

MEETING

STATE OF CALIFORNIA

HORSE RACING BOARD

In the Matter of:)
)
Regular Meeting)
)

BARRETT'S

HIND'S PAVILION

1101 MC KINLEY

POMONA, CALIFORNIA

WEDNESDAY, SEPTEMBER 20, 2006

10:00 A.M.

Reported by:
Troy Ray

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

Richard B. Shapiro, Chairperson

John Amerman

William A. Bianco

John C. Harris

Jerry Moss

STAFF

Ingrid J. Fermin, Executive Director

Jacqueline Wagner, Staff Services Manager I

Mike Martin, Program Analyst/Public Information Officer

Ysanne Rarick

Derry L. Knight, Deputy Attorney General

ALSO PRESENT

Drew Couto, President, Thoroughbred Owners of California

Ed Halpern, California Thoroughbred Trainers

Jack Liebau

Dr. Rick Arthur

Craig Fravel

Ron Charles

Sherwood Chillingworth

Tom Robbins

Rick Hammerle

Martin Panza

Eval Wyatt

APPEARANCES CONTINUED

ALSO PRESENT

Michael Ziegler

Alex Ardans

Sue Stover

Darrell Haire

Robert Tunney

Ron Blomien

Chris Korby

Guy Lamothe

David Mathenson

John Hindman

Kathy Christian

Rene Turevsky

Scott Daruty

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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| A. Personnel | |
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1 PROCEEDINGS

2 EXECUTIVE DIRECTOR FERMIN: Can I have your
3 attention, please, and we'll have this meeting come to
4 order. Ladies and gentlemen, will the meeting come to
5 order.

6 This is a regular meeting of the California Horse
7 Racing Board on Wednesday, September 20th, 2006, at Hind's
8 Pavilion, Barrett's, Fairplex Park, 1101 West McKinley
9 Avenue, Pomona, California.

10 Present at today's meeting are Chairman Richard
11 Shapiro, Commissioner William Bianco, Commissioner John
12 Harris, Commissioner John Amerman, Commissioner Jerry Moss.

13 What we're going to do, now, is we're going to go
14 into closed session and we'll return, hopefully, shortly.

15 COMMISSION CHAIRPERSON SHAPIRO: Ten to 15. Ten
16 to 15 minutes.

17 (Thereupon, the Board adjourned to
18 convene the Closed Session.)

19 EXECUTIVE DIRECTOR FERMIN: Yes, we'll reopen the
20 meeting at this time. I'd like to remind everybody to
21 please state your name and spell your last name for the
22 court reporter, so that we can get an accurate record.
23 Thank you.

24 COMMISSION CHAIRPERSON SHAPIRO: Good morning to
25 everybody. The Board invites comments from the public about

1 items on its agenda. It also invites public comment about
2 items not on the agenda, that are related to horse racing,
3 during an open comment period.

4 In order to assure that each individual who wishes
5 to comment will have an adequate opportunity to do so, and
6 also to assure that the meeting as a whole will be completed
7 in a timely manner, so that individuals wishing to comment
8 on multiple matters will not be required to stay for an
9 unreasonable length of time, I will strictly enforce a five-
10 minute time limit for each person wishing to speak on any
11 agenda item.

12 The goal of this rule is to assure that each
13 person's right to make their views known is not disrupted by
14 another person's conduct.

15 In order to expedite the comment process there is
16 a public comment sign-in sheet, or cards, for each agenda
17 item on which the public comment will be taken, as well as a
18 sheet for comment about anything related to horse racing
19 that is not on the agenda.

20 The sheets are located, or the cards -- and Wendy,
21 you'll -- who has the sheets? Do you have them? Or the
22 cards, they're on the podium, okay.

23 Just prior to our discussion of the item I ask
24 that the cards be brought to me. I will let you know when
25 your time is commenced and when there is one minute left

1 when your time is up.

2 When your time is up, you'll be expected to return
3 to your seat so that I may call the next person waiting to
4 the podium. When all the names have been called I will ask
5 if anyone else has a comment on the agenda item, who has not
6 already spoken. At that point the Board will not take any
7 further comment on an item unless the Board has specific
8 questions it wishes addressed.

9 In the interest of time and fairness to those
10 wishing to speak, repetitious statements are not desirable.
11 Thus, if a particular point has previously been made, please
12 simply state that you agree with that prior speaker.

13 Further, statements are off the -- statement that
14 are off the point of the agenda item, or which address
15 another item, will not be permitted.

16 If time is up, I ask the speaker to please take
17 his or her seat. If it appears that a speaker is repeating
18 what has previously been stated, I will ask the speaker if
19 he or she has any additional comments to make. If not, I
20 will ask the speaker to allow the next speaker to come to
21 the podium, irrespective of the time remaining, unless a
22 Board member indicates that he or she still wishes to hear
23 from the individual.

24 I'd also like to make another, further opening
25 statement. Before embarking on today's agenda, I wanted to

1 make a few remarks considering the conduct of our meetings.

2 First, I appreciate the time and devotion of every
3 individual here today towards the horse racing industry.
4 While there may be differences of opinions and differing
5 views, at the end of the day each and every person is
6 dedicated to the well being of the California racing
7 industry.

8 Those of us that sit as Commissioners do so as
9 unpaid volunteers. Many of us spend countless hours of our
10 time, forsaking other things we could be doing either for
11 profit, leisure, or our families, again, because we care
12 about this industry.

13 We all do the best we can given the knowledge we
14 have and the information provided to us by you, in the
15 audience, and the CHRB staff.

16 At times we may make decisions that you may not
17 agree with or we may err, but none of our decisions are
18 because we don't care.

19 Over the last year I've become increasingly
20 bothered that the business we are attempting to conduct is
21 hampered by a few individuals with personal vendettas or
22 agendas designed to disrupt these meetings.

23 At times, some of the issues that have been
24 brought to the attention of this Board have been useful and
25 worthy of further study. But, more often, comments are

1 cloaked in either personal attacks and insults that are not
2 productive to the business of these meetings.

3 I ask for that conduct to stop now.

4 As Chairman, I have and will continue to try and
5 manage this process in a timely manner that will allow us to
6 deal with the tough and necessary business that comes before
7 this Board.

8 While I would prefer a less structured meeting, it
9 has become necessary, due to the constant interruptions and
10 outbursts, that we institute a more formalized method of
11 conducting these meetings.

12 I would like to encourage everyone to think and
13 advise this Board on the best way to conduct these meetings,
14 so that the maximum time can be allocated to the business
15 that comes before us each month.

16 To those that are disenchanted I will again, as I
17 have in the past, ask you to refrain from making
18 inappropriate and disrespectful comments and, instead,
19 become a positive force in helping everyone in this
20 industry.

21 There is not secret that this Agency has a limited
22 budget. Those funds should not be wasted on needless
23 litigation and staff time.

24 In closing, this is your industry and your
25 business. We are here to regulate and to help. I hope that

1 everyone in the audience today will step forward at the
2 appropriate time, and in the appropriate manner, to
3 contribute to the future success of these meetings and
4 California horse racing.

5 I should also add that our host today, Mr.
6 Henwood, has advised me that they are arranging to have
7 sandwiches and lunch brought in, so that we will be taking a
8 lunch break today. It is likely this meeting will take some
9 time, so we will break for lunch.

10 He's also bringing over pick-six tickets, and
11 racing forms, and programs, and a wagering machine. So that
12 should help Mr. Harris, and everybody else who needs to get
13 in.

14 Okay, the first item on the agenda is the approval
15 of the minutes of the regular meeting of August 17th, 2006.
16 I ask if there's a motion or comments?

17 COMMISSIONER HARRIS: Actually, one minor
18 correction. On page 16 we had the motion, effectively
19 tabling the proposal to allow uncoupled owner entries. And
20 I abstained from that vote, so it should just show instead
21 of it passing unanimously, that it was cast with John Harris
22 abstaining.

23 COMMISSION CHAIRPERSON SHAPIRO: Okay, we'll make
24 that change.

25 Are there any other comments? If not, I'll

1 entertain a motion to approve them.

2 COMMISSIONER AMERMAN: With that addition, I so
3 move.

4 COMMISSION CHAIRPERSON SHAPIRO: Thank you, is
5 there a second?

6 COMMISSIONER BIANCO: Second.

7 COMMISSION CHAIRPERSON SHAPIRO: It's been
8 seconded. All in favor?

9 (Ayes.)

10 COMMISSION CHAIRPERSON SHAPIRO: Consider it
11 passed.

12 And so you also know, I am going to flip around on
13 the agenda somewhat, so the order that you have on the
14 agenda may not necessarily be the order that we're going to
15 look at.

16 For that reason, I'm going to ask now if there's
17 any other business to come before the Board, which is Item
18 Number -- I've lost my second page. Anything under General
19 Business or Other Business, that needs to be brought to the
20 attention of the Board at this time.

21 There being none, then we will consider that
22 matter has been heard.

23 Item Number Two, report from the Thoroughbred
24 Owners of California and California Thoroughbred Trainers
25 regarding stall applications and assurances that language

1 requiring their use of detention barns for TCO2 violations
2 is included in the application.

3 This matter has to do, and I appreciate that I see
4 Mr. Couto and Mr. Halpern coming forward. I placed this
5 matter on the agenda and I would like to hear, before we
6 hear the license applications that are before us today, what
7 language is provided to deal with the TCO2 offenses and
8 penalties.

9 MR. COUTO: Good morning, Chairman Shapiro,
10 Commissioners. Drew Couto, of the Thoroughbred Owners of
11 California.

12 I will defer to my good friend, Ed Halpern, here,
13 to address if you have any questions relating to the stall
14 applications and condition books.

15 But with regard to the contracts, the two of us,
16 and our organizations, have made it a point over the last
17 couple of years to have identical language in our contracts
18 with the racing association, relating to high TCO2 tests.

19 We have been working together, with management
20 from Hollywood Park, over -- actually, with the Bay Meadows
21 Land Company, over the last two weeks, to reach some revised
22 language for the contracts, and I believe we have done so.

23 The new language differs from the prior language
24 in that for the second and third incidence or occurrence of
25 a high TCO2 violation, rather than restricting a trainer's

1 ability to enter horses, the time periods in which they are
2 in a protection barn, quarantined to a protection barn and
3 subject to surveillance has been extended from the initial
4 period, which is 30 days quarantine in a protection barn and
5 45 days of surveillance. To the second offense would be 45
6 days in the protection barn, 60 days of surveillance. And
7 the third incidence would be 60 days in the detention
8 barn -- sorry, in the protection barn, and 75 days of
9 surveillance.

10 That is the proposed language for the contract,
11 that as I understand that we are all in agreement with. So
12 by virtue of, I believe it's Section 24, Rule 2040 -- I'm
13 sorry, Rule 2040, the terms of the race meet agreements are
14 binding on horsemen. So to the extent that TOC and CTT have
15 negotiated with the racing association, these protections,
16 resulting from a high TC02, it would be binding on all who
17 participate in the race meeting pursuant to CHRB's rules.

18 So that is how we have handled the matter up to
19 this point and it looks to be the way in which we're
20 comfortable handling it in the future.

21 Ed?

22 MR. HALPERN: Ed Halpern, H-a-l-p-e-r-n,
23 California Thoroughbred Trainers.

24 There has been a glitch that's come up in the
25 proposed agreement, whereby we would go to the new second

1 and third phases, which would just require additional
2 detention.

3 Originally, I had thought that our Board would
4 agree to that, but there has been some opposition on my
5 Board to reducing the second and third penalties from their
6 prior more stringent penalties, so that at least for the
7 contracts that you'll be reviewing today, the meet contracts
8 for Hollywood Park and Bay Meadows, we have put in a
9 provision for the first period to be 30 days of protection
10 and have not put in any language regarding a second, nor
11 third offense.

12 CTT has a Board meeting next week and, at that
13 meeting, our Board will decide whether they want to go back
14 to the older, more difficult penalties, or whether they want
15 to change to the new, just simply detention barn penalties.

16 COMMISSION CHAIRPERSON SHAPIRO: Well, my view of
17 this is that what we've had has been working, and I was
18 concerned that by our relaxing the potential penalties that
19 a trainer could face would be sending the wrong signal in
20 terms of the revision of the language, as it's now being
21 proposed to be inserted into these contracts.

22 And what I would have suggested is that,
23 personally, I would favor that we stay with the language
24 that was existing before, which did provide that a racing
25 association, or any other party, would be able to -- and it

1 would have to be the racing association, to not accept
2 entries from somebody that had multiple offenses.

3 In this case, what I'm hearing is that they would
4 be subject to longer stays in the detention barn, but that
5 they would be able to continue entering horses and
6 competing.

7 As you know, and as I think we all have to
8 realize, that we, as a regulatory agency, are not able to
9 move and act as quickly as we might like and, therefore, the
10 only way with which to deal with a positive that might come
11 forward is through some contractual arrangement between the
12 parties entering the horse and the subject parties that are
13 posting the race meeting.

14 Therefore, if a trainer, and every time a horse is
15 entered there's an acknowledgement that the horse is being
16 entered with the conditions of what the race meeting are,
17 which means that if they have a multiple offense they could
18 be subjected to a refusal of accepting entries from that
19 trainer, that would appear, to me, to be a very strong
20 deterrent for anybody that would have any inclination to
21 cheat.

22 By doing this, it appears that somebody could
23 continue, if they were so inclined, and their consequence is
24 that they're simply going to be in the detention barn.

25 Am I missing something there?

1 MR. HALPERN: No.

2 MR. COUTO: Chairman Shapiro, I would say,
3 personally, I concur with your views. And Ed told me this
4 morning, just a few minutes ago, that they're only
5 inserting the first penalty in there, given -- to allow this
6 Board and opportunity to review that.

7 You know, I'd have to say I'd have to ask my Board
8 the same thing.

9 But the problem with what you're suggesting is
10 that these are negotiated agreements between the racing
11 associations and the horsemen's organizations. Terms are
12 negotiated. Not everything that we want ends up getting
13 into the contact, and vice-versa.

14 In talking, in discussing this with our track
15 partners, the track partners, and I'll let them speak for
16 themselves, has been -- the input to me has been that the
17 track partners do not wish to be placed in the position of
18 denying horsemen the opportunity to enter horses, now that
19 the Horse Racing Board has assumed authority for testing,
20 sanctioning, fining, suspending. That their view is that is
21 not a role that they wish to play, or are willing to play,
22 or will negotiate to accept that responsibility.

23 So we're caught in a very difficult position.
24 While I think, personally, and much of my Board would like
25 to see higher penalties, our partners are not willing to do

1 so, so we've got to find common ground, and that's what
2 we've tried to do.

3 And, you know, I should defer to them to tell you
4 what their reasons are, but that's the reality of how we've
5 gotten where we are.

6 COMMISSION CHAIRPERSON SHAPIRO: Well, I'd like to
7 hear from them. But, again, what we're talking about is,
8 yes, the Horse Racing Board is entrusted with the
9 responsibility to dispose, properly dispose of any such
10 infractions.

11 But the reality of the situation is, and I know
12 that when I'm on the backside and there's a positive, I hear
13 why isn't Bob in the detention barn? If it's left to us to
14 adjudicate, that could be, with appeals, and stays, and
15 going through the legal process, somebody that has a high
16 TC02, or violation, may be able to forestall any action for
17 a year or longer.

18 The goal here was to take immediate action to
19 protect the integrity of the sport and make sure that the
20 playing field was level.

21 And so I do want to hear from the track partners
22 because, to me, we're all in this together. And if we
23 lessened this, this hammer that we have over people's head
24 to make sure that we have a level playing field, I think it
25 sends the wrong signal.

1 COMMISSIONER HARRIS: Am I right, though, isn't
2 this really a dual program? We've got our program, which I
3 guess you're concerned how quickly it can move, but this is
4 really a track/horseman agreement. And I don't know, you
5 know, if the good's not necessarily the enemy of the
6 perfect, at least this gets something down, and it gets it
7 started.

8 And, I mean, obviously, I can't see why a trainer
9 would take the risk of having multiple violations if he
10 knows he's going to be in the detention barn for 30 days,
11 he's going to lose his purse, he's going to get ultimate
12 sanctions from the Board.

13 I mean, it seems like we've got pretty good
14 sanctions that anyone, reasonably, wouldn't try to evade.

15 COMMISSION CHAIRPERSON SHAPIRO: Unfortunately, we
16 do have, though, we do have people that could have second
17 offenses, and there are people that may try to push the
18 envelope. And my question is why are we changing it? Why
19 are we lessening any potential options that are available to
20 us to protect the integrity of the game? I simply don't
21 want to open that door.

22 Mr. Liebau, you're standing there, I'm sure -- or
23 any Commissioners, that you probably --

24 MR. LIEBAU: Jack Liebau, from Bay Meadows and
25 Hollywood Park.

1 I think the problem is that aren't all in it
2 together. And I think the problem is that the lawsuits are
3 not going to be against the Horse Racing Board, they're
4 going to be against the tracks, possibly against the
5 trainer's organization and the owner's organization.

6 The third penalty requires that the person's
7 horses not be allowed on the track or entered for the -- not
8 be entered for the rest of the meet and take his horses
9 immediately off the track.

10 That, Mr. Shapiro, is a death penalty. It's a
11 death penalty that goes into effect without any due process
12 of the law, whatsoever. A person, what's he do? He's out
13 of business.

14 So I think, in this day and age, and especially in
15 the State of California, that any place in the United
16 States, when your livelihood is taken away from you, without
17 any due process of law, I think there's a problem. I think
18 there's liability. Our attorneys tell us there's liability.

19 You'll recall, when Hollywood Park was owned by
20 Churchill Downs, Hollywood Park wouldn't enter into these
21 agreements.

22 I have no problem, whatsoever, if the Horse Racing
23 Board made, as a condition of licensing us, that those
24 provisions be in the agreement, then we would all be in it
25 together.

1 But otherwise, I think that -- and, of course, the
2 problem that we have is that the Horse Racing Board has the
3 authority to do the testing, to levy penalties, and the
4 problem is one of the things, as I understand it, is that
5 the Horse Racing Board does not have the authority to put a
6 horse into what we now call a protection barn, or a
7 detention barn.

8 You know, and I think that you're asking the
9 tracks to do something that you, the Horse Racing Board,
10 cannot do. And as representing the trainers, or not only
11 the trainers, but owners of tracks, I'm willing to take some
12 risk and put in some penalties that I think are a deterrent,
13 but I'm not willing to have the exposure for putting
14 somebody out of business.

15 And I think, you know, one of the problems we've
16 got with this is the penalties are the same whether a guy
17 runs one horse or a thousand horses. And certainly, maybe,
18 a guy that runs a thousand horses might make a mistake here
19 and there.

20 So that's our position and I think that we are
21 concerned about the integrity of racing. We want to do
22 everything we can do. And I think that the penalties that
23 are being suggested are a deterrent that I just can't give
24 that death sentence.

25 COMMISSIONER HARRIS: Also, I think that it

1 isn't -- we want to be -- by going forward, in California
2 we'll have the toughest program in any state in the country,
3 with the program that's envisioned here. So it's not like
4 we've got a soft stance on bicarbs, because it's very strong
5 sanctions where, when you think about it, over the years
6 there's been no sanctions on bicarbs.

7 MR. LIEBAU: I'm not really aware of any trainer
8 ever being given a death sentence in California, really.
9 Maybe I'm wrong on that, maybe it probably does, but I don't
10 recall any. I mean, that's what this does. If you put a
11 guy out of business for a year, and he's lost all his
12 clients and his horses, doubtful he'll ever come back.
13 He'll become a software geek.

14 COMMISSION CHAIRPERSON SHAPIRO: Thank you.

15 MR. HALPERN: May I make one additional comment?

16 COMMISSION CHAIRPERSON SHAPIRO: Please.

17 MR. HALPERN: I just, I don't want to leave
18 anybody here with the impression that our organization is
19 against tough penalties. Our Board has been unanimous over
20 the years in being as strong as we can be to punish and
21 prevent misbehavior, or behavior that hurts the best
22 interest of racing.

23 But our position, as of today, comes down to a
24 split between what Mr. Liebau is saying, those on our Board
25 who are against the tougher penalties is saying it is a CHRB

1 matter, they're now involved and let them handle it. We're
2 willing to do the minimum to keep it under control until
3 they can handle it. So it's not a matter of looking for
4 lesser penalties.

5 I am also concerned, as an attorney, and as a
6 representative of the trainers, who have positive results,
7 about this lack of fair here. It is a dangerous position
8 for us and for those trainers to say that you could get a
9 third penalty, a third strike and go to jail for life, but
10 not really have a hearing on it, and no requirement of any
11 proof, of any kind, other than a positive test.

12 And so that is, to me, a dangerous position for us
13 to be in. And I don't think the Board wants us to be in
14 that position, either.

15 COMMISSION CHAIRPERSON SHAPIRO: Mr. Arthur --
16 Dr. Arthur?

17 DR. ARTHUR: Yeah, Dr. Rick Arthur, soon to be
18 Equine Medical Director. To put this in perspective, the
19 second and third stages, in terms of the TCO2 violations,
20 were prior to any CHRB regulation. We've only had one
21 person who has two TCO2 violations in this period of time.
22 He served the 14 days, but it obviously didn't cure him
23 because he's going to come back again with two violations,
24 that I believe the complaints -- have they been filed, yet,
25 Ingrid? Yeah, up north.

1 EXECUTIVE DIRECTOR FERMIN: I'm not sure if
2 they're filed, yet, but they're in the process.

3 DR. ARTHUR: Okay, they soon will be filed. But
4 the point is that the protective surveillance in the
5 detention barn has been effective. I think the compromise
6 proposal gives us, the Horse Racing Board, I'm talking
7 about, enough time to develop their cases against multiple
8 violators.

9 Once a complaint is filed, it is a public document
10 and the horsemen's groups and the associations can be
11 notified. And the manner in which the detention barn is run
12 and how they relate a hearing or meeting to the trainer can
13 be left up to the associations and the horsemen's group.

14 And from the CHRB's perspective, I think we can
15 step in and take additional TC02 tests, either prior or
16 before, or in the detention barn, or the surveillance barn
17 in a manner that would insure compliance.

18 I think it's a reasonable compromise if it moves
19 things along, and I think we can still get the job done. It
20 works and I think we should be satisfied with it. I would
21 hate to see us back pedal and not have any program at all.

22 And I would like to point out that racing
23 associations could, and I think they'd have very good
24 justification if they so desire, refuse entries from anybody
25 with multiple violations.

1 So I think there's a lot of avenues to make sure
2 that this continues to work.

3 MR. FRAVEL: Craig Fravel, Del Mar, F-r-a-v-e-l.

4 I'd like to sort of support what Jack said on this
5 one. I've sat on this Committee when we've had first-time
6 violators and I have to tell you, I don't think we're very
7 good at it, and that's the thing that gives me a lot of
8 concern. As Ed mentioned, there's due process issues, and
9 the sort of quasi-public business that we're in, highly
10 regulated, and for us to be in the enforcement business is a
11 very awkward thing. And I can't really -- just don't think
12 we're particularly well-suited for conducting that activity.

13 Having said that, I would also tell you that I
14 think there's a serious concern that, as Jack mentioned, not
15 only from a liability stand point, but in terms of whether
16 we're really accomplishing what we want to accomplish if we
17 have these escalating penalties, if you will, imposed by
18 consensual agreements between the parties.

19 And the reason I say that is, and I think this is
20 something you should ask your Deputy Attorney General for
21 some advice on, as I'm aware, any time there is a civil
22 proceeding and a, quote, criminal or punitive proceeding by
23 a regulatory or prosecutorial body, invariably courts stay
24 the civil action in that so that the rights of the defendant
25 aren't prejudiced in the criminal or prosecutorial action.

1 And for us to be engaged in this sort of quasi-
2 punitive activity, while there are pending hearings, seems
3 to me to raise serious issues from the due process stand
4 point, in terms of whether the Board will ultimately be
5 prejudiced in its ability to prosecute under its rules.

6 So I would suggest that the Attorney General at
7 least be asked to advise all of us whether that's potential
8 problem. I would hate for us to impose a detention barn,
9 which basically says this person's guilty of doing this, and
10 have that prejudice the outcome of your hearings.

11 So I think there's a -- I'm supportive of the
12 compromise that's been suggested by Drew and Ed, and would
13 hope that we can move forward on that basis.

14 But even so, I think we need to find out if even
15 doing that -- you know, the last thing you want to have
16 happen is the Racing Board's sanctions be undercut by what
17 we do.

18 COMMISSION CHAIRPERSON SHAPIRO: I totally agree
19 with that. And perhaps, Derry, you could opine on that at a
20 later date, look into that and make sure that we're not
21 doing anything that would undercut our ability to enforce it
22 from our perspective.

23 Do any of the other Commissioners wish to speak to
24 this?

25 COMMISSIONER MOSS: I kind of agree with what

1 Mr. Liebau and Mr. Fravel said. But I believe that there's
2 got to be teeth and some substantial penalties, and I think
3 we need to work that out, perhaps through legislation, so
4 that it's not arbitrary. If somebody's caught a second and
5 third time, then penalties are in the books and everybody
6 knows what's going to happen.

7 So I think we have to perhaps resolve what these
8 penalties will be, apart from what the tracks are doing, and
9 maybe get it through legislative process.

10 COMMISSIONER HARRIS: I think we don't really need
11 legislation, I think we have ample latitude, you know, in
12 our sanctions on class threes to do whatever we want to do,
13 as I understand.

14 EXECUTIVE DIRECTOR FERMIN: I just wanted to --
15 were you done?

16 COMMISSIONER HARRIS: Yeah.

17 EXECUTIVE DIRECTOR FERMIN: Just wanted to comment
18 that the violations that we've had, when they've gone into
19 the protective barn, have definitely come back into the
20 realm of what is realistic for the horse. We've taken it
21 out of competition and all of the readings have been very
22 favorable to the program.

23 So I think that, from what I've seen in working
24 with Dr. Stanley, it's working and I would hate to see any
25 part of that jeopardized. So, you know, I do see some of

1 the out-of-testing results and it's encouraging to see that
2 they do drop, and they do drop significantly. So even when
3 people don't know what they're doing wrong, somehow they
4 seem to come back and do it right.

5 COMMISSIONER HARRIS: I think part of it's been an
6 educational process, too, that hopefully people know, now,
7 that it is a class three violation, they're going to use
8 their purse, there's all these different sanctions from the
9 tracks, the horsemen are putting on. It's just the
10 reasonability of doing it is a lot less than it was a few
11 years ago.

12 And the one thing I think we need to make sure,
13 though, is that if people continually educate, and I'm not
14 sure if the trainers are actually signing something, you
15 know, when they get their stalls, acknowledging that these
16 sanctions do exist and that they, you know, really
17 understand the total program or not.

18 COMMISSION CHAIRPERSON SHAPIRO: That's why we did
19 ask to have the condition books and the stall applications,
20 to make sure there was sufficient language in them.

21 And one of my concerns, also, is that I don't know
22 if it is possible for somebody to claim that they're not a
23 member of either of these two organizations. But even if
24 somebody wanted to assert that claim, I think that there
25 should be something that says in the condition book that any

1 horse entered, as a condition to entry, there's some
2 acknowledgement, at least, that these are the rules and that
3 what the possible penalties are should there be a positive
4 test.

5 MR. COUTO: Well, the fortunate thing is that,
6 based on the law, and based on the horse racing rules,
7 that's not necessary. Whenever they accept stall space
8 controlled by a running track they are bound, by virtue of
9 the law in this State, to the terms of the agreement
10 executed between the horsemen and the racing association.

11 And I can say that with confidence, given prior
12 litigation I was involved in, regarding that issue in
13 particular.

14 But to the extent you want to remind participants,
15 licensees, that additional is fine.

16 COMMISSION CHAIRPERSON SHAPIRO: I think it would
17 be at least good for us to make sure that on the stall
18 applications and in the condition books that whatever
19 penalties will be imposed, as a result of contractual
20 relations between the track and the horsemen, and the
21 trainers, should at least be there so that we can look back
22 to it, or they can look back to it and be aware of it. I
23 don't think it can hurt.

24 MR. HALPERN: Chairman Shapiro, we do have that
25 language in the stall application. There is a current

1 Hollywood Park stall application, or proposed one, which
2 literally says by signing this you agree to be bound by the
3 TCO2 rules, as provided for in the contract between the TOC
4 and the CTT and the racing association.

5 COMMISSION CHAIRPERSON SHAPIRO: And do they
6 initial that or something, on the stall application, as
7 well?

8 MR. HALPERN: They do sign the stall application,
9 they don't initial the application.

10 MR. COUTO: Not all of them. We found that to be
11 a problem, previously, not all trainers will actually sign
12 their stall application. So, again, it's not required under
13 the law, it's just a good follow-up step to have to --

14 COMMISSION CHAIRPERSON SHAPIRO: Well, I just
15 don't want to see something fall between the cracks. I
16 think that for the integrity of the game, I think we're all
17 desirous of the same thing and I just want to try to close
18 every loophole.

19 MR. HALPERN: I think all of us.

20 COMMISSION CHAIRPERSON SHAPIRO: And I appreciate
21 that, Ed.

22 Dr. Arthur?

23 DR. ARTHUR: Dr. Arthur, again. I would like to
24 point out that we have had a very effective program. We've
25 had only two violations in over 20,000 starts in Southern

1 California, and over 12 months, which is a vast improvement
2 from where we started over two years ago.

3 But to get to what Mr. Harris mentioned, there is
4 definitely a difference, we see a difference in patterns in
5 the north and the south. And Dr. Stanley and I are going to
6 schedule a meeting with the people up north, to get them
7 more attuned to what the program is and where they could
8 fall into risk with their TCO2s. So we're going to try to
9 hit this from two sides.

10 COMMISSION CHAIRPERSON SHAPIRO: Okay. Is there
11 any other discussion by anybody on the Board?

12 If not, Mr. Charles?

13 MR. CHARLES: Ron Charles, MEC. Just one quick
14 question. And I concur with everything that has been said
15 before me, Jack and I think Craig expressed the concern that
16 we've had, and all of us sitting in these meetings.

17 And discussing the high TCO2 with the trainers,
18 we're hearing a lot of excuses. But, amazingly, close to
19 half of them, either publicly or privately, have actually
20 admitted that they've used that.

21 My only concern is we're only -- I think we've had
22 some multiple offenders and we're talking about the first
23 three. What if we get to four, or five, and six, and what
24 do we do at that point?

25 COMMISSION CHAIRPERSON SHAPIRO: Well, again,

1 personally, I believe that if we have people that are
2 multiple offenders, and they get to that level, I don't see
3 what benefit they bring to participating in California. And
4 I understand that if somebody says you're going to drive
5 somebody out of business, those owners have choices of lots
6 of other good trainers.

7 And, frankly, I would hope that the racing
8 associations and we, in California horse racing, would ask
9 them to move elsewhere. I don't think that we should have
10 people that are having multiple offenses, that are impugning
11 the integrity of the sport.

12 MR. CHARLES: And I agree with you, Mr. Chairman.
13 I also would hope that the TOC and the CTT would take that
14 opinion, also.

15 COMMISSION CHAIRPERSON SHAPIRO: Well, that's what
16 I'm hoping for and, obviously, I would prefer to have
17 language that was more punitive as a deterrent. I'm not
18 looking to hurt anybody. These are choices people make.
19 And I think with our new EMD, and our ability to try and
20 work with the trainers, that we should be able to eliminate
21 this.

22 But if somebody wants to push the envelope to take
23 an unfair advantage, I don't welcome them, and I don't think
24 that we should be welcoming of people that do that.

25 But if the consensus is, from the Board and from

1 those in the audience, that we should modify the rules to
2 this new language then, you know, we'll go with that.

3 I, simply, would have preferred to keep all of our
4 options available to us and not be deterred by a potential
5 lawsuit. But I hope that the Board would consider, and the
6 racing associations will consider it.

7 Unfortunately, we just can't act fast enough. You
8 know, that's a fact of life.

9 MR. CHARLES: And maybe one approach could be to
10 sit down with the TOC, the racing associations sitting down
11 with the TOC and the CTT, and talking about anything past
12 the third violation.

13 MR. COUTO: Chairman Shapiro, at some point, you
14 know, we're speculating about how many positives someone may
15 have. But at some point I think -- we're close to that
16 right now, I guess, someone with four.

17 The reality, based on what happened in New York,
18 is it's up to us, I think, to go to the U.S. Attorney at
19 that point, or to the AG's office and ask for criminal
20 prosecution.

21 Given the interstate nature, exactly what they did
22 in New York is to prosecute that individual for race fixing
23 and wire fraud violations, and they are very serious federal
24 felonies that lead to a substantial time in prison.

25 If you want to get this message out, one of the

1 powers this Board has is to not only sanction and suspend,
2 but to recommend criminal prosecution when the behavior gets
3 to a certain level.

4 And when we start talking about three, four, and
5 five violations, knowing that they are going to have a high
6 probability of affecting the outcome of a race, and given
7 all the wagering that is occurring in this State, and
8 interstate, through interstate commerce, that's the time you
9 see a prosecution and that is something that we cannot do.
10 But the Board and the industry -- the Board can ask the
11 authorities, the prosecutors to do that, and we can support
12 that. And I think that's probably the next step we go to
13 when you have that sort of situation.

14 COMMISSIONER HARRIS: I also think the Board can
15 move faster than we do. If we really want to move, I think
16 we can. We need to have a fair system. But I think we need
17 to not let these things drag on like we have.

18 COMMISSION CHAIRPERSON SHAPIRO: Well,
19 unfortunately, as just evidenced by our discussion in the
20 Executive Session, I think there are some very artful
21 attorneys that are able to delay the process. And, again,
22 what I hear on the backside, all too often, is how come you
23 haven't dealt with Bob. And I'm saying we are dealing with
24 Bob. But as we go through this process, it's very
25 frustrating to me, and frustrating to the 99 percent of the

1 honest people out there that only want to see a level
2 playing field.

3 And I'm reaching out and I'm not saying that the
4 racing associations and the horsemen aren't forthcoming, but
5 I do believe that we're all in this together because our
6 goal is the same.

7 MR. HALPERN: I think that we should take note,
8 and we've talked about this many times, and it still doesn't
9 see to happen but, as you say, we have those cases where
10 people will say, well, what have you done about Bob, and a
11 nice answer would be, well, nothing with him, yet, but this
12 is what we did with A, B, C and D. And we still have failed
13 to publicize all those things we have done, even with the
14 TCO2s, to A, B, C and D.

15 And that, to me, has been the greatest deterrent.
16 That those people, who have been embarrassed by being caught
17 with a high TCO2, which is 80 percent of those that have
18 been caught have stopped doing it mainly because of the
19 embarrassment.

20 COMMISSION CHAIRPERSON SHAPIRO: Well, I think
21 your point is extremely well taken. And, as we discussed
22 yesterday, I know that, unfortunately, we have not put out
23 notices in certain cases. And I did speak with our
24 Executive Director and I think we're going to make a better
25 effort, now, to try and come out with some type of a

1 statement with respect to any results that we get back when
2 there is a positive, when there is a split that comes back
3 confirming that positive, so that all of the racing
4 community understands where these cases are at.

5 I think that we don't do as good a job, as we
6 should have, imparting the knowledge of both the process and
7 where these specific cases are, and I think we will try to
8 do a better job. And I think that with Dr. Arthur on board,
9 we'll be able to do that.

10 Thank you. If there's no other comments, we'll
11 move to Item Number Three.

12 Hold on. Yes, sir.

13 MR. CHILLINGWORTH: Sorry about being late. Oak
14 Tree Racing, Sherwood Chillingworth. I agree with
15 everything that's been said. I think somewhere along the
16 way there has to be a significant penalty imposed on the
17 people that -- and I'm not sure whether it's the fourth,
18 fifth, or sixth violation, but there has to be some cut off.

