

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

BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING
NOVEMBER 27, 2007

Reported by: SHERRI SANTMAN FISHER
Job #9-66555

1 BE IT REMEMBERED that the above entitled matter
 2 came on for hearing on the 27th day of November, 2007,
 3 beginning at 10:32 A.M. at 105 West 15th Street, Room
 4 120, Austin, Travis County, Texas, and the following
 5 proceedings were reported by SHERRI SANTMAN FISHER,
 6 Certified Shorthand Reporter for the State of Texas.

7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

APPEARANCES

- Commissioners: JESSE R. ADAMS
- G. KENT CARTER
- CHARLES L. "SONNY" SOWELL
- RONALD F. EDERER
- ROLANDO PABLOS
- ROBERT SCHMIDT
- GLORIA HICKS
- ERNEST ANGELO, JR.
- JIMMY ARCHER

1 CHAIRMAN ADAMS: Good morning, everyone.

2 It's now 10:30 and it's time to begin. I call into
3 session this meeting of the Texas Racing Commission.

4 Ms. Giberson, will you please call the
5 roll?

6 MS. GIBERSON: Ernest Angelo?

7 MR. ANGELO: Here.

8 MS. GIBERSON: Jimmy Archer?

9 MR. ARCHER: Here.

10 MS. GIBERSON: Ron Ederer?

11 COMMISSIONER EDERER: Here.

12 MS. GIBERSON: Gloria Hicks?

13 COMMISSIONER HICKS: Here.

14 MS. GIBERSON: Rolando Pablos?

15 COMMISSIONER PABLOS: Here.

16 MS. GIBERSON: Robert Schmidt?

17 COMMISSIONER SCHMIDT: Here.

18 MS. GIBERSON: Sonny Sowell?

19 COMMISSIONER SOWELL: Here.

20 MS. GIBERSON: Kent Carter?

21 VICE-CHAIRMAN CARTER: Here.

22 MS. GIBERSON: Chairman Adams?

23 CHAIRMAN ADAMS: Here.

24 Before we get into the main portion of
25 the agenda, I would like to recognize and have everyone

1 welcome our two new Commissioners here this morning.
2 And as we traditionally do, we're going to allow each
3 one of them to address the industry and tell us a
4 little bit about themselves.

5 So if we could, Gloria, you get to be
6 first. Gloria Hicks.

7 COMMISSIONER HICKS: I'm Gloria Hicks.
8 I'm a CPA. I'm from Corpus Christi, Texas. My
9 interest in the Racing Commission was actually in
10 horses and dogs and their care. I'm very excited to be
11 here. I've read a lot of the materials. And I feel
12 very honored to be with this distinguished group of
13 people. Thank you.

14 CHAIRMAN ADAMS: Thank you, Ms. Hicks.
15 And Robert Schmidt?

16 COMMISSIONER SCHMIDT: I'm Robert
17 Schmidt. I'm an orthopedic surgeon from Fort Worth,
18 Texas. I've had a lifelong interest in horses. I have
19 no formal remarks, but I'm looking forward to working
20 with this distinguished group.

21 CHAIRMAN ADAMS: Very good. And we're so
22 happy to have you all and please feel free to jump
23 right in it because it's going to be an interesting
24 meeting today.

25 The first item of business is our public

1 comments. Ms. Giberson or Mr. Fenner, do we have
2 anyone signed up at this time?

3 MR. FENNER: No, sir.

4 CHAIRMAN ADAMS: Okay. No one is signed
5 up at this time.

6 We'll move on to general business,
7 discussion and consideration and possible action on the
8 following matters: A report and update by the
9 executive director and staff regarding administrative
10 matters. Charla Ann King, please.

11 MS. KING: Thank you, Mr. Chairman and
12 Commissioners. I have two items this morning. First,
13 I want to give you an update on the sunset review
14 process. As you recall, you approved the agency's
15 self-evaluation report for the Sunset Commission at
16 your August meeting. That report is serving as the
17 starting point for the sunset staff to learn about our
18 key functions, the history of the agency, agency
19 funding, and several policy issues that we identified.

20 The Racing Commission is one of 27 State
21 agencies undergoing review for the 81st legislative
22 session. We were selected to be on the front end of a
23 fairly heavy schedule. Of the 27 entities being
24 reviewed, two are particularly relevant to the Racing
25 Commission: The Department of Public Safety and the

1 Texas Equine Research Account Advisory Committee.
2 Other agencies include TXDOT, the Department of
3 Insurance, the Department of Agriculture, and the Texas
4 Youth Commission. So they've got a pretty full plate.

5 Sunset's tentative time line calls for
6 the review work of our agency to be completed in early
7 March. The staff report will be published by the end
8 of March. A public hearing will be held during the
9 month of April, with the Sunset Commission scheduled to
10 make its Racing Commission decisions at its June
11 meeting. And that's important to look forward to the
12 publication of the staff report and then a public
13 hearing where the chairman and staff will testify. Of
14 course, the ultimate decision regarding the agency and
15 the proposed changes to the Racing Act will come during
16 the 81st legislative session.

17 Our review began on October 19th with an
18 executive level introductory meeting that was attended
19 by the director of the Sunset Commission, Joey Longley,
20 by Deputy Director Ken Levine, Kelly Kennedy, policy
21 analyst and project manager, and Steven Ogle, policy
22 analyst. And I would like to take this opportunity to
23 ask Ken, Kelly, and Steven to please stand so that
24 everybody can recognize them.

25 We have Ken and Steven, but Kelly is not

1 here yet; so when she gets here, we're still going to
2 make her stand up. Ken is the project supervisor and
3 Kelly reports to him. Go ahead and sit down. She's
4 the project manager.

5 Ms. Kennedy has a Master's in public
6 service and administration from the Texas A&M Bush
7 School of Government and Public Service and has been
8 with the Sunset Commission for about three and a half
9 years. Actually we worked briefly with Ms. Kennedy
10 last biennium when she worked on the review of TVMDL,
11 so she has a strong understanding of the functions and
12 the issues related to our drug testing lab. Steven
13 Ogle is a Baylor law graduate and he's recently joined
14 the Sunset Commission staff following private
15 practice.

16 In the first week of the review, we
17 devoted 10 hours to a fairly intensive agency
18 overview. At that time we gave them our version of
19 Racing 101 which focused on the business of racing. We
20 decided to cover that first, both horse and greyhound.
21 And then the department managers reviewed their
22 specific regulatory programs with them. And we had
23 staff from both the House Appropriations Committee and
24 the Lieutenant Governor's office participating, so we
25 were very pleased with that.

1 Field work began on Thursday, November
2 8th, when the team visited Retama Park. Dr. Marsh,
3 Chuck Trout, and John Ferrara assisted me in providing
4 an educational tour that focused most heavily on
5 veterinary regulation. That was our focus that
6 evening. Dr. Marsh and Dr. Frakes took the team out on
7 prerace vet checks and then we took them all over the
8 racetrack, from the paddock, to the starting gate, to
9 the stewards' tower, the test barn. They were able to
10 see the business of racing firsthand.

11 Their field work is going to continue
12 tomorrow and Thursday at Corpus Christi Greyhound
13 Racetrack and then it's on to Lone Star this Friday and
14 Saturday. Between the field visits they are continuing
15 to conduct one-on-one interviews with the department
16 managers and they've met with most of the senior
17 management team already.

18 Ken, Kelly, and Steven are available
19 following this meeting to meet with any of you
20 individually or set up a more convenient time for
21 further discussion. So if you have any questions about
22 sunset, I can address those now but look forward to
23 meeting with the sunset team so that you can visit with
24 them.

25 CHAIRMAN ADAMS: Thank you, Charla.

1 MS. KING: Okay. I have a second item.
2 My second item is in regard to Corpus Christi
3 Greyhound. December 30th is the last day -- race day
4 scheduled. With the impending closure, staff is
5 working very hard to ensure orderly transition and a
6 wind-down to inactive status. Of course, one of our
7 greatest concerns has been the managing of the
8 greyhounds.

9 We have met and worked extensively with
10 the Texas Greyhound Association in efforts to
11 facilitate the best approach possible for the
12 greyhounds. We've learned a lot in the past few weeks,
13 especially in conducting a detailed inventory of all
14 the greyhounds that are present on the racetrack.

