch it, then  
22 perhaps you could say jogging isn't training, but  
23 that's an interpretation that we may have --

24 MR. BURNETT: The tradition over hundreds of  
25 years has been horses train in the morning and they

1 race in the afternoon. You can call it exercise and  
2 you can call it training and you can cut it fine,  
3 but training is training and there's racing in the  
4 eyes or the notion of legislators, I think. We  
5 might be able to find a way around it that way. We  
6 have a plethora of lawyers.

7 MS. DILWORTH: Well, I'm sorry. I do need to  
8 clarify that the rule refers to racing and  
9 exercising. So if exercising includes jogging --

10 MR. SIEGEL: All three?

11 MR. WEINBERG: What causes the confusion in my  
12 view is it describes the surface. You can be on  
13 that surface used for racing in training, i.e., the  
14 racing and training surface is open for racing and  
15 exercising. So is there meant to be a distinction  
16 between training and exercising? But there are  
17 three different words used.

18 MR. PETRAMALO: I would think you could argue  
19 that exercising in this context means warming up  
20 prior to the race and in-between races. You go out  
21 there and see the card. The horses in the fourth  
22 race are going to be out there at the first race  
23 warming up. That may constitute exercising as  
24 opposed to training, which is what goes on in the  
25 morning. I just thought I'd throw that out there.

1           MR. BURNETT: It's too bad that our vice  
2 chairman is not here so we can blame him for this  
3 confusion.

4           MR. PETRAMALO: The other thing that perhaps  
5 should be considered is something short of having a  
6 human ambulance out there all the time. Look at it  
7 from Colonial Downs' standpoint -- are you writing  
8 this down, Ian?

9           MR. STEWART: I got it Frank.

10          MR. PETRAMALO: It's \$1,800 a week to do that.

11          DR. DUNAVANT: And the ambulance sits less  
12 than a mile outside the gate down the road. If you  
13 have an injury, call the ambulance.

14          MR. PETRAMALO: Is there some type of  
15 compromise between having the ambulance sitting  
16 there or having no ambulance at all?

17          MR. BURNETT: I hear you, but would y'all  
18 agree with me that the question that has to precede  
19 the solution is -- or on an immediate basis is  
20 whether it's within our power to make this rule  
21 change such that it's effective immediately, you  
22 know, have an affect on this race. I mean, I  
23 just -- I don't know that answer at this point. I  
24 think we need to know that answer before we fashion  
25 a solution, but I certainly would be willing to call

1 a special meeting to pass a rule that everybody  
2 agrees on that's going to make sense once we've had  
3 a chance to determine that we have jurisdiction and  
4 authority to do it or authority to do it. We have  
5 jurisdiction.

6 DR. DUNAVANT: I've got to go.

7 MR. BURNETT: Is that helpful to you? I mean,  
8 thank you for coming and talking to us. We will try  
9 and get you something to work with.

10 DR. DUNAVANT: Well, it's lawyeristic, I  
11 guess. I don't know anything.

12 MR. LERMOND: Mr. Chairman?

13 MR. BURNETT: The only thing worse than a  
14 lawyer giving advice you don't like is having to pay  
15 the lawyer in court.

16 DR. DUNAVANT: I understand.

17 MR. BURNETT: We'll do the best we can.

18 DR. DUNAVANT: Thank you.

19 MR. LERMOND: Charlie, before you go, I wanted  
20 to clarify. Is Thursdays the only day where they're  
21 using that jog path?

22 DR. DUNAVANT: No, no.

23 MR. PETRAMALO: They use the jog path all the  
24 time.

25 DR. DUNAVANT: They're using it every day.



1 MR. BURNETT: That's got to change anyway.

2 DR. DUNAVANT: It's dangerous. I mean, the  
3 only -- well, I don't know how you could make it not  
4 dangerous. Maybe if you ran a six-foot chain link  
5 fence so a horse would bounce off it and couldn't go  
6 down those holes, but you know, that's clear --

7 MR. LERMOND: So if the track was open for  
8 training every day, then they wouldn't need to do  
9 that in the afternoon?

10 DR. DUNAVANT: No, they wouldn't have to use  
11 that.

12 MR. LERMOND: They use it all afternoon long  
13 every day. It doesn't matter if it's Thursday or  
14 what.

15 DR. DUNAVANT: It's very fortunate we haven't  
16 had a bad accident.

17 MR. HARRISON: So let me clarify. Dave's  
18 question was if the track was open every day  
19 including Thursday, that jog path would never be  
20 used?

21 MR. PETRAMALO: No, it would still be used.

22 DR. DUNAVANT: They would try to use it. The  
23 only way it would be not used is if there was a rule  
24 that you couldn't use it.

25 MR. LERMOND: But you're saying you're using

1 it more because you can't go out there on Thursday?

2 DR. DUNAVANT: That's right. And at twelve  
3 o'clock, they're going up and down there. If the  
4 track was open seven to twelve seven days a week, I  
5 wouldn't have no problem --

6 MR. BURNETT: Charlie, if the track were open  
7 from six in the morning until two in the afternoon,  
8 at three o'clock you'd see a guy on the jog track.

9 DR. DUNAVANT: Unless you told him he  
10 couldn't.

11 MR. BURNETT: Exactly. We've got to get  
12 people to be disciplined, too, and not waste the  
13 resources of this operator here.

14 DR. DUNAVANT: Exactly. You know, everybody  
15 is not common sense, but anybody with any common  
16 sense and jogs a horse down there knows that that's  
17 an accident waiting to happen.

18 MR. BURNETT: Right. Some are just higher  
19 risk takers than others, and there they are.

20 DR. DUNAVANT: I'm too old to take that risk.

21 MR. BURNETT: Thank you, sir.

22 DR. DUNAVANT: Thank y'all.

23 MR. WEINBERG: Can I just seek one point of  
24 clarification for the record?

25 MR. BURNETT: Please.

1           MR. WEINBERG: The path that we are talking  
2 about was built to get people from point A to point  
3 B.

4           MR. PETRAMALO: Horses.

5           MR. WEINBERG: Horses from the barns to the  
6 track. It wasn't the intent -- we're calling it a  
7 jog path, but it wasn't intended to be.