19 My comment is that, in my view, our present stall
20 applications leaves it at the discretion of the racing
21 association, which I don't think is right. I mean, it's a
22 CHRB rule, they should enforce it. They can tell us what to
23 do and who to put in detention barns, but every racing
24 association may have a different viewpoint, and it should be
25 a uniform application throughout the State of California.

1 So I don't think it should be left to the
2 discretion of the individual racing association, it should
3 be an enforcement done by the CHRB.

4 COMMISSIONER HARRIS: Well, the CHRB does -- I
5 think that when this program started we didn't have a rule
6 on high bicarbs, period. So, basically, the only allegation
7 was that if somebody's doing something to the horse, giving
8 them something within 24 hours of a race, and so then we got
9 the associations and the horsemen involved.

10 But, conceivably, if someone had two or three of
11 these and even though it's a class three, we could rule a
12 person off for life, if we want to. I don't think we're
13 hampered in our penalties. It's just it might take a while.
14 But I think once the word's out that it's a serious thing,
15 you're going to lose the purse, there's all these other
16 things, which I think they've really come to a screeching
17 halt, anyway. I think we're talking about a problem that
18 we've kind of fixed it, really.

19 COMMISSION CHAIRPERSON SHAPIRO: Again, the
20 problem is our hearing process. We can't take action until
21 there's been a hearing process, and we then know that that's
22 going to be subject to a lot of lawyering, and we thus don't
23 deal with it in a timely manner. That's why we need the
24 participants, the racing associations and the horsemen, so
25 that we can at least put these horses and people on notice

1 that there are rules, that aren't going through the hearing
2 process, that they have to abide by, so that we can timely
3 take action.

4 I don't have any problem with it falling on our
5 shoulders, but it doesn't address the timeliness which we're
6 burdened with. And that's the issue here, as far as I can.

7 COMMISSIONER HARRIS: Well, I think the whole
8 justice system doesn't have the timing. So that would seem
9 a little more timely way to handle the incidents, than we
10 have. But I think our whole system is based on due process,
11 and that's a violation.

12 MR. CHILLINGWORTH: Well, accepting that point of
13 view, my concern is the different application that might
14 occur at different tracks.

15 I mean, for example, Jack has indicated they're
16 very reluctant to take on the responsibility. Somebody else
17 might and then you'd have an unequal application of the
18 rules. That's my final comment.

19 COMMISSION CHAIRPERSON SHAPIRO: Okay.
20 Mr. Liebau, do you want to add something before we move on?

21 MR. LIEBAU: Jack Liebau, from Bay Meadows and
22 Hollywood Park. Just to make Mr. Chillingworth a little bit
23 more comfortable, my understanding of that language is that
24 it is not just at the discretion of the track, because I
25 wouldn't take on that responsibility, frankly. So I

1 insisted that CTT and TOC concur that this was going to be a
2 contractual thing and all of us we're going to be in the
3 bag, together.

4 And so it's not discretionary between one track,
5 what one track does and what another track does.

6 I mean, the problem that we've got is that -- I
7 understand what you're saying, Commissioner Shapiro, but you
8 can't do indirectly what you can't do directly. And that's
9 why I said in my opening remarks that I think that the Board
10 should look at getting some sort of punitive action that
11 includes either a protection barn or a detention barn,
12 that's the cleanest way of going.

13 And, you know, the problem is we've got a judicial
14 system, and those are rights that people have and,
15 unfortunately, sometimes people are able to drag it out. It
16 just happens, no matter whether it's horse racing or
17 whatever it is. It's sort of a way of life, unfortunately.

18 And the other problem that we've got, and maybe
19 the Attorney General should even address this is, you know,
20 these tests are being taken under the authority of the CHRB,
21 and we're relying on that. I mean, somebody, and probably
22 we all know what lawyer's going to start talking about
23 custody of the thing, and what the chain of custody is, and
24 whether there was a split sample, and all those things.

25 So, I mean, this is a tough problem. But so far,

1 I think we've done marvelously. And that's sort of the
2 bottom line, it's worked, and I think it will continue to
3 work.

4 And as far as something that gets fourth, or
5 fifth, or sixth, I think then the racing secretaries just
6 don't give them stalls. So, I mean, I think that will be
7 taken care of, too.

8 COMMISSION CHAIRPERSON SHAPIRO: Well, I
9 appreciate your comments. I will ask the Attorney General
10 to look into this and perhaps provide to the Board what
11 options it has with dealing with, either through the rule-
12 making process, or what other options we can have that would
13 allow us to react timely enough to address a problem, and
14 laid out so that we can have a further discussion on it in
15 the future.

16 EXECUTIVE DIRECTOR FERMIN: I would just add that
17 the chain of custody for the TCO2 is exactly the same
18 documentation that has held up for the rest of our testing.

19 COMMISSION CHAIRPERSON SHAPIRO: Okay, moving on
20 to Item Number Three, discussion regarding racing programs
21 and efforts to address field size, quality and quantity of
22 the entrants, ways to improve racing programs, types of
23 races, and restrictions.

24 This matter was simply to be a discussion item of
25 what we can do, and I appreciate that I believe racing

1 secretaries are here, that would allow us to look at what
2 can we be doing to improve our racing program, do our racing
3 programs -- are they geared too much to the correct level of
4 racing, are we moving maidens through fast enough, are we
5 too focused on pick-six carryovers. What can we do to
6 improve the racing programs throughout the State?

7 I don't know if any -- if the racing secretaries
8 want to come up and address this. Again, what I have been
9 told is that there is concern by certain owners that,
10 unfortunately, it appears more often than not that a race
11 that has five or six -- or change it the other way, there
12 may be straight maidens entered to go in a race, and instead
13 of that field being split to where there's two eights, or a
14 seven and an eight, they'll run one of those maiden races
15 and, instead, using a 10,000 claiming race.

16 And so, again, this is to be a discussion item,
17 and I see Mr. Robbins has come forward with great glee and
18 excitement, I'm sure.

19 MR. ROBBINS: Tom Robbins, Racing Secretary, Del
20 Mar. That's right, a lot of glee.

21 I wish I were standing up here, offering some new,
22 brilliant way to write a condition book so that we could
23 improve field size, and racing quality, and all the other
24 things you just mentioned. Unfortunately, I'm not. So I'm
25 not sure what I'm going to say.

1 I don't think I can get very specific, other than
2 to say that all race tracks in California have agreements
3 with the horsemen's organization. And, in our case, it's
4 with the Thoroughbred Owners of California.

5 And in that agreement we address condition book
6 issues, race programming issues. I might add we meet
7 periodically, just not in front of each race meeting, but we
8 meet periodically through the year to discuss various
9 issues.

10 And I think, Mr. Shapiro, you've attended a few of
11 those sessions. They can be quite lively.

12 COMMISSION CHAIRPERSON SHAPIRO: They're good
13 work.

14 MR. ROBBINS: We don't always agree. Oftentimes
15 we agree to disagree. We don't always get our way, talking
16 about the racing secretaries, and sometimes TOC doesn't get
17 their way, also.

18 The fact of the matter is we do have these
19 discussions and we try to do what's best for the State of
20 California and our racing programs, and I'm talking
21 primarily in Southern California.

22 We also meet once a year with the California
23 Thoroughbred Breeders Association to discuss how we can
24 improve the racing product from their perspective. We meet
25 with the CTT, as well.

1 COMMISSION CHAIRPERSON SHAPIRO: Tom, so let me
2 ask you a specific question. I know we harp, and I'm the
3 biggest harper, if there's such a word, on field size. But
4 at certain times are we forsaking a quality five-horse
5 field, or six-horse field, when we could be putting on a
6 race that's of higher quality, so that we increase field
7 size too much so we get a 12-5 claimer? Are we erring in
8 that area, are we hurting the owners, that make the major
9 investment, from being able to move horses along and
10 providing racing opportunity? Are the rules too tight?
11 Again --

12 MR. ROBBINS: Well, I think, certainly, in the
13 last decade has become sort of the -- you know, the
14 measuring stick for how well a race track does. And I do
15 think we focus too much on that.

16 I can say, philosophically, and I'd be glad to
17 speak for the other Southern California racing secretaries,
18 who are here today, we all, having grown up through the
19 Jimmy Kilrose school of race programming, can say
20 unequivocally that we are supportive in trying to promote
21 the better racing, better quality of racing every
22 opportunity we get. It's not always possible.

23 We used five-horse fields, allowance races at Del
24 Mar this summer. We firmly believe it starts with the
25 stakes program, and the allowance program, and moving those

1 non-claiming type horses out so that they can support this
2 program, because we believe that's the lifeblood of the
3 industry.

4 But having said that, we also recognize that
5 probably more than half of the program is made up by
6 claiming races, and those horses are equally as important.

7 We have that constituency to deal with. And not
8 only that, but we have to balance our purse programs as
9 well. So it's a bit tricky, but I can tell you that
10 concerns about us, at least in Southern California, not
11 trying to promote the better horses are pretty much
12 unfounded.

13 Do we have as many of those horses as we used to
14 have? The answer is no. I would like to say something
15 positive. I think because of your direction, the CHRB's
16 direction, and the mandate about having synthetic surface
17 here at the end of 2007, I think is the absolute perfect way
18 to go and we've certainly seen direct evidence, albeit it's
19 a rather short period of time. But what Hollywood Park has
20 done with the cushion track, we were over there the other
21 morning watching horses train, and I can't find one
22 complaint, or I couldn't get one complaint from one trainer.
23 And I know it's a short period of time.

24 But Martin Panza can come up, Hollywood Park's
25 racing secretary, and talk about the phone calls he's

1 getting from people out of state, wishing for stall space.

2 So I applaud you for your efforts. It's something
3 positive, it's one of the few positive things we have going
4 for us.

5 And if we can get more of the non-claiming type
6 horses in California, and don't let me sound like I'm trying
7 to ignore claiming horses because, as I said, they do make
8 up more than 50 percent of our program.

9 But if we can improve the quality of our races,
10 have more horses in our inventory to help fill those races,
11 whether they be maiden special, or first condition, and
12 second condition, and third condition allowance races to
13 support the stakes, we're all going to be better off, in my
14 personal opinion. And I think I'm speaking for the other
15 racing secretaries, as well.

16 COMMISSIONER HARRIS: You know, one issue I think
17 is just what the Board's role is. And I think our role
18 isn't so much to tell you, really, what races to write, but
19 just to provide the environment, like we're doing through
20 the synthetic tracks.

21 And I think the real negotiations got to be
22 between the horsemen and the tracks, as far as what program
23 they collectively think best works.

24 But one thing that I'm concerned about, on the
25 claiming races I think, you know, are obviously an integral

1 part of the program. But it seems like our claiming prizes
2 haven't gone up at all over the last ten or 20 years, and
3 you see so many horses getting claimed out of a given race.
4 I mean, at Del Mar sometimes there would be four or five
5 horses claimed out on a race, and I don't know if that's a
6 particular healthy situation because you get so much
7 turnover of horses.

8 And I know that if you talk to the racing
9 secretaries about it they say, oh, if we go up a little bit,
10 all the horses are going to go to Mountaineer Park, or
11 Sunland, or there's all these reasons not to go up.

12 But if there was some way we could just, you know,
13 arbitrarily raise the claiming prices by ten percent, 20
14 percent, I think you'd end up with about the same program
15 and it would elevate the value of the horses.

16 Because it's tough, from the breeding industry's
17 perspective, to raise a horse and spend 15 or 20 raising it,
18 you're going to spend another 15 or 20 getting it to the
19 races, where somebody can go claim a horse for 16 or 20, and
20 they've got one they can run next week. So the numbers are
21 sort of out of line.

22 MR. ROBBINS: Well, that's something that we have
23 had discussions the last few years on, and I don't know if
24 they're inflated or not. And if we did raise, arbitrarily,
25 the numbers, whether it's one or two levels, would we lose

1 horses? My guess is we would. And can we afford that?

2 I see a lot of horses running around here, that
3 ran at Del Mar in our minimum winners claiming race for
4 10,000, and running in the \$5,000 level.

5 So, you know, that's a tricky question. We still
6 have a finite number of dollars, pursue-wise, to deal with.
7 And if those purse levels, and an elevated level for those
8 claiming horses doesn't support that, and they have other
9 options and better options to run elsewhere around the
10 country, are we going to be shooting ourselves in the foot
11 by losing those horses.

12 COMMISSIONER MOSS: I'd like to just get back to
13 the maiden allowance race, if I might. I mean, why can't
14 you just mandate that if there's 14 entries or more for a
15 maiden allowance race, we split the race? I mean, to have
16 people wait to run a horse for another, you know, 20, 30
17 days, when the horse is ready to go, especially a maiden,
18 and especially when you get a chance to build two stars at
19 one time, you know.

20 MR. ROBBINS: I don't think there's a racing
21 secretary -- if we can do something like that. But are you
22 saying that if the race in the condition book, go that day,
23 then we're going to arbitrarily call off some other race
24 that's filled with sufficient entries?

25 COMMISSIONER MOSS: No, I would say you can

1 accommodate it. I would say owners wouldn't mind if you
2 changed the purse structure on a situation like that, or
3 even made it an extra race.

4 MR. ROBBINS: Personally speaking, I'm not sure we
5 want to mandate it to be of a certain number because we've
6 seen where trainers and owners can manipulate entries. If
7 14 is the number, somehow we'll get 14 in a race and we'll
8 run two five-horse fields.

9 I can only tell you, philosophically, that if we
10 can split a maiden special race on any day, we're going to
11 do our best to try to do it. But working within the
12 confines of the thoroughbred owners of California -- like I
13 said, if the condition book goes, in order to split that
14 race with 14 horses, we then would have to call off a race
15 that, under today's contractual obligations, that we'd have
16 to use and fill, so we couldn't have that.

17 So that's something that we would have to change
18 within our agreements.

19 COMMISSION CHAIRPERSON SHAPIRO: Can you just
20 describe what those contractual obligations are? I'm not
21 sure that we all understand what are the restrictions that
22 are placed on you. Again, from my perspective, each of the
23 racing secretaries, and I have no -- I think that you guys
24 do a great job and I know it's a very difficult job, I'm
25 concerned that are we micro-managing -- I don't want you to

1 be micro-managed. I want you to be able, because you know
2 your inventory, to put the best fields together and put the
3 best product in front of our fans.

4 But we also have to address what the inventory is
5 that you have to deal with. Are there restrictions that
6 you're dealing with, that we're not aware of, that inhibit
7 you?

8 MR. ROBBINS: Well, I think you're probably aware
9 of them. There are purse level issues in the agreement,
10 there are minimum number of entries in a race, for that race
11 to be used, whether it's a claiming race or a non-claiming
12 race. There is California bred information in the
13 agreement.

14 All of these things, most of them anyway, address
15 our program. And do we agree with everything that's in
16 there? Probably not. You know, but we continue to have
17 dialogue, we continue to try to fine tune our programs and
18 suggest ways that we can improve our program.

19 We've recently modified, started the Oak Tree
20 meet, modified our eligibility rule, so it's been tweaked a
21 bit so that it's going to be less restrictive for horses
22 running in Southern California.

23 COMMISSIONER HARRIS: One area that I -- one
24 reason I suggested this item be on the agenda is I think a
25 longer period of time between entries and the running of the

1 race, like currently it's 48 hours, normally, sometimes 72,
2 but it's been suggested that in other states, and there's
3 reasons to do this as far as veterinary practices, and
4 getting a horse -- you know, working a horse before you run
5 him, you know, all kinds of things, and there's some
6 downside of doing it.

7 But what would the tracks think about increasing
8 entries for 48 to either 72 or 96 hours?

9 MR. ROBBINS: Well, I think it would probably --
10 that answer would vary from track to track. And I think if
11 you check around, most racing jurisdictions around the
12 country, they're either 48 or 72 hours, not beyond that.

13 Del Mar, we have three days at 48 and three days
14 at 72.

15 My answer's going to be different than Santa
16 Anita, because we don't have nearly the rainfall that Santa
17 Anita does, and they've got turf course issues, and main
18 track issues.

19 And my question would be is the tail wagging the
20 dog? Is it the medication that's impacting when we're going
21 to take entries on these races?

22 COMMISSIONER HARRIS: Well, it's not strictly
23 medication, but it's just -- that's one issue. But a lot of
24 the frustration that I've heard from horsemen is that if a
25 race doesn't go, and it comes back, we don't know if it's

1 going to go two days from now, or four days from now, or
2 when, you just have a better feel for when your horse might
3 get back in.

4 Also, I think from some owners' perspective it
5 would give, you know, better time to plan to be there, which
6 is one of the things that would keep owners interested. I
7 guess, the racing secretaries are worrying about scratches,
8 but I don't really think that -- I think it's something that
9 may well work and we need to, you know, think outside the
10 box on this, and other issues, and see areas of the country
11 where it's worked.

12 I mean, it was, I think, controversial in Northern
13 California, they went from 48 to 72, and that was like a big
14 problem. But Ron Charles got it done, somehow, and it's
15 worked out fine.

16 MR. ROBBINS: Well, I think this item was
17 originally a part of this agenda item, and we were told that
18 it was going to be moved over to next month. We'll
19 certainly have all of the tracks around the country, and
20 what their entry schedules are, and certainly be more
21 prepared to discuss it next month.

22 COMMISSIONER AMERMAN: I'd like to go back to
23 something Tom Robbins said a little while ago. It strikes
24 me that our biggest issue is an umbrella over all these
25 other specifics that we're talking about, is the inventory

1 of horses that we have here, in California.

2 And we are sitting today and, hopefully, it will
3 all work out, but we are sitting on an opportunity that is,
4 I think, very big, with the synthetic tracks.

5 I, like you, Tom, was up at Hollywood yesterday,
6 and I was tremendously impressed by the comments from the
7 trainers, the horsemen, the grooms, the exercise riders.
8 There really was no negatives, except that maybe there's the
9 smell of oil in the air, which I hope would go away over
10 time. Or, if it doesn't, everybody will get used to it.

11 So it would seem to me that we should be reaching
12 out to the rest of the country to bring horses into
13 California. Everything in life costs money, so the question
14 is how do you do that.

15 And something we talked about at one of the
16 previous meetings, I think, was looking at what we're doing
17 with the CMC funds to see if, indeed, we could put together
18 a program that appeals to horsemen throughout the country,
19 that would like to come to Southern California.

20 When you think that we have the best weather,
21 we've got great purses, we're going to have, hopefully, very
22 excellent tracks within the next 12, 15, 18 months, it seems
23 to me that we ought to be telling our story, and we need to
24 do it by getting some monies from somewhere else. And I
25 think there might be some other areas to go, other than CMC,

1 but it strikes me we all could chip in and just appeal to
2 horsemen across the country.

3 MR. ROBBINS: Yeah, there's no question, and that
4 is a program that's been in effect for a little bit over a
5 year, I believe. I mean, I don't think any other state
6 offers that, and I agree with Mr. Amerman, we have the
7 opportunity right now to make a difference.

8 And I think the evidence is there. Todd Fletcher
9 is sending horses to Hollywood Park and these are,
10 obviously, high quality horses. And I applaud the efforts
11 of CMC and TOC for getting that accomplished. It's a great
12 program and it's an aggressive program.

13 And if we can't inject more money into our purses,
14 if we can improve the quality of our program, our purses are
15 going to go up. And so I absolutely agree with that.

16 There's no question that there is a concern about
17 west coast racing from other parts of the country, in terms
18 of safety of our service.

19 COMMISSIONER AMERMAN: Yeah, the issue is it's too
20 hard. But it isn't going to be too hard and we ought to
21 tell that story.

22 MR. ROBBINS: Right.

23 COMMISSION CHAIRPERSON SHAPIRO: And, obviously, I
24 agree with all of that. The question, though, will be when
25 we get those horses, we need to also make sure that there's

1 racing opportunity for those horses and that we can make
2 sure that they're getting enough opportunity, and not
3 feeling that they're having to sit back while there's a
4 bunch of cheap claiming races, because they make a pick-six,
5 or for whatever reason.

6 And that, again, goes to the point that I don't
7 want your hands so tied and so that, you know, Martin can
8 say, you know, I've got six horses here that are ready to
9 go, and are non-winners of three, and we need to just make
10 sure that they're getting races.

11 And I'm a little concerned, even though I'm very
12 outspoken about it, that we're focused so much on field size
13 that, again, we also need to balance to get the quality up.

14 MR. ROBBINS: No, there's no question. And
15 believe me, these guys don't have to come up here.
16 Everybody is supportive of that. And I can tell you, and
17 I'm not terribly proud of it, but Del Mar probably has the
18 worst record for pick-six carryovers. And I apologize to
19 Mr. Fravel for that.

20 Anyway, seriously, it is an effort that we're all
21 excited about, trying to get better horses here, increasing
22 the inventory of horses that do make up the maiden special
23 or that, as I said, the conditional races that are going to
24 end up supporting the stakes, and we're excited about that
25 opportunity.

1 COMMISSION CHAIRPERSON SHAPIRO: Well, clearly,
2 it's fun to see that there's some excitement in California
3 right now, as the anticipation of seeing cushion track
4 perform, and also the comments that are coming from
5 everybody I've also heard from, and to see that new stables
6 are looking to come here.

7 And my compliments and thanks to everybody that's
8 making that happen.

9 Are there any other comments on this issue?

10 COMMISSIONER HARRIS: One thing I might mention is
11 that on the CMC has got some of their funding going to
12 super-charging races. I question if this -- I'd like to see
13 a little analytical study done, if this really helps as much
14 as it might, and is this the best way, one, to use their
15 money and then, two, if you're going to do it in the purses,
16 maybe it could be more creative. Maybe we should have a
17 super-charge purse going a mile and three-quarters on the
18 turf, or something to not just take the regular races that
19 people run a point for anyway, and I've had horses run well,
20 and some of them I got more money. But, I don't know, I was
21 going to run in that race, anyway, because if you've got a
22 two-year-old maiden, you're pointing to the two-year-old
23 maiden race, regardless of if it's super charged.

24 So I think just that whole super-charge program
25 needs vetting out a little bit.

1 COMMISSION CHAIRPERSON SHAPIRO: Well, I believe
2 that the -- I know that -- I believe that both Hollywood
3 Park and Santa Anita, I think they do keep statistics. But
4 perhaps, on our next agenda, we should ask for a report from
5 CMC, so that we can better understand their program. I know
6 that we've all received information about it, but we also
7 should look to see what the super charge analysis is.

8 Because what I've been told anecdotally is that
9 the super charging pays for itself in increased revenues
10 that are bet on those super-charged races or days.

11 I happen to share with you, I'm rather skeptical
12 about it.

13 COMMISSIONER HARRIS: Well, I'd just like to see
14 the data. Obviously, those big days are going to be big
15 days. If you put, you know, on Hollywood Gold Cup Day you
16 put on a maiden race, you're going to get more money bet on
17 a maiden race that day, super charged, than maybe if it was
18 on a Thursday or something, but is that the best way to
19 spend the money. It's really not our money, it's the
20 horse's money and the track's money, so they really can
21 spend it all in any way they want it. But I think it's just
22 something they need to look at.

23 COMMISSIONER MOSS: Or perhaps, as well, within
24 that data to see what it would take to have the extra race
25 accommodating a higher allowance, small field, or split a

1 maiden allowance, because I think it's very important to
2 have these races. If you really want owners to come out to
3 California, I think as our Chairman said, you have to make
4 sure that there are races available for these horses. Thank
5 you.

6 MR. HAMMERLE: Rick Hammerle, H-a-m-m-e-r-l-e,
7 from Santa Anita.

8 I just wanted to speak to Mr. Harris and the rest
9 of you. Regarding the super charging, we come up with this
10 idea about two years ago, I believe, with the CMC, along
11 with the TOC, and we've had to provide them with all our
12 statistics, and the increases in the handle and the national
13 exposure that we've received, and the increase in the
14 attendance. And it's our belief that these days have not
15 only paid for themselves, but have gone far beyond not only
16 the fact of the handle has gone up, the attendance has gone
17 up, the field size has gone up.

18 Rather than spending that money for an ad in the
19 paper, or a national publication here or there, we've been
20 letting the National Turf Riders advertise for us because
21 our cards, both at Hollywood Park, Del Mar, and Santa Anita
22 have been so good that day that we've been getting national
23 exposure. So people across the country are reading about
24 our cards and looking at our cards.

25 And our feeling is that this is worth much more

1 than a half-day job and racing form, and that this program
2 has proven itself over the two years that we've done it.
3 And if we're going to have it on the agenda next year, we'll
4 be glad to come in with the CMC and the TOC, also, and show
5 the statistics to you, to what we believe have been a
6 successful program.

7 COMMISSIONER HARRIS: I agree that you put on good
8 cards those days, it's just a question of if someone has a
9 certain category of horse, is he going to not run that horse
10 if that race is not super charged. What my theory is that
11 you're going to run the horse. If you've got an allowance
12 horse, not only is it two races going long, you're going to
13 run in that race when it comes up. You're not going to say,
14 well, I'm not going to run in that race unless it's super
15 charged.

16 And I don't know if the fans, conversely, are
17 saying, gee, I think I'm going to go to the races today, but
18 I don't think I'll go because they've got this allowance
19 race that's a \$50,000 purse. I would go if it was super
20 charged and it was a \$70,000 purse. I don't know if that
21 really -- I think what the fan is saying, that he's looking
22 for a very competitive field and a big field which, you
23 know, is what the object of super charging is. But I'm just
24 questioning if that gets you there or not.

25 MR. PANZA: Martin Panza, from Hollywood Park Race

1 Track, Racing Secretary.

2 The super charging came about, about five years
3 ago we looked at our big days and we found that three or
4 four of our race-size fields that day were five- and six-
5 horse fields. We were like, look, we're putting up millions
6 of dollars of purse money for these big stakes, why are the
7 first three races on the card that day five-horse fields?

8 And super charging, to some extent, has alleviated
9 that problem, where all the races that day are eight, or
10 nine, or ten horses. And we handle more money because of
11 it. Is it perfect? Maybe not. But I think it has helped
12 the handle.

13 From Hollywood Park putting in the cushion track,
14 I'd just like to say that in the last week I've probably
15 gotten more phone calls from owners or trainers wanting to
16 come to Hollywood Park and stable, and be on this material.

17 For about the last two months, addressing
18 Mr. Amerman, we've been heavily calling stables on the east
19 coast, and trainers on the east coast, and saying we have
20 this new product, we think our surfaces are going to be
21 better, that all of California is going to these surfaces,
22 and that we think we can provide a safe arena for your
23 investment.

24 And we've probably, at this stage, I know
25 Todd Fletcher came out in the Form and said, yes, I am going

1 to have a California string.

2 I think, in the next week or so, you're going to
3 see a few more east coast stables making releases that they
4 are heading this way.

5 So we are working towards that and I think it's
6 going to snowball, I really hope it is. And the biggest
7 thing is they are going to bring better horses and it
8 increases their inventory.

9 And you can only write races for the inventory you
10 have and, obviously, as we get better horses here, we can
11 write more of the better races. And that's the goal of all
12 the racing secretaries here. Thank you.

13 COMMISSION CHAIRPERSON SHAPIRO: Martin, I just
14 want to tell you, and make sure it's on the record, I just
15 want to thank you. I know you're doing a hell of a job and
16 you brought cushion track, along with Jack, and Terry, and
17 everybody else. And I think that, you know, everybody here
18 owes you a debt of gratitude. And I know how hard you're
19 working and I just wanted to tell you. Thank you.

20 MR. PANZA: Well, thank you, but everyone in
21 California's working hard.

22 COMMISSION CHAIRPERSON SHAPIRO: I agree with
23 that, too.

24 COMMISSIONER HARRIS: I think it's a real big
25 plus. I think the rumor is completely false that Hollywood

1 is going to supplement, for instance, for the north, for
2 horses that want to run on the dirt. That's not right at
3 all.

4 MR. PANZA: Are we going to pay the shipping for
5 that, too?

6 COMMISSION CHAIRPERSON SHAPIRO: You know, if I
7 had said that all of California, I might get criticized for
8 that.

9 MR. FRAVEL: Craig Fravel, Del Mar. I just wanted
10 to kind of jump on that bandwagon. You know, Commissioner
11 Amerman said this is an opportunity. I think this is the
12 biggest opportunity that we've had to unleash a lot of
13 unused energy, if you will. And Martin was saying how he's
14 been making phone calls, and giving people input on having
15 the safe racing surfaces.

16 You know, up until this year this State, Martin
17 and Tom, and those guys were tired of making those kind of
18 phone calls because the response they got all the time was,
19 I'm sorry, I can't convince my owner to send out any horses
20 out here because the tracks are too hard.

21 Now, whether that was true or not, there wasn't
22 any overcoming that perception. And I can tell you right
23 now, I mean, you can go to Keeneland or you can go elsewhere
24 around the country, people are talking about what California
25 has done. Not just the fact that it's at Hollywood, but the

1 fact that they're looking forward to Del Mar and, hopefully,
2 Santa Anita, Golden Gate, you name it. We now have a story
3 to tell.

4 And I think your focus on allowance races, main
5 races and all these other things is things we need to talk
6 about, and work on, take advantage of the opportunity. We
7 need to work with CMC, get the message out that they were
8 willing people financially to come back out here. We need
9 to go to California owners, like John, and others, and say
10 bring your horses back here. If you've got them training at
11 Saratoga, or Churchill Downs, or wherever, that's a huge
12 opportunity.

13 And the best part of the whole story is that
14 there's one or two race tracks on the east coast that are
15 doing it, but a lot of them are still dragging their feet,
16 and they're going to drag their feet because they're kind of
17 stuck in the past. And this is a chance for us to move
18 ahead, not in a small way, but in a huge way.

19 And I would just encourage the Board, you know,
20 when you put out your press releases, or whatever, let's not
21 talk about what we were talking about, how we've got bad
22 field sizes and bad racing, let's talk about what we've got
23 to look forward to. I mean, this is a huge time for us and
24 it's only going to get better.

25 COMMISSION CHAIRPERSON SHAPIRO: Absolutely agree

1 with you, I think that's absolutely true. And I think that
2 perhaps Mike Martin can talk to you, and others who are
3 talking, so that we can continue to talk this up.

4 I mean, if Hollywood Park is out of stall space,
5 you know, because we have so many requests, that wouldn't be
6 a bad thing to say, so that people want to get in their
7 early for Santa Anita, Del Mar, Golden Gate. And I think
8 that's a point well taken.

9 And I also want to thank Craig because if you
10 hadn't insisted that I come out and almost fall on a horse
11 at Keeneland, I wouldn't have seen polytrack when I did.
12 And so I know, Craig, you've been a huge motivator of this
13 and thank you to you, as well.

14 Okay, why don't we move on to Item Number Four.
15 And I have a hunch we'll hear Jackie Wagner, CHRB staff, for
16 the first time today.

17 STAFF SERVICES MANAGER WAGNER: Good morning,
18 Commissioners, Jackie Wagner, CHRB staff. This application
19 is from the Hollywood Park Fall Racing Association. They
20 are proposing to race from November 1st through December
21 18th. There are 36 days, which is nine more dates than they
22 raced in 2005.

23 They're proposing to race a total of 310 races, or
24 8.6 races per day. In 2005 they raced 8.44 races per day,
25 with an average of 7.45 runners per race.

1 The analysis indicates an actual daily purse for
2 the fall 2005 meet as \$376,000. Actually, that number is
3 \$320,000. And the estimated average daily purse for this
4 meet would be \$330,000.

5 The dates that they are proposing to race are the
6 dates that were allocated by the Board. They will be racing
7 five days per week, Wednesday through Sunday, with eight
8 races on Wednesdays, Thursdays, Fridays, and nine or ten
9 races on selected Saturdays and Sundays.

10 They are proposing to race ten races on November
11 the 24th, which I think is the day after Thanksgiving.
12 November the 25th, November the 26th, and they will be
13 racing eight races on December 18th.

14 Their post times will be 12:30 p.m. daily. They
15 are asking for a 7:05 post time on November 10th and 17th,
16 and an eleven o'clock in the morning post time on
17 Thanksgiving, that Thursday, November the 23rd.

18 Their advance deposit wagering providers are TBG,
19 XPressBet and YouBet.

20 This application is still missing, we still need
21 the Horsemen's agreement.

22 Staff would recommend that the Board approve the
23 application contingent upon us receiving that. And we do
24 have representatives from the Association, should you have
25 any questions.

1 COMMISSION CHAIRPERSON SHAPIRO: Thank you,
2 Jackie. Mr. Wyatt, can I ask that you come to the table?
3 There's a glare and I just can't see anybody at that podium.
4 And I don't know if the other Commissioners are having the
5 same problem or not, but it's just easier to talk with you.

6 MR. WYATT: Sure.

7 COMMISSION CHAIRPERSON SHAPIRO: I would suggest
8 we jump into the first issue and my guess is that we may
9 need TOC to join you. Can we find out what the -- and Jack,
10 whoever wants to come forward to --

11 MR. WYATT: Euale Wyatt, E-u-a-l-e W-y-a-t-t, with
12 Park. We have a different of opinion on two items in the
13 proposed agreement. One has to do with the minimum number
14 of horses in an overnight stay, in which we must run -- it's
15 obligatory that we run a race.

16 Previously, it has been -- the number has been
17 six. TOC wants to eliminate the number, period, and
18 requests that we seek their approval before we can cancel
19 any overnight stake, regardless if another horse is in it.

20 We have some sympathy with that position. We
21 understand the importance of giving good horses an
22 opportunity to run. We have countered with a proposal that
23 the number be reduced from six to five. That doesn't mean
24 that, you know, if there was an exception for a horse race,
25 that we wouldn't consider running it. And that's where we

1 are, now.

2 And there is, also, in the track covenant portion
3 of the agreement, TOC has proposed that -- it presently
4 reads that during the term of the agreement, which is the
5 race meeting, that we will recognize TOC as the
6 representative of the horsemen, you know, according to the
7 statute. They are proposing to insert the word "during the
8 course of the agreement and thereafter." In our view,
9 "thereafter" means forever and that's a little bit onerous
10 to us.

11 All of that being said, we are willing to submit
12 both of those differences of opinion to the Board for
13 binding arbitration.

14 MR. LIEBAU: I would suggest, too, that as far as
15 the --

16 COMMISSION CHAIRPERSON SHAPIRO: Hold on. You're
17 on, but before we go forward, we are once again faced with
18 an application that needs to be addressed, and with an issue
19 that is disputed. And I don't think the Board wants to be
20 in this position to where, and as I recall, the last time I
21 think we had to call, and I don't even remember what
22 the -- I think it was the State's schedule, or something.
23 That we had to call a special meeting of the Board.

24 And I think that it puts us in a bad spot. It's
25 clearly putting you, everybody in a bad spot.

1 So my first question is, do you believe, and I see
2 Drew is standing at the podium, as well, do you believe that
3 you've exhausted your ability to resolve this amongst
4 yourselves?

5 MR. LIEBAU: I think we probably have, and I would
6 suggest that in order to handle this quickly, that we just
7 each submit a white paper as to our position, and you
8 appoint one or two Commissioners, and they decide what's to
9 be. And that's perfectly okay with us, and it's a way of
10 getting this done quickly and not having to have any special
11 meeting, or to have any sort of mediation or anything like
12 that, it's just strictly binding arbitration. And then,
13 whatever decision is made, we're more than willing to live
14 with.

15 COMMISSION CHAIRPERSON SHAPIRO: Do you feel,
16 though, as we're hearing this application, if we heard the
17 issues right now, and the full Board heard those issues, and
18 we simply made a motion of what to incorporate there, would
19 both parties be willing to just let us hear it right now, so
20 that we don't even have to go to the extent of your
21 submitting a white paper. I mean, the issues, as I
22 understand them, the second one is rather simple in terms of
23 should the word "thereafter," be incorporated or could it be
24 modified until the next license application, so it's not
25 infinitum.