15 After completing the inventory and
16 consulting with the parties, the Commission established
17 a process requiring that no greyhound be allowed to
18 leave the compound without completion of documentation
19 and approval of a Commission judge. We implemented the
20 process on October 25th.

21 The updated and enhanced process includes
22 increased responsibilities for track security and
23 better coordination between us and the association.
24 We're collecting more detailed disposition information
25 than before, including information on transportation

1 and destination of all greyhounds transferring out of
2 the greyhound -- of the Corpus Christi greyhound
3 facility.

4 Although the launch of the process has
5 not been perfect, everyone is committed to making the
6 process work and things are going fairly well.

7 In addition to efforts in tracking the
8 outgoing greyhounds, staff has also assisted in
9 supporting efforts to set up the greyhound adoption
10 process. TGA and the racetrack worked diligently
11 together and an adoption kennel at the track is now
12 operational. At last report it had 26 greyhounds in
13 it.

14 The Texas Greyhound Association has
15 worked very hard setting up the adoption effort and
16 working with the adoption groups. These groups include
17 the Texas Greyhound Adoption Program located in Seguin,
18 the Greyhound Adoption League of Texas that's located
19 in Addison, and Heart of Texas Greyhound Adoption in
20 San Antonio.

21 TGA is working to ensure that all the
22 greyhounds are properly identified and photographed and
23 that owners have been properly notified and that the
24 release documentation is in order. And also very
25 important has been their efforts to arrange for spaying

1 and neutering for the adoption dogs and then
2 microchipping them for identification purposes.

3 So staff will continue to monitor the
4 process and assist in any way that we can and we very
5 much appreciate the cooperative effort that has
6 occurred in this area.

7 I'll have some additional comments on
8 Corpus Christi Greyhound later in the agenda, so that
9 concludes my administrative report and I can answer any
10 questions you might have.

11 CHAIRMAN ADAMS: Any questions of Charla
12 Ann?

13 If not, I would like to commend the staff
14 on a tremendous job of dealing with this very unusual
15 problem. And it's sad, but yet it's a fact of life
16 here that has to be dealt with and staff has gone out
17 of their way to deal with this, so -- as well as the
18 Texas Greyhound Association and the adoption agencies.
19 So thank you all very much on behalf of the
20 Commissioners.

21 MS. KING: Thank you, Mr. Chairman.

22 CHAIRMAN ADAMS: The next item will be
23 budget and finance and our update will come from our
24 chief financial officer, Shelley Harris-Curtsinger.

25 MS. HARRIS-CURTSINGER: Good morning,

1 Commissioners. I'm going to start with Tab 2
2 actually. It is the approval of the Commissioners'
3 operating budget. And under Tab 2 you will find the
4 operating budget that we are proposing for fiscal year
5 2008.

6 There are several significant changes
7 between fiscal year '07 and '08 from the legislative
8 session. This includes a two percent salary increase
9 for all State employees. The agency was given the
10 appropriations to cover the salary increase.

11 Second, the legislative session added one
12 additional FTE in Strategy 3.1.2, wagering compliance
13 inspections, and \$75,000 in appropriations for wagering
14 system security testing. Also effective September 1st
15 the Legislature increased the travel expenditures
16 allowable by raising the mileage rate from 44.5 cents
17 to 48.5 cents per mile.

18 In preparing the budget for fiscal year
19 '08 and working with staff, we decided that an
20 increase to the travel budget from our LAR request was
21 necessary throughout the agency due to the increasing
22 cost of travel and the additional appropriations given
23 to each agency for out-of-state travel.

24 With the additions to the budget from the
25 Legislature for the two percent salary increase and the

1 appropriations for the additional FTE and waging
2 security system testing, the agency's budget for fiscal
3 year 2008 is \$10,245,647.

4 From a cash flow standpoint, the agency
5 raised fees in January of 2007 to cover our
6 expenditures and with the continued decrease of the
7 outs money. The agency does not expect to expend all
8 appropriations for fiscal year 2008 and does expect to
9 carry funds over into fiscal year 2009 which the agency
10 is allowed to do between the bienniums.

11 In looking at where we are as of right
12 now, as of October 31st, our agency is 2.8 percent
13 under budget at this time and that shows in Tab 1, our
14 update of the budget.

15 In conclusion, we think everything is on
16 line to go well for this fiscal year. I will be happy
17 to answer any questions and respectfully request the
18 Commission approve the operating budget for the fiscal
19 year 2008.

20 CHAIRMAN ADAMS: Any questions? Yes,
21 Rolando.

22 COMMISSIONER PABLOS: Okay. I just had a
23 couple of questions on the -- I'm looking at -- I guess
24 it's page one of one where goal one -- let's see. How
25 can I get you to this?

1 MS. HARRIS-CURTSINGER: Of the operating
2 budget?

3 COMMISSIONER PABLOS: Yes, ma'am. I
4 guess it would be the goal of enforcing racing
5 regulations in Texas where it talks about the number of
6 positive drug tests for illegal medications.

7 MS. KING: 2-11 of the packet.

8 COMMISSIONER PABLOS: Thank you.

9 CHAIRMAN ADAMS: Can you get us on the
10 same page, Shelley?

11 MS. HARRIS-CURTSINGER: Okay. 2-11 of
12 the packet; and of the operating budget, on the bottom
13 it's II.D. Page 1 of 1.

14 COMMISSIONER PABLOS: The line item where
15 it refers to the number of positive drug tests for
16 illegal medications and you look at 2006, 2007, and
17 then the budgeted 2008 amount that goes up to six, why
18 is that increased?

19 MS. HARRIS-CURTSINGER: That is a
20 proposed figure. That is a figure worked out with the
21 LBB. The figure is usually not what that figure is
22 looked at to be because that is just a proposed figure
23 for the budget. And just so you know, we will be
24 looking at all of those measures with the LBB and the
25 Governor's office come probably January and February.

1 Since Charla Ann and I both started in
2 2005, we haven't had a good look at the performance
3 measures with the LBB and the Governor's office and
4 that will be something that we do look at for the next
5 legislative session. And that looks at the budgeted
6 amounts, the budgeted amounts for the performance
7 measures as well as the dollar figures.

8 So that may be a little bit high, but
9 that's the figure that's in the Appropriations Act. So
10 that's where that comes from.

11 COMMISSIONER PABLOS: Okay. The only
12 other thing that kind of stands out is on page 2-17.
13 It's Section III.A, page six out of 18, where it talks
14 about the number of investigations completed. Here
15 we're seeing that in 2006 we had 947, in 2007 we had
16 3200, and you're budgeting 900. Why is that
17 discrepancy?

18 MS. HARRIS-CURTSINGER: That is correct.
19 There was -- in the investigation section there was
20 some discrepancies found on how the actual number of
21 investigations were calculated. And that calculation
22 will have to be looked at very closely and exactly what
23 is being counted as far as the number of investigations
24 and see if that needs to be readjusted when we go into
25 the legislative process again.

1 COMMISSIONER PABLOS: So is it the
2 methodology? I'm not understanding.

3 MS. KING: For performance measures,
4 there is always a formula that they're calculating,
5 what they're including and what they're not including;
6 and so in digging into this particular performance
7 measure, we found some inconsistency in terms of how
8 the agency over the long term had been counting it.
9 And so -- and there were some assumptions made about it
10 and then we've been digging into it and trying to
11 refine that. And so we're seeing it depends if you
12 count it this way and define it this way or if you
13 include this.

14 Tom Neely could provide more detail on
15 that if we need him to at this point, but we're going
16 to be working with LBB to settle on a calculation
17 methodology that we think really reflects what they're
18 trying to count and what we think is important to
19 count.

20 So there has been -- it has to do with
21 the criminal history, the way that criminal histories
22 are checked and investigated by staff. And we've done
23 a -- in fact, Tom has done a long review all the way
24 back to figure out why these figures have looked the
25 way they have. So that's good that you point it out.

1 It's something that we need to work on and get straight
2 with the Legislative Budget Board.

3 COMMISSIONER PABLOS: Thank you. That's
4 all, Mr. Chairman.

5 CHAIRMAN ADAMS: How will this ultimately
6 affect the bottom line? What --

7 MS. HARRIS-CURTSINGER: As far as the
8 performance measures are concerned, the LBB and the
9 Governor's office would look at these and look at our
10 performance in relation to a budget that they would
11 propose for the next legislative session and what
12 changes need to be made to our performance measures.