8           MR. SIEGEL: It's a path they're using for  
9 jogging.

10          MR. WEINBERG: Right.

11          MR. PETRAMALO: Exactly.

12          MR. BURNETT: It was intended and designed for  
13 walking.

14          MR. WEINBERG: And for that purpose, it is  
15 safe and appropriate.

16          MR. BROWN: Absolutely.

17          MR. BURNETT: And you're going to have the  
18 occasional groundhog, one thing or the other, but  
19 you're walking and calm is the idea. It might under  
20 toe before a race but still.

21                 To be absolutely clear, it's not my  
22 understanding that Colonial Downs or anybody else  
23 ever intended that that path be used the way it's  
24 being used now, to exercise, train, or otherwise  
25 make harness horses go fast.

1 MR. BROWN: But on the other hand, there's a  
2 lot of horses -- you know, they have to be moved  
3 every day so basically we have to look for a  
4 solution to this problem.

5 MR. BURNETT: Right. Understood.

6 MR. BROWN: Even if you calm things down to  
7 the point where you're just moving the ones that got  
8 injected the day before or two days before or the  
9 ones that, you know, have bad tendons, but some way  
10 or another we have to do something.

11 MR. BURNETT: I agree with you, Mr. Brown. Do  
12 you have any suggestion as to how we address that  
13 issue?

14 MR. BROWN: I think if you look at the  
15 possibilities right now as far as what our options  
16 are to look at, that I don't disagree with. I mean,  
17 let's find out what we are obligated to legally,  
18 that's number one.

19 MR. BURNETT: I agree. I'm just wondering  
20 while that's taking place, it might make sense to  
21 have the right people talking to each other about  
22 alternative solutions for horses that need to move  
23 and for what the safest and most practical, all  
24 things considered, method would be on that  
25 backstretch to take care of these horses and let

1 racing proceed in an efficient fashion.

2 Is that -- perhaps, would you be willing to  
3 undertake to get those discussions going with  
4 Mr. Woolnough and track officials and others?

5 MR. BROWN: Absolutely.

6 MR. BURNETT: That would be great. Vic, would  
7 you provide some support for that?

8 MR. SIEGEL: I'll help.

9 MR. BURNETT: That's great.

10 MR. HARRISON: We neither mention a jog path  
11 in our rules or define it, but we do -- as Dave  
12 pointed out just before, we do have the -- under the  
13 powers of the stewards or judges, it's sort of like  
14 this all knowing, all seeing group, they can address  
15 anything that's not addressed in there. So they  
16 could issue a ruling concerning the jog path. What  
17 they can't do is override this rule that says that  
18 there has to be at least one ambulance within the  
19 enclosure, not a mile away, but it says within the  
20 enclosure of the racetrack --

21 MR. BURNETT: Sure.

22 MR. HARRISON: -- anytime basically a horse is  
23 out there on the track.

24 MR. BURNETT: That's a separate issue that you  
25 and Amy are going to look at, but I agree with you

1 that the stewards can do what is necessary to  
2 protect the safety of people and animals on the back  
3 side. That's their job, among others. So if you  
4 would have that discussion, Mr. Brown would be  
5 involved with it and any others, just go on as best  
6 we can.

7 MR. HARRISON: I wonder if Dr. Harden wants to  
8 chime in on anything.

9 MR. BURNETT: Dr. Harden, do you want to chime  
10 in?

11 DR. HARDEN: I will.

12 MR. BURNETT: If you want to. You don't have  
13 to.

14 DR. HARDEN: The horse path -- we call it the  
15 horse path, not the jog path. The horse path is  
16 definitely unsafe for jogging, but if the horse path  
17 were closed, they're still jogging. They're jogging  
18 around the barns. They're jogging around the whole  
19 barn area back there. I mean, this goes on all  
20 afternoon. It's not just an eleven to twelve  
21 o'clock issue. They train all day. Maybe in the  
22 night. I'm not here at nighttime.

23 MR. BROWN: And this is even on the days the  
24 track is open between six and eleven or whatever?

25 DR. HARDEN: Yes.

1 MR. PETRAMALO: Would you agree that it's less  
2 dangerous jogging around the barns than on the horse  
3 path, Doc? Is it?

4 DR. HARDEN: Well, yeah, it is. The  
5 thoroughbreds, of course, on a rainy day, we have --

6 MR. PETRAMALO: Jog on the shed row.

7 DR. HARDEN: We have people jogging at the  
8 shed row with thoroughbreds. I mean, some things  
9 happen that you don't really care for, but they jog  
10 all afternoon.

11 MR. BURNETT: Doc Harden, would you be willing  
12 to help Commissioner Brown and this group come up  
13 with a solution because --

14 DR. HARDEN: Yes, sir.

15 MR. BURNETT: -- I think your input would be  
16 valuable?

17 DR. HARDEN: Yes, sir.

18 MR. BURNETT: Thank you.

19 All right. I think we've beaten that issue to  
20 death pretty well.

21 Colonial Downs update on the harness meet.

22 MR. STEWART: Well, we opened about ten days  
23 ago in conjunction with the New Kent County Fair.  
24 We had some nice crowds. We had some full fields,  
25 as Charlie mentioned. Last weekend, we did pretty

1 well. We had five or 600 people both Friday and  
2 Saturday. We had our comedy night on Saturday  
3 night. It's something we're trying. We did very  
4 well with the family four pack on Sunday. We're  
5 going to have some more of the comedy night going  
6 forward, plus a casino night.