1 And on the other one, if we heard what the issue
2 is and the Board rendered an opinion on that, would both
3 parties be willing to accept the position of the Board,
4 today?

5 MR. LIEBAU: Well, I think we would, it's just a
6 matter of how much time would be consumed and whether it
7 would be much easier, even if the Chairman acted as the sole
8 arbitrator. I mean, I don't have any problem with that one
9 way or the other, or pick one Commissioner. Whatever is
10 your pleasure, I guess is what I'm saying.

11 COMMISSIONER HARRIS: I think we could just take a
12 vote on it. I mean, it's not going to dramatically change
13 the shape of racing whichever way we go on either of these.
14 It's just better to get the darn thing done.

15 COMMISSION CHAIRPERSON SHAPIRO: Well, that's
16 where I'm headed. What I don't really want to do is I don't
17 want to see us put into the positions that, unfortunately,
18 we have been put in before, where there is a dispute, we're
19 dealing with an application, and we're then forced where
20 everybody moves forward in an unknown. And I would like to
21 resolve it.

22 I would like to give it a try, that if we could
23 hear your position on it, we hear TOC's position, and I need
24 to hear from the TOC whether they would be willing to accept
25 this idea, and all the Commissioners could hear on it, and

1 we simply -- somebody can make a motion from the Board as to
2 either which way, and it can either pass, and somebody can
3 make another motion.

4 But to TOC, Drew, would you be willing to move in
5 that direction or do you feel the need that your case needs
6 to be presented in a white paper?

7 MR. COUTO: Drew Couto, Thoroughbred Owners of
8 California.

9 First of all, I'd recharacterize the issues a
10 little bit from what's been characterized up to this point.

11 COMMISSIONER HARRIS: Well, I think we've got to
12 first decide if we want to do it. There's no use having
13 this big debate and then --

14 COMMISSION CHAIRPERSON SHAPIRO: Well, first,
15 yeah, I don't think we're going to get into the issues, as
16 much as do you think, in terms of dispute resolution, it's
17 possible, given your knowledge of these issues, that we
18 could hear what the differences are and would you be willing
19 to leave it to us today, to make a decision, or would you
20 prefer that either the Chairman, or two members, or three
21 members make a decision for you, or do we need --

22 MR. COUTO: I'm uncomfortable. Just in all
23 candor, I'm uncomfortable. There's a process that exists
24 when you have a dispute in a Horseman's agreement, which is
25 that it is typically heard by the Peri-Mutuel and Licensing

1 Committee. So I'm a bit uncomfortable standing up here and
2 trying to figure out, in the last 45 seconds, if it's better
3 to have the issue decided today or follow the process that's
4 been in place forever.

5 I disagree with Mr. -- I want to say this and,
6 hopefully, can say it without interruption. I disagree with
7 Mr. Liebau's characterization that these issues can't be
8 worked out. And I'll remind Mr. Shapiro, the last time we
9 had that difference of opinion the stakes issue it was
10 resolved without the need of having a committee. I believe
11 you noticed the committee hearing and it was resolved before
12 the committee ever convened.

13 So, you know, I don't share --

14 COMMISSION CHAIRPERSON SHAPIRO: I believe I was
15 the one that resolved it.

16 MR. COUTO: I agree you made some phone calls, but
17 the point was we didn't have a committee meeting. There
18 were some phone calls made and a position was changed.

19 In this particular thing, you know, I have faith
20 that we're going to be able to work it out. But standing
21 here, with 30 seconds to make that decision, I'm not
22 comfortable.

23 COMMISSIONER HARRIS: Well, it seems like the
24 issues are fairly straight forward. My concern is that
25 you've had a long time to negotiate this and, apparently,

1 they got to an impasse, which was unfortunate. I don't
2 think we went to encourage impasses, if this happens. But
3 if this happens, I think we need to get the darn thing done.
4 They've got their marketing plans, and all these things to
5 go, and be good to walk out of here and say, look, you've
6 got your application and this is what we decided.

7 COMMISSION CHAIRPERSON SHAPIRO: All right, let me
8 go a different direction. Is it possible, then, why don't
9 we carry over these two license applications towards the end
10 of the meeting. Do you feel that the parties could be able
11 to go outside and try to work this out amongst yourselves,
12 so that we don't have to hear it?

13 MR. COUTO: Yeah, I think that's possible.

14 COMMISSION CHAIRPERSON SHAPIRO: Mr. Liebau?

15 MR. LIEBAU: I'm fine.

16 COMMISSION CHAIRPERSON SHAPIRO: Fine.

17 COMMISSIONER HARRIS: Because just to clarify, the
18 issue on the entry, number of entries in overnight stakes,
19 the Hollywood Park position is that they want, if they've
20 got five entries, they would make the race go.

21 The TOC position is that it's immaterial how many
22 entries you have, you've got to make it go.

23 MR. COUTO: No.

24 MR. LIEBAU: You have to get the consent from the
25 TOC.

1 MR. COUTO: If I can state the TOC's position,
2 rather than have Mr. Liebau do it, I think we might have a
3 clearer understanding of where we are.

4 With regard to all stakes races in the State of
5 California, each contract with the racing association says
6 that there should be no stake canceled without the consent
7 of TOC. And we do that because we're trying to protect
8 those individuals who go out and buy those horses, that type
9 of horses and target advertised, published races that these
10 stakes are going to occur.

11 What we've found is Northern California and
12 Southern California shifting what were traditional stakes to
13 the overnight stakes, with the idea that they can be
14 canceled at the time of entry, if there are not enough
15 entries. And we feel that's unfair to those people who
16 target those races, and unfair to those owners who buy those
17 horses, and it sends the wrong message, particularly to
18 owners in Northern California, who continue to make
19 investments in new horses. That the races they intend to
20 run in may or may not go, and that's up to the complete
21 effectiveness of the racing office, alone.

22 And what we have said is with all other stakes
23 races in this State, you need the consent of TOC to cancel
24 that race, and we're going to extend that to overnight
25 stakes as well, particularly given that they are advertising

1 these stakes well in advance as part of their stakes
2 schedule. That's the issue.

3 COMMISSION CHAIRPERSON SHAPIRO: I mean, that
4 sounds reasonable to me, that if a race is advertised and
5 owners and trainers are pointing at it, is your -- is
6 Hollywood Park's position that if the entries fall below a
7 certain number, you want the ability to cancel those races?

8 MR. LIEBAU: Overnight stakes are just like any
9 other overnight race that's in the book. If you have nine
10 winners, and one in the book, certain owners are going for
11 that race, too, and if it doesn't fill, it doesn't go. And
12 that's the way it's been, it's that way in every race meet
13 agreement that I've ever seen, that overnight stakes are
14 clearly treated the same as overnights and, in fact, it
15 specifically says that in the agreements that we've had in
16 the past.

17 MR. COUTO: You know, one thing about this
18 business is it's evolving. And when the original language
19 was in place, that Mr. Liebau refers to, overnight stakes
20 were a different type of beast. They were largely a
21 classified allowance that carried slightly more, so that the
22 horsemen who participated in that, horses who participated
23 in that had the chance of getting black typed.

24 Today, the overnight stake is really the hybrid
25 here, in California, it's not what it used to be. It's an

1 advertised stake, it's not part -- simply two weeks in the
2 condition book, advertised in advance. It's part of a
3 stakes schedule advertised throughout the year. The purses
4 are substantially more. And the people who target those
5 races are entitled to run in those races, unless there's
6 good reason not to do it.

7 What we're saying is that race -- it's not that
8 that race cannot be canceled, it's simply that they have to
9 do, as they do with other stakes, work in consultation and
10 concurrence with TOC. We don't believe that's unreasonable,
11 given the --

12 MR. LIEBAU: I think at this point in time we do
13 have three racing secretaries, if they haven't already left
14 to go get some lunch here, and maybe they'd like to speak to
15 it, because this is going to be precedence setting.

16 COMMISSION CHAIRPERSON SHAPIRO: Can I just
17 ask --

18 MR. LIEBAU: Certainly, the rule's going to be the
19 same for Hollywood Park, as Santa Anita and Del Mar.

20 COMMISSION CHAIRPERSON SHAPIRO: Can I just ask
21 another question, though? On page 4-5 through 4-7 there's a
22 list of the stakes schedule. Are the races that we're
23 talking about, those races that are on 4-7, which are the
24 BienBien Stakes, the Hermosa Beach, the Audrey S. Kemis, the
25 OnTrust, and the Cat's Cradle, are those the races we're

1 talking about?

2 MR. WYATT: They are.

3 MR. LIEBAU: Except for the --

4 MR. WYATT: And we have also proposed that the --
5 in the spirit of compromise, that the OnTrust and the Cat's
6 Cradle are races that we could not cancel without TOC's
7 permission.

8 COMMISSION CHAIRPERSON SHAPIRO: Okay, so we're
9 talking about three races.

10 MR. WYATT: That's correct.

11 COMMISSION CHAIRPERSON SHAPIRO: Okay. On your
12 calendar and dates that you advertise, are you listing those
13 races as stakes races to be offered at Hollywood Park?

14 MR. WYATT: We are.

15 MR. LIEBAU: Well, overnights.

16 COMMISSION CHAIRPERSON SHAPIRO: Well, whether
17 they're overnight or they're not overnight, when you put out
18 advertisements, and things like that --

19 MR. WYATT: We are, but we certainly do not have
20 to. But we are and I think that, you know, in the spirit of
21 fairness that it's fair that they're advertised. But the
22 point goes to -- this is no reflection on anybody or
23 anything. I do recall that the ability to cancel pure
24 stakes races is not ours, we have to ask permission and we
25 need to get permission from TOC to do that.

1 And my only experience in doing that was in the
2 fall meeting, sometime in the early nineties we had a one-
3 horse race, and we asked permission to cancel the race and
4 it was denied, so we had a walkover.

5 And I don't belittle or demean anybody's desire to
6 have good horses run, and I think they deserve every
7 opportunity that we can give them, but there is a line
8 someplace, depending on the quality of the race, the number
9 of horses in the race, that the public needs to be protected
10 and needs to be thought of. They are, after all, where the
11 money comes from.

12 COMMISSIONER HARRIS: I think, also, that the
13 other owners, even though TOC represents them, I think are
14 damaged when you have a race that is a poor betting race it
15 doesn't generate very much purse money at all. But so if
16 that purse money is paid out, it creates a disparate
17 situation for the other owners that are not in that race.

18 MR. LIEBAU: And also, you know, the ability to
19 call a race an overnight stakes race helps the breeder,
20 because of the ability to get black type. And for many
21 reasons, a lot of allowance races that we go with conditions
22 are now called overnight stakes races. And I think the
23 tracks should continue to have incentive to --

24 COMMISSIONER HARRIS: That's one reason I think
25 the breeders would be concerned. That I'd like to see the

1 overnight stakes program expanded, and if we make it too
2 restrictive, there would be a chance that tracks would say,
3 well, let's not even have overnight stakes because we don't
4 have the --

5 MR. LIEBAU: We won't advertise them.

6 MR. COUTO: Mr. Harris, I would agree that you
7 would like to see the overnight stakes expanded because the
8 Cal breders obviously get the bonus. We're aware of that,
9 that's why we've supported them, as well, let's be honest
10 about that.

11 But the way in which you phrased the question that
12 there are other owners that are damaged by having a race go
13 with a poor field suggests that TOC isn't capable of
14 determining when we're protecting owners by canceling a race
15 with a bad field, concurring with the decision of
16 management.

17 I can tell you that, I think it was a year or two
18 ago, when we were contacted by the racing office here, at
19 Fairplex, that they had a stake in which they only had two
20 entries. We agree to the cancellation of that race because
21 it wasn't going to be a prudent use of purse funds, it
22 wasn't the type of stakes that horses -- this was the only
23 opportunity they were going to get to run in. We made a
24 sound decision and we will make sound decisions going
25 forward, when it is appropriate to cancel a stake and when

1 it's appropriate to protect owners in the race, or those
2 owners not with a horse in the race.

3 But again, you know, we have this authority and we
4 have this right with regard to all other stakes, and it
5 seems artificial -- given the way in which these stakes are
6 done, it seems artificial to say you can be consented to on
7 all these other -- you can have consent rights on all these
8 other stakes, but on these particular few, which are very
9 few, we're not going to give them to you. It just doesn't
10 make sense to do that.

11 COMMISSIONER MOSS: Can I just say, Mr. Chairman,
12 I don't know if this is in our realm, to tell you the truth,
13 however well intentioned we may be. I think, you know, TOC,
14 Hollywood Park, they're close to resolving this and I think
15 it's in their purview to do that. You know, I don't know if
16 we can provide, you know, any involvement in this.

17 COMMISSIONER HARRIS: Yeah, I think they aren't,
18 though. I think we need to decide it for them, somehow.

19 COMMISSION CHAIRPERSON SHAPIRO: I'm concerned
20 that what I don't want to do is we have an application in
21 front of us. I don't want to leave a loose end, that is
22 untied, as we have done and paid the price for it in the
23 past. We've done it on ADW matters, we've done it on the
24 stakes schedule matter.

25 If the parties think they can bring it to

1 resolution amongst themselves, I'm all for that. But on the
2 other hand, if I understand the issue, we're talking about
3 three races out of 310 races. I think it does go to the
4 issue as to that there are three quality races, for young
5 horses, and what I have heard from members of this Board is
6 that they want to encourage that those races go, even if
7 they don't get a full complement of entries.

8 So I understand both points. I would like to
9 resolve this and, therefore, what my inclination would be is
10 to move this to the back of the agenda and see if the
11 parties can come forth.

12 Otherwise, I would suggest that this Board try to
13 resolve this matter in some way, so that there is not
14 uncertainty left. It just keeps biting us in the butt every
15 time we do that.

16 COMMISSIONER HARRIS: Yeah. But I think the
17 bigger issue, probably, is going forward, too. I mean,
18 these are kind of minor issues. But it's what's going to
19 happen at Santa Anita, because they're going to have a lot
20 bigger issue on their overnight stakes and we need to --

21 COMMISSION CHAIRPERSON SHAPIRO: Well, again,
22 going back to our prior discussion, what I heard, what I
23 thought I was hearing was that we want to provide racing
24 opportunity for young horses, that they can count on that
25 there's going to be races.

1 COMMISSIONER MOSS: All right, so we can say that
2 we're overly in favor of the TOC position. I'm just saying
3 that --

4 COMMISSION CHAIRPERSON SHAPIRO: I'm not saying
5 that.

6 COMMISSIONER MOSS: Well, but that's the point is.
7 The point is why are we becoming in this, that's the
8 question I have.

9 COMMISSIONER HARRIS: Well, there's got to be a
10 Horseman's agreement and there's not one.

11 COMMISSIONER MOSS: Yeah, I'm an owner and I would
12 see these races exist, but that's not a fair position for me
13 to take if you're in the midst of the negotiations, that's
14 the way I feel about it.

15 MR. LIEBAU: In any event, since you've heard so
16 much on this issue, why don't you let the racing secretaries
17 take three or four minutes and see what they say? Now, I'll
18 rely on the racing secretaries.

19 COMMISSION CHAIRPERSON SHAPIRO: That's fine.

20 MR. LIEBAU: So why don't we do that right now.

21 COMMISSION CHAIRPERSON SHAPIRO: Well, first of
22 all, unfortunately, I think we need both sides to agree, as
23 I've just been reminded by our DAG, that we do need for both
24 sides to agree for us to do this.

25 MR. LIEBAU: I so agree.

1 COMMISSION CHAIRPERSON SHAPIRO: You agree. I
2 heard that and I appreciate that.

3 If TOC is willing to agree, then we will hear it.
4 If not, again, I would encourage that we defer this so that
5 the racing secretaries and TOC can meet on this, and we'll
6 hear the application, because I want to approve your
7 applications today and there not be a loose end.

8 MR. PANZA: If I may, Martin Panza, Racing
9 Secretary, Hollywood Park. We were given this about three
10 weeks ago, us being Hollywood Park, and so we've,
11 internally, been able to discuss this for a few weeks. But
12 this is a statewide problem, or it needs to be addressed by
13 Santa Anita and Del Mar, it affects all of us, not just
14 Hollywood Park. And I wish that this has been brought up at
15 a different forum, where the secretaries could have talked
16 about this, first.

17 The reason why I have overnight stakes on my
18 schedule is because I may not be able to afford to have a
19 hundred-thousand-dollar stake for that group of horses, so
20 we provide an overnight stake so at least there's an
21 opportunity for those horses to run.

22 During the spring meet I may add some additional
23 overnight stakes because there may be an abundance of horses
24 in some category that allows me to write more races, or it
25 may be fillies and mares, allowance fillies that cannot --

1 we can't fill the races, so you go ahead and you try and
2 hang one, hoping that the black type will give incentive for
3 people to enter it.

4 If you put restrictions here, you tie my hands.
5 Because, guess what, if I have to use it with two or three
6 horses, I'm not going to write it, and I don't think that's
7 what you want to have happen.

8 And so here's an instance where I really think you
9 guys need to let us do our jobs. I don't think it's a
10 problem. I think in all the years I've been at Hollywood
11 Park I've canceled one overnight stake, and that's because
12 we had two horses to enter, and that was a two-year-old
13 race.

14 COMMISSIONER AMERMAN: I'd like to touch on that
15 point. How many times has this occurred? Maybe you're
16 telling this for my benefit, but --

17 MR. PANZA: Very few. And I think this last
18 winter, at Santa Anita, I think there was an overnight stake
19 where a TOC chairman had a horse in there, or a TOC Board
20 member, and it became a huge mess and it hit the form. And
21 there's a reason why we can't own horses. There's a reason
22 why 1584's on the book, because the integrity comes into
23 play. I get to choose which race goes, not an owner. And
24 it's no good when you put the TOC in a position of one of
25 their members having a horse in a race and then coming to us

1 and saying, well, you've got to use the race.

2 All owners should be equal, leave it up to us.

3 COMMISSION CHAIRPERSON SHAPIRO: Absolutely.

4 MR. PANZA: And don't tie our hands. Because,
5 like I said, there are some categories that we can barely
6 get to fill. And if there's rules put in place that say I
7 have to use that race, I'm going to be afraid, and I think
8 all these secretaries are, to even write that race, and
9 that's no good for any of us.

10 COMMISSIONER AMERMAN: Mr. Chairman, I'm violently
11 in agreement that we should allow these people to do their
12 job, and get together and find a resolution on it.
13 Otherwise, it's going to be a lasting thing that's going to
14 continue on, and we're going to be thrown into the middle of
15 them, and I don't think we should be in it.

16 COMMISSIONER BIANCO: Jack, with the additional
17 losses of inventory that we're going to have hearing that,
18 you know, Hollywood Park has added stalls, right, do you
19 think this is going to be a problem?

20 MR. LIEBAU: I really don't know. I mean, I don't
21 have a feel for that. Martin would have a better feel for
22 that.

23 But I think I have to tell you that I think this
24 is a racing secretary issue. I know that Martin polled the
25 racing secretaries, or at least pursuant to my suggestion,

1 and I understood that there was sort of an uproar on it. I
2 have to tell you that I'm here backing the racing
3 secretaries. If the racing secretaries want to concede this
4 issue, I'm not standing up here taking the bullets, I'll
5 tell you that. So, I mean, it's a racing secretary issue.

6 COMMISSION CHAIRPERSON SHAPIRO: So perhaps the
7 other racing secretaries, I would like to see -- Mr.
8 Harlow's here, Mr. Robbins, I don't know if he's still out
9 there, and whoever else is here.

10 MR. HAMMERLE: I'm Rick Hammerle.

11 COMMISSION CHAIRPERSON SHAPIRO: Mr. Hammerle,
12 you're standing there.

13 MR. COUTO: I'd like to jump in real fast and say
14 something about this, and I'd like to caution my racing
15 colleagues of polling one another and discussing what the
16 terms of the contract should be together, without TOC
17 present. That's anti-trust. They cannot get together and
18 work on the terms of the race meet agreement together.

19 COMMISSION CHAIRPERSON SHAPIRO: Mr. Couto, I
20 didn't hear that they were working together on the
21 terms --

22 MR. COUTO: Well, what -- when they poll
23 each --

24 COMMISSION CHAIRPERSON SHAPIRO: Wait, let me
25 finish. Let me finish. I didn't hear that they were

1 working to conspire on what the terms of this agreement
2 were, what I heard was that they were discussing an issue
3 that would affect, could affect all racing associations, and
4 getting input from other racing secretaries, so that they
5 were making a decision that would be to the benefit of
6 racing. I really think that's a stretch.

7 MR. COUTO: And that's the type of discussion, if
8 they have, they typically have with us in the room so that
9 it is not a violation. We do this on a regular basis. And
10 so I just caution everybody, when they all get together and
11 decide what the policy should be and stand up here, it's a
12 dangerous precedent that I don't think the Horse Racing
13 Board should be encouraging.

14 COMMISSION CHAIRPERSON SHAPIRO: Thank you.
15 Mr. Hammerle, do you have an opinion on this issue?

16 MR. HAMMERLE: For the record, I made some notes
17 about five minutes ago, when I heard this come up.

18 COMMISSION CHAIRPERSON SHAPIRO: Thank you.

19 MR. HAMMERLE: We did not meet out in the hall. I
20 just want, for the record, to correct something or make
21 something clear as far as the overnight stake programs
22 around the country. They're not unique to California.
23 I've, myself, worked in the State of New Jersey for 11
24 years, at Monmouth Park, in the Meadowlands, where our stake
25 program had 65 to 70 races on it and of those at least 40 of

1 them were overnight stakes that we prepared for each track.
2 I know that because I was responsible for filling most of
3 them. And they are different than scheduled stakes.

4 And I will tell you, the same feeling was there as
5 it is there. If we didn't make one of those, it was a big
6 deal. We go out of our way to make these things because we
7 know the quirks of them. Most of them are preps for our
8 major races or they fill gaps where maybe where an allowance
9 race might go, as you've suggested. We call them stakes, we
10 have a nomination fee, and that boosts their chance to go.

11 What has happened here in California, I think over
12 the last few years I've noticed more, which I know more that
13 I'm doing, is rather than waiting for that spot to come up
14 in the condition book where maybe you know you're going to
15 write one, and we've just waited and put it in the book as
16 it went along, we're starting to advertise them ahead of
17 time a little bit more. And the reason we're doing that is
18 so the owners and trainers can see where they are and,
19 hence, they'll go more.

20 In discussing the fact of making them go, I really
21 cannot think in the last five years, three, four, five years
22 of one, specifically, that has not gone. And if one has not
23 gone on that day, that we have not brought it back
24 subsequently, in a couple days, or a week, depending on the
25 weather, to make it go -- and speaking of weather, at our

1 meet at Santa Anita, when we race during the rainy season,
2 if we have an overnight stake that's on the turf, and it's
3 raining, and it's going to rain, I mean, I don't believe
4 because five horses enter that stake to run on the turf,
5 that we're not going to run on the turf, that we need to be
6 obligated to use that race. I'm not going to go over all
7 the reasons that Martin did because he did a good job doing
8 that, but I'm going to mirror that by saying, you know,
9 there are certain things that need to be left to our
10 discretion, that's what we get paid to do is to make those
11 decisions, to use or not use those races, and when to use
12 them. And this is a major one.

13 And it also goes along, dovetails with the
14 allowance races. Those allowance races we put in there, we
15 want to make them, and the stakes are even more important.
16 So I think we need the opportunity to, you know, use our
17 judgment and use those, and not have a set number when they
18 need to go.

19 COMMISSION CHAIRPERSON SHAPIRO: Okay. Are there
20 any other racing secretaries in the room that choose to
21 render an opinion on this?

22 Okay. Well, what I again will do is I would
23 suggest that we defer hearing this application and the Bay
24 Meadows application, because I believe there's the similar
25 issue with that application, and see if the parties can't

1 meet. We're going to take a lunch break very shortly,
2 perhaps they can get together over lunch and see if they
3 can't bring closure to this.

4 If that's acceptable to the rest of the Board?

5 COMMISSIONER AMERMAN: Absolutely.

6 COMMISSIONER MOSS: Yeah.

7 COMMISSIONER HARRIS: Yeah. Well, one issue that
8 might somewhat help it, I notice in the first day of the
9 meet you have the BienBien Stakes, who is a turf horse and
10 it's a turf stakes. I think it would be a good idea if you
11 kicked off your synthetic track with some race on a
12 synthetic track, maybe you could get some super-charge money
13 to do it and, I don't know, tie it into some marketing plan
14 that you might have, like maybe other parts of synthetics
15 that people use, maybe the Dolly Parton Stakes, or something
16 like that, to really kick off the meet.

17 COMMISSION CHAIRPERSON SHAPIRO: Okay, moving
18 right along with that one.

19 (Laughter.)

20 COMMISSION CHAIRPERSON SHAPIRO: Okay. We're
21 going to -- we'll do a report on the Strategic Planning
22 Committee, and that would be me.

23 Yesterday, the Strategic Planning and Dates
24 Committee met. Commissioner Amerman, Commissioner Moretti
25 and I were all present, as were, I'm assuming, a lot of you.

1 Initially, I asked to see if there was any
2 revisions, modifications, or suggestions from the audience.
3 There were none forthcoming. I put forward a calendar,
4 which was a proposal for race dates for 2007. Yesterday's
5 meeting was to discuss 2007, primarily because it's our
6 intent to bring to this Board a calendar for adoption at the
7 next Board meeting, next month.

8 There was considerable discussion, considerable
9 upset, and concern over the proposed calendar. At the
10 conclusion of that meeting we invited everybody, who wishes
11 to tinker with the calendar, or come up with other ideas, to
12 do so, such that we will meet again the week, I think, of
13 the 11th of October. We will then schedule another
14 Strategic Planning meeting.

15 The idea behind the calendar was to look to reduce
16 certain number of dates, particularly in the north, where
17 we've had a historical shortage of field size and horses,
18 trying to address weather conditions that contribute to
19 that.

20 We're also trying to look at and ask our fair
21 partners that they look at creative ways to contribute more
22 to the racing business by conducting one combined fair
23 meeting.

24 We've blocked out a period of dates for them, so
25 that they could meet amongst themselves and come forward

1 with a way to utilize those dates, so that they would be
2 able to contribute more money to horse racing, provide more
3 racing opportunity.

4 I will tell you, after the meeting I heard
5 considerable upset from some of the fair partners and I,
6 therefore, want to take advantage of this opportunity to
7 once again encourage them that it is not our desire to
8 dictate to them where they will run and how they will run
9 but, rather, that we ask them to come forward with a plan.

10 While we have some very good things going on,
11 especially with the engineered or synthetic surfaces coming,
12 we need to improve our fair network such that the fairs can
13 become a more vital and integrated role into the success of
14 California horse racing.

15 So I again reiterate that nothing was set in stone
16 yesterday, but I believe that this Board, or a number of
17 members of this Board, are desirous of making changes that
18 will improve California horse racing. We wish to work with
19 everybody, but it is critical that we stop talking and start
20 doing.

21 Commissioner Amerman, I don't know if you wish to
22 add anything to the meeting?

23 COMMISSIONER AMERMAN: I think you've covered
24 things extremely well. I do think that what we tried to
25 point out was that if we go back to what is comfortable in

1 race dates, which essentially would be what we're doing at
2 the present time, clearly, we know what's going to happen,
3 things will continue to drift on down.

4 So, therefore, I think what was attempted to be
5 done yesterday was to put out a calendar that had been well
6 thought out, we hope, and if we had -- we asked at the
7 beginning of the meeting, I think as the Chairman said, for
8 ideas. There were nobody that came up. I can understand
9 that.

10 So, obviously, it was an attempt to put a plan out
11 there, to which everyone can begin to put their thinking
12 into it. And we welcome the input of everybody. There's
13 been a lot of hard work put into that calendar. And we
14 don't say we have all the magic answers. But between all of
15 us, I do think we can come up with a better calendar than we
16 have at the present time. Because if we continue to stay
17 where we are, we clearly will continue to drift down.

18 COMMISSIONER HARRIS: Is there a calendar
19 available that we can get distributed and look at?

20 COMMISSION CHAIRPERSON SHAPIRO: Yes, and we'll
21 make that available.

22 COMMISSIONER HARRIS: Because I'm a little
23 concerned on the fairs in the north, I think there's some
24 adjustments that might be made. But I need to see dramatic
25 adjustments before '07, this quick, without working on it

1 some, because the fairs have got scheduling issues and
2 they've got a lot of different things, and I think they are
3 a vital part of the Northern California racing, and they're
4 really attracting more people than a lot of the major
5 tracks.

6 And the same way with the major tracks, too, I
7 think, you know, I'd like to see some streamlining of the
8 dates. But I'd like to get more of an experiment done to
9 see, you know, if we move things a little bit what do we see
10 happen, rather than move things a lot and see what happens.

11 COMMISSION CHAIRPERSON SHAPIRO: We'll make that
12 calendar available to the other Commissioners. And, again,
13 this matter will come up before the Board, where the full
14 Board can provide input and be part of the decision-making
15 process of what is ultimately done.

16 All right. With that, I think we ought to adjourn
17 for lunch. Again, thanks to Mr. Henwood and Fairplex Park,
18 I believe that they have some food for us. They have racing
19 forms, and programs, and pick-six tickets, and a pari-mutuel
20 machine. The pick-six is nearly \$1 million, with the
21 carryover, so enjoy.

22 Why don't we reconvene at -- is 45 minutes enough
23 for everybody or do we need an hour?

24 COMMISSIONER HARRIS: Yeah, 45.

25 COMMISSION CHAIRPERSON SHAPIRO: Okay, 45 minutes.

1 We'll reconvene at one o'clock, but stay tuned that maybe
2 there's a resolution.

3 MR. COUTO: There's a resolution.

4 COMMISSION CHAIRPERSON SHAPIRO: There's a
5 resolution?

6 MR. COUTO: There's a resolution.

7 COMMISSION CHAIRPERSON SHAPIRO: Now, how goddam
8 easy was that.

9 MR. COUTO: Well, didn't I tell you we just needed
10 time.

11 COMMISSION CHAIRPERSON SHAPIRO: Fine. Go break
12 bread, and we'll come back, and we'll deal with your
13 applications and resolve them. Thank you.

14 (Thereupon, the luncheon recess was
15 held.)

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1 I think that's correct, isn't it, Drew?

2 MR. COUTO: It is correct.

3 COMMISSION CHAIRPERSON SHAPIRO: Okay, that would
4 appear acceptable to you. I have a hunch it will be
5 acceptable to this Board.

6 And on the other matter, which is the contract
7 language?

8 MR. WYATT: We have taken your suggestion, I
9 believe, and it will be until the next license application.
10 I believe that's what you suggested.

11 COMMISSION CHAIRPERSON SHAPIRO: That is what I
12 suggested. Okay, great.

13 Then if that's the case, we have before us the
14 Hollywood Park license application. I'd like to ask, given
15 that you have cushion track and looking at your projections
16 for average daily purses, can you tell me what assumptions
17 went into that in terms of are you -- what size purse
18 increase are you projecting for this year?

19 MR. WYATT: Well, let me try to answer the
20 question this way, it has been our practice or the practice
21 to make what I would call reasonably conservative estimates
22 on what purses will be generated at a race meet. I think
23 part of that stems from the fact that a few years ago, and
24 Drew can correct me here, there were purse cuts at two or
25 three consecutive race meetings.

1 And a purse cut is -- not only does it detract
2 from the race meeting at which the purse cut takes place,
3 purses are generally -- well, not generally. They are cut
4 because of an over-estimation of what's going to be
5 generated, and the race meet generally ends up with a large
6 overpayment, which is also debilitating to subsequent race
7 meetings.

8 So I think it's fair to say that TOC and the
9 tracks have tried to be reasonable, but err on the side of
10 conservatism.

11 COMMISSION CHAIRPERSON SHAPIRO: I used purse as
12 an example, but let me ask the question a different way.
13 Given what you're seeing the reaction and the excitement
14 revolving around your fall meeting, what type of increases
15 do you think is realistic, that we might look forward to, in
16 terms of this meeting in 2006 versus 2005, and clearly 2005
17 was hampered because of the turf course. So what are your
18 expectations and your hopes?

19 MR. WYATT: Well, not to evade your question, but
20 the purses generated at last year's meeting, with the
21 assistance of four days of just simulcasting, where purses
22 did not have to be paid, the purses generated were quite
23 similar, on a per-day basis, of the 2004. We are --
24 currently, when we apply for a license, we have generally a
25 purse increase of about \$10,000 a day.

1 Now, that purse projection, and again I tell you
2 it is a reasonably conservative estimate, well before this
3 poly track was installed. Certainly, it was in the process
4 of being installed. Now that it is in and now that we have
5 been, at least in the short term, well pleased, and
6 everybody seems to be well pleased, and all indications are
7 that it will do all of the things that we hoped it would do,
8 I think that, you know, you can say that our projection is
9 very conservative.

10 To put a number on where I think we might end up,
11 I mean, I don't know, I couldn't even guess.

12 COMMISSION CHAIRPERSON SHAPIRO: Well --

13 MR. LIEBAU: Whatever -- excuse me, Jack Liebau.
14 Whatever purses are generated are going to be distributed to
15 those that run. And the problem is that whenever you only
16 have a 30-day meet, you know, you're on the edge. And as
17 Euale said, you want to make sure that you don't get in an
18 over payment, not just because the track has to cover the
19 over payment, but the over payment adversely impacts the
20 next meet, too.

21 COMMISSION CHAIRPERSON SHAPIRO: Jack, I probably
22 phrased it wrong that I said purses. What I'm really trying
23 to get is forget purses. What are your expectations for the
24 meeting, in light of all the new and positive things that
25 are going on, forget purses.

1 MR. LIEBAU: All right.

2 COMMISSION CHAIRPERSON SHAPIRO: I'm trying to get
3 a feel of like what are your expectations? I mean, it
4 should be, I would think, very optimistic and very high.

5 MR. WYATT: I apologize, I misunderstood the
6 question and I apologize.

7 COMMISSION CHAIRPERSON SHAPIRO: Well, I started
8 with purses, so you can --

9 MR. WYATT: I would think that we are more excited
10 about this race meeting than any race meeting I think any of
11 us involved at Hollywood Park have looked forward to. I
12 mean, I think we look forward to this one with more
13 enthusiasm and more optimism than any one than we have in
14 the past.

15 You know, I'm sure you're going to ask some
16 questions about marketing here in a minute, and Mr. Ziegler
17 is going to --

18 COMMISSION CHAIRPERSON SHAPIRO: You're
19 telepathic.

20 MR. WYATT: -- is going to address those. And
21 he's going to tell you, I believe, that the \$8 million plus
22 that we spent on this track is our most major marketing
23 expenditure. And we think it is going to come back to us in
24 ways that we can't imagine. You've heard that Todd Fletcher
25 is coming out, and that you've heard that there are other

1 trainers and owners who are interested in coming. And not
2 just to Hollywood Park, but to California in the next year
3 or two.

4 This is a pretty exciting time. I think Mr.
5 Fravel said it, I think, better than I can. This is an
6 opportunity for us all and we are, hopefully, going to take
7 advantage of it.

8 COMMISSION CHAIRPERSON SHAPIRO: So let's go
9 there. How are you going to take advantage of it? I
10 appreciate and I don't minimize that a significant amount of
11 money was spent to improve the dirt track and, also, with
12 the improvement that you're making on your turf course,
13 which I think is exciting. Those are extremely, you know,
14 wonderful moves.

15 But how are you going to capitalize it in terms of
16 promoting it to the general public?

17 MR. WYATT: I think, Mr. Shapiro, that, you know,
18 to spend money and tell people that they should be at a race
19 track, when we have no product to offer them, has been a
20 waste. We now, hopefully, will have a product. And we will
21 get that word out, and Mr. Ziegler can address that.