13 And one of the things that we will be
14 asking them to look at and hopefully be making some
15 proposals is a lot of the performance measures for this
16 agency measure the industry as opposed to measuring the
17 performance of the agency. And so we will be looking
18 to see if we need some changes in that area, to see --
19 if they want us to be measuring the industry, that's
20 fine. But if they want to measure the performance of
21 the agency, we may need some changes to our performance
22 measures. And the performance measures of this agency
23 have not been changed since the agency was
24 established.

25 CHAIRMAN ADAMS: Are they part of the

1 statute or are they --

2 MS. HARRIS-CURTSINGER: They're in the
3 general appropriations act, so they are part of the
4 bill that's passed for budget.

5 CHAIRMAN ADAMS: Any other questions?

6 MR. ANGELO: Mr. Chairman, I've got a
7 couple of similar questions on page 2-28. There's some
8 numbers there that look a little strange in the
9 relationship between '06, '07, and proposed for the
10 professional fees and services and also for the other
11 operating expense.

12 MS. HARRIS-CURTSINGER: Okay.
13 Professional fees and services, when you go from '06 to
14 '07, we had some funds left to expend because that's
15 during a biennium, so we did some extra computer
16 projects at the end of that year. And then we budget
17 that we will need some extra things done for '08, so we
18 have budgeted a little extra. Those are any contracted
19 expenses that we might need for computer services, for
20 vets, stewards that we may have to have come in on a
21 contract. Any of those types of expenditures, that's
22 where they would fall.

23 MR. ANGELO: So that reflects the large
24 increase in both of those --

25 MS. HARRIS-CURTSINGER: Yes, sir.

1 MR. ANGELO: -- two categories?

2 MS. HARRIS-CURTSINGER: Yes, sir. And
3 one of those things is that as it's been more difficult
4 to find veterinarians willing to work the hours that
5 come with this industry, as well as judges and
6 stewards, we've had to enlist more contracted
7 services.

8 CHAIRMAN ADAMS: Other questions?

9 Okay. Hearing none, I will -- the Chair
10 will entertain a motion to approve the proposed
11 operating budget for 2008.

12 COMMISSIONER SOWELL: So move.

13 COMMISSIONER EDERER: Second.

14 CHAIRMAN ADAMS: Okay. Moved by
15 Commissioner Sowell, seconded by Commissioner Ederer.

16 Any discussion?

17 All those in favor?

18 COMMISSIONERS: Aye.

19 CHAIRMAN ADAMS: Any opposed?

20 The motion carries.

21 Okay. So that took care of B and C
22 items, so we move over to approval of charges for
23 services performed under the memorandum of
24 understanding with the Texas Veterinary Medical
25 Diagnostic Laboratory in accordance with the Racing

1 Act, Section 3.07(d). Mr. Fenner?

2 MR. FENNER: Commissioners, under the
3 Section 3.07 of the Texas Racing Act, all drug testing
4 on race animals is performed by the Texas Veterinary
5 Medical Diagnostic Laboratory. The charges for those
6 drug testing services are actually paid by the
7 associations, but the agency reviews the invoices to
8 make sure that they're accurate and we also enter into
9 a memorandum of understanding with TVMDL to make sure
10 that the charges are fair and reasonable.

11 We have looked at the prices that TVMDL
12 has proposed for FY 2008. There is a slight increase
13 of seven percent or eight percent depending on which
14 particular test is being done. This is a seven or
15 eight percent increase over the charges that were
16 originally put in place in 2004. So the staff believes
17 that the charge increases are reasonable, particularly
18 in light of the reduced number of drug tests that will
19 be taking place in '08 as a result of Corpus being
20 closed.

21 We also have Dr. Marsh and Chuck Trout
22 available to answer questions as well as Ken Peck from
23 TVMDL.

24 CHAIRMAN ADAMS: Yes. Any -- do we need
25 Dr. Marsh to come forward or Chuck Trout? Does anyone

1 have any questions?

2 Dr. Marsh, would you like -- would you
3 like to address the Commission or is it purely for
4 questions?

5 MR. MARSH: Good morning. I'm Stewart
6 Marsh, the chief veterinarian. I really had no plan to
7 address the Commission on this item. I have reviewed
8 the memorandum of understanding and I think it is a
9 fair increase because we do get outstanding testing
10 procedures from this lab.

11 CHAIRMAN ADAMS: Thank you. Thank you,
12 sir.

13 I also have signed to speak Mr. Ken Peck
14 with the laboratory. Mr. Peck?

15 MR. PECK: Commissioners, I thank you for
16 allowing me to say something. The drug testing program
17 that we've been performing since 1989 has been rather
18 challenging. It is a game of cat and mouse. I'll be
19 honest with you on that. We sometimes work very
20 efficiently in terms of catching that mouse and
21 sometimes we're a few strides behind. It does take a
22 budget to be able to keep up with that mouse and that's
23 simply what we're asking for here today. This has been
24 a slight increase that with the revenue loss will help
25 us equalize operational function without any

1 significant decrease in performance. Thank you.

2 CHAIRMAN ADAMS: Thank you, sir.

3 Any questions? Yes, Mr. Pablos. A
4 question of Mr. Peck or just a general?

5 COMMISSIONER PABLOS: A general question
6 to the staff. Going to page four out of six in the
7 memorandum, Section III-1, it talks about us
8 supervising, agree to supervise the collection at each
9 site. Just from a procedural standpoint, can you
10 explain to me how that works? Who are we supervising?
11 Do we perform the collection ourselves or do we depend
12 on a third party to collect the actual urine samples?

13 CHAIRMAN ADAMS: We're probably going to
14 need Dr. Marsh or --

15 MS. KING: Or Chuck.

16 MR. MARSH: The rule and the act say that
17 we must test the winner of each race. Our contract
18 with TVMDL appoints a certain number of samples over
19 the whole year; so it turns out for a horse performance
20 of 10 races, we do 22 samples, so that means the winner
21 of 10 races plus usually the second place horse and the
22 third place horse out of two races that night.

23 The third place horse, those races are
24 called by the stewards every day on a random basis. So
25 that's how that's determined. They can call at any

1 time a finisher that didn't finish properly, any horse
2 they feel that there's cause, that they need to come in
3 and be tested.

4 So we can -- it's the stewards'
5 discretion; and if in my rounds in the afternoon I see
6 something that I find amiss, I can certainly ask the
7 stewards to call the test and they never turn me down.
8 So that's how it was determined.

9 COMMISSIONER PABLOS: My question is
10 mostly on the chain of custody on the actual collection
11 of the sample. Who is doing the actual sample
12 collection?

13 MR. MARSH: There are test technicians
14 that are employees of the racetrack --

15 COMMISSIONER PABLOS: Of the racetrack.

16 MR. MARSH: Of the racetrack.

17 COMMISSIONER PABLOS: Not the
18 Commission.

19 MR. MARSH: Not the Commission. Under
20 our supervision, the supervision of the test barn
21 supervisor and the veterinarians that are working that
22 track, that they perform the actual urine collection
23 from the test animals and we ensure -- the Commission
24 staff ensures that they follow the proper chain of
25 custody. The blood is drawn by the veterinarians most

1 of the time.

2 COMMISSIONER PABLOS: And so these folks
3 collecting the urine samples, they are employees of the
4 track?

5 MR. MARSH: Yes, they are employees of
6 the track.

7 COMMISSIONER PABLOS: And do they have to
8 have any special qualifications to do that? Are there
9 any background checks performed on these folks or
10 anything? Do you know?

11 MR. MARSH: We have the option of
12 interviewing every test technician -- I say "we," the
13 test barn supervisor or the veterinarian at that
14 track -- and determine. Other than that, it's the
15 normal qualifications for an employee at the track is
16 the requirement there. We do the interview and have
17 the last say if we want this person to work for us.