7 We've done something a little bit different  
8 this year. We're using something called -- on the  
9 internet called a Groupon. You may have heard of  
10 this. Basically, what it is it's an opportunity to  
11 sell products at basically a discount for a limited  
12 period of time, and it requires that a certain  
13 number of people sign up for it before the offer  
14 takes effect. We did it to sell family four packs.  
15 We sold about 200 of those in 24 hours, and we did  
16 the same thing with a deal on dinners in the Turf  
17 Club. We sold about 200 of those in 24 hours.

18 MR. BURNETT: Help us a little bit. Groupon,  
19 G-R-O-U-P-O-N?

20 MR. SIEGEL: It's a website called Groupon dot  
21 com.

22 MR. BURNETT: That was my next question.  
23 Where do you go?

24 MR. SIEGEL: Restaurants use it and other  
25 venues to gain new customers by offering a discount,



1 and you can buy a restaurant gift certificate for  
2 \$25 that's worth 50 at one time. They offer new  
3 ones every day, I think.

4 MR. STEWART: Right. Each offer is good for  
5 24 hours or so. So it's clearly -- to me it's a  
6 very powerful marketing tool, and we're going to use  
7 it a lot more in the future. I can see some places  
8 where we could really get some value out of it.

9 Obviously, Charlie mentioned a number of  
10 things. I'm not going to respond to all of them.  
11 In general, we've got a little different point of  
12 view on some them, but as Commissioner Burnett  
13 mentioned, I think they're all in the past. We  
14 fixed those issues. Look forward in moving forward.

15 MR. BROWN: I have a question.

16 MR. BURNETT: Yes, please.

17 MR. BROWN: Ian, as far as when you had the  
18 comedy night, now, you ran your comedy after the  
19 races?

20 MR. STEWART: Uh-huh.

21 MR. BROWN: How was the crowd for that?

22 MR. KELLEHER: About 70-some people, and they  
23 all stayed from the races. We didn't have anybody  
24 coming just for comedy. They were here and  
25 purchased tickets either when they showed up in the

1 Turf Club and saw that they were being sold or --

2 MR. STEWART: It's something we brought into  
3 our OTBs over the last year periodically. It's done  
4 pretty well.

5 MR. BURNETT: So they'll pay an add-on price  
6 for the comedy component?

7 MR. STEWART: Right.

8 MR. BURNETT: Pay the usual admission, and  
9 then if they want to stay on and go to the comedy  
10 club piece, they pay whatever it is, the admission  
11 to it?

12 MR. STEWART: Right.

13 MR. BURNETT: And you had 70 people stay?

14 MR. KELLEHER: We had it in the ballroom.  
15 We're also offering the back side, you know, on the  
16 horsemen stuff, you know, discount to come over, you  
17 know, after racing and stuff for comedy and other  
18 things.

19 MR. BURNETT: Gotcha.

20 MR. STEWART: We're out there trying to --

21 MR. BROWN: That's what you have to do.

22 MR. STEWART: -- look at other ways to bring  
23 different people.

24 MR. BROWN: I was just kind of curious to see  
25 how many people came in to take advantage of it.

1 MR. STEWART: I'm real excited about the  
2 Groupon. I think it's -- I can really see how maybe  
3 we could do some stuff with that.

4 MR. BURNETT: It seems like a natural fit with  
5 racing because you have such a large body of fans to  
6 work from.

7 MR. STEWART: You do. The problem with it is  
8 is basically the product generally is offered about  
9 half price, and then you're splitting what you get  
10 with the Groupon guys. So what hurts us is, you  
11 know, our admission price is so low.

12 MR. BURNETT: Can it be tied to giveaways in  
13 any way? Put some value on the giveaway?

14 MR. STEWART: Oh, sure. Yeah. It's part of  
15 what we did with the dinner in the Turf Club is  
16 build the value with other things.

17 MR. BURNETT: All right. Anything else on the  
18 harness meet?

19 Next item is unlicensed ADW operators in  
20 Virginia. We've talked about that some. I'd be  
21 happy to hear more.

22 MR. WEINBERG: I'd be happy to address that.  
23 I think at your place you will see a copy of a  
24 website called the All Horse Racing dot com with the  
25 headline, "Rebates You Deserve."

1           Our request of the Commission is really to  
2           issue a cease and desist letter to All Horse Racing  
3           dot com. They are clearly doing business in  
4           Virginia. They're soliciting Virginia patrons, and  
5           they don't hold a license for account wagering.

6           MR. PETRAMALO: Who are these people?

7           MR. WEINBERG: They're a group. They are  
8           headquartered in Gibraltar, so they are an offshore  
9           entity. Jeanna Bouzek can testify and we have an  
10          affidavit from her. She was able to go on-line,  
11          fund her account in about three minutes, place a  
12          wager all in under ten minutes.

13          Recognizing that the Commission's letter will  
14          somewhat fall on deaf ears, what is different from  
15          perhaps we had talked in the past is that this  
16          summer regulations that had been in the works for  
17          several years finally went into effect that are  
18          promulgated under the Unlawful Internet Gambling  
19          Enforcement Act of 2006, which puts the burden on  
20          banks, credit card companies, and the clearing  
21          agencies that make all of that work to not help  
22          facilitate illegal gambling over the internet.

23          So we would remain optimistic that if the  
24          Commission were willing to issue such a letter, we  
25          would work to make sure that letter finds itself

1 into the hands of the banks, credit card companies,  
2 and the clearing agencies so that they now are on  
3 notice that funding these types of wagers is not  
4 legal in Virginia and, hence, would cutoff, I would  
5 suspect, a significant portion of the business that  
6 All Horse Racing dot com is able to generate.

7 Candidly, these regulations have already  
8 caused a headache for legitimate licensed ADWs as I  
9 think staff can attest. So the banks are very  
10 sensitive to these issues and tend to overreact  
11 rather than underreact.

12 MR. BURNETT: What I was thinking was gun shy.  
13 Are the banks sometimes reluctant to process  
14 transactions for fear that they may be out of bounds  
15 even though they're legitimate? Is that fair?