22 And we think we are now going to have a product to
23 sell that we haven't had for probably 10 to 15 years.

24 MR. LIEBAU: I mean, the proof of the pudding's
25 going to be in the product, and there's no question about

1 that.

2 COMMISSION CHAIRPERSON SHAPIRO: Oh, Jack, I
3 agree.

4 MR. LIEBAU: And there's no question about that.
5 And, you know, you go to a restaurant and have a lousy meal,
6 you don't go back no matter what happens.

7 COMMISSION CHAIRPERSON SHAPIRO: Absolutely.
8 Okay, so now, Mr. Ziegler, you have a product. You finally
9 have something to really promote. So tell me, since you
10 didn't have something to promote before, and you spent how
11 much money promoting it?

12 MR. ZIEGLER: In last fall meet?

13 COMMISSION CHAIRPERSON SHAPIRO: Yeah.

14 MR. ZIEGLER: Around 470.

15 COMMISSION CHAIRPERSON SHAPIRO: Pardon me?

16 MR. ZIEGLER: \$470,000 in paid media.

17 COMMISSION CHAIRPERSON SHAPIRO: Okay. So now
18 you've got a product, how much are you going to spend and
19 what are you going to do?

20 MR. ZIEGLER: Mike Ziegler, from Hollywood Park.
21 We're increasing our marketing budget for media, from one
22 year to the next, about 30 percent from the get-go. Now,
23 paid media, as most of us in this room know, didn't
24 necessarily do a ton of good things for us, as exemplified
25 by the cash com line last spring.

1 We are making better efforts to utilize database
2 marketing and direct mail to put the message in front of
3 people that we're open for the fall meet, with new product.
4 The fans are aching for the new product, we're going to tell
5 them about it through more effective means of promotion.

6 An example, in the first week of the meet,
7 somebody who is a regular customer at Hollywood Park is
8 going to pay \$6 to see five days of racing. They're going
9 to have a coupon for free Wednesday. Every Thursday during
10 the fall meet's going to be free Thursday for a Gold Club
11 Member.

12 We're sending out passes for a free clubhouse
13 admission, free program, free form, and free parking on the
14 Friday before Breeder's Cup. We're actually going to ask
15 them to pay us to come out on Breeder's Cup. And when they
16 show up on Breeder's Cup, they're going to get a bounce-back
17 ticket to come back on Sunday.

18 So anybody who wants to come to the races, out of
19 a list of about 10,000 to 80,000 for the general admission
20 coupons, is coming for free the whole week.

21 I don't think anybody's doing that right now.

22 Moving from there, Friday night racing. We've got
23 two Friday nights during the meet. We're hiring popular
24 bands to play those two nights. We're calling them College
25 Nights, so I've hired campus reps on each of the five

1 universities in Southern California. Those people will hand
2 out free passes, and I'm going to bonus the guy who shows up
3 with the most amount of passes.

4 All I can do is give people free passes and tell
5 them to come see the music, drink the drink specials.

6 I've got promotions on pretty much nearly ever
7 Saturday during the meet. I'm giving away a sweatshirt, I'm
8 giving away a free fleece blanket. I've got mystery mutuel
9 vouchers. I'm giving away a snow globe right before
10 Christmas. I am doing a Hispanic Family Day and I'm doing
11 Snow Day for the community.

12 Every Wednesday is a free admission for -- or, I'm
13 sorry, a discounted admission for seniors. And like I said,
14 every Thursday is free for a Gold Club member.

15 We're doing a million dollar pick-six during the
16 Turf Festival which, as we all know in this room, we didn't
17 get to run last year. And we're going to have a mystery
18 mutuel voucher that's good for a grand prize at either
19 Northern California or Southern California participating
20 satellite locations.

21 We're on TV four out of the seven weeks, and
22 that's difficult this meet because of, you all know,
23 political campaigns are coming up at the first week of the
24 meet and we have to try and buy media in competition with
25 everybody who's running for political office.

1 I'm in print every single week, with full-page
2 color ads on the westside newspapers, and quarter-page ads
3 in the L.A. Times.

4 We're on radio every week, not only the racing
5 radio shows, but we're promoting some events with the Ticket
6 1050, and with FM stations who are corresponding to the
7 format of the bands that we hire for the Friday nights.

8 And we've got a lot of direct mail going out.
9 And, frankly, at the end of the day, we're going to be in
10 unpaid media, meaning asking Mike Mooney, on our publicity
11 department, to generate a lot of awareness of what's going
12 on, on the track.

13 Because, as everybody in this room knows, we're
14 the first track to have synthetic surface in Southern
15 California and we're looking forward to it.

16 COMMISSIONER AMERMAN: You know, the only issue
17 that I'd raise, and I looked through your marketing program
18 and I was very impressed with the promotional program and so
19 forth, but I'm not so sure that everyone knows what you have
20 going for you.

21 When you think about it, you've got more horses
22 coming there, they're going to be better horses. We've got
23 a synthetic track, a cushion track that is the best around,
24 by far.

25 You've got a new grass course, whether it will be

1 in or not, I don't know, but it's a plus.

2 You're working against a year ago that had a lot
3 of problems. It's a marketing man's dream, you've got
4 everything going for you.

5 And the only thing I would suggest to you, if I
6 could, is that you load it up front, because you don't have
7 the advantage of saying, Eureka, they all came to the park,
8 and then I can spend a little bit more behind it.

9 Sometimes, in marketing, you've got to take a
10 little bit of risk, and I think you've got to spend up front
11 to get people in and get the word of mouth around that this
12 is a terrific place to come to have fun, entertainment, and
13 good sport.

14 MR. ZIEGLER: The only thing I would say to that
15 is I absolutely agree with you, except I have that political
16 campaign two weeks going up against me and that --

17 COMMISSIONER AMERMAN: Well, yeah, but you're
18 innovative enough to figure ways around that.

19 MR. ZIEGLER: I'm giving away the first week to
20 anybody who wants to come.

21 COMMISSION CHAIRPERSON SHAPIRO: Mike, you know,
22 we might steal from our good friends at Santa Rosa, where
23 they did Toast to the Turf. You may do Toast to the Track,
24 or something and, you know --

25 MR. ZIEGLER: I think I'm going to do the Dolly

1 Parton Overnight Stakes, actually.

2 (Laughter.)

3 COMMISSION CHAIRPERSON SHAPIRO: Well, that's the
4 John Harris Dolly Parton Overnight Stakes.

5 COMMISSIONER HARRIS: Well, Commissioner Amerman
6 wants to change it to the Barbie Doll.

7 (Laughter.)

8 COMMISSION CHAIRPERSON SHAPIRO: Oh, very good,
9 John. The other thing is --

10 MR. ZIEGLER: The Barbie Doll giveaway day, I
11 think you're on to something.

12 COMMISSIONER AMERMAN: It might work.

13 MR. LIEBAU: One thing that I think, and maybe
14 Mr. Shapiro knows this, at times I have some sensitivity
15 about things that I shouldn't have, and yesterday --

16 COMMISSION CHAIRPERSON SHAPIRO: Really? What did
17 you say, Jack, I didn't -- could you repeat that, again?

18 MR. LIEBAU: That I might be overly sensitive at
19 times.

20 COMMISSION CHAIRPERSON SHAPIRO: Oh, okay.

21 MR. LIEBAU: And yesterday it seemed that I
22 perceived that there was sort of a feeling around that
23 maybe, you know, we hadn't done well in the past. And I
24 think, just to give you some historic perspective, and I'll
25 pass these out, are the CHRB reports for the last two meets

1 that have been held under our present management.

2 And at our first meet we were up 1.11 percent on
3 the average daily handle and on the second meet we were up
4 2.47 percent and that's, you know, overall.

5 And I think that we can do better, but we haven't
6 done a bad job as far as having two consecutive meets that
7 are up in handle. And I'm not too sure that everybody is
8 aware of that.

9 COMMISSIONER AMERMAN: From my perspective, I
10 think you've done fine, considering the circumstances. The
11 only point I was trying to make is you have an opportunity
12 in 2006, that's never been presented to another race track,
13 in my opinion.

14 MR. LIEBAU: We hope that we will make the best of
15 it. And, as we said, we're trying to go with loading that
16 first week to give everybody the biggest enticement that we
17 can, as far as having almost free admission.

18 COMMISSIONER HARRIS: Well, that's the thing, I
19 think we're all on the same page. It's just you've got such
20 an opportunity, as has been discussed, I think we'd like to
21 see a little more enthusiasm. I mean, all your employees
22 should be talking about it and this should be -- I mean,
23 there's so much potential for free media here.

24 COMMISSION CHAIRPERSON SHAPIRO: I mean, I read
25 that the Green Monkey may be coming to California. Now, you

1 know, have the Green Monkey Day or get them to say the --
2 have him gallop in front of the stands, come out and see the
3 most expensive horse in the world. You know, that kind of
4 stuff that will get you free press and generate excitement
5 on a new track.

6 COMMISSIONER AMERMAN: Mr. Ziegler, I think in
7 your presentation, which was excellent, you make the point
8 that your consumer and customer friendly, and I think you
9 can improve in those areas, from what we've seen in the
10 past. And I'd be interested in any thoughts you might have
11 that how you can do that or, if you don't have the thoughts,
12 maybe you can develop them.

13 MR. ZIEGLER: I think, from experience, it takes a
14 lot of management being out on the floor.

15 COMMISSIONER AMERMAN: Amen.

16 MR. ZIEGLER: And I think keeping our eyes open to
17 what's going on. And, frankly, taking suggestions from
18 customers and really delivering on their suggestions.

19 COMMISSION CHAIRPERSON SHAPIRO: If I can switch
20 to a different subject, can you explain who will be the
21 security officers for your graded stakes, on the
22 surveillance? At the last meeting in Del Mar, I raised the
23 issue about seeing if we couldn't get some of our existing
24 personnel, that are licensed, to fill that gap and I think
25 there was some overture, by some, that they would look into

1 that.

2 Have you looked into whether or not you can meet
3 with the unions and see if they can supply the people to
4 you, to fulfill that responsibility?

5 MR. WYATT: We are looking at several avenues.
6 George Hanes and I have been looking at several avenues. I
7 believe we discussed with Ingrid, but I don't believe that
8 we're going to be able to get all Teamster guards, enough of
9 them to -- that's the union that we have a security contract
10 with -- to do the job, so we are going to have to supplement
11 that.

12 We are exploring the possibility of making sure
13 that if we have to go outside, that the individuals who are
14 supplied to us are carrying a guard card that is issued by
15 the State of California.

16 We haven't come to any absolute conclusion, yet,
17 other than the fact that we are exploring those
18 possibilities.

19 COMMISSION CHAIRPERSON SHAPIRO: Okay. Well, I
20 appreciate your meeting with George and I think it would be
21 helpful to us if you'd keep us apprised, or at least let us
22 know if there's a way to do that. If the Teamster's can't
23 provide you with enough people, I understand that, but I
24 think that to the extent they can and there's an opportunity
25 to do that, it would be better for all parties concerned.

1 EXECUTIVE DIRECTOR FERMIN: I would just add that
2 I do have some samples, and we tried some different kinds of
3 cards that we could maybe issue, that Del Mar was helpful
4 with, and we can talk about those and what kind of a check
5 we need to put on those people in order to find out exactly
6 who we have and that they're appropriate for the job.

7 COMMISSION CHAIRPERSON SHAPIRO: Mr. Liebau, I
8 read that there was a note here that the audited financial
9 statements weren't yet available.

10 MR. LIEBAU: I think they've been sent. They
11 weren't available on the day that they were -- but they have
12 been issued, finally, by PDW.

13 COMMISSION CHAIRPERSON SHAPIRO: Okay, do we now
14 have them?

15 STAFF SERVICES MANAGER WAGNER: I have not yet
16 received them. When I get back to the office, I'll double
17 check and I'll forward them to you.

18 COMMISSION CHAIRPERSON SHAPIRO: Well, if they're
19 done, will you make sure that we do get them?

20 MR. LIEBAU: Absolutely. No, they're done,
21 there's no question about it.

22 COMMISSION CHAIRPERSON SHAPIRO: Okay, we should
23 have those in the file.

24 Does anybody have any other questions for this
25 application?

1 If not, I'll entertain a motion that they begin
2 the most exciting race meet in the history of Hollywood
3 Park.

4 COMMISSIONER MOSS: So moved.

5 COMMISSION CHAIRPERSON SHAPIRO: It's moved. A
6 second?

7 COMMISSIONER AMERMAN: Move second.

8 COMMISSIONER AMERMAN: All in favor, aye?

9 (Ayes.)

10 COMMISSIONER AMERMAN: Good luck.

11 COMMISSION CHAIRPERSON SHAPIRO: Good luck, go get
12 them cushion track.

13 All right, the next item on the agenda, if the
14 people for Bay Meadows Racing Association would step
15 forward? Wow, that was fast.

16 STAFF SERVICES MANAGER WAGNER: Jackie Wagner,
17 CHRB staff. Bay Meadows has applied for their thoroughbred
18 race meeting to be conducted October the 18th through
19 December 18th, for 46 days.

20 They are proposing to race a total of 396 races or
21 8.61 races per day.

22 It should be noted that they did not conduct
23 racing during this prior time, during this time last year.
24 The dates proposed are the dates that the Board has
25 allocated.

1 They'll be racing five days per week, Wednesday
2 through Sunday, with eight races on weekdays and nine or ten
3 races on weekends, holidays, and days of special interest.

4 They will be racing concurrently with Oak Tree and
5 Hollywood Park. The first post time proposes at 12:45 p.m.
6 daily, with a 7:20 p.m. post on October the 20th, the 27th,
7 November 10th, and November 17th.

8 On Thanksgiving, which is November the 23rd, they
9 are proposing an 11:15 a.m. post time.

10 And on Breeder's Cup, their post will be 11:20
11 a.m. And Cal Cut Day of 12:15 p.m.

12 The analysis indicates that we are missing the
13 Horsemen's agreement and, as we've heard, they've come to
14 agreement on that. I'll just wait until I get a copy of
15 that.

16 And with that, staff would recommend that the
17 Board adopt the application as presented.

18 COMMISSION CHAIRPERSON SHAPIRO: First of all, I
19 hope that Bernie Thurman's mother --

20 MR. LIEBAU: Mother.

21 COMMISSION CHAIRPERSON SHAPIRO: Pardon me?

22 MR. LIEBAU: Ninety-six years old.

23 COMMISSION CHAIRPERSON SHAPIRO: Pardon me?

24 MR. LIEBAU: Ninety-six years old.

25 COMMISSION CHAIRPERSON SHAPIRO: Ninety-six years

1 old. I know that she's with her and I wish her well, as I'm
2 sure the rest of the members of the Board do. I'm also
3 assuming that she's the one that put this license
4 application together. And I have to tell you she did an
5 excellent job in her description of the security controls at
6 Bay Meadows.

7 I would hope that all the racing associations
8 would see the instructions and the outline of how this
9 manner is outlined, handled, and the instructions. And,
10 yeah, I thought it was really great.

11 COMMISSIONER HARRIS: Well, especially the camera
12 situation they have at Bay Meadows is particularly
13 impressive, that I'd hope some of the other racing
14 associations would look at that.

15 COMMISSION CHAIRPERSON SHAPIRO: Yeah, I mean, it
16 is a very good situation up there. I know I went up and
17 Rich Lewis, I think it was, showed it to me. But, again, I
18 thought the presentation here was great, and so please pass
19 that on to Bernie.

20 MR. LIEBAU: I will.

21 COMMISSION CHAIRPERSON SHAPIRO: One issue that
22 came up last year was when there is wet weather, and this
23 will apply to both Golden Gate and Bay Meadows, there was an
24 issue, and I think it was at Golden Gate last year, with the
25 ambulance getting around the track, following the horses

1 when the track got really bad. How as that done at Bay
2 Meadows?

3 MR. LIEBAU: Well, there's a different ambulance
4 that's used during wet weather, that has different tires.

5 MR. ZIEGLER: It's a four-wheel drive, too.

6 COMMISSION CHAIRPERSON SHAPIRO: I think you're
7 using the wrong mike. There you go.

8 MR. LIEBAU: At Bay Meadows there are two
9 different ambulances. One, during wet weather, is four-
10 wheel drive and equipped to handle the track.

11 COMMISSION CHAIRPERSON SHAPIRO: So is the
12 ambulance able, at all times, to follow the horses, even in
13 inclement weather, on the track?

14 MR. LIEBAU: I've never seen a situation where
15 that hasn't been the case. I mean, it's always.

16 COMMISSION CHAIRPERSON SHAPIRO: Okay. Well, I
17 just remember, maybe it was at Golden Gate last year, where
18 there wasn't a bit of a problem, and I just want to make
19 sure that we do have an ambulance that is following the
20 horses, even when the track gets sloppy.

21 EXECUTIVE DIRECTOR FERMIN: When the weather is
22 really bad, generally, very often the ambulances will be in
23 the chute and they do have either chains, or four-wheel
24 drive, or special tires, and with the radio system, they're
25 radioed when they're needed. Because it's very easy for

1 them to slip and slide in it, and they can get in more
2 trouble on the way, than they can just sitting in the chute.
3 And it was tested over and over again, and that was actually
4 the most expeditious way to get to any kind of an accident.

5 COMMISSION CHAIRPERSON SHAPIRO: All right. I
6 note the marketing program for Bay Meadows and, again, I
7 thought it was more creative and also I wanted to tell you
8 that I thought it was great that you're taking advantage of
9 what may be Russell Bay's historic record with the
10 bottlehead, and promoting that. I'm assuming that's your
11 big hook for this meeting?

12 MR. ZIEGLER: That's my Northern California.

13 COMMISSION CHAIRPERSON SHAPIRO: Okay, I thought
14 that was good, yeah.

15 COMMISSIONER HARRIS: This isn't so much aimed at
16 Bay Meadows but, in general, in our packets, with these end-
17 of-meeting reports from the stewards and investigators, just
18 as part of our protocol we need these, you know, from the
19 previous meeting to be looked at and have some assurances
20 that anything's been dealt with, that they were pointed out
21 that should be dealt with.

22 MR. LIEBAU: You know, with respect to that, John,
23 they aren't really circulated to the track management.

24 COMMISSIONER HARRIS: No.

25 MR. LIEBAU: And I think it would be a good idea

1 if they were, so we knew if there were some problems we
2 would know what the CHRB considers to be problems, and we
3 could address them.

4 COMMISSIONER HARRIS: Yeah.

5 MR. LIEBAU: But, I mean, as things go, the
6 minutes that we get routinely are from the Cal Expo harness
7 meet, and it's kind of bizarre.

8 COMMISSIONER HARRIS: Yeah, that's two different
9 things. I do think that, yeah, the steward's minutes should
10 be distributed to the track management. These are these
11 end-of-meet reports, which was actually focusing on the
12 fairs.

13 But I think in the industry we need to disseminate
14 information as best we can to everybody. It doesn't do any
15 good to have some report laying around that points out some
16 problem, but nobody knows about it.

17 COMMISSION CHAIRPERSON SHAPIRO: I think it's a
18 great idea. And, Jackie, if you could make sure from now on
19 that when we have a license application, if you will attach,
20 both in our book last year's, the prior year's end-of-meet
21 report and, also, when the end-of-meet reports are provided
22 to us, a copy should go to the racing associations so that
23 they see what we're being told.

24 COMMISSIONER HARRIS: Yeah, I think the steward's
25 minutes should go to the racing associations, also. I mean,

1 they're available under freedom of information, anyway, but
2 they don't get them.

3 MR. LIEBAU: We don't get those. That's why I was
4 saying the steward's minutes that we're getting at Bay
5 Meadows are from Cal Expo.

6 COMMISSION CHAIRPERSON SHAPIRO: Okay.

7 MR. LIEBAU: And Bernie keeps asking, but nothing
8 happens.

9 EXECUTIVE DIRECTOR FERMIN: You should be getting
10 them all.

11 COMMISSION CHAIRPERSON SHAPIRO: You should be
12 getting them. But, okay, let's make sure you get them.

13 Does anybody have any other comments to this
14 application?

15 COMMISSIONER AMERMAN: Yeah, I just have one. I
16 thought you had great truth in the beginning of your plan
17 for Bay Meadows, and I'll just read it. It says,
18 "meanwhile, the market as a whole is shrinking from a
19 shortage of new plans. The major contributing factor to
20 this was the hesitation of the horse racing industry to make
21 the jump to television, thereby missing exposure to future
22 generations of fans."

23 I took that to say maybe we ought to turn that
24 around, maybe there is a revert of racing and it will be
25 through television. So I'd just suggest to everyone that

1 maybe, instead of the depth of promotions, which are very
2 important, I would agree, but we allocate a little bit more
3 money for television, which is where we're going to get new
4 fans.

5 MR. ZIEGLER: Well, Bay Meadows has broadcasted in
6 the Bay Area on TVG, which you can get on cable in the Bay
7 Area, which is very useful.

8 COMMISSIONER AMERMAN: Yeah, but the only thing
9 I'm saying is new fans.

10 MR. ZIEGLER: Right.

11 COMMISSIONER AMERMAN: I mean, TVG, you're talking
12 to yourself. We really have to reach out to new customers
13 and young.

14 MR. LIEBAU: I think the biggest reach, as far as
15 Bay Meadows is concerned, has been the Friday nights. Now,
16 there's no question that if you go to the track on Friday
17 night, you'd like it, Mr. Shapiro, it's exciting. There's a
18 certain, you know, certain whatever in the air, and there's
19 young people around. And we've seen some of those people
20 coming back.

21 And so, you know, that's been our hook as far as
22 new fans, along with group sales, because group sales has
23 been a very big thing at Bay Meadows. And it kind of got in
24 a little slump because of the dot.com, but we're seeing that
25 business coming back.

1 I mean, during the fair that was just concluded,
2 group sales was up almost 200 percent, and that was because
3 companies were, again, having picnics and outings at the
4 track. So I guess the long and short of it is business is
5 better up there.

6 COMMISSION CHAIRPERSON SHAPIRO: Well, that's good
7 to hear.

8 Now, Mr. Ziegler, before you get away, what will
9 the budget be for marketing at Bay Meadows this meeting?

10 MR. ZIEGLER: Hang on, I confuse them so much I
11 don't have it memorized.

12 COMMISSIONER AMERMAN: Yeah, a million eight, I
13 think.

14 MR. ZIEGLER: It is.

15 COMMISSIONER AMERMAN: It's on page 20 of 21.

16 MR. ZIEGLER: That's the Hollywood.

17 COMMISSIONER AMERMAN: Oh, is it? I'm sorry. A
18 million three -- a million one, you're right.

19 MR. LIEBAU: You got me very nervous here,
20 Mr. Amerman, at a million eight.

21 COMMISSIONER AMERMAN: A million one, I apologize
22 to you, Jack.

23 COMMISSIONER BIANCO: Jack, I know you have pull
24 at Stanford. I think if you could get the band down there,
25 because I don't want the football team.

1 MR. LIEBAU: Well, I did go to the game last
2 Saturday, when it was for the opening of the stadium. And
3 as you may know, the band is at deep trouble at Stanford
4 because they wrecked their thing, and there are signs all
5 around the stadium, "free our band." So maybe we can bring
6 the band to Bay Meadows.

7 MR. ZIEGLER: Mr. Shapiro, to answer your
8 question, it's over 500,000 in print, radio, and direct
9 mail.

10 COMMISSION CHAIRPERSON SHAPIRO: Are there any
11 other questions? If not, I'll entertain a motion on this.

12 COMMISSIONER AMERMAN: So moved.

13 COMMISSIONER BIANCO: Second.

14 COMMISSION CHAIRPERSON SHAPIRO: All in favor?

15 (Ayes.)

16 COMMISSION CHAIRPERSON SHAPIRO: Good luck with
17 Russell.

18 All right, let us now switch to Item Number 11,
19 which is a report by representatives of the California
20 Animal Health Food Safety Laboratory on the Postmortem
21 Program. I think we're fortunate to have Dr. Ardans and
22 Dr. Stover here to share this with us. Good afternoon.

23 DR. ARDANS: Thank you. I'm Alex Ardans, I'm
24 Director of the Animal Health and Food Safety Laboratory
25 System at UC Davis, and we're very fortunate to have also

1 with us, today, Dr. Sue Stover, who's Professor and Director
2 of the Wheat Veterinary Orthopedic Research Lab at UC Davis.

3 We appreciate the opportunity to come before you,
4 today, to share with you some of the results of our program
5 over the past year.

6 What you see before you here on the screen
7 represents our Postmortem Program here, in California, which
8 is truly a cooperative program. It's a cooperative program
9 between the California's racing associations here, in the
10 bottom half of this representation. It's a cooperative
11 program with the Horse Racing Board and two of the entities
12 in the School of Veterinary Medicine at UC Davis. We're
13 very fortunate that we have a diagnostic system that can do
14 the examinations on these horses, but moreover, we're very
15 fortunate to have a doctor like Dr. Sue Stover, who has
16 committed her entire career to research of the performance
17 animal, particularly that of race horses.

18 California's program is, I think as most of you
19 know, is somewhat unique in the country because not only are
20 we examining horses that suffer catastrophic injuries during
21 racing, we're looking at those injuries that occur during
22 training, but we're also looking at all horses that die or
23 are euthanized on a facility controlled by the California
24 Horse Racing Board.

25 What I'd like to do is just go over, very briefly,

1 some of the statistics that are provided in the little
2 brochure that we've passed out to all of you here, today.

3 When this program was started, it was the
4 California Horse Racing Board, you folks came to us, in the
5 School of Veterinary Medicine, and asked if we could look at
6 what was going on with catastrophic injuries, if we could
7 come up with some reasons for these injuries and it, then,
8 as an ultimate, would there be some prevention strategies
9 developed.

10 Now, since we have started, and we started this
11 program in 1990, through the end of 2005 we have examined
12 3,820 horses, and to date we've examined over 4,000 horses.
13 So there's a considerable database that exists here.

14 Now, on this representation you see the numbers of
15 horses that have been submitted over the years through the
16 Postmortem Program. The average of these submissions is 238
17 horses per year. And you can see this last year we had 342.
18 That represents, from the previous year, an increase of
19 about 27 percent.

20 This represents the activity at the time of the
21 injury or when the horse was submitted to us. You can see
22 here the nonexercise, these are the horses that have the
23 colics, the pneumonias, those type of horses.

24 A hundred and fifty-seven were involved in racing,
25 a hundred and sixteen were involved in a training episode at

1 the time of their injury.

2 And you can see this just represents by month. We
3 had a couple months last year where we saw some greater than
4 expected submissions. The month of March we had more
5 submissions then and, also, the month of October, and that's
6 represented here graphically. You can see the months of
7 March and October, where we had increased submissions.

8 We look at it by breed and by age. And the
9 preponderance of the horses that we examine are
10 thoroughbreds, that represents California's racing. The
11 most prevalent age is the younger horse, the three- and the
12 four-year-old horse, with about 60 two-year-olds that we
13 examined last year. This just represents it in a graphic
14 form, again showing the most prevalent injuries in the
15 three-year-old, again, probably reflecting the populations
16 at risk.

17 These are the categories of injury by age, and you
18 can see we broke down those first four where we had an
19 accident. The nonexercise, again, the pneumonias, the
20 colics, and you can see those are more prevalent in the
21 younger horse. But then in the racing, the training
22 injuries about the same in the two-year-olds, and they're
23 about the same in the three-year-olds. Fewer training
24 injuries in the four-year-olds, and fewer training injuries
25 as the horses age.

1 And when we look at breed and what type of
2 activity they were involved in, two things, as we've talked
3 about in the past, you see the Quarter Horse, the
4 preponderance of the injuries occurring during racing, fewer
5 occurring during training.

6 But then with the thoroughbreds, pretty similar
7 rates, when comparing racing and training.

8 Now, this is not put up here to try and get you to
9 look at all categories. This is put up just to emphasize a
10 couple of issues here. And you can see where the large
11 numbers are. You can see there are 54 injuries to the
12 metacarpal or the cannon bone. Then you can see down here,
13 the sesamoids 45, or a biaxial sesamoids 50.

14 So there's almost 50 percent of those injuries
15 that we're seeing. And the injuries or the reasons for
16 submission is about 83 percent of the horses that come to us
17 are submitted for injuries to the musculoskeletal system.
18 And of those injuries, about half of them are dealing with
19 injuries that occur in the ankle, the lower cannon bone, or
20 in the sesamoids, or in the suspensory apparatus, as
21 Dr. Stover will talk about here in a moment.

22 We've looked at, and it pretty much is the same
23 every year, when you look at the limbs that are affected,
24 there doesn't seem to be any difference whether it's the
25 left front or the right front, and whether it's they occur

1 during racing or training, there's about an equal
2 distribution between the left and the right front legs.
3 And, similarly, in the rear legs.

4 This is just a schematic showing, again, where the
5 injuries occur, and that's in your handout, also. Again, it
6 just emphasizes that the preponderance of the injuries,
7 again, are in the cannon bone, here in the sesamoid, in the
8 front ankles of these horses.

9 So with this, I'd like to pass it over to
10 Dr. Stover to talk about some of her research activities.

11 DR. STOVER: Thank you. Susan Stover from the
12 School of Veterinary Medicine at UC Davis. And that's
13 S-t-o-v-e-r.

14 And just following up on work that we've done this
15 year, we recognize that over the past years of the
16 Postmortem Program we've been able to study fractures of
17 long bones throughout most of the horse's body, and
18 recognize that most of these catastrophic, fatal injuries
19 are the result of some preexisting milder injury, most
20 commonly stress fractures of the long bones.

21 Over time we try to move from one injury to
22 another and address it in depth, and because of the large
23 number of injuries around the fetlock region, we've focused
24 on the fetlock region more recently.

25 I'm sure most of you are aware, but for fetlock

1 breakdown injuries we're looking at this region on the limb.
2 And as illustrated in this cadaver limb on the left, where
3 the skin has been removed and we've loaded it in a
4 mechanical testing system, we can see, as the fetlock
5 hyperextends that we have a number of these tendons and
6 ligaments on the back of the fetlock that support it and
7 keep it intact.

8 One of the ones that does this in a major way is
9 the suspensory apparatus, right here, and we've laid this
10 out so that you can see the three components, the suspensory
11 ligament, the pear or proximal sesamoid bones, directly
12 against the back of the cannon bone and the fetlock, and the
13 distal sesamoidean ligaments.

14 And you can see they're similar to lengths of a
15 chain, they're in series, and so if we have disruption of
16 any part of that suspensory apparatus, we've lost the
17 ability to support that fetlock joint.

18 And common injuries would include strain or
19 rupture of branches, or body of the suspensory ligament,
20 fracture of these proximal sesamoid bones, or disruption of
21 these distal ligaments, which allow the sesamoid bones to
22 move up toward the shoulder region and, again, losing
23 support of the fetlock.

24 When we looked at injuries to the suspensory
25 apparatus for all horses that died, we found a high

1 prevalence of milder injuries, both in the suspensory
2 ligaments and the distal ligaments.

3 We recognized, when we looked at epidemiologic
4 studies, that if a horse continues to train and race with
5 one of these milder injuries they're much more likely to be
6 removed from training within a period of three months.

7 In this particular graph, this top, lighter line,
8 we're following a hundred percent of horses without any mild
9 injury and three months later, at the end of this line,
10 we've lost about ten percent of them to training.

11 If we follow the solid line, which are horses,
12 starting with a hundred percent of horses that are training
13 on one of these mild injuries, I just pointed out, within
14 three months we've lost 45 percent of them from our racing
15 inventory.

16 We've recently completed an examination of 328
17 horses through this program, looking at fractures of the
18 proximal sesamoid bones, variety occur. We first tried to
19 find out if there were changes that could be detected with
20 radiographs, with veterinarians and trainers in the barn,
21 and we recognize that horses that have visible evidence of
22 extra bony production, or large vessels in the bone, are
23 actually at markedly reduced risk for injury, which is why
24 these numbers are less than one.

25 And we were bit discouraged, initially, because

1 this meant that we were unable to detect lesions, through
2 routine examinations at the race track, that would be
3 indicative of pending fatal injuries.

4 So, subsequently, we looked very closely at
5 fractured sesamoid bones, such as this pear from a horse
6 that broke down in the fetlock. And when we looked at these
7 with fine sections, where we radiographed them and looked at
8 the fracture line, we recognized that there's some
9 irregularities within the fracture line. Normally, this
10 line should look like a piece of broken chalk, where you
11 have very smooth, straight lines, even though they might
12 curve slightly.

13 We further looked at unfractured sesamoid bones
14 from these horses and we found evidence, right here, or
15 preexisting damage and remodeling that leads to these
16 proximal sesamoid bone fractures.

17 So we've discovered that in this instance, once
18 again, we have preexisting lesions that the horse is racing
19 and training on, and these act as stress risers and under
20 normal, otherwise normal circumstances, allow for fracture
21 through there, and that's the reason for this irregularity
22 in the fracture line.

23 We looked at the racing records of these horses
24 and we recognize that horses that sustain these fractures,
25 PSP for proximal sesamoid fracture, on the right, have more

1 works, races, races per year, and time in continuous
2 training than their counterparts, which did not have a
3 proximal sesamoid bone fracture.

4 So, once again, similar to previous work, we have
5 horses that are undergoing a much higher training and racing
6 intensity than horses that are remaining sound and
7 continuing to race.

8 Graphically, this shows the same thing. On the
9 right we have zero time, and on the left minus 12, which
10 means 12 months before one of these horses sustained a
11 fatal, catastrophic injury.

12 The open circles are horses that continue to race
13 and train, the solid circles are horses with proximal
14 sesamoid bone fracture. And you can see the disparity
15 between these two lines, there's a huge difference in the
16 number and distance that these horses are actually training
17 and racing at high speeds.

18 So the bottom line is that these horses with
19 fracture are characteristically much more intensely raced
20 and trained than horses that did not sustain this fracture.

21 We're also very interested in following racing
22 surface, especially with the changes at Hollywood Park, and
23 coming in Southern California in general. To this end, last
24 summer we took horses back to the training poly track at
25 Keeneland and studied the horses between the hoof and the

1 ground, as well as the motion of the joints within the limb.

2 And this work, analyzing the data, is still
3 underway. We have some encouraging information.

4 This particular graph is just one of the changes
5 that we see, the differences between tracks. In this
6 instance, the poly track tends to, so to speak, engender
7 fewer vibrations within the limb, meaning that the hoof is
8 more stable as it engages the track and leaves the track.
9 There's much more work to be done.

10 While we're very optimistic about -- I'm very
11 optimistic about cushioned, poly track type surfaces, at the
12 same time I think it's a very important time to monitor and
13 assess both the racing surfaces, as well as through the
14 Postmortem Program, the types of injuries that we see.

15 Again, optimistic that we see fewer injuries, but
16 we may also see that we have a change in the type of
17 injuries, and so very important time for the industry.

18 And just to recognize all those people, and the
19 cooperation that we have at the race tracks, and we greatly
20 appreciate and treasure that working relationship. Thank
21 you.

22 COMMISSION CHAIRPERSON SHAPIRO: Thank you. There
23 is no doubt that the work that you're doing is totally
24 invaluable to the industry, not just in California, but
25 throughout the country. And I know that other parts of the

1 country are interested in your work.

2 Needless to say, it's very disheartening to see
3 this 27 percent increase over the last year.

4 COMMISSIONER HARRIS: Is there any chance that
5 could be a statistical error, that in previous years they
6 weren't sending as many to the lab, or these figures are
7 pretty accurate year to year?

8 DR. ARDANS: No, I think that is pretty accurate,
9 Commissioners, because we, over the years, have thought have
10 received every animal that dies or is euthanized on a
11 facility under CHRB's control.

12 COMMISSIONER HARRIS: I was trying to figure that
13 it wasn't as bad as it looks, but it does look -- it's
14 particularly disconcerting in that we've got -- we've got
15 better diagnostic tools, we've got, you know, really more
16 safeguards now, than we ever have, as far as keeping horses
17 from breaking down, theoretically, although the synthetic
18 tracks are going to help a lot. But it's hard to figure out
19 why there's this big spike.