18 COMMISSIONER PABLOS: Okay. Thank you.

19 MR. MARSH: And of course, when they're
20 licensed, there is a background check on them.

21 CHAIRMAN ADAMS: And they do have to be
22 licensed.

23 MR. MARSH: They do have to be licensed.
24 They're licensed as a test technician.

25 COMMISSIONER PABLOS: Thank you.

1 CHAIRMAN ADAMS: Any other questions?

2 Thank you, Dr. Marsh.

3 Okay. The Chair will recognize or
4 entertain a motion to approve the memorandum of
5 understanding with the Texas Veterinary Medical
6 Diagnostic Laboratory.

7 MR. ANGELO: Move approval.

8 COMMISSIONER SOWELL: Second.

9 CHAIRMAN ADAMS: It's been moved and
10 seconded.

11 Did you get the individuals?

12 Any discussion?

13 All those in favor?

14 COMMISSIONERS: Aye.

15 CHAIRMAN ADAMS: Any opposed?

16 The motion carries.

17 The next item, report on racetrack
18 inspections. Mr. Neely, director of investigations.

19 MR. NEELY: Good morning, Commissioners.

20 I'm Tom Neely, director of investigations for the
21 Racing Commission. As you can see, we've been pretty
22 active on inspections over the last period and there
23 are a few updates I'd like to share with you that are
24 not on your packet because they came in during the last
25 few weeks.

1 The issues in Item No. 3 there for Corpus
2 Christi veterinary, most of those things had been
3 resolved; but there were still a number of issues
4 related to maintenance, doors, drains, ceiling tiles,
5 crate maintenance. Dr. Marsh has issued a letter to
6 them dated on November the 13th and gives them until
7 December the 1st as a deadline to get these things
8 completed. Failure to do so, they would be referred
9 for administrative penalty.

10 Also on Corpus Christi, the next item,
11 there's still an outstanding issue there. It's related
12 to the grandstand, structural integrity of the
13 building. And this is going to be a long-term issue
14 probably.

15 Also, further down, the third item from
16 the bottom, the items there that the racing judges had
17 identified were resolved on November the 23rd.

18 And the last item on your form there is
19 the enforcement inspection. This was related to the
20 fire inspection. They were not in compliance when they
21 were initially inspected. They did a follow-up
22 inspection on November the 21st and they were still not
23 in full compliance.

24 These were things related to
25 extinguishers not being up to date and things like

1 that. It was nothing related to needing to close the
2 meet down. But there are still things that they're
3 going to have to take care of. And the fire marshal, I
4 believe, was going to be back out there in 10 days.
5 Around the 1st or 2nd of December he should be back out
6 there.

7 Any questions?

8 CHAIRMAN ADAMS: Any questions?

9 Thank you, Mr. Neely.

10 Our next item is proceedings on
11 racetracks, discussion, consideration, and possible
12 action on a request by Corpus Christi Greyhound Track
13 to allocate live racing dates for 2008. If you recall,
14 Commissioners, this is the item that's been -- it was
15 tabled at our last Commission meeting. I'd like to
16 recognize our director, Charla Ann King.

17 MS. KING: Thank you, Mr. Chairman.

18 Yes. As you recall, there was a motion that was tabled
19 for the 60-day performance and so that it failed. By
20 tabling the request, the Commission gave Corpus Christi
21 management an opportunity to return to this meeting and
22 possibly propose an amendment for reconsideration.

23 I believe that we were all hoping for
24 that opportunity, but it did not happen. They
25 announced they're closing on November 1st with a

1 statement that they hope to return to live racing in
2 '09.

3 While I reported earlier about the
4 enhanced disposition policies and the adoption program
5 under way, staff is also working with track management
6 on operational shutdown issues, including last day
7 carryover pool payouts and their plan to honor all
8 outstanding winning pari-mutuel tickets through
9 December 31st, 2008. And I believe that that plan has
10 been approved. And Lila is nodding her head.

11 Looking forward, we've notified
12 management that the facility must be kept in good
13 working condition during the year of inactivity as
14 there is no maintenance exemption for inactive tracks.
15 To that end, we've requested a written maintenance
16 schedule for all buildings during the dormancy of live
17 racing. We will continue to inspect the facilities and
18 bring those reports to you.

19 This is an important opportunity for
20 Corpus Christi Greyhound Racetrack to get caught up on
21 their maintenance. Without any race animals present on
22 the compound, they will be able to go in and be able to
23 fix the kennels to the degree that everybody expects.

24 We have also reminded management that
25 their active racetrack license fee of \$175,000 for '08

1 is due on January 31st and that unless they request and
2 are granted live race dates by September 1st of '08,
3 they'll be subject to pay an inactive license fee in
4 addition of \$125,000 at that time.

5 This has been truly a very difficult
6 task, perhaps one of the most difficult ones since I've
7 come to the Commission, the closing. It means a lot of
8 people are losing their jobs, and that includes most of
9 our staff at the track.

10 We sent our staff services officer, Gail
11 Anderson, to assist with counseling our employees. She
12 met with them to discuss ways to search for other job
13 opportunities and answer questions about their benefits
14 and options for converting insurance and options on
15 retirement programs. And so it's a difficult time for
16 staff and we're working our best through that.

17 Those are my comments, Mr. Chairman.
18 Corpus Christi is here today and prepared to comment
19 and answer any questions you might have.

20 CHAIRMAN ADAMS: Okay. I have no one
21 signed to speak; but if there is someone, would you
22 please sign and fill out a card and -- if you'd like to
23 address the Commission. Anyone from Corpus Christi?

24 While we're waiting on the gentleman, the
25 Commissioners would like to send their condolences or

1 the Commission. Basically I'm here to answer your
2 questions.

3 CHAIRMAN ADAMS: Mr. Savin, you do
4 understand what Charla Ann has been passing on to us
5 about the opportunity to get the maintenance done that
6 needs to be done, the opportunity to resolve the
7 construction -- the structural problems that you have
8 in the grandstand, et cetera, and that the staff is
9 going to be there monitoring that and expecting it to
10 be done in a timely fashion?

11 MR. SAVIN: Yes, sir.

12 CHAIRMAN ADAMS: And any other questions
13 for -- yes, Rolando.

14 COMMISSIONER PABLOS: Basically I just
15 have a comment. I'm wondering, what are we going to do
16 next year to avoid what happened this year? Do you
17 have anything planned with respect to, you know, making
18 next year different?

19 MR. SAVIN: Well, without taking up too
20 much of your time, we're going to continue to dialogue
21 with the other two greyhound tracks, with the TGA, with
22 Commission staff, in hopes that we can reopen in 2009
23 on some sort of seasonal or circuit basis.

24 COMMISSIONER PABLOS: And when do you
25 plan on doing that?

1 MR. SAVIN: Well, we'll come before the
2 Commission as often as you deem necessary to give you
3 updates; but again, a lot of that is going to depend
4 upon the disposition of the TGA, the Valley, and Gulf
5 Greyhound as we work towards some sort of resolution,
6 again, whether it's a two-track circuit, a three-track
7 circuit, whether we're a seasonal facility similar to
8 the Valley. And of course, the TGA would be very
9 prominent in those discussions.

10 COMMISSIONER PABLOS: I'm just very
11 troubled by hearing that our folks are losing their
12 jobs and some of the folks down in Corpus are losing
13 their jobs as well; and I just want to make sure that,
14 you know, all parties involved really get involved and
15 do their best efforts in trying to come up with a
16 solution because I don't want to have to go through
17 this next year.

18 And given our situation with the rules
19 the way they read with respect to licenses going
20 dormant, you know, I don't see any end in sight and so
21 I'd like to make sure and get everybody's commitment
22 that that's exactly what's going to happen.

23 MR. SAVIN: Well, you certainly have our
24 commitment. And, you know, again, part of our problem
25 is working out the details with the TGA and with one or

1 two of the other tracks to make a viable racing circuit
2 for the dogmen and the State of Texas.

3 COMMISSIONER PABLOS: I appreciate it.
4 Thank you.

5 CHAIRMAN ADAMS: Any other questions?
6 Yes, Mr. Sowell.

7 COMMISSIONER SOWELL: Would it be
8 appropriate for you to give us an update now?
9 Obviously discussions have been under way; and without
10 breaching any confidentiality that might jeopardize
11 your discussions, can you bring us up to date as to
12 where it stands now?