16 MR. PETRAMALO: Can you fund your EZ Horseplay  
17 accounts with Mastercard or Visa? I don't think  
18 they're taking them.

19 MR. STEWART: It's done on a bank-by-bank  
20 basis, basically.

21 MR. PETRAMALO: My bank won't do it.

22 MR. STEWART: It very well may not. Most of  
23 them don't, but there's roughly 20 percent of them  
24 that will. If you go to the right bank, they'll do  
25 it.

1 MR. BURNETT: It strikes me that the  
2 communication to a bank about this could have the  
3 effect you want, which is to stop All Horse Racing  
4 dot com from being able to process their bets and  
5 the like, and do their business through these banks.  
6 It seems to me there's a significant risk based on  
7 what we've already seen. They may decide that the  
8 safe course is just to shut even more of it off, and  
9 I'm wondering if this is an opportunity for us to  
10 try and educate these banks and other processors  
11 about a bright line between the legitimate activity  
12 because it's a very small universe in Virginia of  
13 legitimate activity. I mean, they don't have to  
14 know very much to know this one, this one, and this  
15 one, and that's it.

16 MR. WEINBERG: Right.

17 MR. BURNETT: And then that whole bunch of  
18 them that are offshore, huh-uh, we're not touching  
19 you, but unfortunately, we get swept into that  
20 larger crowd with a lot of these banks that are just  
21 afraid of the whole thing, and it hurts us as Frank  
22 is saying.

23 MR. WEINBERG: I can't say I'm an expert, but  
24 I have had some experience in the last month. The  
25 banks are requiring legal opinions saying that this

1 type of wagering in Virginia is legal and that is  
2 the basis on which they're honoring these accounts.  
3 I think that's just the beginning. I think it is  
4 Bank of America and a company called Global  
5 Clearing, which does a lot of the clearing for  
6 Mastercard and Visa through your credit card.

7 MR. PETRAMALO: Well, you can rest assured  
8 that the NTRA and the American Horse Council are  
9 working vigorously on this issue on behalf of the  
10 big guys, TVG, et cetera.

11 MR. BURNETT: Okay. Can we -- one is, as  
12 everybody knows, we have an obligation to report to  
13 the state police if we're aware of illegal  
14 activities. I think an affidavit from Jeanna  
15 probably is more than adequate notice for us to have  
16 sufficient cause, whatever that might be  
17 characterized as legally, to do that part. What the  
18 state police will do with it, we have no idea.

19 I wonder whether including perhaps the United  
20 States attorney because it has federal implications  
21 in some kind of a notice to these bandits might be  
22 helpful, and I wonder if we could engage the help of  
23 the United States attorney in helping us establish  
24 that bright line between what's legit and what  
25 isn't. They need to do it internally for purposes

1 of who they're going to prosecute and who they  
2 aren't, looking at it in terms what's a violation  
3 and what isn't, but I would think a bank receiving  
4 an opinion letter with the concurrence from a U.S.  
5 attorney in their jurisdiction or their state would  
6 be very powerful evidence that they're doing what  
7 they should be doing. Am I being politically naive  
8 to think that a U.S. attorney would help us?

9 MR. WEINBERG: The short answer is I don't  
10 know. I guess the more pressing issue is -- I think  
11 that is all an excellent approach, but our  
12 experience has been that will take anywhere from  
13 three to eight months. In the meantime, you will  
14 see in the affidavit this is happening immediately.  
15 People are moving dollars out of the SWFs and onto  
16 these accounts to get the rebates.

17 I think if the Commission is convinced that  
18 this is illegal activity, it's unlicensed activity,  
19 and hence, violates the law that even that letter,  
20 which I think could be issued very quickly will have  
21 a chilling effect on all racing -- All Horse Racing  
22 dot com's business in Virginia. I would continue to  
23 proceed with the U.S. attorney's idea, but I  
24 wouldn't postpone the Commission taking action in  
25 pursuing that venue as well.



1           MR. BURNETT: I think this is something,  
2           fellow commissioners, that we would want to get  
3           legal advice on probably in closed session. Since  
4           we already had need to follow-up on our last closed  
5           session on that subject, I would suggest that sooner  
6           rather than later we convene for that special  
7           session to cover now two issues, and we can hear  
8           from our counsel as to how we should appropriately  
9           respond to the request of Colonial Downs and if  
10          you'll provide that affidavit to us, if you haven't  
11          already, thank you.

12          MR. WEINBERG: I'll make sure you have it for  
13          closed session.

14          MR. PETRAMALO: I would suggest for  
15          credibility purposes that maybe Vic or Dave might  
16          want to apply. I mean, it's one thing to have an  
17          affidavit from a competitor. It's another thing to  
18          have an affidavit from a staff member of the racing  
19          commission that I was able to go on-line and open  
20          this thing up.

21          MR. BURNETT: I know that that's something the  
22          state police have done historically and, again, I  
23          think they spend about six months getting the  
24          hundred dollars appropriated to go ahead and  
25          undertake the effort. It just takes forever, but --

1 MR. PETRAMALO: I'm sure Vic could get the  
2 hundred bucks.

3 MR. BURNETT: I want to make sure -- I worried  
4 a little bit when I was hearing in a public forum  
5 that employees of our regulated entity were out  
6 there engaging in illegal activity so they could  
7 tell us that it was illegal and whether there might  
8 be any funny things that come out of that. I want  
9 to make sure that what we're doing is okay with our  
10 counsel, but I hear you. I'm satisfied with the  
11 competitor's affidavit. I don't know if it would be  
12 legal muster for the rest of us, but --

13 MR. HARRISON: This is a little bit of a  
14 different animal. It's a little more insidious,  
15 this all racing, because they are based overseas and  
16 they are not betting into the pools in the U.S.  
17 They're simply, oh, this horse paid 350 at Monmouth,  
18 okay, we're going to give this person 350. They're  
19 paying the on-track price.