20 COMMISSION CHAIRPERSON SHAPIRO: Well, I was just
21 going to ask that very question. Do you want to venture a
22 guess as to why we've seen this 27 percent increase? And I
23 know you're scientists, so you don't like guessing, but --

24 DR. ARDANS: Well, it's like we've said before is
25 that we have numerator data, we don't have the denominator

1 data, so we don't know the population, so to speak, the
2 numbers of horses that are at risk.

3 What we have started to do and we're going to be
4 looking at this, hopefully, with some additional resources,
5 starting to see if we can normalize this data against
6 something like number of starts, or something in that area.

7 COMMISSIONER HARRIS: Yeah, I think that would be
8 good to have some bench mark, like number of starts or
9 number of horses in training, or something, because a lot of
10 data's out there.

11 But do any other states have programs similar to
12 California's?

13 DR. ARDANS: There are a few states that are
14 beginning, now, Commissioner Harris. Washington has started
15 one, Texas has got the beginnings of one. We were contacted
16 by Illinois, by some of their people in the veterinary
17 school there, about getting a program started, too.

18 But a program, such as we have in California, I'm
19 not aware exists anywhere else in this country. And again,
20 a lot of that is due to the resources that we're fortunate
21 enough to have here, in our State.

22 COMMISSIONER HARRIS: Well, it's a great program.
23 I think we just need to see if there's anything additional
24 we can do as far as data, or tracking back, you know,
25 different aspects of horses, or if there's anything we can

1 do at all to further enhance it.

2 DR. ARDANS: Well, I think --

3 COMMISSION CHAIRPERSON SHAPIRO: Do you think it
4 would be useful, perhaps, to put on some seminars, or
5 something at the tracks, where you could show this data to
6 the trainers?

7 You know, one of the things is there's a lot of
8 data here, and my concern is that the data's only as good as
9 you can use it and improve from it. And I'm wondering if
10 when you look at that such a great preponderance of the
11 casualties are in these few areas, you know, are there
12 things that you can impart to the trainers that both shares
13 this data with them and, perhaps, any prophylactic means
14 they can use to try to stop what is happening?

15 DR. ARDANS: Well, we're certainly willing to go
16 anywhere, anytime to present this information. And Sue, I
17 think, has some other ideas on this.

18 EXECUTIVE DIRECTOR FERMIN: I think Dr. Arthur,
19 one of his ideas is to have some continuing education for
20 trainers and, particularly, if there's been any kind of
21 medication violation, or whatever, that they undergo some
22 kind of --

23 COMMISSIONER HARRIS: Yeah, I think it's
24 something, really, as part of our license. It's been
25 frustrating because I think we have a lot of good trainers

1 in California, but there hasn't been a real zeal for
2 knowledge or, really, research, or things like that, that we
3 need to either somewhat, with either a carrot or stick,
4 encourage more investigation by trainers on what they can do
5 or not do on all of these kinds of injuries. The horses are
6 going to break down, regardless, but we need to have at
7 least all the people involved to understand the science.

8 COMMISSION CHAIRPERSON SHAPIRO: Well, I would
9 like to suggest that we try to schedule at least one or two
10 in Southern California, and Northern California, where on
11 the backside of the race track, you know, maybe we can
12 arrange for a lunch to be brought in and get the trainers
13 in, and let them see this data, and the have an opportunity
14 to discuss, with you, all the various factors that could
15 lead to these injuries so that they can, you know, have a
16 discussion and get involved in trying to understand what's
17 going on. Maybe, it's the number of works that they have,
18 maybe shoeing.

19 COMMISSIONER HARRIS: We've got to get the people
20 there. We've done several things like that before and just
21 nobody shows up. I think we've got to figure some way where
22 we really figure up a different way to market it, or
23 something.

24 COMMISSION CHAIRPERSON SHAPIRO: Well, why don't
25 we just clamp down on the purse amount and say we're not

1 making any purse distributions until you go to this seminar,
2 it's real simple.

3 COMMISSIONER HARRIS: That's an idea.

4 DR. STOVER: I'd just like to make a comment, if I
5 may. One is we're very pro education, we'd be happy to
6 participate in any way that we can to help disseminate
7 information.

8 As I listen, however, at the same time as I listen
9 to the meeting here, today, I recognize how complex an issue
10 it is. And I think this exercise intensity is a big, big
11 factor in whether or not horses get injured and break down.
12 And what continually amazes me is how many of the decisions
13 that are being made here, today, have the potential to
14 impact the trainer and how or when they must prepare the
15 horse to meet the schedules that are probably in their
16 control, I don't know, but are being affected by decisions
17 in all part of the industry.

18 So I think it would be nice for everyone to sit in
19 the same room because a decision is being made about race
20 dates, and what cards we're trying to fill, and what
21 inventory we have, and how hard that inventory has to work
22 to meet those demands, it's all interrelated. And I think
23 everybody needs to come to the table to participate in those
24 discussions at some level. And maybe it already happens and
25 I apologize if I'm speaking out of line.

1 COMMISSIONER HARRIS: Yeah, I think there is an
2 industry symposium back in Kentucky, next month, I know I'm
3 going to and Dr. Arthur, and probably some other people to
4 look at this, you know, as a national problem.

5 But the problem is that nationally we're starting
6 fewer -- a given horse is starting fewer times per year,
7 now, than they were 20 years ago or 30 years ago. So it's
8 not like we're really pushing our horses, now, than we ever
9 were, but maybe our trains -- we're pushing them more in
10 training or something's different, it seems like.

11 But with all the tools we've got to scan horses
12 and x-ray horses, you'd think we'd be doing better now.

13 Now, on those sesamoid fractures, do those happen
14 as a result of the sesamoid actually making impact with
15 something or are they more of a torque on the sesamoid from
16 the different ligaments?

17 DR. STOVER: Well, they're probably not an impact,
18 but due to excessive strains within the bone. Because the
19 area that's remodeling, that's setting the bone up for
20 fracture, is not on the outside of the bone, it's in the
21 area of highest what we call tensile stress. This is a bone
22 that sees a different mechanical environment than most of
23 the other bones that we've looked at, so we were very
24 excited about, you know, finding out what's going on.

25 But it's a result of what we call repetitive use

1 injury, and not from the fetlock, for example brushing on
2 the surface. It's from continual strain from over-
3 extension.

4 COMMISSIONER HARRIS: And sort of the torque that
5 gets set up from that or the torque somehow, causes it to
6 break?

7 DR. STOVER: Well, the torque is around the joint,
8 so when the fetlock extends there is a torque placed on the
9 bone, but the bone is under compression where it pushes
10 against the cannon bone, but it's under tension where it's
11 between the ligaments above and below it.

12 COMMISSIONER HARRIS: So it's compression against
13 another bone.

14 DR. STOVER: So it's in the area where it's under
15 tension that we're seeing this injury.

16 EXECUTIVE DIRECTOR FERMIN: Do you get any history
17 on the horses, for instance, whether they've been on the
18 vet's list or not on the vet's list?

19 DR. STOVER: No, we really -- you know, this is
20 done in an anonymous manner, so we don't have any of that
21 information.

22 EXECUTIVE DIRECTOR FERMIN: Because we are now
23 posting, you know, the official vet's list is on our
24 website, now, and it might be something that we can
25 certainly work with you on, not on just the vet's list, but

1 trying to gather more history on a horse.

2 COMMISSIONER HARRIS: I think we really need to
3 have everything available, if we can, if a horse was treated
4 in a certain way -- not that there's any illegal activities
5 happening, but if we can show that this horse has
6 been -- you know, had cortisone injections five times in the
7 last year, that might be a different situation than one that
8 hadn't, just to see if we can find a pattern.

9 COMMISSION CHAIRPERSON SHAPIRO: Well, hopefully,
10 with Dr. Arthur joining our staff and working closely with
11 you people, you good people up at UC Davis, that will
12 improve the communication and the dialogue, such that we can
13 glean more information out of what we're doing and, also,
14 incorporate it into this program and other programs that you
15 have.

16 And as you know, we've spoken before, it's our
17 desire to work more closely with you than we have in the
18 past, and it's very important information and work that you
19 do for us, to which we're very grateful.

20 Does anybody have any other questions? If not, I
21 want to thank you.

22 DR. ARDANS: Thank you.

23 COMMISSION CHAIRPERSON SHAPIRO: The next item on
24 our agenda is Item Number Seven.

25 COMMISSIONER HARRIS: You know, on this item, too,

1 I think it would be good if we can get as many of these
2 folders as we can to distribute, I mean, make sure they get
3 wide distribution, where people know this and they get
4 familiar with what's going on up there.

5 COMMISSION CHAIRPERSON SHAPIRO: Yeah, I think we
6 ought to see if we can't get a bunch and actually put them
7 in the racing offices and, you know, let people read them.

8 Okay, Jackie.

9 STAFF SERVICES MANAGER WAGNER: Jackie Wagner,
10 CHRB staff. Item Number Seven. This is the proposed
11 amendment of Rule 1582, Form of Entries and Declarations.
12 The proposed amendment to Rule 1582 will provide that under
13 Rule 1437, which is Conditions of Race Meeting, the
14 Association may accept entries by telephone, facsimile, or
15 any other electronic means it deems appropriate.

16 In addition, the Association may require written
17 confirmation of such entries. This will allow the current
18 practice regarding telephone entries, and will allow us to
19 introduce additional technologies as they become available.

20 This amendment has been noticed to the public for
21 45 days. We received no comment on this proposal and staff
22 would recommend that the Board adopt it, as presented.

23 COMMISSION CHAIRPERSON SHAPIRO: Let me just
24 clarify. What this does is this makes it available, but the
25 racing associations, themselves, will institute which manner

1 in which they choose to accept entries; is that correct?

2 STAFF SERVICES MANAGER WAGNER: Correct. That is
3 correct.

4 COMMISSION CHAIRPERSON SHAPIRO: Do any Board
5 members have any comments to this? I recommend that we
6 approve this. Does anybody have any comments?

7 If not, I'll entertain a motion that we adopt this
8 rule.

9 COMMISSIONER AMERMAN: So moved.

10 COMMISSIONER MOSS: Seconded.

11 COMMISSION CHAIRPERSON SHAPIRO: It's been moved
12 and seconded. All in favor?

13 (Ayes.)

14 COMMISSION CHAIRPERSON SHAPIRO: Item Number
15 Eight.

16 STAFF SERVICES MANAGER WAGNER: Item Number Eight.
17 Jackie Wagner, CHRB staff. This is the proposed amendment
18 to Rule 1544, just Calling Off Race, and Rule 1658, Vesting
19 of Title to Claimed Horse.

20 Currently, Rule 1544 provides the circumstances
21 under which a race may be canceled or called off. The rule
22 does not address what happens to claims that are being made
23 in these types of races.

24 This proposal was heard before the Board at its
25 August meeting and, at that time, there was concern

1 expressed regarding the necessity of making sure that this
2 rule would apply going forward, and would not apply to those
3 cases that were passed.

4 And we double checked, and it really is not
5 necessary to modify the text of this proposed amendment.
6 Under the APA, once a regulation is adopted and it is filed
7 with the Secretary of State, it becomes effective 30 days
8 out. It is not a retroactive -- an amendment.

9 So we are proposing that the Borad adopt this
10 rule, as we presented it. It's been noticed for 45 days,
11 we've received no comments, and staff would make that
12 recommendation.

13 COMMISSION CHAIRPERSON SHAPIRO: Similar to the
14 last rule, this rule has been discussed at the Board.
15 There's no comment.

16 I also would recommend that this rule be passed.
17 Is there any discussion?

18 If not, I'll entertain a motion.

19 DEPUTY ATTORNEY GENERAL KNIGHT: I just have a
20 question. Did you get some advice on that when --

21 STAFF SERVICES MANAGER WAGNER: Yes, we spoke with
22 the advice attorneys at the Office of Administrative Law.

23 DEPUTY ATTORNEY GENERAL KNIGHT: Because, yeah, I
24 understand that it doesn't go into effect until then but,
25 retroactive effect is another issue.

1 I mean, I think that being an abundance of
2 caution, I would specify.

3 STAFF SERVICES MANAGER WAGNER: No. Under the
4 APA, it is not necessary to do that. When we spoke to the
5 attorney, the reference attorney, of course you know,
6 there's five standards a rule amendment has to abide by, and
7 one of them is necessity.

8 And under the rules of the APA, a regulation does
9 not become effective until 30 days after filing. The only
10 amendments to that is if the agency specifically asks for a
11 specific date, but it does not go backwards, it goes
12 forward.

13 DEPUTY ATTORNEY GENERAL KNIGHT: I don't mean to
14 debate it here, I wasn't aware of that.

15 COMMISSIONER HARRIS: But it's clear that it's not
16 retroactive?

17 STAFF SERVICES MANAGER WAGNER: Oh, it's very
18 clear, it's very clear.

19 COMMISSION CHAIRPERSON SHAPIRO: All right. Will
20 I hear a motion in a second?

21 COMMISSIONER BIANCO: I made a motion.

22 COMMISSION CHAIRPERSON SHAPIRO: Second.

23 COMMISSIONER AMERMAN: Okay, it's moved, it's
24 seconded. All in favor?

25 (Ayes.)

1 COMMISSION CHAIRPERSON SHAPIRO: Item Number Nine,
2 Jackie.

3 STAFF SERVICES MANAGER WAGNER: Item Number Nine
4 is a proposed addition of a new rule to the Board's rules
5 and regulations, that would be called Rule 1874.1, and this
6 is a breath alcohol testing rule.

7 The proposed addition of this rule will state that
8 jockey's are subject to breath alcohol testing prior to each
9 race meeting in which they participate. If a test shows a
10 concentration of 0.05 percent or more of alcohol, the jockey
11 shall not be allowed to ride and shall be referred to the
12 stewards.

13 In addition, this rule will specify that Board
14 investigators, the stewards, or any security officer of the
15 Association may require a licensee to submit to a breath
16 alcohol test, if there is reasonable cause to believe that
17 the licensee is under the influence of alcohol.

18 And we have defined under the influence of alcohol
19 to mean, it means a blood alcohol concentration of 0.05
20 percent or more.

21 We would recommend that the Board direct us to
22 initiate the 45-day comment period on this proposal.

23 COMMISSION CHAIRPERSON SHAPIRO: This is done,
24 currently, in harness racing. I believe there are some
25 other jurisdictions that do it, and I believe that, in an

1 abundance of caution, that we should be doing this, as well.

2 COMMISSIONER HARRIS: It seems, too, I
3 think -- I've been reading some of the minutes from
4 Sacramento, the harness rule they're using is basically
5 somewhat of a national standard that the training horse
6 people have.

7 But probably, if we want to put our own rule in,
8 we should include harness horses at our rule, so that it
9 might have more impact on the whole industry.

10 COMMISSION CHAIRPERSON SHAPIRO: I think it's a
11 good point, I think we should make the rule to incorporate,
12 to include jockeys and/or drivers.

13 STAFF SERVICES MANAGER WAGNER: We talked about
14 that. But, currently, under the harness rules, particular
15 issue was handled by agreement between the harness, the
16 Sacramento Harness Association, under their horsemen's
17 agreement with the California Harness Association.

18 COMMISSION CHAIRPERSON SHAPIRO: Yeah, but I think
19 that Commissioner Harris is saying something different,
20 rather than rely on it being an agreement between CHHA, why
21 don't we make it part of our rule.

22 COMMISSIONER HARRIS: Yeah, that way, it's going
23 to -- because, conceivably, we could do it by agreement,
24 also, but I think we're doing a rule just so we've got
25 oversight.

1 STAFF SERVICES MANAGER WAGNER: Okay. So you want
2 to capture the driver. So the language will say every
3 jockey or driver.

4 COMMISSION CHAIRPERSON SHAPIRO: Correct.

5 STAFF SERVICES MANAGER WAGNER: Okay.

6 COMMISSION CHAIRPERSON SHAPIRO: Mr. Haire?

7 COMMISSIONER HARRIS: Also, my understanding,
8 unless there's something particular about alcohol and
9 different male/female, but when we refer to the "he," it
10 should be "he" or "she" in item three.

11 It says a jockey may submit a breath test before
12 the commencement of the next program which he participates,
13 which insinuates that only a man could fail.

14 STAFF SERVICES MANAGER WAGNER: Oh, I see.

15 COMMISSION CHAIRPERSON SHAPIRO: They.

16 STAFF SERVICES MANAGER WAGNER: Okay.

17 COMMISSION CHAIRPERSON SHAPIRO: Okay.

18 Mr. Haire?

19 MR. HAIRE: Darryl Haire, Western Regional Manager
20 for the Jockey's Guild.

21 Commissioner Shapiro, the Jockey's Guild is for,
22 okay with the proposed breath alcohol testing. The Guild,
23 through Barry Broad, will be submitting comments.

24 What we would recommend is that we have high
25 quality law enforcement equipment that's available, and

1 personnel who are trained appropriately for this. And
2 riders that test positive are testing again a few minutes
3 later. And, also, that the equipment is maintained and
4 calibrated correctly, and that the second time that riders
5 test positive, that they do seek some kind of treatment,
6 whether it's through Winner's Foundation, or we set up
7 something.

8 COMMISSION CHAIRPERSON SHAPIRO: Okay. Well, why
9 don't you submit your comments, as it will be out for the
10 45-day comment period.

11 COMMISSIONER HARRIS: Actually, it may be the way
12 it's written. Fortunately, I'm not very familiar with
13 alcohol tests, but it says "if the results of the breath
14 alcohol tests show a concentration of .05 percent or more by
15 weight of alcohol in the blood." Well, I know, that's got
16 to be a -- I don't know if a breath test is going to
17 necessarily show what the blood work was. This is sort of
18 an assumption, where I think we need to write it to be
19 whatever the state of the art is.

20 But I agree that it's very important that the
21 calibration of the equipment be right.

22 STAFF SERVICES MANAGER WAGNER: And we will assure
23 that in the procedures. We currently have six
24 breathalizers. There's a breathalizer for every track,
25 that's my understanding. And we're in the process of

1 getting the procedures, if this is implemented, finalized.
2 So we will be working with the Jockey's Guild, with our
3 investigators, and all the associations.

4 COMMISSION CHAIRPERSON SHAPIRO: And I suggest you
5 contact the USTA, as well, since they have a policy, the
6 United States Trotting Association.

7 COMMISSIONER HARRIS: I wonder if the State of
8 California has some protocols on the whole subject, too.

9 COMMISSION CHAIRPERSON SHAPIRO: Right. Okay,
10 I'll entertain a motion, unless there's any other
11 discussion, to put this out for the 45-day comment period.

12 I'll move.

13 Second?

14 COMMISSIONER BIANCO: Second.

15 COMMISSION CHAIRPERSON SHAPIRO: All in favor?

16 (Ayes.)

17 COMMISSION CHAIRPERSON SHAPIRO: Okay. Item
18 Number 10.

19 STAFF SERVICES MANAGER WAGNER: Item Number 10.
20 Jackie Wagner, CHRB staff.

21 This is the proposed amendment of Rule 1433, which
22 is the application for license to conduct a horse racing
23 meeting. As you know, under Rule 1433, a racing association
24 or a racing fair must submit an application to the Board for
25 consideration. The applications are CHRB 17 and the

1 CHRB 18.

2 Assembly Bill 1180, which is the statutes of 2005,
3 contains several provisions that specifically address
4 jockeys and jockey's health and safety issues. Under 1180,
5 the Board is required to address those particular concerns
6 and we have done that by this proposed amendment.

7 What you have in your packet is a proposed
8 amendment to Rule 1433, and since we are proposing to amend
9 the application, that is why you see an amendment to the
10 rule.

11 What we have done is we have amended CHRB 17 and
12 18, which are both the applications for the racing
13 associations and the racing fairs, to add a -- to amend,
14 actually, the emergency service sections of both
15 applications.

16 And if you will, for your preference, if you'll
17 turn to page 13, under that particular section you will see
18 the amendments as we're proposing them.

19 Under emergency services the new language is
20 underlined, and what you see is the result of the provisions
21 of 1180. The application will now require that an applicant
22 describe the on-track first-aid facility that is on their
23 track, including the equipment and the medical staffing.
24 They will be required to give us the name and the telephone
25 number of the licensed physician that is on duty during

1 their race meeting.

2 Under 1180 there was an exemption for the Quarter
3 Horse Racing Association, and the exemption is noted on this
4 particular application under D1. And the day, since they're
5 located close to a hospital, we're asking for the name of
6 the hospital and with whom the agreement is in place, that
7 they're going to take jockeys to in the event that there's
8 an injury.

9 We're also asking for the name and emergency
10 telephone number of the hospital to be used for events for
11 any injuries to jockeys.

12 The law also requires that an emergency medical
13 plan procedures be posted in the jockey's room, both in
14 English and Spanish. We are requiring that the applicant
15 attach a copy of that to the application.

16 In addition, the law requires the naming of a
17 health and safety manager, and an assistant manager, who are
18 the individuals that are going to be responsible for
19 compliance, to see compliance of this particular section.

20 In addition, we have made some other modifications
21 in response to comments that were made by the Board at its
22 last meeting, addressing the purse program. And you'll see
23 that we have modified section five of both applications to
24 ask for the associations and the fairs to give us their
25 average daily purse estimates for their current meet and the

1 prior actual figures on the application, so that information
2 will be on the application for you, so you won't have to ask
3 for it every time.

4 In addition, we have added a new section eight to
5 this application, which addresses the Board's assurance as
6 to who the advance deposit wagering vendors will be for the
7 Association, and that's going to be under a new section
8 eight, that's a new advance deposit wagering section, and
9 we're asking the applicants to identify their advance
10 deposit wagering deposit that will be used during the race
11 meet.

12 That's it. And staff would recommend that the
13 Board instruct us to notice the amendments for 45 days.

14 COMMISSION CHAIRPERSON SHAPIRO: Thank you. I
15 think this would be very helpful, these changes with respect
16 to the license application, and I fully support them.

17 Does anybody have any objection, or comments, or
18 changes? Otherwise, I would recommend, again, that we put
19 this out for the comment period.

20 There being none, entertain a motion?

21 COMMISSIONER AMERMAN: So moved.

22 COMMISSION CHAIRPERSON SHAPIRO: A second?

23 COMMISSIONER BIANCO: Second.

24 COMMISSIONER AMERMAN: All in favor?

25 (Ayes.)

1 COMMISSION CHAIRPERSON SHAPIRO: Okay, that is
2 done.

3 Item Number 13. This is a report on the status of
4 the Jockey Health Assessment Study. If you'll come forward,
5 I would really appreciate it.

6 MR. FRAVEL: We're going to demonstrate on
7 Mr. Tunney the methods to be utilized in this study.

8 Craig Fravel, Del Mar.

9 As many of you remember, the subject of jockey
10 scale of weights has been percolating along for the past
11 couple of years and in the context of AB 1180, the jockey he
12 was just referring to, there was a mandate agreed to between
13 the representatives of the Jockey's Guild, the race tracks,
14 and horsemen's groups that we would facilitate and engage in
15 a jockey health study and assessment, that the guild or a
16 representative of the jockeys would participate in the
17 design and development of that.

18 And, unfortunately, somehow or another I got the
19 assignment on this one not only to help organize it, but to
20 raise the money to help pay for it. And I'm pleased to
21 announce that working with both Darryl Haire, Barry Broad,
22 Dr. Dan Benardot, Dr. Seftel, Bay Meadows and Golden Gate,
23 we have finalized the protocols, essentially, for what we're
24 calling the initial phase of the jockey health study,
25 through Dr. Benardot, who's a nutritionist, and Ph.D, and

1 athletic performance at Georgia State University. He's done
2 a lot of work with the U.S. Olympics team in gymnastics and
3 wrestling, and in other areas, and have agreed on the
4 protocols for that first phase.

5 What we are awaiting at the moment is the
6 finalization of the independent review board, at Georgia
7 State University, which has to actually approve all funded
8 research protocols before they can begin any kind of study
9 that involves human subjects. Since this is one of those
10 subjects, Dr. Benardot submitted that about six weeks ago, I
11 believe, and the reason he had to wait to submit it was that
12 we had to come to some final agreements on what it might
13 look like and, also, fund it.

14 Through the NTRA, about \$50,000 of that has been
15 funded, which is basically enough to provide for Dr.
16 Benardot's time during the first semester of the school
17 year.

18 We have approved additional funding through the
19 CTBL, California Thoroughbred Business League, and the TRA
20 has committed some additional funding for further processes
21 on this study, as well.

22 And we hope to begin sometime this fall and the
23 program objectives are to actually do this on site here, in
24 California, or at least the large majority of the research
25 protocols and investigations at Northern California and

1 Southern California sites, once we've gotten the independent
2 review board approval.

3 So as soon as that approval comes through, we'll
4 be sitting down with the Jockey's Guild, with Darryl and
5 Barry, and working with them to try and make sure that we
6 get enthusiastic participation from riders. It's very
7 important, not only from a research stand point, but I think
8 from everyone's stand point, that jockeys understand this
9 is, A, completely voluntary, they're under absolutely no
10 compulsion to do it and, B, to come up with long-term
11 practical solutions that are going to be beneficial for not
12 only the industry, but for the riders.

13 And so we've made a lot of headway. I know it's
14 slow going, but I think it's important to play out. This is
15 intended to be an academically sound, peer-reviewed research
16 proposal. And much as the due process and racing board
17 world takes time, so does the academic world, to make sure
18 that academic protocols are met.

19 So we're moving along, hope to have a lot of work
20 done this fall. Also working with -- we'll try to work with
21 jockeys, the Guild, and others around the country, to have
22 some of this work done at other sites, so it's not simply
23 limited to California.

24 COMMISSION CHAIRPERSON SHAPIRO: Well, I think
25 that's great. I know that you've worked very hard on this

1 and it's something that we have to do, and I think that it
2 will benefit the industry in a variety of ways and it will
3 help us lead to, I hope, a uniform scale of weight
4 throughout the whole country, so that we, in California,
5 aren't disadvantaged, or perceived to be, riding at heavier
6 weights than other venues.

7 Does anybody have any other questions on this
8 matter?

9 COMMISSIONER MOSS: How soon in the fall, Craig?

10 MR. FRAVEL: I'm hoping that the IRB approvals
11 will be done within the next week to two weeks, and as soon
12 as we get those, I will sit down with Darryl and Barry, and
13 the race tracks operating north and south, and try to work
14 out the logistics, and when Dr. Benardot can be out, how
15 they can work with the on-track physicians, and their
16 facilities, or whether we need to run facilities elsewhere.
17 You know, just work out the logistics of it.

18 And then the amount of time that it will take for
19 each rider to go through the protocols and all that.

20 So I would hope by the end of October we'll have
21 done the first sets. And what we might try to do is have
22 one small group go through it, to sort of see how they work.
23 Again, that's something I'm going to have to work with Barry
24 and Darryl on to make sure that we get good cooperation on.

25 COMMISSIONER HARRIS: Did Barry Broad, but the

1 Jockey's Guild did buy into this progress fine?

2 MR. FRAVEL: Yeah, Darryl can speak to that, but
3 we've been in contact with them throughout the design
4 process on this, and Richard and I have been on conference
5 calls with them to talk about how we're going to go about
6 it, and phases beyond this, as well.

7 COMMISSIONER HARRIS: Because on your plate, as
8 far as we have voluntarily increased the weights somewhat,
9 but I wasn't aware that that was a problem. Is this a
10 perceived by out-of-state horsemen, as far as California
11 goes, that they've increased weights?

12 COMMISSION CHAIRPERSON SHAPIRO: Yeah, I think at
13 certain times of the year we are perceived as riding heavier
14 than back east.

15 COMMISSIONER HARRIS: Should I call Tom Fletcher
16 and let him know about that, when he comes out?

17 COMMISSION CHAIRPERSON SHAPIRO: No, John, I think
18 you can call Dolly Parton and talk to her.

19 Okay, I jumped over Item Number 12, and this would
20 be discussion on the distribution of the Bay Meadows
21 Foundation.

22 Ysanne, nice to see you. And I must also put on the
23 record that John Reagan's father passed away yesterday, or
24 the day before, and I hope that you'll express our
25 condolences to him as he goes through this difficult period.

1 MS. RARICK: CHRB staff, Ysanne Rarick. This is
2 the Bay Meadow's Foundation is requesting the Board to
3 approve its proposed distribution of Charity Racing Days
4 proceeds in the amount of \$76,500.

5 The list of 25 beneficiaries is attached for your
6 review. The distribution will give 50 percent to industry-
7 related organizations. And staff recommends that the Board
8 approve this request.

9 COMMISSIONER HARRIS: I had one question on that.
10 I think it's by statute that there's 50 percent of
11 distribution has to be to horse-racing related charities,
12 and I notice that one of their larger beneficiaries, that
13 they categorize in that area, which just brought them to
14 exactly 50 percent, was California Council on Problem
15 Gambling. Which may well be a worthy cause, but I question
16 if that's really horse-racing related, in the intent of the
17 Legislature.

18 I think the intent of the Legislature was that
19 this is for, you know, horses or people who are actually
20 working in the industry, not people who may have problems.

21 You know, I suggest that we go back to the Bay Meadows
22 Foundation and have them give us the justification.

23 COMMISSION CHAIRPERSON SHAPIRO: Okay, I think
24 that's a good suggestion. And while it is 50 percent, that
25 doesn't mean it can't be more. And I think as some of our

1 backside services are seeing reductions, I would encourage
2 racing associations. Not to say that the Redwood City
3 Police Athletic League isn't a good charity, or any of these
4 others, but I think we do have to look to take care of our
5 own as much as we can.

6 And so perhaps we could ask them to give us,
7 perhaps reevaluate the distribution to the California
8 Council on Problem Gambling.

9 I knew we'd get you out of your chair, it was just
10 a matter of time.

11 EXECUTIVE DIRECTOR FERMIN: There was a committee
12 that had asked for the CHRB to participate, and we actually
13 have a staff member, Sue is chairing that part of it. But
14 they've asked that we contribute into the -- facing the fact
15 providing input for problem gambling. So that may where
16 this came from, I'm not sure.

17 COMMISSIONER HARRIS: No. Yeah, I don't think
18 that was the intent of the Legislature, that that was a
19 horse-related charity.

20 COMMISSION CHAIRPERSON SHAPIRO: Yeah, I think
21 that we should look at, you know, the medical clinic on the
22 back side, and things like that, which is desperately trying
23 to recover more funds.

24 Mr. Liebau?

25 MR. LIEBAU: Jack Liebau. I just would like to

1 make it clear that neither Bay Meadows, nor myself, have any
2 relationship, other than being a defendant to this
3 Foundation, because they have sued us, as Mr. Harris knows,
4 on numerous occasions.

5 COMMISSION CHAIRPERSON SHAPIRO: Oh.

6 MR. LIEBAU: So we have nothing to do with them.

7 COMMISSIONER HARRIS: But isn't there some change
8 in that going forward?

9 MR. LIEBAU: Pardon me?

10 COMMISSIONER HARRIS: I was under the impression
11 that this is -- that that's going to change going forward,
12 are they going to --

13 MR. LIEBAU: We, under our application that you've
14 approved, are being -- are going to distribute our own
15 charitable funds which, no doubt, will be distribute a
16 hundred percent to equine charities.

17 COMMISSION CHAIRPERSON SHAPIRO: Thank you,
18 Mr. Liebau, and perhaps we can -- you could deliver the
19 message, along with staff, that we would like to see a
20 greater number, a greater amount of the distribution go to
21 horse-related charities.

22 The next item is going to be lengthy and, hold on,
23 I see Mr. Tunney standing there at attention for something.
24 No. Is it on this matter?

25 MR. TUNNEY: Well, I'm going to ask the indulgence

1 of the Board to take Item 15 out of order, before this item
2 occurs. I was comfortable until I saw Mr. Couto's Power
3 Point presentation go up, and this will take just a short
4 moment.

5 COMMISSION CHAIRPERSON SHAPIRO: No, go ahead.
6 Okay, what I'm going to do is I'm going to take a ten-minute
7 break before we go into this item, which I expect is going
8 to be something that is going to take some time. Are you
9 trying to make an airplane or something?

10 MR. TUNNEY: I'm trying to make another meeting.
11 But my request would be to take this out of order, Item
12 Number 15. I'm here, representing Northern California
13 Offtrack Wagering.

14 COMMISSION CHAIRPERSON SHAPIRO: All right, then
15 we will take Item Number 15, and then we will go take a ten-
16 minute break, and then we will go into Item Number 14.

17 MR. TUNNEY: Just for the record, I'm Peter
18 Tunney, T-u-n-n-e-y, representing Northern California
19 Offtrack Wagering, Inc.

20 COMMISSION CHAIRPERSON SHAPIRO: Mr. Tunney, go
21 ahead.

22 MR. TUNNEY: Well, this item is a carryover, as
23 you'll recall, Mr. Chairman, from last month, and it's the
24 change in the vanning and stabling percentage withheld. You
25 asked for some additional information, which we provided to

1 the staff.

2 These number have been audited by the Board,
3 actually, several years ago -- when I said these numbers,
4 the procedure was audited by the Board, John Reagan and his
5 staff, and so we know that the particles within the audit
6 are appropriate.

7 This is an increase based on additional costs
8 associated with vanning and stabling. These are numbers
9 that we submitted right after the last Board meeting.

10 COMMISSION CHAIRPERSON SHAPIRO: I appreciate that
11 you've provided this to us. I did have a couple question.
12 Are Pleasanton, Stockton, Fresno/Sacramento, are they
13 getting these same proportion of stabling monies based on
14 the number of horses they have, and also the overhead of
15 keeping their barn areas open?

16 MR. TUNNEY: Well, I'll let Chris Korby respond to
17 that, I can't answer for him. But these monies are
18 basically between Golden Gate and Bay Meadows for vanning
19 and stabling on a year-round basis. Most of these other
20 facilities are only stabling for certain portions of the
21 year. Vallejo -- pardon me, Stockton opens early for their
22 meet, for example, and has horses in there in the Month of
23 May. We have horses in --

24 COMMISSION CHAIRPERSON SHAPIRO: Is Pleasanton not
25 open year-round?

1 MR. TUNNEY: Pleasanton is open, but they charge a
2 per diem amount for the horses that are in there, and we
3 reimburse starters from Pleasanton. We, at Bay Meadows and
4 Golden Gate, reimburse people that start from Pleasanton at
5 either facility.

6 Pleasanton charges day money for stabling.
7 Similar to, I guess you'd say, San Marin.

8 COMMISSION CHAIRPERSON SHAPIRO: Okay. Yes?

9 MR. BLOMIEN: Mr. Chairman and Members, Rod
10 Blomien on behalf of the Alameda County Fair at Pleasanton.
11 We're supportive of this item.

12 We have year-round stabling at Pleasanton. I
13 think we provide a number of starters each day to both
14 Golden Gate Fields and Bay Meadows. I think currently we
15 have -- well, if you discount the fair season, we probably
16 have close to 400 horses stabled there. And the bulk of
17 them go to the track and do run.

18 And we have just recently been contacted by a
19 major trainer, who wants to move his stable from one of the
20 larger -- from Bay Meadows or Golden Gate, I forget which
21 one it is, that's now going to be centered at Pleasanton.

22 And we need this money. We're currently running a
23 deficit of over 300,000 and we would hope that TOC, and
24 Golden Gate, and Bay Meadows would support a greater
25 allocation to Pleasanton. Thank you.

1 COMMISSION CHAIRPERSON SHAPIRO: Before you get
2 away, I think you and I were heading in the same direction
3 here. Are you asking that you get a greater proportion of
4 this money or are you simply advocating that we improve the
5 increase in the rate?