13 MR. SAVIN: Well, we have had some
14 discussions. Gulf has not shown interest in being a
15 part of a year-round circuit, which we fully
16 understand. We've talked with the Valley. Again, the
17 Valley is currently running about four and a half, five
18 months. We're looking to work on the feasibility of a
19 circuit with the Valley that would somehow allow the
20 dogs the ability to race year-round or stay in Texas
21 year-round without us having to suffer further
22 significant financial losses.

23 Again, this is all predicated on the
24 significant losses that Corpus has seen over the last
25 several years. And you've all seen the financial

1 reports. We're talking, you know, well in excess of a
2 million dollars a year.

3 So we're looking for a solution that
4 would not alleviate our losses entirely but get it to a
5 level that's acceptable to the management committee
6 that oversees the operation of Corpus.

7 Corpus does want to be a part of the
8 Texas racing community and contribute both to greyhound
9 and to horse purses through simulcasting. So we will
10 work diligently, but it will take the cooperation of
11 the TGA and potentially one or two of the other dog
12 tracks in the State of Texas for us to come back in
13 2008 with something other than a seasonal schedule that
14 we had proposed this year.

15 COMMISSIONER SOWELL: Due to the absence
16 of any specifics, I would assume that none exist, that
17 you've not made any real progress to date. Is that
18 correct?

19 MR. SAVIN: That's correct in the sense
20 that we're not ready at this point to put forth a 2009
21 racing schedule; but we certainly hope that we would be
22 able to come before the Commission in the spring of
23 2008, you know, well in advance of when we came this
24 year, and update the Commission on our dialogues with
25 the other tracks and the TGA and work in conjunction

1 with the TGA to bring forth a proposal for a 2009
2 racing schedule.

3 COMMISSIONER SOWELL: Thank you.

4 CHAIRMAN ADAMS: Any other questions?

5 Thank you, Mr. Savin. Appreciate it very
6 much.

7 MR. SAVIN: Thank you.

8 CHAIRMAN ADAMS: Yes, Charla Ann.

9 MS. KING: If I might comment, especially
10 on the timetable, talking about early spring of --
11 that's just around the corner. And it has been our
12 pattern to use a working group to discuss these
13 issues. And since we have a lot of new members on the
14 Commission, we need to probably redesignate two
15 Commissioners to help serve on that working group for
16 the greyhound race date consideration.

17 So we might need to get that up and
18 running so people know that they're going to be tasked
19 with that and we can get some meetings scheduled so we
20 can make sure we get together on that.

21 CHAIRMAN ADAMS: Would those be
22 appointments on my part?

23 MS. KING: They would be. It can be
24 volunteer appointments. Of course, we have a
25 representative of the greyhound -- a slot for that,

1 which I believe is Commissioner Pablos, and so he would
2 need a Commissioner companion on that effort.

3 CHAIRMAN ADAMS: Okay. If anyone is
4 interested in that, please contact me at our break and
5 then we'll go from there.

6 MS. KING: Okay.

7 CHAIRMAN ADAMS: Thank you, Charla Ann.

8 MS. KING: Thank you, Mr. Chairman.

9 CHAIRMAN ADAMS: The next item of
10 business is a request by Valley Race Park to modify its
11 2007 live racing schedule. I would like to recognize
12 Mr. Milt Roth from Valley Race Park.

13 MR. ROTH: Thank you, Commissioners.

14 At the last meeting we withdrew our
15 request to operate on Wednesdays in November, November
16 29th -- November 28th, the 5th and the 12th and the
17 19th; and we were a little concerned we might not have
18 enough greyhounds to fill those dates.

19 At this moment we have just about enough,
20 even though we're a little disappointed we didn't get
21 any greyhounds from Corpus at this point. We thought
22 we were going to get some. We had some signed
23 contracts with some kennels, but they weren't released
24 from their obligations at Corpus.

25 But we still have enough greyhounds to

1 make those Wednesdays work. We would like to run more
2 races those days, but obviously we can't at this
3 point. But the 13 races are feasible and we'd like to
4 be able to do that.

5 CHAIRMAN ADAMS: Any questions for
6 Mr. Roth? Yes, Mark.

7 MR. FENNER: Chair Adams?

8 Mr. Roth, I just wanted to clarify that
9 your request is for matinee performances?

10 MR. ROTH: Matinee performances with 13
11 races, yes.

12 COMMISSIONER PABLOS: On Wednesdays?

13 MR. FENNER: On Wednesdays.

14 CHAIRMAN ADAMS: Thank you, Mr. Roth. I
15 don't think there are any questions at this time, sir.

16 Diane Whiteley, please?

17 MS. WHITELEY: Good morning,
18 Mr. Chairman, Commissioners. Welcome, new
19 Commissioners. I'm glad to see there's a fellow CPA in
20 racing.

21 Is this on the new topic, Chairman, or is
22 this on Valley's race days?

23 CHAIRMAN ADAMS: This is on the request
24 for Valley Race Park and hopefully you can help us with
25 assuring us there are enough dogs to do this.

1 MS. WHITELEY: You know, we certainly
2 appreciate Valley adding its races. We also were very
3 disappointed that three kennels from Corpus Christi
4 that had contracted with Valley were not able to go
5 down to Valley.

6 It was our understanding at the last
7 Commission meeting, and as evidenced by the transcript
8 for the last meeting, that Corpus Christi had thought
9 the three kennels were going as well; but subsequent to
10 that meeting they were -- two of the kennels were not
11 let go, which is very disappointing to us since they're
12 both full of Texas-bred greyhounds.

13 We tried to work it out and to this point
14 we have not been able to do that and so it's -- it's a
15 sad situation for us because the two kennels will go
16 out of business December 31st rather than continuing
17 with the kennel business until after Valley. But other
18 than that, we're certainly pleased whenever a track
19 adds races for us.

20 CHAIRMAN ADAMS: Thank you, ma'am.

21 Any questions?

22 I hear none. Thank you, ma'am.

23 MS. WHITELEY: Thank you.

24 CHAIRMAN ADAMS: Anyone else here
25 interested in addressing the Commission regarding the

1 request for Valley's adding Wednesday matinees?

2 Is there any discussion among the
3 Commissioners?

4 The Chair will entertain a motion to
5 approve the Valley's request, Valley's request to amend
6 the 2007 race dates.

7 COMMISSIONER PABLOS: So move.

8 CHAIRMAN ADAMS: That will add a total of
9 four performances, one for each Wednesday from November
10 the 28th through December the 19th, for a total of 52
11 additional races.

12 Moved by Commissioner Pablos.

13 COMMISSIONER EDERER: Second.

14 CHAIRMAN ADAMS: Seconded by Commissioner
15 Ederer.

16 Any discussion?

17 All those in favor?

18 COMMISSIONERS: Aye.

19 CHAIRMAN ADAMS: Any opposed?

20 The motion carries.

21 The next item is allocation by the Texas
22 Greyhound Association of interstate cross-species purse
23 monies. And I have two individuals signed to speak.
24 Ms. Whiteley?

25 MS. WHITELEY: The allocation of

1 cross-species is one of those items that I'm going to
2 give a little bit of background for the new
3 Commissioners so they can maybe get a feel for what's
4 happening here.

5 On the cross-species, this is, for
6 example, horse races shown at greyhound tracks and
7 greyhound races shown at horse tracks and the
8 simulcasting of those and how the purse money is
9 allocated between the tracks.

10 For our purposes, the allocation of
11 cross-species refers to out-of-state greyhound tracks,
12 for example, like Palm Beach, being shown at a horse
13 track, for example, Lone Star Park. And under -- we
14 receive 5.5 percent of that handle and that's sent to
15 the Texas Greyhound Association where then we compile a
16 formula and allocate it to our two greyhound tracks.

17 We do take out an administrative fee. We
18 are allowed up to 20 percent, which we were taking a
19 little bit earlier this year. We have now dropped it
20 to 15 percent to increase the purse money available to
21 the greyhound tracks.

22 This has been on the agenda a couple of
23 times because we were unsure of how the race days were
24 going to work out for the rest of the year; but now
25 that it seems fairly certain which tracks will be

1 operating in 2008, this is our final.