20 MR. BURNETT: So they're taking the --

21 MR. HARRISON: And they're capping the payouts  
22 at \$750 to one. So if you won a \$10,000 trifecta at  
23 Monmouth, you're only going to get \$1,500 maximum on  
24 this site.

25 MR. PETRAMALO: So they're not taking

1 anybody's signals and co-mingling pools?

2 MR. WEINBERG: They're not co-mingling pools.

3 MR. BURNETT: They're laying it off.

4 MR. PETRAMALO: They're making books.

5 MR. HARRISON: Right. Right.

6 MR. BURNETT: They'll take the easy stuff and  
7 tell them to lay off the long shots.

8 MR. PETRAMALO: That's what they do in South  
9 America.

10 MS. BOUZEK: But they're still taking our  
11 customers.

12 MR. PETRAMALO: Yeah. Yeah.

13 MS. BOUZEK: You know, then we get to the --  
14 you'll read in the affidavit, it was y'all don't  
15 take care about us, how come you don't do this, you  
16 know, why don't y'all give us instant cash for bets  
17 made in the OTB or bets made on EZ Horseplay. You  
18 guys -- you know, it makes us look bad.

19 MR. BURNETT: That's the one part of this that  
20 maybe -- it would be nice if we could figure out a  
21 way to convey to our legislators and the like when  
22 we talk -- and our secretary, in terms of how all  
23 this business works and what the citizens of  
24 Virginia want in terms of doing -- they flock to  
25 these computer gambling sites. They flock to the

1 new Hollywood casino in Maryland. Apparently, they  
2 opened a few days early, which I read in the paper  
3 today.

4 MR. PETRAMALO: Yesterday.

5 MR. BURNETT: So we need to think about our  
6 product too. It's telling us that our product keeps  
7 slipping and slipping and slipping in terms of what  
8 the customer really wants. We can regulate it --  
9 regulate them out of here to a certain extent, but  
10 we also have this parallel issue of trying to get  
11 our product where it needs to be.

12 Are we amenable to that solution to get with  
13 our counsel as quickly as possible and get a  
14 response to this as quickly as possible? We have  
15 the affidavit. Does that work for you?

16 The next item is -- I'm sorry. I didn't mean  
17 to cut you off. Jim, do you have anything further  
18 to offer on that subject?

19 MR. WEINBERG: Not on that subject, no. Thank  
20 you.

21 MR. BURNETT: Let's move to item C, request  
22 for approval to place account wagering terminals.

23 MR. WEINBERG: I wanted to revisit an issue  
24 that I think we talked about a number of times.  
25 Colonial Downs is promoting account wagering in the

1 private clubs and in bars and restaurants through  
2 the use of touchscreen terminals and kiosks.

3 This Commission had asked for a business plan,  
4 I think, back in April. As part of that April plan,  
5 we outlined the goal to open a hundred locations,  
6 which would expand beyond the private clubs into  
7 bars and restaurants. At that time we said we would  
8 pursue expansion into those public places in  
9 compliance with some proposed marketing regulations  
10 we had provided to the Commission.

11 A key component of that is seeking some type  
12 of governmental approval or imprimatur in the  
13 jurisdiction that we desire to visit with bars and  
14 restaurants. And so as we have gone into  
15 Chesterfield County, New Kent, Hopewell, Petersburg,  
16 and now Newport News, we have received written  
17 letters from the Commonwealth's attorneys in those  
18 jurisdictions acknowledging that account wagering  
19 occurring at bars and restaurants is compliant with  
20 the law and that they saw no objection to us  
21 proceeding with their plan.

22 The immediate issue that we would ask for the  
23 Commission's help with is the Commonwealth's  
24 attorney in Newport News twisted around our analysis  
25 a little bit, but came up, I think, with the right

1 conclusion and said it's legal, but I want -- I  
2 think you need -- you, Colonial Downs need  
3 permission from the Commission that betting at each  
4 location is within the scope of your license.

5 So his view was as long as you had Commission  
6 permission to put equipment into a particular bar or  
7 restaurant, it was permissible under the law  
8 according to his analysis and the analysis we had  
9 provided to him. We've identified a bar and  
10 restaurant in Newport News. It is Mike's Place on  
11 Warwick Boulevard if you're familiar with the area.  
12 It's an Irish pub. Probably much like Finn McCools,  
13 but I have not been there myself.

14 What Colonial Downs would like from the  
15 Commission is a letter for our files that if there  
16 was ever a question in Newport News, the  
17 Commonwealth's attorney asked us, well, did you get  
18 permission for Mike's Place, we have a letter in our  
19 file that we can show the Commonwealth's attorney  
20 and say yes. In compliance with your May 7th  
21 letter, we have secured that permission from the  
22 Commission.

23 As I've discussed with Mr. Harrison, we  
24 assured the Commonwealth's attorney that we didn't  
25 need that permission, I think, orally on the phone,

1 he acknowledged that, but again, Colonial Downs is  
2 owned by Jacobs Entertainment, Inc., which owns  
3 gaming or holds gaming licenses in a variety of  
4 jurisdictions including Nevada, Louisiana, Colorado,  
5 and Pennsylvania. Even a minor infraction of a  
6 gaming license in Virginia could have consequences  
7 for those licenses, so we're just making sure that  
8 we cross the T's and dot the I's.

9 In connection with this request, I'm happy to  
10 take you through the legal analysis that we have  
11 provided to the various Commonwealth's attorneys  
12 that have granted us these letters.

13 MR. BURNETT: Let me stop you there. I'm not  
14 sure -- my fellow commissioners I hope will speak  
15 up -- that you need to take us through that.