6 MR. BLOMIEN: Well, the Board doesn't have the
7 authority to determine how much money we get, that's done by
8 the people who have shares in NOTWINC, and that's comprised
9 of Bay Meadows, Golden Gate, and TOC, and CARF. Quite often
10 we get outvoted, but we would hope that the other members of
11 NOTWINC would turn a kinder eye to the plight of Pleasanton.

12 COMMISSIONER HARRIS: Well, I think the purpose of
13 this was just to do some due diligence, which you've done,
14 and I think it's a sound program and we ought to approve it.

15 COMMISSION CHAIRPERSON SHAPIRO: Yeah, I do, too.
16 I don't have a problem approving what's being asked for, I
17 was just wanting to make sure, because I was contacted, that
18 the amount that is going to Fresno and Pleasanton is, in
19 fact, equitable. And that's why the questions I was asking,
20 because I was aware that, if I understand it, between Bay
21 Meadows and Golden Gate, they basically can dictate where
22 this money goes and I just want to make sure it was being
23 done equitably.

24 MR. TUNNEY: Well, a point of clarification. The
25 horses that come from Pleasanton to Bay Meadows or Golden

1 Gate, Pleasanton charges them a per diem amount to stable
2 there.

3 COMMISSION CHAIRPERSON SHAPIRO: Right, I
4 understood that.

5 MR. TUNNEY: The horses then, each time they
6 start, are repaid a starter fee. So, basically, if you
7 start a couple times a month, you're going to get you rent
8 payment back.

9 To Mr. Blonien's point, there are stables that
10 move back and forth between whatever time of year it is,
11 whether they have two-year-olds, or older horses, move back
12 and forth between the tracks, and Pleasanton's one of them.

13 We have said to Pleasanton in the past, in these
14 discussions, that we would certainly include conversations
15 that would reimburse them or do some other, you know -- if
16 we did vote to reimburse them out of this fund as long as
17 they're charging rent. But we would be glad to work with
18 them to try to find a solution to help them reduce that
19 deficit.

20 COMMISSIONER HARRIS: I think the northern program
21 is -- I mean, nothing's really completely equitable, but
22 it's fairly equitable. Probably, the more inequities are in
23 the south, relative to the north, and the south there's a
24 lot bigger reimbursements for tracks that aren't really
25 doing as much as the Pleasanton.

1 MR. TUNNEY: We've had these discussions with
2 Pleasanton over the years and more recently have said to
3 them, as we move into this next phase, let's look at
4 Pleasanton as a more viably, year-round stabling.

5 COMMISSION CHAIRPERSON SHAPIRO: And that's fine.
6 I mean, I think we want to encourage them to be year-round
7 stabling, and especially as we move forward, and I just want
8 to make sure that it's equitable to them.

9 Okay, Mr. Korby, is there something to add?
10 Otherwise, I'm going to make a motion to approve this.

11 MR. KORBY: No, sir, I just want to say that CARF
12 also wishes to speak in favor of this. Chris Korby, K-o-r-
13 b-y, California Authority of Racing Fairs.

14 COMMISSION CHAIRPERSON SHAPIRO: Is there a motion
15 to approve this? Oh, I'm sorry, Guy, I'm very sorry, I have
16 a card.

17 MR. LAMOTHE: Thank you, Commissioner. Guy
18 Lamothe, L-a-m-o-t-h-e, Thoroughbred Owners of California.

19 I just wanted to make the Board aware that at the
20 last NOTWINC Board meeting the TOC proposed to increase the
21 rate to the full amount of 1.25, as opposed to the 1.15,
22 which you see here, in front of you.

23 And the reason was to make those additional funds
24 available to support vanning from the south to the north.
25 That didn't pass, obviously. But we are looking into the

1 feasibility of that, gathering some numbers, and wanted to
2 make you aware that this might come before the Board, again,
3 for a subsequent rate increase that would cover any such
4 program.

5 COMMISSION CHAIRPERSON SHAPIRO: Okay, thank you.

6 MR. TUNNEY: We also share that thought.

7 COMMISSION CHAIRPERSON SHAPIRO: Thank you.

8 All right, all those -- is there a motion?

9 I'll move it.

10 Any second?

11 COMMISSIONER BIANCO: Second.

12 COMMISSION CHAIRPERSON SHAPIRO: Second. All
13 those in favor, aye?

14 (Ayes.)

15 COMMISSION CHAIRPERSON SHAPIRO: Okay, we're going
16 to take ten minutes and then we're going to deal with ADW.

17 (Off the record for a break.)

18 COMMISSION CHAIRPERSON SHAPIRO: All right, we're
19 going to bring the meeting back to order. Mr. Couto, we're
20 being handed a document here, is this the same thing that
21 you have on the screen there?

22 MR. COUTO: It is.

23 COMMISSION CHAIRPERSON SHAPIRO: Okay, thank you.
24 This is Item Number 14 and this item, I believe, was first
25 placed on our agenda in January of this year. And as some

1 of us will recall, and some who haven't been here won't
2 recall, this matter was placed on the agenda to be heard.
3 We were then -- we agreed to defer this matter.

4 Senator Dean Flores met with the parties, there
5 have been discussions with the parties. And at our last
6 meeting we once again deferred it after that was an
7 agreement between TVG and TOC, that they would work in the
8 intervening period between the last meeting and this meeting
9 to try and resolve their differences.

10 Therefore, I would ask -- I would like to hear
11 from both TOC and TVG if the issues in dispute between them
12 have been resolved, first. And we do have comment cards,
13 which other people will want to comment on, as well.

14 So, Mr. Couto, you're sitting there, so let's ask
15 you, is this matter resolved?

16 MR. COUTO: Unfortunately, it is not.

17 COMMISSION CHAIRPERSON SHAPIRO: Okay. Given that
18 that is the case, I think the Board has been more than
19 lenient trying to create, provide time for the parties to
20 walk through the issues.

21 And I see that Mr. Nathanson, welcome to the
22 meeting, and he sat down next to you.

23 So, Mr. Couto, you were there, first, you handed
24 us something. I think that what we're talking about here,
25 and I'm just going to read the agenda item, is that:

1 "The licensing and studying of ADW hub
2 rates and the obligations of ADW
3 companies or racing associations to have
4 agreements with horsemen or owner's
5 organizations. Two, TVG and TOC hub fee
6 rate dispute relating to imported
7 thoroughbred races and the propriety of
8 an ADW company to import races without a
9 contract in place with the racing
10 association, or horsemen's organization
11 of the same breed as imported races.
12 Three, the method of determining
13 calculating and reserving for rates in
14 dispute. And, four, any other related
15 matter considered part of the dispute
16 between any ADW company and any racing
17 association, or horsemen's, or owner's
18 organization."

19 Therefore, if you are going to want to address
20 this matter, I suggest you fill out a comment card so that
21 we will know that.

22 Mr. Couto, why don't you bring us up to date?

23 MR. COUTO: Thank you. Based on the anticipation
24 of many people here, I guess we should start this with
25 Michael Buffer saying, "let's get ready to rumble."

1 But the truth is, I will say this, we've had a
2 series of very cordial, professional meetings with the
3 representatives of TVG over the last two weeks. And in and
4 of itself that was really refreshing and gave, I think, all
5 of us confidence that we can eventually sit down in a room
6 someday, under the right circumstances and get a deal done.
7 But, unfortunately, based on where we are right now, we do
8 not have that gun.

9 And so nine months ago we brought to the Horse
10 Racing Board's attention the fact that in the second year of
11 TVG's current license, it did not have a hub fee agreement
12 with TOC. Which, as some of you may recall, is a condition
13 set by the Horse Racing Board at the time of licensing, and
14 that was set in the beginning of the -- the end of the year
15 2004, for the current two-year licensing period for TVG, and
16 that is that they must have an agreement with TOC. And they
17 did at that time, for one year, it was understood.

18 And, therefore, based on the fact that we did have
19 the license, they were licensed -- 'm sorry, therefore,
20 based on the fact we did have the agreement, they were
21 licenses for a two-year period, subject to having a
22 horseman's agreement in the second year.

23 I want to run through the issues to set up sort of
24 where we are, so we can review this, put it in the proper
25 context and, hopefully, have a resolution today.

1 There are three issues, in particular, that are
2 germane to this and I call them the lingering ADW issues.
3 The first one is does the CHRB have the authority to
4 adjudicate the ADW issues raised by TOC.

5 The second issue is does an ADW's failure to
6 obtain a contract with a currently operating licensed
7 California thoroughbred association prevent it from
8 conducting ADW wagering on thoroughbred races.

9 And this was important in the time frame of
10 January/February, when TVG did not have an agreement with
11 the two MEC tracks running at the time.

12 And the third issue is has the CHRB consistently
13 required an ADW provider also have a contract with the
14 horsemen representing the relevant breed as a condition of
15 the ADW license.

16 So let's look at the first issue, which I think is
17 really the easiest, does the CHRB have the authority to
18 adjudicate the issues raised by TOC? And the answer is,
19 very simply, yes. Under 19604, which controls the ADW, it
20 clearly states that the Horse Racing Board has authority
21 over advance deposit wagering and that it is only conducted
22 with the approval of the Board.

23 And under subsection (k), "any dispute concerning
24 the interpretation or application of this section shall be
25 resolved by the Horse Racing Board."

1 So it brings us to issue number two. Does an
2 ADW's failure to obtain a contract with a currently
3 operating licensed California thoroughbred racing
4 association prevent it from conducting ADW wagering on
5 thoroughbred races in the State of California.

6 For that you go back again to Section 19604, of
7 the Business and Professions Code, and there is important
8 language in that section, which says, "the Board may
9 authorize" -- again, "the Board may authorize any racing
10 association or fair during the calendar period it is
11 licensed by the Board to conduct live racing, to accept
12 wagers on advance deposit wagering."

13 This legislation gave the right only to tracks and
14 to racing fairs to conduct ADW wagering. But it went on to
15 say that a track or a fair could do so through a betting
16 system or multi-jurisdictional wagering hub.

17 Again, this bill gives the right to conduct ADW
18 wagering not to the ADW providers, but to tracks and racing
19 fairs who are conducting live meets, and they may, at their
20 election, have that occur through a contract with an ADW
21 provider.

22 Okay, which means, sort of looking back at this,
23 hopefully my slide will go, that in other words, California
24 ADW providers accept wagers as an extension of the racing
25 association or fair's license, not their own. According to

1 the law, they only conduct, again, ADW as an extension of
2 the racing association or fair's license.

3 So that means, therefore, if a fair or racing
4 association is not permitted to accept certain types of
5 wagers, in this particular case imported thoroughbred
6 wagers, then the ADW provider, who has a contract with them,
7 can't do so because they don't have any rights superior to
8 the racing association because that's who the Horse Racing
9 Board is granting the right to conduct ADW.

10 So the question then becomes what do the
11 contracting race tracks or fairs have the right to do. You
12 look at, first, Business and Professions Code Section
13 19596.1, and that relates to harness and quarter horses.
14 And this was important because TVG has insisted that through
15 its license with Los Al it is permitted to accept wagers and
16 conduct ADW wagering on thoroughbred signals.

17 And what 19596.1 authorizes is that a harness
18 horse association or a quarter horse association may accept
19 wagers on the results of out-of-state or out-of-country
20 harness or quarter horse races, only. They are limited to
21 accepting wagers, again, on harness or quarter horse races,
22 only. That's what the Los Al license is limited to.

23 So you look at the next section of law, which is
24 19596.2, which relates to the thoroughbred industry, and
25 that says that a thoroughbred racing association or a fair

1 may accept wagers on the results of out-of-state or out-of-
2 country thoroughbred races during the period of time in
3 which they are licensed to conduct racing.

4 So the law in this State, California law that
5 applies to racing says, the Quarter Horse Association can
6 take wagers on quarter horse races, thoroughbred
7 associations can take wagers on thoroughbred races, and that
8 includes imported races.

9 It goes further. If we go back to Section 19596.1
10 it says that "no quarter horse association or harness horse
11 association shall accept wagers on out-of-state or out-of-
12 country quarter horse or harness races commencing prior to
13 5:30 p.m., without the consent of the thoroughbred
14 association or fair that is then conducting a live racing
15 meet in the State at that time."

16 Now, if we go back to January when, again, TVG did
17 not have a contract in January, February, March or April,
18 that period of time when Bay Meadows wasn't running and we
19 only had Golden Gate and Santa Anita, TVG did not have an
20 agreement, either with TOC or with any thoroughbred racing
21 association in this State, to conduct wagering, ADW wagering
22 on imported thoroughbred races. They were relying
23 exclusively on their contract with Los Al.

24 Los Al was not permitted to accept wagers on
25 imported thoroughbred races, by virtue of the law. Not only

1 that, they couldn't accept wagers before 5:30 p.m., unless
2 they had the consent of Santa Anita, which they did not
3 have.

4 So by law, TVG was not legally permitted to accept
5 imported thoroughbred races -- or wagers on imported
6 thoroughbred races this year.

7 So again, I want to summarize that what the law of
8 the State of California says is that an ADW provider accepts
9 ADW wagers as an extension of the license of the racing
10 association or fair with whom they have a contract, and that
11 they are not permitted to accept wagers independently, by
12 virtue of a contract with a non-thoroughbred association.

13 So what TVG was doing for a good portion of the
14 spring was illegal under California law. Without the HUB
15 fee agreement with TOC, what they were doing was illegal.

16 COMMISSION CHAIRPERSON SHAPIRO: Can I ask a
17 question, just to make sure, I'm trying to follow? If they
18 had a HUB agreement with TOC, then they would have been able
19 to import it, even though they didn't have an agreement with
20 Santa Anita?

21 MR. COUTO: What we have done, by virtue of the
22 HUB fee agreement, was work with our track partners to say
23 we have a HUB fee agreement with these ADW providers that
24 assures you're going to get X amount of money. And it was
25 agreed to in the first year of ADW because what we had was

1 some tracks controlled by one ADW company, some tracks
2 controlled by another ADW company. Unless there was a
3 consistent agreement year round, these companies were going
4 to have to stop operating during the period of time they
5 didn't.

6 So the parties, all the parties involved agreed
7 that if they had an agreement with TOC, TOC would impose on
8 their race track partners to allow these companies to
9 continue working during that period. That is the way in
10 which it evolved from the last four years, from 2002, '03,
11 '04, '05, and '06. Or up until '06, '07.

12 COMMISSION CHAIRPERSON SHAPIRO: So in the case of
13 Santa Anita, when this first arose, TVG, which does not show
14 Santa Anita, could not accept wagers on Santa Anita but was
15 able -- had they had an agreement with you, TOC, they would
16 have been able to import races, thoroughbred races; is that
17 correct?

18 MR. COUTO: In 2002 this was an issue of
19 contention, and what the Horse Racing Board did was insist
20 that in order for TVG to accept wagers on thoroughbred
21 racing, when they didn't have an agreement with a
22 thoroughbred track, is they had to have an agreement with
23 us. That was a source of contention in January, February,
24 March, April, all the way until November of that year when
25 the -- and we'll see, because I'm going to go through this

1 testimony with you, all the way through November of the
2 first year, when the Horse Racing Board made it very clear
3 that if TVG did not have an agreement with us, because they
4 couldn't get one from MEC, and MEC couldn't get one from the
5 TVG tracks.

6 And the Horse Racing Board was concerned that this
7 was going to be a bad situation. The decision was to insure
8 protection of the industry by requiring an agreement with
9 TOC.

10 And as I'll go through the testimony, you'll see
11 how this evolved.

12 COMMISSIONER AMERMAN: I don't quite understand,
13 TVG didn't have an agreement this spring with the track, or
14 with TOC, why are we sitting here going into October and
15 nothing has really happened.

16 COMMISSION CHAIRPERSON SHAPIRO: Well, let me
17 address that.

18 COMMISSIONER AMERMAN: Forgive me, I'm new.

19 COMMISSION CHAIRPERSON SHAPIRO: No, no, you are
20 new.

21 COMMISSIONER AMERMAN: Yeah.

22 COMMISSION CHAIRPERSON SHAPIRO: This was brought
23 to the Board's attention, we were prepared to hear it and
24 deal with it. There was a firestorm of politicking that got
25 involved. Senator Dean Flores came in and said, listen,

1 before you hear this, I'd like to meet with the parties, I'd
2 like to see if I can't help bring revolution.

3 His good offices tried for many months to do it.
4 After it appeared -- there were some discussions, then, that
5 I think took place between TVG and MEC, to which I don't
6 have knowledge about the content of those discussions,
7 because I believe there were confidentiality agreements that
8 were signed, and I don't believe TOC was involved in those
9 discussions. When those agreements seemed to -- when those
10 discussions with MEC did not lead to a fruitful conclusion,
11 the ball was put back in our lap.

12 COMMISSIONER AMERMAN: And this was about when?

13 COMMISSION CHAIRPERSON SHAPIRO: And this was
14 about a month ago.

15 COMMISSIONER AMERMAN: Okay.

16 COMMISSION CHAIRPERSON SHAPIRO: And so it was on
17 our agenda the last meeting and we made one last, failed
18 ditch effort to see if TOC and TVG could work through this
19 dispute which, unfortunately, they have not been able to do.

20 Is that agreeable to both of you there, generally?
21 Again, I --

22 MR. MATHENSON: Today, yeah.

23 COMMISSION CHAIRPERSON SHAPIRO: Just generally,
24 trying to help. Okay, go ahead.

25 MR. COUTO: So that brings us sort of to the third

1 issue and that is has the CHRB consistently required an ADW
2 provider also have a contract with the horsemen representing
3 the relevant breed as a condition of the ADW licensure.

4 So in order to get there, we sort of got to review
5 a little history here. 2002 was the first year in which the
6 ADWs were licensed. And beginning from January 10th through
7 the 23rd, TOC negotiated HUB fee rates with the three ADW
8 providers. We were able to reach an agreement with
9 XPressBet first.

10 TVG took the position, which they are taking
11 again, now, somewhat surprisingly, that they don't need an
12 agreement with us, all they need is the Interstate Horse
13 Racing Act, that the statute specifically does not say that
14 they need an agreement with us, that the rule does not --
15 your rule, the ADW rules, does not say they need an
16 agreement with us.

17 They took that position in 2002, from day one, and
18 you'll see what transpired in 2002 and how we got there.

19 January 24th of that year was the CHRB meeting in
20 which the ADW licensing applications came up for hearing,
21 for XPressBet, YouBet, and TVG, and this was all new
22 territory. This was all new territory for the Horse Racing
23 Board and how it was going to be done was somewhat unclear,
24 I think, to everybody.

25 But if we look at January 24th, it begins with the

1 approval of the XPressBet license and CHRB staff, and you'll
2 see on each slide and each page there are reference numbers,
3 and if you were to go to the transcripts of these hearings,
4 so that would be the January 24th, 2002 CHRB hearing. And,
5 for example, the first citation here is page 36, it should
6 be lines 1 through 18, unfortunately, it's a period, or 1
7 through 19, whatever, where you will find this testimony,
8 which we've excerpted the entire testimony there.

9 I am quoting testimony here, and not paraphrasing
10 it, so you'll find this when you go there.

11 CHRB staff advised the Horse Racing Board that
12 they had received Horsemen's approval on a contract that
13 morning regarding XPressBet. Mr. Liebau, who was then
14 working for MEC, confirmed that negotiations with TOC had
15 occurred, we had reached an agreement, and that agreement
16 was going to extend through November 15th of that year in
17 order to give us and them adequate time to negotiate the
18 term of the next agreement, when their license would be
19 renewed, hopefully, for 2003.

20 Again, in 2002 the ADW licenses were granted on a
21 one-year basis.

22 So the next license up that day, for hearing, was
23 YouBet, and CHRB staff advised the Horse Racing Board that
24 the application was incomplete because it still required
25 Horsemen's approval in the contract from TOC.

1 At that time Executive Director Roy Wood asked, do
2 you have a contract with the Horseman's Association,
3 thoroughbreds who are racing at Santa Anita at this time.

4 Mr. Luniewski, who was then, again, working for
5 YouBet, replied no, they did not, but they were working with
6 us to have that and they were also working with the harness
7 folks. And for that reason, and the fact that their bond
8 had not been in place at the time, the Horse Racing Board
9 declined to license YouBet that day.

10 But as this testimony points out, on the next
11 page, Vice Chairman, then Licht, was encouraging, is a mild
12 way of putting it, but he was encouraging YouBet to work
13 with TOC to get this contract, and highlighting there that
14 an agreement with Horsemen was necessary for the licensing
15 to occur.

16 The next license up that day was TVG. Their
17 license was approved for one year. They submitted an
18 agreement with Horsemen, from Los Al, and they were again
19 asked if they had a Horsemen's agreement with the
20 thoroughbred owners.

21 Chairman Allan Landsburg, at that time, asked in
22 particular had they negotiated with TOC, and Mr. Wilson, at
23 the time, asserted that they did not have to negotiate with
24 TOC --

25 COMMISSION CHAIRPERSON SHAPIRO: And Mr. Wilson is

1 who?

2 MR. COUTO: Mark Wilson.

3 COMMISSION CHAIRPERSON SHAPIRO: Is he the
4 president of TVG at that time?

5 MR. COUTO: He was the then president of TVG, CEO.
6 And he asserted that he only needed a contract with the
7 racing association and/or the Interstate Horse Racing
8 approval from TOC.

9 And as Mr. Licht pointed out, at the time, that he
10 was very uncomfortable with this notion that TVG was going
11 to be able to accept wagers on thoroughbred races out-of-
12 state, while Santa Anita was running, using only out-of-
13 state signals, thoroughbred signals, and pointed out that he
14 was very uncomfortable with the fact that TVG would then
15 have only fairgrounds or some other tracks to offer, and it
16 was going to have a negative impact on California horsemen
17 until the Hollywood Park meet started.

18 These were the concerns of the Horse Racing Board,
19 again, in the very first month in which they were licensed
20 in 2002, that's January.

21 In April of that year, on April 25th, the Horse
22 Racing Board scheduled an update, sort of a review of ADW at
23 that point, and it began with a review of XPressBet's
24 performance. Ed Hannah was then VP and general counsel for
25 XPressBet, and he handed out some printed materials that

1 summarized where they were so far. And, again, he also
2 specified what the HUB fee rates were based on the
3 negotiated contract between TOC and XPressBet. And pointed
4 out that at that time their rate was four and a half on
5 California wagers, and three and a half on imported wagers.

6 By that time YouBet also had an agreement, a hub
7 fee agreement with TOC, as had been required by the Horse
8 Racing Board, and they also identified for the Horse Racing
9 Board that they were operating under a sublicense agreement
10 with TVG in order to get the California product that TVG
11 purportedly controlled.

12 So you had XPressBet confirming that they had HUB
13 fee agreements with TOC, as required by the Horse Racing
14 Board at the first meeting, you had YouBet confirming that
15 fact, again as required by the Horse Racing Board at the
16 first meeting.

17 We get now to TVG again, April 25th. Mr.
18 Landsburg, who was then Chairman of the Horse Racing Board,
19 was a bit upset with TVG and said he demanded an explanation
20 to the Board as to why TVG lacked the Horsemen's agreement,
21 as was required for their license application.

22 Mr. Hindman argued that it was a matter of
23 interpretation, again that he only needed an agreement with
24 the tracks pursuant to the statute, pursuant to the rule,
25 and that he needed the Interstate Horse Racing Act, but he

1 needed nothing more than that.

2 And Mr. Landsburg then pointed out, well, that's
3 an interesting interpretation, but you have an agreement
4 with the Los Al Horsemen, so you obviously understood that
5 what we were looking for was an agreement with the horsemen
6 of the breed that you would be dealing with.

7 And this argument continues on for several pages,
8 dozens of pages. And Mr. Blake, who was then the Deputy AG,
9 advising the Horse Racing Board at that time, pointed out to
10 the Board, and to Mr. Hindman, in particular, that while the
11 law, the statute did not specify that they needed an
12 agreement with TOC, and the rule didn't, he pointed out that
13 the Board had the discretion, under the licensing powers
14 granted to you, to require a Horsemen's agreement, if you so
15 saw fit. And the Horse Racing Board in fact did so see fit.

16 And explained, I believe, at that time to the
17 Board and also I'm told, although I haven't seen it because
18 it's privileged, I'm told, also, that he advised the Board
19 in writing that they were entitled to -- not only entitled
20 to, but they had the legal authorization to require it and
21 had, in fact, required, as a condition of licensure, an
22 agreement between the ADW companies and the Horsemen's
23 organizations who were there.

24 I don't know this for a fact, I have not seen the
25 document. I understand that you all have a copy, or some of

1 you have a copy of that.

2 Now, Chairman Landsburg was upset by this
3 discussion and, as you can see, his testimony was that he
4 felt that TVG in 2002 was blatantly ignoring a requirement
5 that had been set by the CHRB, precedential, and that
6 XPressBet and YouBet had, in fact, executed agreements with
7 TOC.

8 And as he said, the CHRB had the power to make the
9 rules and were making the rules with regard to the licensing
10 of ADW companies and was requiring this agreement.

11 Now, again, this discussion goes on for pages, and
12 pages, and pages. But again that day Mr. Landsburg made it
13 clear, and I'll quote him, "no further agreement shall be
14 done without a specific Horsemen's agreement as required by
15 the CHRB license."

16 Now, I want to point back to Mr. Blake's
17 testimony, the Deputy AG, he said, "the requirement," i.e.
18 the requirement, a Horsemen's agreement, "was imposed by the
19 Board at the discussion of this application," meaning TVG's
20 application in January.

21 I don't think anybody thinks it's in the law, as
22 he pointed out, and I know TVG's going to continue that
23 argument today, six and a half years later. But he pointed
24 out to -- we agree, it's not in the law, it's not in the
25 rules, but the Board has the power to require it, and did

1 require it, and has required it every time since these
2 licenses were granted.

3 Mr. Hindman at that time was again continuing to
4 argue and said, "at what time?" Mr. Blake confirmed "at the
5 time the licenses were discussed this was required."

6 Lastly, on that date Mr. Landsburg insisted, he
7 said, "we're going to have a clear procedure in the future
8 so there's no doubt." I recall this speech very clearly.
9 He said, you know, "all further agreements will have an
10 agreement between Horsemen and TVG."

11 Now, Mr. Harris, who was then at that meeting,
12 pointed out that while he wasn't involved in passage of the
13 legislation, it was his understanding that the intent was
14 always that "owners would have veto power meet by meet, on
15 whatever providers there were."

16 Okay, so again, Mr. Harris expressed, in April of
17 2005, that his understanding of the intent in the law was
18 that owners would have veto power meet by meet.

19 Again, April 25th was a very important meeting.
20 Mr. Harris then discussed what the statutory limit was on
21 the HUB fees. Mr. Landsburg pointed out it was six and a
22 half percent.

23 And as Mr. Harris then stated, "I would like to
24 see it get as low as it can." But he noted that "the Horse
25 Racing Board could do nothing to set the HUB fees." And he

1 pointed out, again, "that if owners and the ADW companies
2 negotiated something different, he wasn't certain the Horse
3 Racing Board had standing to require a different number, it
4 was left to the Horsemen" and as he said, "the owners and
5 the ADW providers."

6 And I'm going to wrap up fairly quickly, so bear
7 with me just a couple moments more. That same year,
8 November 2002, was the hearing regarding licensing for the
9 second term, which would be for 2003 and '04, it was a two-
10 year term.

11 The Horse Racing Board asked if an agreement had
12 been reached this year, being for 2002 and 2003, between TVG
13 and TOC, and advised that, yes, they had reached an
14 agreement. Mr. Wilson confirmed that they had reached an
15 agreement. And I think you've seen, in the past, a copy of
16 that agreement, which I showed to the Board in February.

17 At that time, again November 21st, 2002, two-year
18 licenses were being issued and it was noted that the
19 agreement between TOC and TVG was a one-year agreement.

20 And Mr. Harris noted that fact, at that time, and
21 said, you know, it was kind of interesting, he thought it
22 might be a good thing, he said, "if there was some
23 extraordinary circumstance that came along, there was a
24 safeguard because that agreement was one year." There was a
25 safeguard in the Horsemen's agreement was one year and it

1 could be revised in the middle of the term of the license.

2 Again, the discussion about HUB fee rates was
3 raised and Mr. Harris pointed out to the Board, at that
4 time, "that it is not the CHRB's position to negotiate HUB
5 fee rates" and he says, "the Horsemen do that."

6 And he pointed out also at that time, on page 74,
7 roughly lines 1 through 25, "that a ADW company could have a
8 license, but not a contract" -- "they could have a license,
9 but not a contract with either a track or Horsemen, and not
10 be able to conduct ADW, despite the fact that they were
11 licensed."

12 Again, on December 16th of that year TOC and TVG
13 execute the formal document, and it's the same memorandum
14 that's been forwarded to them, basically every year, with
15 different terms. Some are signed, some are not signed.
16 They are sent as confirmation of what the agreement is
17 between the two parties, based on their sit-down
18 negotiations.

19 Lastly, I want to bring you up to this current
20 license period. December 2nd, 2004 TVG's license was up for
21 2005 and 2006, that was the issue then. TVG's application
22 was approved subject to the Horsemen's agreement. And Ms.
23 Noble, who then was CHRB staff, I'll read -- I'll quote --
24 I'll read her quote here. It says, "the Thoroughbred
25 Horsemen's agreement has not been received. Staff

1 recommends the Board approve the application conditioned
2 upon receiving the Thoroughbred Horsemen's agreement." This
3 is relating to TVG.

4 I then stood up and advised the Horse Racing Board
5 that we had reached an agreement the night before with TVG.
6 There were some lengthy discussions with all the ADW
7 providers the night before, so we actually did have a
8 Horsemen's agreement, they would be coming shortly, and we
9 had reached agreement on what the terms would be.

10 And based on that, the completed application and
11 the representation from the parties that we had a Horsemen's
12 agreement with the -- a HUB fee agreement with TVG, their
13 license was granted.

14 And that covered this period right now, 2005 and
15 2006. And I've also included in there for each, YouBet, and
16 also XPressBet, the same basic testimony, reviewed by staff,
17 indicating that they needed the agreement with TOC in order
18 to approve the license, and on each time I advised the Horse
19 Racing Board that we had reached an agreement the night
20 before.

21 Now, they were issued licenses covering 2005 and
22 2006. As a condition, as this Horse Racing Board has
23 imposed ever since, that as a condition of that license they
24 had to have that agreement.

25 Now, it's the same as if a trainer's licensed and

1 a trainer must have worker's compensation. They have a
2 license for a period of time. But if their worker's
3 compensation lapses during the period in which their license
4 is valid, that license is suspended because as a condition
5 of that licensure in this State, in California, if their
6 worker's comp policy lapses, the license does as well, it's
7 suspended.

8 Here, we have an identical situation in which a
9 condition imposed by the Horse Racing Board, and I know that
10 TVG's going to come up and say read the law, read the rule,
11 and they're going to ignore what the Horse Racing Board's
12 DAG told them, and what has been required every year since.
13 They're going to say, well, we were licensed for two years.
14 Even though we don't have an agreement during the period in
15 question, in particular, and we don't have a Horsemen's
16 agreement valid today, we can, nonetheless, conduct ADW in
17 the State, import thoroughbred races, relying on Los Al's
18 contract. We can set our own HUB fee rate, regardless of
19 who says otherwise, and we'll set it at six percent, a
20 higher rate than we've had in two years, and that is where
21 we find ourselves today, back to where we were at the
22 beginning of ADW, in 2002, when TVG took the position,
23 unlike the rest of the companies here, that they don't need
24 an agreement with us.

25 COMMISSION CHAIRPERSON SHAPIRO: Let me ask you a

1 question. Do the other ADW companies have agreements with
2 TOC?

3 MR. COUTO: Yes, they do.

4 COMMISSION CHAIRPERSON SHAPIRO: Okay. Are you
5 done?

6 MR. COUTO: Yeah. I guess the last thing I wanted
7 to perhaps address here is this was my conclusion, which
8 I've largely stated, but I give you -- give you some
9 information here. What we're talking about is imported
10 thoroughbred signals, and what we've done is highlight for
11 you what the -- I know you can't read them, it's not
12 included in the packet, I came up with this, this morning,
13 and I'll send it to you subsequently.

14 But this is a list of the imported -- of the
15 signals that TVG offers here, in California. And in 2004,
16 going back to 2004, I believe they offered 80 some signals,
17 of which, hopefully, they'll clarify, I believe 11 of them
18 are California signals.

19 So they offer, in 2004, to California players, I
20 think it was 84 total signals, 73 were imported signals.

21 In 2005, I believe the number went up to 87, or
22 roughly 90. And again, it's just 11 California signals and
23 the rest are made up of imported signals.

24 And in 2006 we're up, I believe the number is 104
25 signals with, again, only 11 being California signals.

1 And on those imported signals, in which they bring
2 it in at a rate they choose, we have tried to set the HUB
3 fee rate to adjust it so that the recovery for horsemen and
4 race tracks is the equivalent of, actually, slightly better
5 than the off-track model. And we've done that with some
6 science over the past few years.

7 Given the growth that TVG has in out-of-state
8 signals, in imported signals, particularly when they don't
9 have a California track, it's very problematic, it's costing
10 us a tremendous amount of money, and that's why we sought to
11 adjust their rates this year.

12 Lastly, with regard to the rate, they have
13 asserted that two and a half percent HUD fee rate on imports
14 is a ludicrous number, it is a number that's not warranted,
15 it's ridiculous. And at the same time, at the same time
16 while they find two and a half percent ludicrous, they pay
17 us two percent for nonexclusive signals, two percent. And
18 that's what we split with the racing associations, two
19 percent.

20 Not only do they limit us to two percent on the
21 nonexclusives, they have designated in the case of Bay
22 Meadows, which is a nonexclusive, they have designated Bay
23 Meadows an exclusive nonexclusive. Which, by virtue of
24 doing that, limits the ability of other ADW providers, such
25 as YouBet, or AmericaTab, to pay us anything more than two

1 percent, even though it is theoretically a nonexclusive
2 track.

3 So while two and a half percent for them, which
4 they don't split with anybody, is a ridiculously low HUB
5 fee, two percent to the industry, to be split between purses
6 and horsemen is somehow a reasonable number.

7 Now, my final comment with regard to this whole
8 structure, it is -- there are two comments I want to make.
9 One, based on the exclusivities that TVG has, and the
10 pricing model it has, and the sublicense agreements it has,
11 it makes -- it makes the other ADW providers, who sublicense
12 there, it makes it financially impossible for them to make
13 money on California signals.

14 Therefore, they use the California signal as a
15 loss leader to bring people to their site, and I believe
16 they'll be open about this, and then do what they can to
17 shift play over to other signals, where they have a higher
18 yield. And they have to do that because under the
19 sublicense agreement they can't -- they're limited to a half
20 a percent or less based on the agreement. And Mr. Champion
21 might talk to it.

22 And my final comment, I promise, is this, that
23 while TVG is going to raise this issue about whether or not
24 an agreement with us is required for them to conduct ADW,
25 sitting in the audience today is Shawn Egidey, he is the

1 founder and CEO of a start-up ADW company that is trying to
2 get licensed here, in this State, called Day At the Track.

3 And Shawn is going through the license application
4 process right now and he understands, based on his
5 conversations, currently, with the Horse Racing Board staff,
6 that in order to be licensed he needs an agreement, a HUB
7 fee agreement with TOC, and he's tried to work one out with
8 us.

9 So I believe the staff is still understanding that
10 that's a requirement.

11 And, unfortunately, what our problem is for Shawn
12 is Shawn would like to come in, broaden distribution, has a
13 new model, has an interesting theory. We are reluctant to
14 do a deal with Shawn because he cannot get access to TVG
15 content, so he would become another ADW company in the State
16 who only had part of the California content, and was forced
17 to move players to non-California content, when he couldn't
18 get TVG content.