2 The one in your packet that was
3 originally sent in your packet was prepared, quite
4 frankly, in a hurry. And that's my error. And it did
5 not include an allocation when Valley Race Park is not
6 running live. And I sent a corrected one after it was
7 approved by the TGA board at our meeting yesterday,
8 late yesterday evening. And the Commission -- I
9 believe you have that.

10 Thank you.

11 CHAIRMAN ADAMS: Do we have that?

12 MR. FENNER: Yes, you do. It was laid at
13 your chair before the meeting started.

14 CHAIRMAN ADAMS: Okay.

15 MS. WHITELEY: Under Chapter 303, it
16 talks about the distribution of purse money from
17 cross-species simulcasts and these are the guidelines
18 that we follow. Primarily it's to enhance live racing
19 opportunities at Texas greyhound racetracks. So we
20 like to reward live racing. And we take into
21 consideration the average price per point for purses,
22 the purse payout at each greyhound track in the
23 preceding year, and the impact that it has made on
24 greyhound purse revenues in the prior year.

25 This formula was designed and has been

1 very effective, quite frankly, at equalizing the
2 cross-species money between the racetracks. The
3 formula is based on horse handle since that, again, is
4 the cross-species simulcasting at the greyhound
5 tracks. The greyhound tracks pay a purse percentage to
6 the horsemen for simulcasting the horse signals.

7 We have a separate agreement called the
8 global cross-species agreement, and that agreement
9 somewhat balances out the additional purse money that
10 the greyhound tracks pay to the horsemen through our
11 interstate greyhound signals. And it's kind of a
12 convoluted way to get there, but it ultimately gets
13 there. But what this formula does is balances that
14 out. What we are losing on our interstate greyhound
15 signal to our greyhound tracks, this formula balances
16 that out through the horse handle wagering.

17 For the remainder of 2007 we are
18 consistent with Valley running live and this is
19 consistent with the prior years and, again, it's based
20 on horse handle and the percentage. In prior years we
21 have always had -- including this current year, when
22 Valley is not running live, we allocate additional
23 monies to the tracks that are running live and Valley
24 gives up 45 percent of its share in a proportionate
25 amount to Corpus Christi and to Gulf Greyhound. With

1 Corpus Christi not involved next year, all of that 45
2 percent will go to Gulf Greyhound. So I did some
3 calculations on it to see where we would be under the
4 new formula with Valley giving up the 45 percent.

5 First of all, let me preface this by
6 saying I went back to 2006 because that's the first
7 whole year that I have to look at. And for example, at
8 Valley Race Park in 2006, based on this formula, their
9 average point value was \$54.18. Gulf Greyhound was
10 \$53.89. So it's fairly comparable. And I think -- so
11 it's -- the formula is achieving what it's designed to
12 achieve.

13 So based on projections of what will
14 happen in 2008 under this new allocation with Corpus
15 not being in the formula any longer, Valley Race Park
16 will pick up probably about 85 to 90 thousand dollars
17 additional purse money. And so -- and their point
18 value will be fairly equivalent to Gulf Greyhound. So
19 maybe it's too much to Valley, but -- a little too much
20 to Valley, but -- since they only run four and a half
21 months. But I think it's a real fair formula and
22 penalizes no one on this.

23 So I'm available for questions.

24 CHAIRMAN ADAMS: Okay. Thank you,
25 ma'am. Everyone is so sufficiently confused that --

1 MS. WHITELEY: That's why we have a CPA
2 on the Commission.

3 CHAIRMAN ADAMS: Any questions?

4 COMMISSIONER SOWELL: Only by those of us
5 who are not CPA's.

6 VICE-CHAIRMAN CARTER: Could I ask a
7 question about the process?

8 MS. WHITELEY: Yes.

9 VICE-CHAIRMAN CARTER: Who met and
10 discussed the percentages you're proposing to be fair?
11 Did all of the tracks participate in this?

12 MS. WHITELEY: Yeah. Typically how it's
13 done is that we send this proposal out and allow
14 adequate time for all the tracks to give us input on
15 how they feel about it. This last one, for example --
16 and again, it's just my error. I did not include the
17 part where Valley was running dark. And I sent it then
18 to the Commission, I believe, the day after I sent it
19 to the tracks, which is not adequate time and I
20 appreciate that.

21 So I received a response from Gulf fairly
22 quickly as to why it wasn't included as it has been the
23 last several years; and I spoke with Bob Bork,
24 Mr. Bork, last Friday on it and told him that it would
25 have to be changed just due to it's not consistent with

1 the prior years. And then I left a message for him
2 yesterday -- or this morning while we -- after the
3 board voted on it.

4 But typically we like to have a little
5 more time than that, but typically we don't have to
6 submit it at every Racing Commission meeting. So it's
7 a matter of circumstances.

8 VICE-CHAIRMAN CARTER: So currently is
9 there agreement upon this proposal?

10 MS. WHITELEY: There is agreement
11 certainly with Gulf Greyhound. And I mentioned to Milt
12 this morning what the formula, changed formula, would
13 be. And then I have put in a call to Bob and gave him
14 what the percentage was and I haven't heard back from
15 him. But maybe Mr. Roth can address that.

16 VICE-CHAIRMAN CARTER: So do you need
17 more time for everybody to get together on this?

18 MS. WHITELEY: I think that's dependent
19 on Valley Race Park, if they're going to have agreement
20 on that.

21 VICE-CHAIRMAN CARTER: Okay.

22 CHAIRMAN ADAMS: Any other --

23 MS. WHITELEY: They've agreed every other
24 year. I don't -- unless they have changed their --

25 CHAIRMAN ADAMS: So we're back to the

1 same formula.

2 MS. WHITELEY: Right. Yeah, it's the
3 same consistent formula that we've had in place for the
4 last two years. So unless they were to object -- and
5 they have increased their purse money by this by a
6 significant amount, so I don't -- but they certainly
7 are entitled to object.

8 CHAIRMAN ADAMS: And Mr. Bork's group
9 actually did benefit, from what I understand, when you
10 did your calculations from the new breakdown.

11 MS. WHITELEY: Yes, yes, yes. Perhaps
12 not as much as they would like, but they certainly did
13 benefit. Roughly, I'm guesstimating, you know, 80 to
14 90 thousand dollars increased purse money.

15 CHAIRMAN ADAMS: Thank you, ma'am.

16 MS. WHITELEY: Uh-huh.

17 CHAIRMAN ADAMS: Next signed to speak,
18 Mr. Milt Roth.

19 MR. ROTH: Well, Diane is right. We'd
20 like more. But this is okay. We're all right with
21 this formula.

22 CHAIRMAN ADAMS: Okay, sir. Thank you
23 very much, sir.

24 Is there anyone here to speak on behalf
25 of Valley? He is speaking for Valley. Sorry. For

1 Gulf. Excuse me. For Gulf.

2 Hearing none, the Chair will entertain a
3 motion to approve the Texas Greyhound Association's
4 proposed allocation -- revised proposed allocation of
5 interstate cross-species purse money through December
6 31st of 2008.

7 VICE-CHAIRMAN CARTER: So move.

8 COMMISSIONER EDERER: Second.

9 CHAIRMAN ADAMS: Do I have a second?

10 Moved by Commissioner Carter, seconded by
11 Commissioner Ederer.

12 Any discussion?

13 All those in favor?

14 COMMISSIONERS: Aye.

15 CHAIRMAN ADAMS: Any opposed?

16 The motion carries.

17 The next item, allocation among various
18 breeds of horses of purse revenue generated by
19 simulcasting for 2008 under Commission Rule 321.505.
20 We have numerous people signed to speak on this issue.
21 I'd like to begin by recognizing Mr. Bryan Brown. And
22 since we do have so many, if those in favor would all
23 like to speak and then we'll take the opposition and do
24 it that way.

25 MR. BROWN: Good morning, Commissioners,

1 Bryan Brown with Retama Park.

2 You have in your packet an agreement
3 that's been signed by many, many people from the
4 industry. All the racetracks have signed the
5 agreement. The Texas HBPA, which represents Quarter
6 Horse interests, has signed the agreement and the Texas
7 Thoroughbred HBPA has just signed the agreement.

8 Let me kind of walk through, if it might
9 make some sense, the agreement and kind of give a
10 little bit of background on what we're talking about.