16 MR. WEINBERG: Okay.

17 MR. BURNETT: I don't think we would have  
18 asked for the business plan or supported the  
19 business plan had we not believed that everything  
20 you have planned is perfectly legal. That said, I  
21 think there is -- there's concern on this  
22 commissioner's part myself, I'm not sure of getting  
23 in the business of giving permission where that has  
24 already been the legislature's undertaking. They  
25 have given the permission. That's what your

1 analysis says, that's what our analysis says, and I  
2 think about it a little bit in terms of other  
3 licensees perhaps seeing us as playing favorites by  
4 trying to go beyond what the law requires and  
5 favoring them even though they're not on this scene  
6 at the moment, and I just have a concern. It's not  
7 more than that. It's just a concern about what  
8 precedent it might set.

9 I'm curious what the legal analysis of the  
10 Commonwealth attorney is that causes him or her to  
11 believe that you need this special letter of  
12 permission in your file. I suspect you disagree,  
13 but you want just to be careful and not have some  
14 letter come from the Commonwealth attorney that even  
15 hints that you've done anything wrong for the  
16 reasons you set forth. Is that fair?

17 MR. WEINBERG: That is fair. I'm happy --  
18 maybe it would be helpful just to give you copies of  
19 his letter so you can see the nature of what I'm  
20 trying to close the loop on.

21 MR. BURNETT: What I would suggest we do is  
22 because we're having this session to -- the closed  
23 session to accept legal advice, that we include this  
24 as item three and let our counsel, who is well  
25 familiar and very capable on this very issue, help



1 us figure out what the right response is. One of  
2 which may be simply your putting us on notice every  
3 time you open a new place and our acknowledging it  
4 and supporting it. I don't know, you know, whether  
5 somebody raises a issue and they print a transcript  
6 of what's been said today, they ought to be pretty  
7 clear that we're supportive of your putting these  
8 machines in Mike's Place.

9 MR. WEINBERG: I have no objection to that. I  
10 think we do the first part of that. Colonial Downs  
11 does provide a letter to the Commission staff saying  
12 we are going into Mike's Place, a letter back saying  
13 received and acknowledged, I think, would allow me  
14 to answer the Nevada gaming attorney, yes, I have  
15 done everything you've asked of me. I feel like we  
16 close the --

17 MR. BURNETT: Maybe we can fashion something  
18 that would work because as I pointed out before, we  
19 unlike some commissions have an obligation,  
20 statutory obligation to promote the industry. And  
21 so I think our acknowledging and thanking you for  
22 participating in our joint goals might get the job  
23 done.

24 MR. SIEGEL: How many of these --

25 MR. BURNETT: But I want to hear from counsel

1 first in closed session to make sure that we're okay  
2 with that.

3 MR. WEINBERG: There's a lot of mud in this  
4 letter, and perhaps I can get the mud aside and just  
5 focus you on the paragraph that I think is  
6 appropriate.

7 MR. SIEGEL: How many of these have you opened  
8 already?

9 MR. STEWART: We're in 25.

10 MR. SIEGEL: Okay. And you intend, as you  
11 said previously, to open as many as a hundred?

12 MR. STEWART: Yes.

13 MR. SIEGEL: So what you're saying,  
14 Mr. Chairman, about us saying it's fine with us, are  
15 you talking about doing that with Mike's Place or  
16 Joe's Place and Jim's Place and the next 75? Are  
17 you talking about doing it on an individual basis or  
18 us giving essentially an endorsement by our actions  
19 today that would cover the rest of it?

20 MR. STEWART: Well, I guess where I was coming  
21 from is each attorney -- we have received five  
22 letters from five different Commonwealth's  
23 attorneys. Each one is different. Each one says  
24 that it's legal. The Newport News Commonwealth's  
25 attorney has added this additional little piece that

1 says we want you to have specific authorization from  
2 the Racing Commission to put it in places in Newport  
3 News. Okay. From my standpoint, fine. Mr. Newport  
4 News, we'll play by those little rules in Newport  
5 News. Each one is different.

6 MR. SIEGEL: So you're not necessarily asking  
7 us to give our essential approval for the next 75.  
8 This is on a case-by-case basis?

9 MR. WEINBERG: Let me see if I can rephrase it  
10 slightly.

11 MR. SIEGEL: Okay.

12 MR. WEINBERG: If we wanted to open more in  
13 Newport News, we would follow the procedure that I  
14 think Chairman Burnett suggested.

15 MR. SIEGEL: Same Commonwealth's attorney.

16 MR. WEINBERG: Right.

17 Candidly, if we open in Chesterfield where the  
18 letter from the Chesterfield Commonwealth's attorney  
19 is very clear, I think all we would do is advise the  
20 Commission as we agreed to do, we're going to open  
21 at Joe's on Midlothian Turnpike and that would be  
22 all we would expect to ever do.

23 MR. SIEGEL: But another county that you're  
24 not currently operating in, you'd be starting at  
25 ground zero?

1           MR. WEINBERG: That's right. We still need to  
2 go to that Commonwealth attorney. If we get a  
3 Chesterfield style letter, it would be pure notice.  
4 If we got a Newport News type letter, we would  
5 probably look for some acknowledgment --

6           MR. SIEGEL: You would come back to us if you  
7 got a Newport News type letter. That answers my  
8 question.

9           MR. STEWART: Right. And another jurisdiction  
10 may come up with another set of rules that they want  
11 us to abide by, in which case we would have to look  
12 at them and decide whether or not it will work.

13          MR. BURNETT: Vic?

14          MR. HARRISON: The distinction, and correct me  
15 if I'm wrong, is that the 25 that are currently open  
16 are in communities or counties that have a  
17 referendum approved. Mike's in Newport News --

18          MR. STEWART: No.

19          MR. BURNETT: Some do, some don't. Some are  
20 in animal clubs and some are in restaurants.

21          MR. HARRISON: These are public. We're  
22 talking about a public facility.

23          MR. PETRAMALO: Can we parse these? Of the  
24 25, how many are in animal clubs and how many are in  
25 bars and restaurants?

1 MR. STEWART: I think five are in bars and  
2 restaurants, but to be clear, there's no referendum  
3 in New Kent, the City of Hopewell, the City of  
4 Petersburg, the City of Newport News, or  
5 Chesterfield County.