19 ADW is a mess. We have tried to put some sense to
20 it by being involved in the application process, by working
21 out HUB fee agreements that insure that California racing
22 would receive a fair share. We're being denied that
23 opportunity by TVG, who is not, in our view, sitting down to
24 negotiate this. Didn't until two weeks ago. And it's
25 unfortunate where we are today, nine months later.

1 So I apologize for such a long presentation but,
2 hopefully, summarized it.

3 COMMISSION CHAIRPERSON SHAPIRO: Well, I think it
4 was very useful and very helpful to us. I suggest that we
5 reserve making any comments so that Mr. Nathanson can
6 provide us with his view of the situation, at which point we
7 can then ask questions.

8 Mr. Nathanson?

9 MR. NATHANSON: Thank you, Chairman Shapiro.
10 David Nathanson, TVG. It's my distinct pleasure to address
11 this Board, this afternoon.

12 As many of you know, I joined TVG and the horse
13 racing industry a little less than a year ago. During my
14 brief tenure I have spent a significant portion of my time
15 not only getting acquainted with my fellow stakeholders in
16 California racing, but also discussing a variety of the
17 hard-pressing issues that Mr. Couto has raised today,
18 including those specifically related to ADW.

19 TVG is proud to be in this business. We are
20 listening to our constituents and are actively engaged in
21 discussions with our track partners, industry stakeholders,
22 even our competitors, to explore ways to build consensus and
23 improve the business of horse racing in California.

24 And I can tell you it's my intent, and it's the
25 intent of the more than 120 dedicated TVG employees working

1 in California, to do our part to use our multiple platforms
2 to broaden the appeal of the sport, to give our partners the
3 broadest possible distribution to interested viewers, and to
4 service our subscribers and our customers with the best
5 possible experience in the business.

6 I think it can be fairly asserted that TVG has not
7 evolved without making mistakes along the way. Certainly, I
8 have during my brief time here. We're not perfect and our
9 company has significant room for improvement.

10 But no one can question our commitment to
11 California racing. We distribute 5,000 California races a
12 year to all 50 states, via satellite, and 41 states via
13 cable, via all the top cable operators in the country. Our
14 channel is distributed, today, to nearly 20 million
15 households and it's growing.

16 TVG is one of the most widely distributed niche
17 sports networks in the cable industry, and nearly 100
18 percent of all California residents have access to TVG via
19 their cable or satellite provider, and in the top 50
20 communities, the majority of them have it on digital basic,
21 meaning they don't have to pay anything extra for it.

22 We handle more wagers in California than the two
23 other licensed ADW providers combined, generating 750
24 million in California handle to date, and we've paid back to
25 the industry over a hundred million for purses, commissions,

1 and statutory contributions.

2 California racing and its constituents are
3 incredibly important to TVG. And we hope our current and
4 future contributions to California racing will be equally as
5 important to the State.

6 Now, I'd like to take some time to specifically
7 address the comments that Mr. Couto just made and the issues
8 raised by Agenda Item Number 14.

9 Many of these issues, you may recall, we addressed
10 in a comprehensive response to the California Horse Racing
11 Board on January 5th, 2006. Although a number of months
12 have passed, I'd like to reiterate the sentiments of that
13 letter.

14 We firmly believe that TVG has, at all times,
15 acted in accordance with the requirements of the law and the
16 terms of our approval from the California Horse Racing
17 Board. The requires an ADW provider to have a contract with
18 the racing association running a live race meet. TVG has
19 such an agreement.

20 The law also specifies that HUB fees are to be
21 determined by a contractual agreement between an ADW
22 provider and a racing association, providing the fees not
23 excess 6.5 percent of wagering. TVG's contract with the
24 racing association, setting HUB fees, complies with that
25 requirement.

1 The current position taken by TVG are consistent
2 with the position maintained by the company since 2002, and
3 since then we have been operating at all times -- at all
4 times under the explicit approval of the CHRB.

5 In fact, when the initial approval of TVG's first
6 application to conduct ADW was granted by the CHRB on
7 January 24th, 2002, TVG did not have a contract with any
8 California thoroughbred racing association running live at
9 the time, nor did TVG have an agreement directly with the
10 TOC.

11 After consultation with the Deputy Attorney
12 General, the Board approved TVG's application to conduct
13 ADW, including TVG's conduct of ADW on imported thoroughbred
14 races, on the basis of its agreement with Los Alamitas.

15 The Board found that no agreement between the TOC
16 and TVG was required under the California laws governing
17 ADW, and approving our application.

18 The next day, January 25th, 2002, TVG began
19 conducting ADW with California residents, including on
20 imported thoroughbred races, with the Board's approval.

21 We've received that approval under the exact same
22 conditions two subsequent occasions, and not a day has gone
23 by since then that we have not provided our services to
24 California racing fans.

25 It has been asserted that in 2002 that the Board

1 delegated, to a Horsemen's group, the unilateral right to
2 set HUB fees for ADW on thoroughbred races. To our
3 knowledge, the Board, itself, has never asserted that it has
4 the statutory right to unilaterally set HUB fees, which is
5 noted previously are set pursuant to contractual agreements
6 between racing associations and ADW providers.

7 There is no evidence that the Board has ever taken
8 any action to delegate such right, if it exists. It would
9 be a violation of the California constitution to delegate
10 that right to a Horsemen's group, an organization that is
11 not operating pursuant to the laws that govern public
12 agencies and is, itself, a competitive party in this
13 process.

14 Nevertheless, we recognize that for the industry
15 to succeed all stakeholders, tracks, horsemen, television
16 distributors, ADW providers, and even the horse racing fans
17 that we speak to and service daily need to be working on the
18 same page.

19 We have been engaged in active discussions with
20 the TOC over the past few weeks to find common interest that
21 would benefit the industry. And although no agreement has
22 been reached, I believe those conversations have been
23 productive and remain ongoing.

24 I sit here today because TVG is committed to
25 California racing. We look forward to working with members

1 of the Board, as well as members of the Legislature, moving
2 forward to maximize business in California.

3 We understand that with the sunset provision in
4 the ADW law fast approaching, the industry will be working
5 with the Legislature to explore the best ways to improve ADW
6 in the future.

7 We applaud and appreciate the efforts of Senator
8 Flores and Chairman Shapiro to begin that effort and intend
9 to be very active participants in that process.

10 I think you for your time this afternoon and I
11 believe my comments addressed, specifically, the agenda
12 items. If you would like to entertain a broader discussion
13 on the status of ADW in California, John Hindman is prepared
14 to deliver a brief presentation that scribes the positive
15 results of ADW and TVG's contribution to date.

16 COMMISSION CHAIRPERSON SHAPIRO: Thank you very
17 much, Mr. Nathanson. Before Mr. Hindman does that, and I
18 think we are interested in hearing that, I think we should
19 deal with the issue that's before us right now, which would
20 be the dispute and those issues. I do have a few questions.

21 And, first, I want to clearly state that I think,
22 as you started out, nobody can question or should question
23 the value that TVG brings in terms of the television
24 production and the presence of bringing live horse racing
25 into 50 states, and versus all the various cable means, and

1 all that, which I don't understand TV. But I am certainly
2 one of the people that very much enjoys watching TVG and I
3 think that you and your staff should be complimented on the
4 job you do in that regard.

5 So while these are difficult issues, I don't want
6 to lose site of that.

7 I also believe that TVG, along with XPressBet, and
8 YouBet, are critical at this juncture in helping us grow and
9 build California horse racing.

10 Having said that, I also recognize that if you
11 literally read the law, I believe that the law does not
12 provide that the agreement to be entered into is between an
13 ADW company and a Horsemen's association, it says a racing
14 association. I think that's pretty clear.

15 Now, I also understand, however, that going back
16 to 2002, that in light of the way that the ADW companies
17 were formed and, again, it's easy, now, with hindsight to
18 see this, XPressBet was captive to Magna. Therefore, it
19 didn't make much sense to entrust Magna to negotiate with
20 itself what the HUB rates would be.

21 It's also my understanding that when TVG came into
22 existence there were founder partners, and it was my
23 understanding that one of the reasons why there was, what
24 I'll call a default to the Horsemen's organization, was
25 because it was difficult to ask TVG to negotiate the HUB

1 rate with a founder partner.

2 Therefore, it's my understanding that since this
3 Board could not set those rates, and should not set those
4 rates, which I agree with, the only unbiased party, which
5 the parties agreed to at the time, was the Horsemen. The
6 Horsemen had the best interest of the purses, the trainers,
7 the owners and, therefore, they were entrusted with making,
8 entering into and negotiating those agreements.

9 What I don't understand is why now, after that has
10 been the practice for a series of years, whether it's in the
11 law or not, why TVG, unlike XPressBet and unlike YouBet, are
12 opposed to that?

13 And I must tell you I'm also very pleased that you
14 and Mr. Couto, and your respective organizations and
15 members, and partners, and employees have sat down and began
16 a constructive dialogue. It was very troubling that over
17 the last year the parties were not able to sit down.

18 So fundamentally I ask, what is the objection that
19 TVG has to TOC representing the Horsemen to negotiate, in
20 good faith, a fair rate.

21 MR. HINDMAN: If I may, excuse me, Chairman
22 Shapiro, I just wanted to go through --

23 COMMISSION CHAIRPERSON SHAPIRO: Can you state
24 your name?

25 MR. HINDMAN: Yeah, John Hindman, H-i-n-d-m-a-n.

1 I just wanted to go through and I think that, you know, I
2 appreciate your understanding of the facts and the issues at
3 hand here. But what I wanted to do, though, is to go
4 through what, from our view, has been the history and what,
5 from our view, has been the events that have transpired. I
6 mean, Mr. Couto gave his point of view and a very distinct
7 timeline. I would like to follow the same timeline so,
8 hopefully, you could understand our position a bit better.

9 COMMISSION CHAIRPERSON SHAPIRO: Well, okay. I
10 don't want to deny you that opportunity. What I'm not --
11 because it's late in the day, everybody's tired, and this is
12 such a critically important issue, I'd like to get to the
13 heart of it. And, therefore, without going on about the
14 virtues of TVG and the benefit of ADW, let's leave that off,
15 okay?

16 MR. HINDMAN: I'm not even going to show you a
17 Power Point slide.

18 COMMISSION CHAIRPERSON SHAPIRO: If you want to
19 give a different recollection or your view of the facts are
20 different then, please, by all means go ahead.

21 MR. HINDMAN: That's all I was going to do, sir,
22 at this point.

23 COMMISSION CHAIRPERSON SHAPIRO: Fine, thanks,
24 John.

25 MR. HINDMAN: I think it was -- and if you go

1 back and look at the CHRB transcripts, it was widely known
2 at the time of the January 2002 CHRB hearing that TVG did
3 not have an agreement with Santa Anita Park. We still don't
4 today. We did prior to that time, but we still don't today,
5 in January of 2002.

6 We took a very thorough look at the ADW law, the
7 ADW rules that had been drafted, and the requirements of the
8 application, and followed that as closely as we possibly
9 could. And here's what it required, from our view.

10 To operate ADW in the State of California, even if
11 you were licensed, you had to have an agreement with a track
12 running live, unqualified, no qualifications whatsoever in
13 the law and the regulations. That was the first condition.

14 Number two, the fees that you could keep from such
15 wagering, or the HUB fees, were set by an agreement between
16 a racing association and an ADW provider.

17 Three, among other qualifications, in the
18 application it said that you had to comply with the
19 Interstate Horse Racing Act.

20 That is what we understood then and understand
21 now, as our obligations to me.

22 COMMISSION CHAIRPERSON SHAPIRO: Can I just ask a
23 question there? Does the Interstate Horse Racing Act
24 require that there be an agreement with the Horsemen?

25 MR. HINDMAN: The Interstate Horse Racing Act is

1 very clear in what it requires, in that you cannot use a
2 signal for interstate wagering on horse racing without the
3 consent of several groups, including the horsemen at the
4 track where the racing is being conducted.

5 At that time, and generally speaking --

6 COMMISSION CHAIRPERSON SHAPIRO: So that's a yes;
7 correct?

8 MR. HINDMAN: And generally speaking, the track
9 gets those agreements with the horsemen for all interstate
10 simulcast sites. That happened in that instance. Los
11 Alamitos had the consent of its horsemen for TVG to have its
12 signal. We had met the qualifications under the Interstate
13 Horse Racing Act.

14 That is where we came in. We were licensed that
15 day, on that basis. We began, the next day, accepting
16 wagers on Los Alamitos and tracks from across the country.

17 I would note that several things about the three
18 applications that TVG has filed with the Board. Each one of
19 them said that we were going to operate account wagering in
20 the State of California 364 days a year. Each one of them
21 contained a complete run down of the tracks that would be on
22 our wagering menu.

23 None of them were ever accompanied by an agreement
24 with a Horsemen's group.

25 Now, I would like to get to April, so I want to

1 tell you how we were licensed and what the circumstances
2 were. And I want to get to April, with the opening of
3 Hollywood Park.

4 Then Chairman Landsberg again raised these issues.
5 Hollywood Park was opening up and, again, we came forth,
6 Hollywood Park came forth, TOC came forth. Hollywood Park
7 reached an agreement with TOC for TVG to take its signal,
8 that had a bunch of items in it, in terms of it's TOC's
9 agreement with Hollywood Park, and we abided by that
10 agreement.

11 Nothing has changed into how we operate that
12 business in that time since. There is nothing in the law,
13 there's nothing in the regulations that contradict what we
14 do. We did, in 2002, in December of 2002, acknowledge to
15 the TOC at the time, because they asked us to, in the spirit
16 of partnership, what the terms would be that we would
17 operate ADW in California, on thoroughbred races during Los
18 Alamitos. We expressly reserved all of our rights. We made
19 it clear to them that it wasn't an obligation to do so.
20 They didn't ask for any amendment or large swing in the
21 financial basis, so we did so.

22 The same with discussions that we've had since.
23 But again, in terms of our ability to operate lawfully in
24 the State, I think -- I'm trying to make this as short as
25 possible -- using those tools and using what we know the law

1 to be, we are very -- we believe very strongly or firmly
2 that we are acting within the scope of the law.

3 COMMISSION CHAIRPERSON SHAPIRO: John, I'm not
4 coming at this from a perspective of law. Okay. I believe
5 that the law is rather clear that it says that the agreement
6 is between the ADW provider and a racing association. Okay,
7 so let's say that's a given.

8 But what I'm failing to understand is that what
9 we're trying to find is the equity and what's best for the
10 horse racing business. I think it was a qualified yes,
11 Interstate Horse Racing Act says that there must be an
12 agreement with the Horsemen. And if you are wagering on
13 harness racing, I'm assuming that's harness racing Horsemen.

14 If you're talking about conducting wagering on
15 thoroughbreds, I'm assuming that's Thoroughbred Horsemen.

16 Now, technically, and I'm assuming she's an
17 attorney that's going to want to discuss law, and I don't
18 want to discuss law. I'm trying to get to a place of
19 finding what is the problem and what is the right thing to
20 do. We want to use TVG to the maximum benefit, for the
21 benefit of the tracks, the Horsemen, and for TVG. And, of
22 course, our fans.

23 So what you did in 2002-2003, let's look at what
24 we should be doing today, and I still fail to understand
25 since the past practice, whether you reserved your rights or

1 you didn't, was to allow the negotiations to take place with
2 the Horsemen, why are you now not willing to do that?

3 MS. CHRISTIAN: Mr. Chairman, my name's Kathy
4 Christian. I'm actually a former Deputy Attorney General,
5 who represented this Board for almost ten years.

6 COMMISSION CHAIRPERSON SHAPIRO: Well, I was
7 right, you're a lawyer.

8 MS. CHRISTIAN: And I just wanted to clarify a
9 couple of points because I think it will help in terms of
10 the discussion. If you notice, the representative of TOC,
11 Mr. Couto, did not discuss the Interstate Horse Racing Act,
12 and that's because the consent that is necessary under the
13 Interstate Horse Racing Act, is from the Horsemen that are
14 exporting their signal.

15 In other words, no one -- the California Horsemen
16 have the right to say they won't allow their signal to be
17 exported. And when a signal comes into California, federal
18 law requires that the Horsemen at the host state, as well as
19 the host racing commission, agree that that signal can be
20 exported to California.

21 What Mr. Couto was relying on was stitching
22 together, and I'm an old appellate lawyer, so I'm familiar
23 with that trick, a lot of snippets from the transcripts of
24 various Horse Racing Board meetings, as well as little
25 pieces of agreements, out of context, to argue that

1 California law requires that the Horsemen, the California
2 Horsemen agree before somebody else's thoroughbred signal
3 can come into this State. And that's where I think we draw
4 the line and say that's not true.

5 Now, that doesn't mean, of course, that TVG hasn't
6 been willing to have discussions with the Horsemen to
7 specify to them what the terms of the agreements with the
8 various tracks are when the signal is coming from somewhere
9 else.

10 And I wanted to -- and I think this is important,
11 Deputy Attorney General Tom Blake, who preceded Mr. Knight
12 in the job of being counsel to the Board, specifically noted
13 that -- in April, in this famous April meeting, that "I
14 don't think anybody thinks it's the law, or that it's in the
15 regulations, or that it's in the application." That is, the
16 requirement to have an agreement with the TOC.

17 And so, therefore, if this Board steps in and says
18 we are going to influence, somehow, licenses or
19 relationships, or contractual terms by saying you must have
20 such an agreement, I would argue that that's outside the
21 authority that the Board has and that it muddies the water
22 and makes it more difficult for the parties to reach
23 agreement, and leaves --

24 COMMISSION CHAIRPERSON SHAPIRO: Well, let me ask
25 you a question, let me ask you a question to that point.

1 Are you saying, because I was at the meeting, and I believe
2 it was December '04, and you guys can correct me if I'm
3 wrong, when this two-year license was renewed and I was new
4 on the Board, but I clearly remember at that meeting that it
5 was represented to me, as a Board member, that our awarding
6 a two-year agreement meant that all the parties would be in
7 agreement as a condition of your licensure.

8 It was my understanding that the Horsemen, the
9 tracks, and the ADW providers would all participate in the
10 terms under which ADW wagering was being offered.

11 So Ms. Christiansen, is it?

12 MS. CHRISTIAN: Just Christian.

13 COMMISSION CHAIRPERSON SHAPIRO: Christian, sorry.

14 MS. CHRISTIAN: That's all right.

15 COMMISSION CHAIRPERSON SHAPIRO: Are you saying
16 that you believe it's beyond this Board's reach, as a
17 condition to issuing a license to require that the Horsemen
18 participate in the setting of HUB rates; is that your
19 position?

20 MS. CHRISTIAN: Yes, that is my position. That's
21 a bottom line legal position. That doesn't mean that there
22 aren't reasons why the people in the industry wouldn't want
23 to conduct a partnership kind of negotiation to see whether
24 they can make the industry more successful.

25 But, in essence, what you're trying to do is

1 insert something into the ADW law that maybe, arguably,
2 should be there, but that's a legislative prerogative,
3 something the Legislature should do.

4 COMMISSION CHAIRPERSON SHAPIRO: I appreciate
5 that, okay, I understand that. I understand from, I think a
6 lot of people's perspective, that when the law was enacted
7 it was new ground, new territory. We've learned. And I
8 would guess that most people, today, would think that the
9 Horsemen deserve a right to participate in that discussion.

10 So what I hear you saying is that maybe when the
11 ADW law is revised, down the road, that will be taken into
12 consideration, but today shouldn't we all be working so that
13 the -- what is the harm in the Horsemen participating, since
14 they are the true, only independent party, in some of these
15 circumstances?

16 MS. CHRISTIAN: Well, first of all, I think I
17 dispute that they are actually an independent party. They
18 have a stake, just like everybody else has a stake in this.
19 And the independent part is the Horse Racing Board. And had
20 the Horse Racing Board clear authority to do something in
21 this regard, we probably wouldn't be having this discussion.

22 But if you insert yourself now, in a way that
23 interferes with the contractual relationship or imposes an
24 improper condition on a license, I think you make it harder
25 for these folks to reach agreement.

1 COMMISSION CHAIRPERSON SHAPIRO: I can tell you,
2 over the last eight months, where we have not interfered, we
3 have done everything we can to encourage these people to
4 talk and work out an agreement. We did not want to see this
5 come before us, so I beg to differ on that.

6 Go ahead, John.

7 COMMISSIONER HARRIS: I had a quick question. I'm
8 not clear on if everyone's on the same page as far as the
9 exports of signals. I understand that imports, you're
10 taking a position that California can't really control,
11 because that's really up to the people that are in some
12 other state, sending them here.

13 But exports of signal, isn't it possible for the
14 Horsemen's group to say, no, we will not allow the export of
15 our signal, period, if they so desire.

16 Now, maybe they can't really -- it's quite a
17 question of how much they tie that into all the rate issues
18 but, clearly, can the Horsemen say we do not want our signal
19 exported to X?

20 MR. COUTO: Absolutely, under the Interstate Horse
21 Racing Act. Not only can we say we don't want to export it,
22 but we can say, under the IHA, that we don't want any wagers
23 taken by TVG, by Californians, on California races. Because
24 every wager that TVG transacts is an interstate wage or it's
25 handled in Oregon, it crosses state lines, and the

1 Interstate Horse Racing Act applies.

2 There's a couple things I'd like to respond to,
3 when the time is appropriate to respond.

4 COMMISSION CHAIRPERSON SHAPIRO: That's fine.
5 But, guys, we're trying to build this. We're trying to
6 build the industry, we're trying to improve ourselves. I
7 don't want to see TOC saying, fine, you're not going to let
8 us have a voice on importing, the law doesn't allow it, and
9 if you're correct --

10 MR. COUTO: Well, can --

11 COMMISSION CHAIRPERSON SHAPIRO: I mean, what are
12 we doing here.

13 MR. COUTO: Can I jump in on that one issue
14 because Ms. Christian is absolutely incorrect on what our
15 voice is on the import of races here. And if you give me a
16 few minutes, I'll find the specific statute. But imports of
17 thoroughbred races in this State are controlled by, I think
18 it might be 19597, it will take me a while to look up. But
19 there's a committee of three that determine imports of
20 thoroughbred races, according to the law.

21 What she is arguing is that on ADW race that
22 doesn't apply -- on ADW wagers, it doesn't apply, they can
23 import, independently, whatever they feel like.

24 But the law says that the racing association in
25 the south, the racing association in the north, and the

1 Horsemen's group must agree on what signals are imported,
2 two out of three gets you there.

3 So when you have a race track ownership group that
4 runs the two tracks, north and south, at the same time, they
5 can decide independently.

6 When you have two different companies running the
7 race meets north and south, and they don't agree on what
8 comes they come to TOC and they say which signals do we
9 import, because we're at an impasse, it's two out of three.

10 So Ms. Christian is absolutely incorrect about TOC
11 having no say as to what signals can be imported here.

12 Secondly, she's a very good DAG, and I know when
13 she sat up here she made, many times, the argument that
14 while the rule may not be specifically stated, or the law
15 may not specifically cover this issue for the Horse Racing
16 Board, under your primary authority you have the power to
17 make whatever decision, rule, procedure that is in the best
18 interest of racing.

19 And Mr. Blake, what she knows -- what she's doing,
20 as she said, she's a very good appellate lawyer, and what
21 she's doing is only quoting part of what Mr. Blake said. He
22 said, "I agree." He told Mr. Hindman, "it is not in the
23 statute, it is not in the rule."

24 But 19604 gave this Board the authority to set
25 whatever conditions for licensing they chose to set. And,

1 you see, he properly pointed out, back then, that you chose
2 to set, as a condition of licensure, an agreement between
3 the Horsemen and the ADW companies.

4 They have stood up and accepted their license
5 every time, with the representation that there has been an
6 agreement between the TOC and the CHRB. And based on that
7 agreement, we have consented to them having a license.

8 Now, Ms. Christian comes today and says, well, you
9 know, actually, if you read it technically, as an appellate
10 lawyer, it doesn't say that we have to do that, even though
11 we've done it for four years.

12 And included in that packet is a signed agreement,
13 by Mr. Wilson, Mr. Nathanson's predecessor, that is a master
14 HUB fee agreement for 2002 and '03.

15 Now, they say they never signed an agreement, they
16 never agreed to this. They've agreed to it every year
17 since, whether they've signed it or not. We have sat down,
18 they've received a memo documenting it. The rates that were
19 negotiated were input with CHRIMS, and the distributions of
20 revenues were made according to those agreed rates.

21 But we're going to have, we're going to play legal
22 games today, we're going to say --

23 COMMISSION CHAIRPERSON SHAPIRO: All right. And
24 you know what, we're getting way into too many legal games.
25 The bottom line to this is, I turn to you, Mr. Nathanson,

1 why can't we agree that the Horsemen should -- you and the
2 Horsemen should work out, for the betterment of California
3 horse racing.

4 I mean, we can argue about the law, but that's not
5 what we want to do. Let's fix the law at the end of 2007.
6 Why aren't we willing -- why aren't you two companies able
7 to sit down and resolve this on some fair basis? Why are
8 you opposed to sitting with them and saying we're not
9 waiving our legal rights to -- whatever you want to do
10 legally. But what about the industry, what about the state
11 of horse racing in California, that's what we're here for.

12 MR. NATHANSON: Chairman Shapiro, and I think
13 Mr. Couto will agree, we've spent, in the past two weeks,
14 specifically, at least eight hours in a room, sitting
15 together, talking about ways that we can work together,
16 speaking of ways that we can mutually benefit the industry,
17 setting aside legal positions, setting aside who's right,
18 who's wrong.

19 Because I do think the legal positions are
20 relevant but, more importantly, I think there's a lot more
21 benefit that we can create by working together, than
22 fighting at odds. The reality is that the TOC is a
23 competitive party. They are a competitive party because
24 they're going after the same fees that we're -- it's all
25 part of the same pot.

1 But at the end of the day, we recognize the value
2 that the Horsemen represent and we recognize the value that
3 we can create by working together. And I think we have
4 established a certain number of parameters and points that
5 we can work towards.

6 And in fact, where the meeting has been left off,
7 nothing has been resolved, nothing has been agreed to, but
8 we have not walked away from those discussions.

9 COMMISSION CHAIRPERSON SHAPIRO: Well, I
10 appreciate that. But what was the rate that was acceptable
11 to both TVG and TOC in January of '04? What was the rate
12 then?

13 MR. COUTO: It's '05 is what you're looking at, it
14 was 5.5 percent on imported races.

15 MR. NATHANSON: And what was it in '04?

16 MR. COUTO: Six percent. We reduced it in '05
17 because of --

18 COMMISSION CHAIRPERSON SHAPIRO: So fine. So and
19 I have -- please understand, I have no clue. Okay, I know
20 that the maximum is 6.5. So do you have a problem with 5.5?

21 MR. COUTO: Yes, we do.

22 COMMISSION CHAIRPERSON SHAPIRO: You have a
23 problem with 5.5?

24 MR. COUTO: Yes, we do.

25 COMMISSION CHAIRPERSON SHAPIRO: Do you have a

1 problem with 5.5?

2 MR. NATHANSON: In terms of what?

3 COMMISSION CHAIRPERSON SHAPIRO: What the rate is?

4 MR. NATHANSON: For imports?

5 COMMISSION CHAIRPERSON SHAPIRO: Yes.

6 MR. NATHANSON: You know, under the conditions of
7 our agreement, you know, I don't think we have a problem at
8 5.5.

9 COMMISSION CHAIRPERSON SHAPIRO: Okay. What is
10 your problem with 5.5?

11 MR. COUTO: 5.5 was a rate set when the volume was
12 different. And so when the volume increases, you adjust the
13 rate downward, particularly when they are shifting more
14 handle to an out-of-state signal, which produces less
15 revenue for us. That's why we review the rates every year,
16 to make sure that we're maximized.

17 We're not a competitor, despite their
18 characterization. We are the intended beneficiary.

19 COMMISSION CHAIRPERSON SHAPIRO: Yeah, I agree.

20 MR. COUTO: I want to say this, ADW was
21 created -- ADW companies were created to provide a service
22 to the industry. What we have here is we are serving the
23 needs of the ADW companies. We look at these rates, we try
24 and determine what the return is. As you saw, there are
25 more, and more, and more imported races, a greater volume of

1 handle. When they don't have a California product they
2 shift play to those, and people stay playing those out-of-
3 state signals. And that's why we adjusted the rates, to
4 create an incentive for the ADW companies to do all they
5 could, they make more money when somebody plays a California
6 signal.

7 COMMISSION CHAIRPERSON SHAPIRO: So let me ask a
8 question of --

9 COMMISSIONER MOSS: Can I just ask one question?

10 COMMISSION CHAIRPERSON SHAPIRO: Please.

11 COMMISSIONER MOSS: What role does the fact that
12 you have a HUB in Oregon have to do with this? This is a
13 big deal, the fact that you're operating out of Oregon,
14 rather than California, am I correct? Is there taxation
15 rules, is there interstate rules, is it -- all I'm saying is
16 that an absolute necessity to have the HUB in Oregon?

17 MS. CHRISTIAN: It's not an absolute necessity,
18 but it is one of the HUBs that is expressly approve by the
19 Legislature in the ADW law.

20 COMMISSION CHAIRPERSON SHAPIRO: And it's also
21 more economical for TVG; correct?

22 COMMISSIONER MOSS: Sure.

23 MS. CHRISTIAN: And as a result, the Interstate
24 Horse Racing Act provisions do apply. Which is --

25 COMMISSIONER MOSS: And that --

1 MS. CHRISTIAN: I'm sorry, Commissioner.

2 COMMISSIONER MOSS: I'm sorry. So I'm just saying
3 if we had a California business, together, it would have
4 a --

5 COMMISSIONER HARRIS: I think it is a California
6 business, the HUB doesn't really mean very much.

7 MS. CHRISTIAN: That's exactly right.

8 COMMISSIONER MOSS: But the HUB creates a
9 different kind of business, doesn't it?

10 MS. CHRISTIAN: Well, the HUB is in Oregon, but
11 120 TVG employees are here. The TV production company is
12 right here in Los Angeles.

13 You know, the business model that produces what
14 everybody wants, as TVG has tried to explain many, many
15 times is the model that they're engaged in. It allows 20
16 million people to receive --

17 COMMISSION CHAIRPERSON SHAPIRO: Ms. Christian,
18 Ms. Christian, you have union eyes are watching you. And as
19 you know, it's a rather heated subject, so I don't know that
20 we want to go there.

21 COMMISSIONER HARRIS: Yeah, let's not get into
22 that whole thing. I'm not clear what we're going to decide
23 today, anyway, before I leave to go see my horse run.

24 COMMISSION CHAIRPERSON SHAPIRO: Well, our role,
25 and as mandated by California law, is to resolve this

1 dispute. That is our role. It is not that we may, it is
2 that we shall, in horse racing law.

3 Let me ask the question, again, from somebody at
4 the TVG. What percentage of air time is devoted to
5 California in 2006 versus what it was in 2002, '03, '04; do
6 you know?

7 MR. HINDMAN: We show, on average -- and by the
8 way, the number of California tracks that we have has not
9 changed materially in the last several years. We show 5,000
10 races, over 5,000 races a year from California, on our
11 network.

12 COMMISSION CHAIRPERSON SHAPIRO: That wasn't my
13 question.

14 MR. HINDMAN: And we haven't changed the total
15 number that we show.

16 COMMISSION CHAIRPERSON SHAPIRO: That's not my
17 question.

18 COMMISSIONER AMERMAN: What percentage is that?

19 MR. HINDMAN: It's twice as -- we show 25,000
20 races a year, the number of races from California is twice
21 as much as it is from any other jurisdiction.

22 COMMISSIONER HARRIS: I think one of the things is
23 just the total model needs looked at.

24 MR. HINDMAN: I'm trying to answer your question
25 the best I can.

1 COMMISSIONER AMERMAN: The answer is 20 percent.

2 MR. HINDMAN: Right, but you have to realize there
3 are tracks all over the country.

4 COMMISSIONER AMERMAN: It's a very simple answer.

5 MR. HINDMAN: Right.

6 COMMISSIONER HARRIS: Well, tracks are running. I
7 don't think that's as big of a problem, it's just the total
8 model, that maybe the compensation might be based on, you
9 know, how many hours of times you show different tracks, or
10 all kinds of things. But right now, the compensation is
11 based on how much is bet and how much, who gets what, and
12 it's all about money, really.

13 MR. HINDMAN: The other thing that I would just
14 note is that the compensation, and I have a slide, but we
15 probably won't get there, the compensation that comes from
16 an out-of-state ADW wager is the same as the compensation
17 that comes from an out-of-state wager made at the race
18 track, or a satellite facility, with small variations.

19 MR. COUTO: Well, that's only for TVG, John.

20 MR. HINDMAN: Again, may I just finish. And,
21 also, the ADW law was designed by the fact that not
22 everybody would have relationships with everybody else, so
23 there is this market access fee distribution system where,
24 for instance, TVG doesn't have an agreement with Santa Anita
25 Park, but TVG pays more market access fees to Santa Anita

1 Park than either of the two entities that carry Santa Anita
2 Park.

3 So we are generating more purse money for Santa
4 Anita Park, during this time period that is of consequence,
5 than anybody else is.

6 But, by the same token, when Magna brings in
7 quarter horse racing into California, they do not have a
8 relationship with Los Alamitos. They don't have a contract
9 with them, they don't have a relationship with Los Alamitos'
10 Horsemen. But the bring quarter horse racing in and Los
11 Alamitos gets compensated for that.

12 So nobody's been hurt, everybody's getting the
13 amount of money that is appropriate, and the system is
14 working from that perspective.

15 MR. COUTO: My response would be to say that
16 TVG's -- our effective return from TVG is about the
17 equivalent of what we get out of state.

18 But for the other ADW providers, who are taking
19 wagers out of state, it's twice or better what we receive
20 from them or, roughly twice or better what we receive from
21 them when they take a wager out of state. That's because
22 TVG pays us 3.5 in terms of host fees out of state, or two
23 percent if we're nonexclusive. Where the other ADW
24 providers pay us between six and a half and eight and, in
25 some cases, more.

1 So while TVG says we give you the same as what you
2 get out of state from a traditional site, it's still a
3 fraction of what we're getting from the other ADW group.

4 COMMISSION CHAIRPERSON SHAPIRO: So why is
5 it -- why do you pay so much less than the other ADW
6 providers?

7 MR. NATHANSON: Well, first of all, I don't agree
8 that we do, and John can explain, you know, very
9 specifically. TVG receives less than, we believe, than any
10 of the other ADW providers.

11 And I will say that, you know, to say that the
12 television product is not relevant to this equation, I think
13 that --

14 COMMISSION CHAIRPERSON SHAPIRO: Whoever said
15 that?

16 MR. NATHANSON: No, I just --

17 COMMISSION CHAIRPERSON SHAPIRO: Who said that,
18 David.

19 MR. NATHANSON: To the ADW business, I think it
20 is --

21 COMMISSION CHAIRPERSON SHAPIRO: No one said that.

22 MR. NATHANSON: Okay. Well, I apologize.

23 COMMISSIONER AMERMAN: I hope you do.

24 MR. NATHANSON: Ultimately, you know, the ADW
25 business and the television business, for TVG, live

1 together. That is the model, that is what funds, what
2 enables us to do what we do.

3 COMMISSION CHAIRPERSON SHAPIRO: David, I started
4 this out by saying you do great TV, we value it, we value
5 TVG. Okay. No one's discounting that. This is not a pick-
6 on-TVG session.

7 But what this is and what I still don't understand
8 is why you are unwilling, as the other -- while the other
9 ADW companies are willing, to negotiate, in good faith, a
10 rate with the California Horsemen, who clearly deserve a
11 voice and to participate, because it is their livelihood and
12 the revenues that they count on.

13 I don't understand the refusal when in past
14 practice, whether it was law, or not, whether the Racing
15 Board mandated it or didn't, the past history has been that
16 the parties sat down and they worked it out. That's true,
17 nobody can refute that.