11 This agreement covers the split of
12 simulcast generated purse funds and cross-species
13 generated purse funds not only amongst the breeds but
14 also amongst the tracks in the case of cross-species
15 revenue.

16 Ms. Whiteley earlier testified about what
17 cross-species is to her. We're a little different.
18 We're more concerned with the wagering on horse signals
19 that occurs at the greyhound tracks. Four and a half
20 percent of that comes into a pool and then is
21 distributed for use of purse funds amongst the various
22 tracks and breeds. So that's a pool of money that this
23 agreement covers.

24 This agreement has four major
25 components. Number one, which we think is very, very

1 important, is the term. And that's a three-year term.
2 The industry wanted to get together, be able to agree
3 on something, and start focusing on important things,
4 like saving our industry and pursuing alternative
5 sources of revenue.

6 And believe me, when we went through the
7 negotiations, that was very much at heart. Let's agree
8 on something that allows us to move ahead, concentrate
9 on other things. As the Commissioners that have been
10 here for a while have had to witness, there's very
11 often haggling and a lot of discontent that's created
12 amongst these issues and this agreement kind of takes
13 care of that for three years.

14 The first section covers the split
15 amongst breeds of the purse funds generated by import
16 simulcasting; and that's wagering on, in our case, a
17 horse signal at a horse racetrack. The percentages are
18 fairly similar to what we've had the past several years
19 with a couple of major exceptions in the Class 1
20 racetracks.

21 Lone Star Park would dedicate an
22 additional two percent this coming year in 2008 to
23 Quarter Horse purses, would do the same in 2009 and
24 2010. Retama Park and Sam Houston Race Park would
25 dedicate an additional one percent to Quarter Horse

1 purses -- and when I say "an additional," over and
2 above what we've done in the past several years -- in
3 2008, another one percent in 2009, and then the same
4 percentage in 2010.

5 So for 2008, Quarter Horse purses would
6 enjoy a one percent pickup at Sam Houston Race Park and
7 Retama Park and in 2009 and '10 an additional two
8 percent or a total two percent increase for those
9 years. Manor Downs and Gillespie would remain the same
10 as they have for the past several years.

11 Any questions on that? That's kind of
12 the first part of the agreement.

13 The second section covers the escrowed
14 purse account -- and again, that's wagering on horse
15 signals at greyhound tracks -- and the distribution
16 amongst the various tracks and where that money would
17 go. This has been -- these percentages, up until last
18 year, have been relatively the same for the past
19 several years, I believe since maybe 1999. We did a
20 little bit of a different percentages for this year due
21 to the change in some of the race meets. And we
22 negotiated the percentages that you see where Lone Star
23 Park would get 24.65 percent of the pool, Retama Park
24 would get the same amount of the pool, Sam Houston Race
25 Park will get 41.3 percent of the pool, Manor Downs 7.8

1 percent, and Gillespie 1.6 percent.

2 So that's a pool of about a million
3 dollars or so, a million two, that then gets
4 distributed to each racetrack that then gets put in the
5 purse funds that the racetrack has.

6 Then the following -- the final section
7 talks about how at each racetrack those purse funds are
8 distributed by breed. And I won't go through all the
9 percentages; but these, I believe, are very, very
10 close, if not identical, to what we did this past year
11 which did represent a substantial change from prior
12 years in favor of Quarter Horse purses.

13 I can tell you -- and some of the other
14 tracks may want to testify -- this would have -- the
15 results of this agreement for Retama Park would have a
16 substantial increase in Quarter Horse purses, from
17 \$40,000 a day to about \$50,000 a day, but not have too
18 much of a change in Thoroughbred purses. We still look
19 to have -- even with the additional three days that
20 we've -- that we were granted, we look to have well
21 over a hundred thousand dollars a day in purses for
22 Retama Park in 2008.

23 I hope I didn't leave anything out. I'd
24 be happy to answer any questions. The gentlemen behind
25 me all have signed the agreement and support it and are

1 here to answer any questions as well.

2 VICE-CHAIRMAN CARTER: Can I ask one
3 question, Bryan?

4 MR. BROWN: Yes.

5 VICE-CHAIRMAN CARTER: You said
6 approximately a 40- to 50-thousand-dollar change for
7 Quarter Horse purses without too much change to the
8 Thoroughbred. Could you put some kind of guesstimate
9 on "too much change"?

10 MR. BROWN: Sure. We ended up that
11 Thoroughbred purses -- and I'm probably going to miss
12 by a thousand or so -- are about \$103,000 a day at
13 Retama. Because we had a carryover, we didn't spend
14 all our purse account, we should be right at that same
15 level. It will depend on simulcast revenue for the
16 year; but if we maintain or exceed what we've done in
17 the past, we should be right at that same level, maybe
18 a thousand dollars less, if anything.

19 And I'll give you an example. Let's say
20 we're projecting to be a thousand dollars a day less.
21 We would go ahead and keep our purses at the same level
22 we were, so not take that thousand-dollar reduction and
23 simply overpay our purses, because in our case it would
24 be a 30,000-dollar total overpayment which is made up
25 very, very quickly.

1 I don't think it will have an effect on
2 us recruiting horses, trainers, or jockeys. But I do
3 think it will have a big impact on recruiting horses on
4 the Quarter Horse side.

5 CHAIRMAN ADAMS: Any other questions?

6 Dr. Carter, does that answer your
7 question?

8 VICE-CHAIRMAN CARTER: I have another
9 question, but I'll give everybody else an opportunity
10 first.

11 CHAIRMAN ADAMS: Go ahead, sir.

12 VICE-CHAIRMAN CARTER: I see all these
13 signatures on this agreement. Were other people
14 invited to this meeting where you all made this
15 agreement?

16 MR. BROWN: We had several meetings,
17 conference calls. We had meetings amongst just the
18 tracks. We've always invited everybody we could,
19 including the breed associations. You know, we try to
20 be an open book because we have nothing to hide. We
21 realize that if we exclude anybody, then we'll be
22 certainly at fault and be criticized later on.

23 VICE-CHAIRMAN CARTER: Thank you.

24 MR. BROWN: Not everybody was in every
25 single meeting, though. I mean, sometimes people were

1 invited and were not available.

2 VICE-CHAIRMAN CARTER: Thank you.

3 CHAIRMAN ADAMS: For the benefit of the
4 newer Commissioners here, this has been an issue, an
5 ongoing issue, for about two and a half years now; and
6 there have been numerous study groups, several study
7 groups, put together to meet with all of these
8 gentlemen as well as the breed groups, as well as the
9 breed organizations, to try to come up with a plan so
10 that we could solidify this for a longer period of time
11 and we didn't spend too many meetings every year
12 arguing about this particular issue.

13 So I'd like to commend them for taking
14 this step to come forward with a three-year plan so
15 that we can put this behind us and we can go on with
16 the business of improving the industry. And the staff
17 and the Commission has encouraged them to do this. And
18 so I really appreciate what you all have done and
19 appreciate -- I know that everybody had to give here.
20 You know, not everybody gets what they want. It's kind
21 of like the last item here on the agenda where we talk
22 about the fact that greyhounds would like to see more
23 but it's just not there right now. I think that's a
24 part of a negotiation like this. Everyone has to
25 give. And so I appreciate your all's help in what

1 you've done.

2 COMMISSIONER SCHMIDT: Mr. Chairman, I
3 have one question.

4 CHAIRMAN ADAMS: Yes, sir.

5 COMMISSIONER SCHMIDT: Could you just
6 clarify how much purse revenue applies to each of the
7 three sections? I see the percentages, but I'm not
8 quite sure what revenue numbers we're talking about.

9 MR. BROWN: I think I would defer to
10 Mr. Jackson because I know Retama's numbers but it
11 would be difficult for me to talk about the other
12 tracks.

13 MR. JACKSON: Can you hear me?

14 CHAIRMAN ADAMS: Sammy, go ahead.

15 MR. JACKSON: Yes, sir. The simulcast
16 dollars projected for Lone Star Park -- and this will
17 be purse dollars. This is the part that we're
18 allocating.

19 CHAIRMAN ADAMS: Yes.

20 MR. JACKSON: Simulcast purse dollars
21 projected for Lone Star Park in 2008 are approximately
22 \$11,226,722; for Retama Park for 2008, \$3,655,372; for
23 Sam Houston Race Park for 2008, \$6,732,896; for Manor
24 Downs, \$1,358,009; and for Gillespie County Fair,
25 \$249,270.