6 MR. BURNETT: So we already have operating  
7 four or five ADW based bar and restaurant facilities  
8 in non-referendum counties, and then we have 20 or  
9 so animal club operations some in and out of  
10 referendum-based counties.

11 MR. PETRAMALO: Isn't there one in Leesburg?  
12 Did you put one in a VFW in Leesburg?

13 MR. STEWART: We did and it didn't perform  
14 that well, so we pulled it out.

15 MR. BURNETT: So now they're doing -- what's  
16 the thing we talked about earlier, the sweepstakes  
17 gambling they're going to put in?

18 MR. HARRISON: So the VFW, that's considered a  
19 public venue?

20 MR. PETRAMALO: No, private club.

21 MR. BURNETT: It's a private club.

22 MR. HARRISON: So what venues in the  
23 non-referendum counties are you currently in?

24 MR. STEWART: Here in New Kent, we're at the  
25 Sportsman's Tavern and Jones & Hawkes.

1 MR. LERMOND: But you have betting in New Kent  
2 because of the racetrack.

3 MR. STEWART: We don't have an OTB referendum  
4 in New Kent County.

5 MR. HARRISON: An OTB referendum.

6 MS. BOUZEK: Well, then there's more.  
7 Petersburg --

8 MR. STEWART: We're going to open in  
9 Petersburg this week, there's one in Chesterfield  
10 that we're going to open this week, then there's two  
11 bars in Hopewell.

12 MR. PETRAMALO: Did any of these Commonwealth  
13 attorneys base their opinion on the fact that there  
14 was or was not a referendum there?

15 MR. WEINBERG: No.

16 MR. BURNETT: They look at the ADW statute, do  
17 they not?

18 MR. WEINBERG: Pardon?

19 MR. BURNETT: They look at the ADW statute?

20 MR. WEINBERG: Right. Right. The argument in  
21 brief is there's three types of wagering permitted  
22 in the Commonwealth on horse racing, ADW, at the  
23 racetrack, and at a satellite facility. This is one  
24 of the three. We don't -- we're licensed by  
25 provider, not location as are the other two. That's

1 the argument that has prevailed, although this -- I  
2 have to admit, this Commonwealth attorney got it a  
3 little bit confused. I just want to make sure I  
4 don't -- his letter doesn't cause more smoke than  
5 light.

6 MR. BURNETT: You were about to point me --  
7 you're going to eliminate most of this letter and  
8 point to where we need to look?

9 MR. WEINBERG: That would be my goal.

10 MR. BURNETT: All right. Thank you.

11 MR. WEINBERG: Just trying to save a little  
12 bit of time.

13 MR. BURNETT: Mr. Powell is the Commonwealth's  
14 attorney for Newport News?

15 MR. WEINBERG: That is correct. He is the  
16 assistant Commonwealth's attorney. He was  
17 provided -- Linwood Gregory here had provided what I  
18 would call a reasoned legal opinion. He went  
19 through the whole analysis of how he arrived at the  
20 conclusion that this is permitted, and that opinion  
21 was shared with Mr. Powell so that is the reference.

22 MR. BURNETT: Can you provide us with -- I  
23 don't know what our counsel has or doesn't have, but  
24 I think --

25 MR. WEINBERG: I'll give you a package of all

1 the letters.

2 MR. BURNETT: It would be helpful to have a  
3 package of all the letters. One of the things that  
4 I thought you might be aware of, I'm not certain of  
5 it, is that we have talked about putting a  
6 chairman's message on the website about this issue,  
7 telling the public that this opportunity is out  
8 there as an alternative to other ways of wagering on  
9 horses and straight up addressing the issue of the  
10 legality of this kind of wagering and perhaps  
11 including, if it were thought wise by everybody,  
12 these letters from these various Commonwealth's  
13 attorneys.

14 You keep building that library of letters and  
15 when someone calls, it's pretty easy to say, go on  
16 the internet, go to this place, and they're going to  
17 get a huge number of legal opinions all saying the  
18 same thing, albeit, I think, in different ways as  
19 you're able to tell us. I think that adds to the --  
20 you know, to the culture of legitimacy, if you will,  
21 for these facilities and makes it easier for each  
22 succeeding Commonwealth attorney or other person who  
23 is concerned about legality to get comfortable.

24 So that's the reason I would like to see the  
25 whole group together.



1           MR. WEINBERG: The first paragraph merely sets  
2 out the issue. In the second paragraph, there's  
3 some discussion with Mr. Gregory to distinguish  
4 account wagering from wagering at a simulcast  
5 facility, and I believe you will find that he  
6 basically agrees that there is a distinction between  
7 the two. He confuses simulcast horse racing and  
8 simulcast facilities a little bit, but I think  
9 straightens himself out later on.

10           It is in the top of the next paragraph where  
11 there is a little bit of confusion where he begins  
12 to confuse account wagering centers, which in our  
13 regulations is really the call center and the  
14 location of the hub, with a bar and a restaurant  
15 where there is a kiosk and a touchscreen.

16           And so the next several -- the first half of  
17 this paragraph, he's focused on whether the bar and  
18 restaurant are licensed as an account wagering  
19 center, which he sees as a component of the grant of  
20 the license.

21           MR. BURNETT: It all comes into the plan of  
22 operation.

23           MR. WEINBERG: When you look at the  
24 regulations for licensure and account wagering  
25 provider, you have to describe your account wagering

1 center. So at this juncture, he now believes bars  
2 and restaurants are account wagering centers, and  
3 hence, he gets to the conclusion, well, if that's  
4 part of your license -- in this instance, if you got  
5 Mike's Place licensed as an account wagering center,  
6 then sure, what you're proposing to do at Mike's is  
7 clearly within the bounds of the law.