18 And what I'm trying to get to is to bridge the
19 gap, until we get to 2007, when we all know this model, with
20 history behind us, needs to be reworked.

21 And as I also said, it has to be reworked so that
22 TVG can be profitable and make money in California. Okay.

23 So if 5.5 doesn't work, I don't know what the
24 others, what other ADW providers pay. Why can't we find a
25 number for today, until the end, so that we can put this

1 behind us and we can get more out of TVG and more for
2 California horse racing.

3 We are disadvantaged here, we are not going to get
4 slot revenues, we're not going to have instant racing. Our
5 industry needs to get every ounce of help it can get. TVG
6 is a vital player in helping us. I do not want to see TVG
7 disappear.

8 MR. NATHANSON: Neither do we, Chairman Shapiro.

9 COMMISSION CHAIRPERSON SHAPIRO: Great. So if
10 that's the case and you truly care about thoroughbred horse
11 racing or California horse racing, then why not, for a short
12 period of time, make an agreement that helps the industry,
13 helps the Horsemen, and reverse the perceptions, right or
14 wrong, that TVG is unwilling to be a team player? Why not
15 do that with us, now?

16 MR. NATHANSON: We have been engaged with the
17 TOC --

18 COMMISSION CHAIRPERSON SHAPIRO: For two weeks,
19 David. Two weeks, that's true.

20 MR. NATHANSON: You're right, Chairman.

21 COMMISSION CHAIRPERSON SHAPIRO: Again, I'm not
22 trying to be right. I'm trying to bring this to a
23 conclusion that is to set a new footing and a new direction
24 for us.

25 Okay, the past is the past. Let's try to make a

1 deal, let's try to benefit the California Horsemen. It's
2 not for acrimony to stop in California.

3 And so I am asking you to make a concession, to
4 make -- to both of you, this is not just aimed at you,
5 David. Make a concession, put this to bed, and let us find
6 a way so that when we get to December 2007 we have -- we
7 have a plan and we don't have some Legislators, who will
8 never understand the complexities of this, force a plan, and
9 everybody to roll out their legal eagles and have a disaster
10 on their hands.

11 MS. CHRISTIAN: Mr. Chairman, just so the record
12 is straight, though, as you have noted, and as Mr. Couto has
13 noted, there has been an informal agreement since the
14 beginning of ADW and TVG's licensure in California. It's
15 not really a fair or true statement to say that TVG has
16 refused to discuss anything about this issue with the TOC.

17 COMMISSION CHAIRPERSON SHAPIRO: Kathy --

18 MS. CHRISTIAN: The question -- the reason that
19 I'm just saying -- and your encouragement in that direction
20 is, of course, appreciated.

21 But the reason everybody was called to this
22 meeting today is because there's the possibility, and TOC is
23 certainly arguing, that you would engage in coercive action
24 of some kind.

25 COMMISSION CHAIRPERSON SHAPIRO: Kathy, I'm trying

1 to not engage in any coercive action. And please, you're
2 late to the party here, okay.

3 MS. CHRISTIAN: Well, actually, I was here in
4 2002, when TVG was first licensed.

5 COMMISSION CHAIRPERSON SHAPIRO: No, you're late
6 to the party of this dispute. This dispute has been
7 ongoing. There have been many meetings and many
8 discussions, and a lot of issues that have transpired. I'm
9 trying to push that all to the side, and I'm trying to get
10 to the finish line here for the benefit of our California
11 Horsemen, our California owners, and our California tracks,
12 and our California ADW providers.

13 And so I'm really not interested in staking
14 territory over who's done what, none of that matters.

15 MS. CHRISTIAN: Well, we applaud you.

16 COMMISSION CHAIRPERSON SHAPIRO: What matters now
17 is we have the two principals of these organizations sitting
18 here, can we find a way to reach an agreement to put this
19 resolution to bed, so that this Board is not forced to then
20 resolve it, as we deem it should be resolved, at which point
21 we're just going to have legal appeals and lawsuits filed.

22 And so I am imploring you to make a concession.
23 And "you" is right down the middle, it's not aimed at
24 either, you know. Please, where my eyes go doesn't mean I'm
25 thinking just one person.

1 I'm asking you to demonstrate to the California
2 industry that we can turn over a new leaf and utilize ADW in
3 a way that will benefit our industry.

4 MR. HINDMAN: Well, I think, Chairman Shapiro,
5 just in response to that, I would note that I appreciate
6 your request at the last meeting, we took your request at
7 the last meeting very seriously, and I can say that we have
8 had, as David mentioned, several discussions. I've been
9 with TVG since 1999. Those were the best discussions we
10 have had with the TOC probably in my tenure here.

11 And we know that there is much more that can be
12 accomplished together, than apart. Those haven't concluded,
13 yet, those negotiations have not concluded, yet. And the
14 point that we're making is we will talk to those
15 stakeholders, we want -- we'll continue to talk to the
16 stakeholders.

17 But at the same time, you know, what's legally
18 required or not is an entirely different discussion, and I
19 know you understand that.

20 MR. COUTO: Mr. Chairman, this has been going on
21 for nine months. And yesterday it became apparent, it was a
22 very cordial discussion, but my group thought it was a huge
23 three steps backwards. And we had this discussion openly,
24 with all of us in there, that we need to go in front of the
25 Horse Racing Board and let the chips fall where they may,

1 because none of us felt, coming out of there, that while it
2 was a good meeting and we talked openly, none of us felt
3 that we were going to get to a deal. That it was our
4 conclusion that TVG felt that it was free to do what it
5 wanted to do and would continue to do that and they didn't
6 feel that they had to really crunch down on numbers and come
7 to something.

8 This is not about coercion and it shouldn't be
9 characterized that way. This Board imposed a condition on
10 licensure, which TVG now is ignoring. And by asking you,
11 TOC asking you to honor that condition that you imposed on
12 licensing, and that we relied on when we supported their
13 license two years ago, there's nothing coercive about that.

14 If someone fails to honor a condition of their
15 license, and you look at it and you take that license away,
16 or suspend it, or limit it to taking wagers from Los Al,
17 there's nothing coercive about that.

18 We don't want that there, we don't want to be in
19 that position, we've told them, but we're so frustrated, we
20 have no choice.

21 COMMISSIONER HARRIS: I'm not clear what --

22 COMMISSIONER AMERMAN: May I ask a simple
23 question? How far apart are you two?

24 MR. NATHANSON: Pretty significantly.

25 COMMISSIONER AMERMAN: Well, let's be specific. I

1 mean, it's late in the day. I mean, let's not be nice,
2 let's just say what it is.

3 MR. COUTO: Sure. TVG has gone back to the rate
4 that was in existence three years ago.

5 MR. NATHANSON: That Chairman Shapiro suggested.

6 COMMISSIONER AMERMAN: I'm sorry, what is that?

7 MR. NATHANSON: That Chairman Shapiro suggested,
8 5.5.

9 MR. COUTO: No, no, no. They're currently
10 deducting six percent. They went back to a rate that they
11 feel they have under the Los Al contract, they're back to
12 six percent. Okay, well, we had five and a half last year,
13 they've gone back to six percent.

14 COMMISSION CHAIRPERSON SHAPIRO: Can you just tell
15 us --

16 COMMISSIONER AMERMAN: Now, what do you feel is
17 fair?

18 COMMISSION CHAIRPERSON SHAPIRO: Right, what is it
19 you think it should be.

20 MR. COUTO: Well, we'll tell you.

21 COMMISSIONER AMERMAN: I hope so.

22 MR. COUTO: Sure. Our main concern was that
23 during the 10- to 12-week period where they did not have
24 California product and they were moving people to out-of-
25 state products, and that occurs during the Santa Anita meet,

1 we said that rate should be two and a half percent. That
2 was the rate that we had suggested to --

3 COMMISSION CHAIRPERSON SHAPIRO: Mr. Couto, we're
4 running out of time. What do you think the rate should be,
5 please?

6 MR. COUTO: We said two and a half -- let me, I'm
7 trying to go through it, Mr. Shapiro, because we said it
8 should be two and a half percent for that 10- to 12-week
9 period, and the rest of the year would be five and a half
10 percent.

11 TVG was unwilling to do that because they felt it
12 would benefit their primary competitor, MEC, during that 10-
13 to 12-week period there would be too large an amount of
14 money going to MEC in terms of commissions. They did not
15 think that was a good thing.

16 We had a discussion about our objectives being for
17 the benefit of the industry, theirs being corporate
18 objectives to deal with their competitor.

19 So we regrouped and we came back and said the same
20 economic impact can be achieved by lowering the rate to 4.25
21 for the year. It's the same economic impact as 2.5 for the
22 10 to 12 weeks. And that way the commission revenue or the
23 benefit of that lower revenue didn't all enure to MEC, but
24 would spread out over the year to the rest of the TVG track
25 partners and would produce the same amount of purse revenue,

1 although it would be divided among all the tracks instead of
2 simply MEC.

3 COMMISSION CHAIRPERSON SHAPIRO: Okay, in 2006,
4 can you tell me what the other rates are that are paid to
5 the other ADW companies, are they relevant, would they be
6 comparable?

7 MR. COUTO: Hold on one second. There are two
8 components to rates, what they receive on a California
9 wager, placed on a California signal. TVG receives the
10 highest amount, they receive six percent. So when they
11 handle a California wager, or a wager on a California race,
12 they receive six percent.

13 YouBet receives five percent. XPressBet receives
14 five percent on that same wager. And they receive more
15 because we do value the TV product and we do value it very
16 much, we always have.

17 On imported races, again, TVG last year was five
18 and a half percent. Let me see if I can get it right.
19 YouBet, I believe, is four and a half percent, and XPressBet
20 is four and a half percent, and that's through the year.

21 COMMISSION CHAIRPERSON SHAPIRO: Okay.

22 MR. COUTO: Okay.

23 COMMISSION CHAIRPERSON SHAPIRO: Thank you. I
24 don't know that we're going to get anywhere and, therefore,
25 I would like to make a motion to this Board, and I would

1 recommend that the rates be set -- that for the California
2 product that the rate be set at five percent and for the
3 imported races, that it be at four and a half percent,
4 similar to all the other ADW providers. I'd make that
5 motion. Is there a second?

6 COMMISSIONER HARRIS: I'll second it.

7 COMMISSION CHAIRPERSON SHAPIRO: Okay, all in
8 favor?

9 (Ayes.)

10 COMMISSION CHAIRPERSON SHAPIRO: Any opposed?

11 COMMISSIONER MOSS: I'd like to --

12 COMMISSION CHAIRPERSON SHAPIRO: Pardon me?

13 COMMISSIONER MOSS: I just, again, have a question
14 in my mind about how we are involved in all this. I'm just
15 still questioning this. So I'd like to abstain and think
16 about it, personally.

17 COMMISSIONER HARRIS: Yeah, because we've got to
18 have four votes to pass it.

19 COMMISSION CHAIRPERSON SHAPIRO: We won't be able
20 to act with less. I mean, we can still do that, but that --

21 COMMISSIONER HARRIS: I'll move we table the
22 motion and bring it back in October.

23 COMMISSION CHAIRPERSON SHAPIRO: Okay. There's a
24 motion to table the motion and bring it back in October. Is
25 there a second for that.

1 COMMISSIONER MOSS: Is that still time to have
2 this thing work?

3 COMMISSION CHAIRPERSON SHAPIRO: Well, again, I
4 don't think there's anything that is urgent here, and I
5 think it can come back. I would love that the parties call
6 us up and say -- unless you're willing to say -- are either
7 of you willing to accept that at this time, voluntarily, and
8 that way we can show the good faith?

9 MR. NATHANSON: We're willing to continue
10 discussions with the TOC for that.

11 COMMISSION CHAIRPERSON SHAPIRO: That wasn't my
12 question. David, will you accept those rates?

13 MR. NATHANSON: No, we will not, sir.

14 COMMISSIONER HARRIS: Well, I think a bigger issue
15 is would -- if that was imposed, say in October, November,
16 whatever, will you file suit, you know, with the courts to
17 basically overturn our ability to set those rates?

18 MR. HINDMAN: I'll let my counsel answer that.

19 MR. TUROVSKY: I'm happy to address that question.
20 We do object to the manner in which this particular decision
21 is being made to impose a rate based on the --

22 COMMISSION CHAIRPERSON SHAPIRO: Who are you, can
23 you --

24 MR. TUROVSKY: I'm sorry, my name is Ron Turovsky,
25 and I represent TVG. I, too, am an attorney. In terms of

1 the process that's being followed in order to do this, among
2 other things we do disagree that you do have the power to
3 adjudicate a dispute in this manner, on this issue.

4 We also think it's a practical matter. It is
5 inappropriate at this stage to simply step in and consider a
6 narrow piece of it, in this fashion, rather than to allow
7 the parties -- and, obviously, you have identified here a
8 stakeholder, who has already indicated his view of these
9 things, and based on that to suddenly say this is going to
10 be the rate.

11 On the basis of that record, absolutely. I mean,
12 I can't speak on behalf of the company to say there will be,
13 but I can certainly advise there will be litigation over
14 that.

15 COMMISSION CHAIRPERSON SHAPIRO: Thank you. Do
16 you dispute that the Horse Racing Law requires us to resolve
17 a dispute?

18 MR. TUROVSKY: I dispute that the Horse Racing
19 Board, at this point in time, on these -- I completely
20 dispute the concept that there's been sufficient notice that
21 this is going to be the resolution of today. That there
22 will be, in fact, a determination, a specification of a rate
23 and an agreement, and a vote that there will be now a
24 determination of a rate. Particularly given the fact that
25 we have contractual relations in place with tracks, that do

1 not correspond with those terms.

2 You're now imposing a piece, based on not complete
3 information, and based on, now, an impression that we are
4 not attempting to resolve this and, instead, step in and do
5 so. Obviously, the facts and information available to the
6 Board, at this point in time, are not complete, sufficient
7 to reach a resolution of what an appropriate rate would be.

8 COMMISSION CHAIRPERSON SHAPIRO: Well, again, we
9 have heard this matter, we've been dealing with this matter
10 for over eight months. Now, fortunately for you, we now
11 lack a quorum. So we can't take any action right now. And
12 so this matter will be continued to our next Board meeting.

13 And I will ask that the DAG make sure that we
14 provide any and all notice necessary so that you, and any
15 other party, is aware that pursuant to our complying with
16 Horse Racing Law, we are required to take action to resolve
17 this.

18 In the meantime, if the two parties can sit there
19 between now and next month and work it out, we'd be real
20 happy campers. But we've been asked to resolve it. We have
21 an obligation to resolve this.

22 MR. TUROVSKY: And, obviously, not attempting at
23 this point to engage in any discussion about it, but I will
24 say that we do disagree about the right of the Board to,
25 under the auspices of what you've cited, to resolve the

1 dispute in this fashion, or otherwise. And whether you
2 notice it, or not, for the next meeting, obviously, that's
3 without waiver of any of our rights.

4 MR. COUTO: Chairman Shapiro, if I could suggest
5 that perhaps what the Board do is exactly what he says,
6 notice this issue for the next meeting. And I think
7 Mr. Nathanson and I will sit down, immediately, and try and
8 resolve something. Go ahead and notice it, and if we're
9 unsuccessful by that time, you know, Mr., is it Churnov
10 [sic], I think his issues or his concerns about proper
11 notice will have been addressed and you'll have the power to
12 do what you choose to do at that time.

13 COMMISSION CHAIRPERSON SHAPIRO: I agree. I
14 agree.

15 MR. TUROVSKY: I'll just say, for the record, my
16 name is Turovsky, T-u-r-o-v-s-k-y.

17 MR. COUTO: I apologize.

18 COMMISSION CHAIRPERSON SHAPIRO: Thank you. And
19 as we conclude this, I do want to express that I recognize
20 that TVG is making a concerted effort to communicate and
21 work this through with TOC. That does not go unnoticed, it
22 is genuinely appreciated. I do not -- I hope you don't feel
23 that this Board is trying to be heavy handed with either
24 party. We simply want to use ADW and TVG as an integral
25 role, a player in helping us build California horse racing.

1 COMMISSIONER AMERMAN: Could I ask --

2 COMMISSION CHAIRPERSON SHAPIRO: Please.

3 COMMISSIONER AMERMAN: -- a different question,
4 that probably would open a little bit more discussion. I'd
5 be interested in knowing, for the good of the public, and
6 the Horsemen, why there can't be signals that are going on
7 at the same time. Why TVG and, in this case, MEC, can't
8 reach agreement. I know you've had discussions, why haven't
9 you reached agreement?

10 MR. TUROVSKY: Yeah, for that I would ask John to
11 address it.

12 MR. HINDMAN: Or David.

13 MR. TUROVSKY: David would like to.

14 COMMISSION CHAIRPERSON SHAPIRO: Well, and I would
15 also invite, if Mr. Charles is in the room. I just can't
16 see out there.

17 COMMISSIONER AMERMAN: It seems to me it's in the
18 best interest of the horse racing industry for the two to
19 get together. I'm just naive, I guess, I don't understand
20 why.

21 MR. NATHANSON: I can speak on behalf of TVG. I
22 can tell you that, you know, we have engaged in multiple
23 discussions, I can't --

24 COMMISSIONER AMERMAN: Like these.

25 MR. NATHANSON: Well, yes, sir. I mean, at

1 this -- I can't speak to the nature of those discussions
2 because both are public companies and are subject to an NDA.
3 What I can say is that, you know, we recognize the
4 opportunity that exists. We're primary competitors in the
5 marketplace.

6 COMMISSIONER AMERMAN: So what?

7 MR. NATHANSON: And like with every competitor, in
8 any business, it's not always easy to reach an agreement.

9 But, certainly, we continue to have those
10 discussions.

11 COMMISSIONER AMERMAN: That's your understanding,
12 Mr. Charles?

13 MR. DARUTY: Good afternoon, Scott Daruty, on
14 behalf of Magna.

15 First of all, we've said this before on the record
16 and I'll say it again, we believe the exclusive model is bad
17 for the industry. We believe it's bad for the California
18 horsemen, we believe it's bad for the California race tracks
19 and, above all, we believe it's bad for the California
20 racing fans.

21 We stand here, today, willing to exchange our
22 California content with TVG's California content on any
23 terms they dictate. Our only requirement would be that
24 those terms be reciprocal. If they want high host fees,
25 that's fine with us. If they want low host fees, that's

1 fine with us. If they want sublicense fees, or no
2 sublicense fees, we don't care, they can pick.

3 If they want wagering, only, or they want
4 television distribution, or they want internet streaming,
5 pick and choose, whatever they want. They name the deal,
6 we're there. We believe exchange of content is good for the
7 industry and we're ready to do it.

8 COMMISSIONER AMERMAN: That's the only reason I
9 brought it up. I'm trying to determine what is best for the
10 horse racing industry in the State of California, which is
11 struggling at the present time.

12 And you two, MEC and TVG, do hold the keys to
13 success, and you're holding us back.

14 COMMISSION CHAIRPERSON SHAPIRO: Commissioner
15 Amerman, you are dead on there.

16 COMMISSIONER AMERMAN: Well, then perhaps then
17 exclusivity is a thing of the past, you know, and that's a
18 bigger conversation.

19 MR. NATHANSON: Sir, I mean, if I can address the
20 Board. I mean, I recognize and I appreciate Mr. Daruty's
21 comments, but not only have they been -- I have a letter
22 here, from Frank Stronich, that has gone out to every single
23 one of my track partners, existing ones, nonexisting ones,
24 that is encouraging them to go exclusive with MEC. That
25 letter was sent last month, August 16th, 2006.

1 COMMISSIONER AMERMAN: That's a bad letter, then,
2 it's a bad letter.

3 MR. NATHANSON: It is a bad letter and I'd be
4 happy to share it with you. But, ultimately, you know, for
5 Scott to stand up there and say that we're not interested in
6 exclusivity, just two months ago every single track partner
7 received this letter.

8 COMMISSIONER AMERMAN: All I know is what I just
9 heard and it seemed to me like it was an open door and a
10 breath of fresh air. So, therefore, why don't you two get
11 back together?

12 MR. NATHANSON: I'd love to get back together.
13 You know, unfortunately, I think Mr. Stronich is making, you
14 know, more decisions at MEC at this juncture.

15 COMMISSIONER AMERMAN: Well, maybe he could join
16 you in the discussions.

17 COMMISSION CHAIRPERSON SHAPIRO: You know, wait a
18 minute, wait a minute. I have to interrupt. There were
19 serious discussions, which I do not know the content,
20 between TVG and Magna. There is no doubt that there is a
21 lot of consternation throughout the country with the
22 direction that ADW is going.

23 If you are sending out a letter to try and solicit
24 more exclusives for your company, which you do do, which you
25 have, I don't think it is really fair, out of context, at

1 this meeting to portray MEC as doing something that really
2 is the same that others may be doing. They are trying to
3 build their business the same as you are.

4 And what we're hearing here, from Santa Anita, and
5 you and I, and Santa Anita discussed, back in December of
6 last year, Santa Anita has been clear since then that they
7 would love to have TVG at Santa Anita Park.

8 You and I had coffee, we talked about it. Our
9 goal is to get TVG at Santa Anita, we want that.

10 What I just heard is that they are willing and
11 wanting to have TVG. And the discussions, as I recall them,
12 broke down only because they wanted to be able to have video
13 streaming at your exclusive tracks, like Hollywood Park, to
14 which you're unable or unwilling to do that.

15 Now, they still are standing there, saying,
16 please, come broadcast with us, come show our signal. We're
17 looking at how are we going to improve horse racing in
18 California. We want you to make a deal. Frankly, we don't
19 care what the terms are. We just want more money to go to
20 our purses, to our tracks, so that we can improve horse
21 racing.

22 So let's not take something out of context that
23 Frank Stronich sends out, when he may have other reasons and
24 be competing with you.

25 Mr. Charles, is there anything you choose to add

1 to that, you were present?

2 MR. CHARLES: I was. Ron Charles, MEC. Going
3 back to that meeting in December, I did receive a phone
4 call. Just a little history as to how hard we've tried to
5 work out some arrangement with TVG, we think it is so
6 important to the industry, it's critical.

7 But probably more important, the racing fan is so
8 frustrated. They're confused, they don't know where to
9 wager, they don't know when they can watch television.
10 We're hurting our industry.

11 And back in December I received a call from
12 Mr. Nathanson, and asked him if I'd be willing to meet with
13 Mr. Shapiro and sit down, and see if there was any way of
14 finding out some common ground. I think we spent, roughly,
15 maybe three hours. We both brought our counsel in and I
16 believe we made a tremendous amount of headway. We walked
17 out of there with the possibility of having an agreement.

18 Unfortunately, the following day it fell apart for
19 reasons, you know, that just seemed to happen. We didn't
20 feel that it had any basis, but it fell apart.

21 We have talked a number of times this year, the
22 talks have been cordial, not productive. We continue to
23 make some phone calls, asking for some additional talks. We
24 haven't received conversations back.

25 David Nathanson did approach me, today, and

1 requested that we begin talking, again.

2 But I will tell you, I couldn't agree more with
3 what you're saying. And we're not getting into the ADW
4 economic model, which I happen to think is totally broken,
5 that we haven't even discussed today.

6 When you take a look at the return of the wagering
7 dollar and how it's distributed, it's wrong. And I think we
8 need to address that, we need to address using ADW to help
9 our industry instead of fighting, and working against each
10 other. So those two issues, in addition to the fees that
11 these two gentlemen are talking about, all need to talk
12 about as one component.

13 I mean, this is a very complex issue and we're
14 going to need to spend time, and we are going to need to
15 spend some additional time. I think MEC needs to talk with
16 TVG some more, TOC obviously does, too, and come back to you
17 and see if we can make any headway. Because at some time
18 you are going to have to make a tough decision.

19 I mean, I can't imagine, to continue to stop the
20 racing fans from going through what they're going through,
21 now. And I got stopped the other day, just being asked,
22 excuse me, Ron, Oak Tree's coming up, where are they -- we
23 can wager on XPressBet; correct?

24 No, you can't, they're racing at Santa Anita. No,
25 you can't, it's because it's leased you got to go through

1 TVG.

2 Well, how about Golden Gate? That's XPressBet.

3 Well, how about Bay Meadows? Well, that's everything. And
4 we go back to Hollywood, we're back to TVG. Santa Anita,
5 we're back to XPressBet.

6 I mean, how sensible is that? It's not. People
7 want to watch our races. We would love -- I will tell you,
8 we will do anything we can to try to make this arrangement.

9 COMMISSIONER AMERMAN: Does TVG think they would
10 be hurt by having mutual signals or dual signals?

11 MR. CHARLES: I'd have to let them answer that.

12 COMMISSIONER AMERMAN: I know, I'm asking the
13 question.

14 MR. CHARLES: Do I think -- I think, obviously,
15 they do.

16 COMMISSIONER AMERMAN: And that's the bottom line?

17 MR. CHARLES: I think that's their opinion.

18 COMMISSIONER AMERMAN: That's your opinion and I'd
19 like to hear it from TVG.

20 MR. NATHANSON: I think there's two ways to answer
21 that question. First of all, let me make it very clear, and
22 I've expressed this to -- I've spent more time working with
23 the Magna executives, than my own track partners at this
24 point, and I can tell you the only reason we've been
25 interested in doing that is because we are very interested

1 in carrying Santa Anita, we are very interested in carrying
2 Golden Gate.

3 COMMISSIONER AMERMAN: We want you to.

4 MR. NATHANSON: And we want to, too, sir. You
5 know, ultimately, you know, to answer your question in terms
6 of exclusivity, the answer is absolutely yes, there is an
7 issue in regards to exclusivity and two channels carrying
8 the same product, and that's in relation to cable and
9 satellite distribution.

10 You know, the issue facing today is TVG is
11 distributed in 100 percent, nearly a hundred percent of all
12 California residences. The reason we've been able to obtain
13 that distribution is because of the substance of our
14 content, including all of the tracks.

15 COMMISSION CHAIRPERSON SHAPIRO: Well, you also
16 have agreements with Direct TV, which is a better cable
17 operator than Dish, and it reaches more places.

18 But, remember, you also take, you also accept
19 wagers in, what, 17 states?

20 MR. NATHANSON: Twelve states.

21 COMMISSION CHAIRPERSON SHAPIRO: Twelve states.
22 And HRTV accepts them in 37 states. I mean, again, you're
23 right, it's very complex. But the point is I'm asking you,
24 because I'm trying to be very sensitive to not putting you
25 on the spot and not trying to drive you away, where you say

1 they're out to get us, because that's not what I hope you
2 hear here.

3 Is there a framework where you would like to sit
4 down with one of us, two of us, can't be three, and the
5 Horsemen, and Magna, and work on a way to better things for
6 everybody?

7 I mean, tell me, David, you've got all these legal
8 minds and everything, but let's come at it from a business
9 perspective.

10 MR. NATHANSON: I will tell you, Chairman Shapiro,
11 unequivocally, I will sit down with anybody. I mean,
12 whether it's Day At The Track, who Mr. Couto discussed in
13 his --

14 COMMISSION CHAIRPERSON SHAPIRO: Well, I have to
15 tell, he has sent me a log of times he has called and he
16 cannot get a return call from TVG. And I have it.

17 MR. NATHANSON: To be honest with you, Mr.
18 Shapiro, I have not received the call and I am not aware of
19 any calls that he's received.

20 COMMISSION CHAIRPERSON SHAPIRO: Okay. Well,
21 Mr. Hindman has received multiple, numerous phone calls, and
22 they are competent enough to log all of their calls. And
23 I'm just telling you, we have to look at everything here.

24 MR. NATHANSON: We will sit down -- in short,
25 Chairman Shapiro, we will sit down and talk with, as I said

1 in my discussion, with anybody, whether it be a competitor,
2 whether it be any interested party. We're not opposed to
3 sitting down and talking with anybody.

4 MR. COUTO: Can I just weigh in one second, here?
5 To Mr. Nathanson's benefit, he assured the TOC Executive
6 Committee yesterday, and in the meeting before, that he
7 would sit down with us and representatives of MEC within the
8 next two weeks, to have a discussion about the exchange of
9 signals. We were given that assurance again, yesterday.

10 And I've communicated that to Mr. Charles, and
11 Mr. Daruty, and asked when they were available, not next
12 week, but the week after.

13 So the parties have agree to that. As he said,
14 we've had cordial discussions, not yet productive, but we're
15 going to try it again.

16 COMMISSIONER AMERMAN: The history has been that
17 you two have gotten together on a lot of discussions. Is
18 there any advantage --

19 MR. COUTO: No, actually --

20 COMMISSION CHAIRPERSON SHAPIRO: That is
21 incorrect.

22 MR. COUTO: No. No, no, no, actually, it's not.

23 COMMISSION CHAIRPERSON SHAPIRO: That is
24 incorrect. The history has been that the parties have been
25 unable to even talk on the phone.

1 COMMISSIONER AMERMAN: Well, that's what I wanted
2 to -- forgive me, I misstated, you've talked a lot?

3 MR. COUTO: No.

4 COMMISSION CHAIRPERSON SHAPIRO: No.

5 MR. COUTO: No, we've discussed twice in the last
6 two weeks, MEC and TVG discussed, I don't know how many
7 times in the spring, but we've never had a tripart
8 discussion, where all the parties were in the room. And,
9 hopefully, it's probably more futile, but at least it's the
10 next step.

11 COMMISSIONER AMERMAN: My question was would it
12 help to have some independent people involved, that might
13 look at it from a business point of view rather than what's
14 good for me, versus what's good for you?

15 MR. COUTO: Absolutely.

16 COMMISSIONER MOSS: If we were able to remove the
17 exclusivity factor, altogether, and then the two companies
18 would just compete for wagerers, I believe, is that a
19 possibility, could that happen?

20 MR. CHARLES: Could I just make one point? With
21 regards to the exclusives and not having, showing the same
22 race on two different stations, we currently show over 40 of
23 the same races together, during the year.

24 So they are not showing only their exclusive
25 track. The independents, we're both showing.

1 COMMISSIONER MOSS: Right. So, therefore, it's
2 just a question of where each of you get your wagers from.

3 COMMISSIONER AMERMAN: That's the strength of
4 distribution. And you knew TVG does.

5 COMMISSION CHAIRPERSON SHAPIRO: But we have to be
6 cognizant that they have existing agreements, is my
7 understanding, with certain tracks, that would cause them
8 some heartburn, because you don't want to violate what
9 agreements you have in place. Is that also true?

10 MR. NATHANSON: Well, I'm not -- we have exclusive
11 track agreements, if that's what you're asking.

12 COMMISSION CHAIRPERSON SHAPIRO: That's what I'm
13 saying.

14 MR. NATHANSON: Yes.

15 COMMISSION CHAIRPERSON SHAPIRO: And so
16 within -- we have to be mindful that as part of these
17 discussions that there may be some limitations of what they
18 can and can't do, based on current agreements. Is that also
19 true?

20 MR. NATHANSON: Yes, there's multiple limitations,
21 yes.

22 COMMISSION CHAIRPERSON SHAPIRO: But again, going
23 to the point, Mr. Nathanson, how would you -- would you
24 like -- you can pick, any one of us, okay. I'm guessing it
25 isn't me, all right. But -- nobody wants me, don't feel

1 bad.

2 MR. CHARLES: I'm betting on that, also.

3 MR. HINDMAN: Let me just note that before these
4 last conversations with the TOC, I know that you're aware
5 that Mr. Couto actually -- actually proposed a third-party
6 mediator for our TOC discussions, or a third-party
7 facilitator. We thought that was a good idea.

8 We proposed four to him. Three of them were
9 rejected and one of them was not responded to. We didn't
10 get a single proposal from Mr. Couto.

11 COMMISSION CHAIRPERSON SHAPIRO: Let's not go
12 there, John.

13 MR. HINDMAN: But what I'm saying is, is that was
14 something that, for purpose of those discussions, we thought
15 helpful.

16 COMMISSION CHAIRPERSON SHAPIRO: All right. I
17 guess what we're saying is if you would like up to two of us
18 to participate in an effort to help, I believe that two of
19 us are willing to do that, and I can't tell you which two.

20 If you don't want us and you feel that you can
21 find Mr. Guru at Pepperdine, and he can do it, that's fine.
22 All right. But what can we do to facilitate this, because
23 the ultimate goal, I think in my mind, and I expect the
24 others is, we would like to see TVG at Santa Anita, the same
25 as we wanted it last year.

1 We believe that with Hollywood Park starting out
2 on a great foot with cushion track, and you're there. And
3 if you can promote and continue that into Santa Anita, it
4 will help our industry.

5 Now, we have to look to you and ask you are you,
6 A, willing to do it with the Horsemen and with Magna, and do
7 you want our help or do you want to pick somebody else, and
8 will you commit to do that?

9 MR. NATHANSON: I think, you know, first and
10 foremost we are absolutely willing to commit to sit down
11 with either party, independently or together. As I've said
12 to -- as I've said to Mr. Couto and as I've said to each of
13 the parties, respectfully.

14 And in terms of having a facilitator at that
15 discussion, an independent facilitator, I think that would
16 be absolutely helpful. I'd encourage it and I believe it
17 was Mr. Couto's idea, originally.

18 COMMISSION CHAIRPERSON SHAPIRO: Okay. So can we
19 get a commitment that you will do that within a certain time
20 frame, that there will be meetings with TOC, MEC, and TVG?

21 MR. COUTO: Prior to the next Horse Racing Board.
22 How about three meetings prior to the next Horse Racing
23 Board?

24 COMMISSION CHAIRPERSON SHAPIRO: Three meetings
25 prior to the next Horse Racing Board.

1 MR. NATHANSON: You know, to commit to the --

2 COMMISSION CHAIRPERSON SHAPIRO: Don't tell me
3 you're going to Aspen, again.

4 MR. NATHANSON: To commit to the number of
5 meetings that we're going to have, I think is
6 inconsequential. We'll commit to meet until we, you know,
7 find some sort of resolution. If we need to meet ten times,
8 we meet ten times.

9 COMMISSION CHAIRPERSON SHAPIRO: Fine. What we're
10 asking for is we want real meetings not -- you know, we
11 really want you to give it the college try is what we're
12 trying to say here.

13 Isn't that correct?

14 COMMISSIONER AMERMAN: I certainly hope so.

15 COMMISSIONER MOSS: Absolutely.

16 COMMISSION CHAIRPERSON SHAPIRO: All right. We'd
17 like to have your word and that the three parties will sit
18 down. We really hope that you will bring this to fruition
19 and not ask us to have to decide this, because we don't want
20 to decide this. Okay.

21 But we will notice this. I'm going to ask, Derry,
22 if you will participate in making sure it is properly
23 noticed. And again, if necessary, we will have to make a
24 decision here, based on Horse Racing Law.

25 But, again, I really want to thank the parties.

1 Because notwithstanding this, it's clear to me for the first
2 time that both TVG and TOC are really trying, are
3 communicating, and I think that's a big first step.

4 Is there anything else on this matter? Otherwise,
5 we don't have a quorum and I think we're going to need to
6 adjourn the meeting.

7 MS. CHRISTIAN: Could I just ask the question of
8 exactly what it is you're noticing?

9 COMMISSION CHAIRPERSON SHAPIRO: We're going to
10 properly notice, and I'm going to ask our DAG to put
11 together an agenda item that properly notices that we will
12 hear the dispute and that we will act, we will work to
13 resolve it pursuant to our authority. Beyond that, I really
14 don't want to be pinned down, because I've got a bunch of
15 lawyers staring at me, and I'd just as soon have him do it.

16 MS. CHRISTIAN: Okay.

17 COMMISSION CHAIRPERSON SHAPIRO: Okay. All right,
18 with that, it's been an extremely long day. I apologize to
19 those people that we didn't get to, but God bless.

20 MR. COUTO: Thank you very much, sir.

21 (Thereupon the California Horse Racing
22 Board meeting adjourned at 5:00 p.m.)

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