8 MR. BURNETT: But because the plan of  
9 operation has to be approved --

10 MR. WEINBERG: Correct.

11 MR. BURNETT: -- then he uses permission to be  
12 synonymous with approval?

13 MR. WEINBERG: That's right.

14 MR. BURNETT: And if you work back up his  
15 ladder, you see how he gets to permission, but it's  
16 because of the misunderstanding of what an account  
17 wagering center is --

18 MR. WEINBERG: Correct.

19 MR. BURNETT: -- versus a retail facility.

20 MR. WEINBERG: Correct.

21 MR. BURNETT: Okay.

22 MR. WEINBERG: So that is the key sentence for  
23 us is the one right in the middle that begins,  
24 "Accordingly, it is the position of this office that  
25 EZ Horseplay, an account wagering licensee, has

1 permission from the Virginia Racing Commission to  
2 locate account wagering equipment in a privately  
3 owned bar or restaurant or any other location to  
4 which the owner gives lawful consent, then the  
5 action does not constitute illegal gambling."

6 That's all we're looking for, some acknowledgment by  
7 the Commission that what we're doing is within the  
8 scope of the license that he's concerned that we're  
9 extending beyond.

10 MR. BURNETT: And I take it that from the  
11 theory that discretion is a greater part of valor,  
12 you're not looking for correcting his analysis?

13 MR. WEINBERG: In all candor, I had a lengthy  
14 conversation with him and he acknowledged, you know,  
15 understood now the parameters, but said, "But I'm  
16 not going to give you another letter."

17 MR. BURNETT: This is hanging out there. He's  
18 not putting that in writing. I get it now.

19 MR. WEINBERG: You can put it in writing, and  
20 I wrote him a nice letter memorializing our  
21 conversation, but given that, they're looking for me  
22 to close the loop here.

23 MR. BURNETT: Well, I think -- my thinking is  
24 that we should take this up with our capable counsel  
25 in a closed session shortly and see if we can

1 address it. I just think it's encouraging that you  
2 folks are going forward. It's scary a little bit  
3 that we have these illegal bandits out there in a  
4 couple of forms and it would be terrible if we in  
5 any way got connected with them or swept up with  
6 them, but it could hopefully be turned into  
7 something of an opportunity by creating this bright  
8 line I'm talking about. We're the legit people.  
9 Come see us.

10 The icing on the cake is to make our product  
11 so attractive that they want to come to us as much  
12 as they would to the others if the others were  
13 legal.

14 MR. WEINBERG: Absolutely. I think even --  
15 depending upon what the Commission decides to do, if  
16 you did issue a cease and desist letter to All  
17 Racing dot com, it'd be easy to work a paragraph in  
18 that said there are only five licensed providers in  
19 Virginia. These are the five that are all legal.  
20 If you want to join them, you're welcome to,  
21 something to that effect.

22 MR. BURNETT: We will consider that as part of  
23 our analysis.

24 All right. Anything further on that request?  
25 Commissioners? Mr. Secretary? No.

1 All right. Public participation, any member  
2 of the public wish to address the Commission?

3 Seeing none, we'll move to the next item,  
4 which is to set our next meeting. October 26th,  
5 2010.

6 MR. HARRISON: I won't be here. I scheduled a  
7 vacation long before we changed from the third  
8 Wednesday to the fourth Tuesday.

9 MR. BURNETT: Do you have any problem with  
10 your trusted deputy covering that meeting?

11 MR. HARRISON: No. I'd be happy for Dave to  
12 stand in.

13 MR. BURNETT: Great.

14 MR. PETRAMALO: Is that a Tuesday again? Is  
15 the 26th a Tuesday?

16 MR. BURNETT: Tuesday.

17 I do not believe we intended to have a closed  
18 meeting today. Correct me if I'm wrong somebody?

19 Next item is adjournment. I move for  
20 adjournment.

21 MR. SIEGEL: I second.

22 MR. BURNETT: Done. I'm sorry?

23 MR. WEINBERG: Were you going to address any  
24 of these issues today? I thought when you said  
25 legal counsel, you're not going to go into closed

1 session?

2 MR. BURNETT: Today, no. I thought the plan  
3 was because we wanted to include Mr. Miller that we  
4 go into a closed session sometime in the next  
5 hopefully seven to ten days. When you reach  
6 forward, you're talking about the letter from --

7 MR. WEINBERG: I was talking about All Horse  
8 Racing dot com, as well as Newport News, and you had  
9 alluded to a third, but those are the two items --

10 MR. BURNETT: Yeah. Right. The discussion  
11 had been to do it separate from today in part  
12 because of the desire to have Mr. Miller involved in  
13 all three of the subjects that we want to talk  
14 about. We'll try and do it as quickly as we can.

15 MR. WEINBERG: Okay.

16 MR. BURNETT: Vic, can you -- I'm sensing an  
17 urgency here, and I want to accommodate it as best  
18 we can. So can you get with all of us and just see  
19 what the very next opportunity is for us to get  
20 together?

21 MR. HARRISON: Of course.

22 MR. BURNETT: I wonder whether we should  
23 consider changing our regulations, if they need to  
24 be changed, to permit closed session by telephone.  
25 I don't think they're allowed because I think we

1 have to come into open session for the appropriate  
2 motions and the like, but for these kinds of matters  
3 and given our geographic distance, it would be  
4 helpful if we could have something that could be  
5 used sparingly, but if there were a way to address  
6 that regulation, I think at certain times like this,  
7 we can accommodate much faster.

8 All right. Further business? We're  
9 adjourned. Thank you.

10 Note: The proceedings concluded at 12:46 p.m.

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## CERTIFICATE

VIRGINIA:

COUNTY OF NEW KENT:

I, MELISSA H. CUSTIS, RPR, hereby certify that I was the Court Reporter for the Virginia Racing Commission meeting on September 28th, 2010, 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 11th day of October, 2010.

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Melissa H. Custis, RPR

Notary Public for the State of Virginia at Large

My Commission expires:

March 31, 2011