1 COMMISSIONER SCHMIDT: Thank you. That
2 will be fine. I just wanted to know the scope of the
3 numbers involved.

4 MR. JACKSON: Yes, sir.

5 CHAIRMAN ADAMS: Thank you, Mr. Brown.

6 Any other questions? Yes, Mr. Ederer.

7 COMMISSIONER EDERER: One question.

8 Everyone has agreed to this now.

9 CHAIRMAN ADAMS: No, no, that's not the
10 case.

11 MR. BROWN: Everyone that's signed the
12 agreement has agreed to it. I think there's others --

13 CHAIRMAN ADAMS: We've got --

14 MR. BROWN: I hate to quote a former
15 president, but it depends on how you define
16 "everyone".

17 COMMISSIONER EDERER: There you go. But
18 everyone that is standing agrees to this and everyone
19 who has signed this document agrees to it.

20 MR. BROWN: I hope so.

21 COMMISSIONER EDERER: Is that correct?
22 Who doesn't?

23 MR. BROWN: Mr. Ed Wilson I don't believe
24 signed the agreement and represents the Texas Arabian
25 Breeders Association. I believe he is standing here

1 because he agrees to it as well. I don't know who
2 doesn't.

3 COMMISSIONER EDERER: We're about to find
4 out.

5 MR. BROWN: I think you're about to find
6 out. We're the good news.

7 CHAIRMAN ADAMS: Okay. Any other
8 questions?

9 Okay. So that takes care of Mr. Ed
10 Wilson's card, Mr. Terry Blanton's card, Mr. Tooter
11 Jordan's card, Mr. Bryan Brown's card, and the other
12 gentlemen standing here.

13 MR. BROWN: Mr. Werstler, who is from the
14 Texas Quarter Horse Association, did not sign the
15 agreement, but he may want to testify.

16 CHAIRMAN ADAMS: Mr. Werstler?

17 MR. WERSTLER: Good morning,
18 Commissioners. Rob Werstler, executive director for
19 the Texas Quarter Horse Association.

20 I just wanted to get on record that the
21 Texas Quarter Horse Association is in agreement, does
22 support the agreement. As you said, Commissioner
23 Adams, not everybody is happy with it; but that's why
24 they call it a compromise. I think it works. It's
25 more than we've had in the last 10 years. I think we

1 have -- this industry has bigger fish to fry. So we
2 wanted to make sure we were in agreement with the
3 industry when we came before you today.

4 I'd also like to commend the racetracks
5 and the HBPA for brokering this deal, doing what staff
6 had asked them to do and get out in front of it and
7 make something happen.

8 And any questions, I would entertain them
9 now.

10 CHAIRMAN ADAMS: Thank you, sir. I don't
11 see any at this time.

12 MR. WERSTLER: Thank you.

13 CHAIRMAN ADAMS: Okay. Thank you,
14 gentlemen.

15 Next signed to speak is Mr. Dave Hooper.

16 MR. HOOPER: Mr. Chairman, members of the
17 Commission, I'm David Hooper, the executive director of
18 the Texas Thoroughbred Association.

19 First I want to take a moment, on behalf
20 of the Texas Thoroughbred Association's 21 directors,
21 four of whom are present today, and our 2100 members,
22 to extend a warm welcome to the two new Commissioners
23 who are participating today.

24 The Texas Thoroughbred Association looks
25 forward to working with you and helping you better

1 understand this very complex business of pari-mutuel
2 racing and the very significant challenges that face
3 all participants in the Texas racing and breeding
4 industry in the immediate present and the foreseeable
5 future.

6 Thoroughbred racing is well-known for the
7 Triple Crown races, the Kentucky Derby, the Preakness,
8 and the Belmont Stakes; racing at such venerable tracks
9 as Churchill Downs, Del Mar, Santa Anita, and Saratoga;
10 and for the Breeders' Cup World Championships, which
11 Texas was chosen to host in 2004 on a memorable October
12 Saturday at Lone Star Park at Grand Prairie.

13 Since the advent and growth of simulcast
14 wagering, that is, the sending of audiovisual signals
15 of live races from one track to another, through the
16 1990's and today, Thoroughbred racing has become even
17 more of a national and international product in
18 comparison with its sister breeds whose exposure is
19 much more regional in scope.

20 Statistical data prepared annually by
21 your Texas Racing Commission staff shows that of the
22 total dollars bet at Texas tracks on imported simulcast
23 signals, 79 to 81 percent is on Thoroughbred racing, 10
24 to 12 percent is on greyhound racing, five percent is
25 on Quarter Horse racing, three percent is on harness

1 racing, and one percent is on all the other breeds
2 combined.

3 These statistics alone show that
4 Thoroughbred racing is the engine that drives the
5 business train.

6 Thoroughbred racing in Texas is part of
7 that national picture; and its success and
8 competitiveness with Thoroughbred racing in neighboring
9 states and nationally hinges on purse structures at the
10 Class 1 tracks, Lone Star Park, Sam Houston Race Park,
11 and Retama Park. It will help to keep Texas horses and
12 their owners racing in Texas. In other words, any loss
13 in purse dollars for Thoroughbreds is likely to give
14 more owners and trainers reasons to move their horses
15 to other states where the purse structures exceed those
16 in Texas today.

17 Further, any loss in purse dollars for
18 Thoroughbred racing at Texas Class 1 tracks will affect
19 the business viability of those tracks. The operators
20 of Lone Star Park, Sam Houston Race Park, and Retama
21 Park have all testified before you at one time or
22 another that the business success of their tracks is
23 directly dependent on the business of the Thoroughbred
24 meets because those are the only meets that are
25 profitable. Their letters in your agenda packet today

1 reiterate that fact.

2 Therefore, the Texas Thoroughbred
3 Association has not signed the proposed three-year
4 agreement on the division of horse simulcast wagering
5 revenue by breed because it is believed that
6 Thoroughbred racing in Texas cannot give up any
7 additional purse dollars without becoming less
8 competitive than it is today.

9 The projected loss of Thoroughbred purse
10 revenue is \$1,180,000 over the next three years if the
11 number of dates allocated to each Class 1 track is
12 similar to the 2008 dates allocation.

13 And as for the signed agreement, you may
14 note that there was no line for the Texas Thoroughbred
15 Association. There was also no line for the Texas
16 Quarter Horse Association, although I've heard
17 Mr. Werstler testify today that they support the
18 agreement.

19 I would further like to point out to you
20 that not all the parties were involved in the
21 negotiations. Section 321.505, allocation of purses
22 and funds for Texas-bred incentive programs,
23 Subparagraph (A) under purses says "An association
24 shall recommend the percentages by which it will divide
25 the purse revenue generated from simulcasting among the

1 various breeds of horses. The percentages are subject
2 to the approval of the Commission."

3 Paragraph 2 says "Negotiations. At least
4 30 days before recommending the percentages, the
5 association shall begin negotiations with the
6 organizations recognized by the Commission or in the
7 act as representatives of horse owners, trainers,
8 and/or breeders."

9 We were not invited to participate in
10 those phone calls.

11 While breed splits between Thoroughbreds
12 and Quarter Horses have been contentious issues for the
13 respective breed registries for several years, I am
14 pleased to have this opportunity to report to you that
15 after six months of negotiations, the Texas
16 Thoroughbred Association and the Texas Quarter Horse
17 Association signed a milestone agreement on November
18 13th on equitable divisions of purse revenue generated
19 by video lottery terminals at licensed Texas tracks if
20 legislation is passed and VLT's become operational.

21 The agreement covers revenue generated
22 for the VLT purse fund as well as breed splits of horse
23 simulcast purse revenue at each Texas track. The
24 agreement further states that from both revenue -- both
25 those revenue sources, Thoroughbreds will provide an

1 equitable share to Arabians and Quarter Horses will do
2 the same for Paints. In order to reach this historic
3 agreement, I can assure you Thoroughbred interests gave
4 up very substantial revenue.

5 With the VLT agreement in place and ready
6 to be incorporated in legislation to be introduced in
7 2009, the Texas Thoroughbred Association respectfully
8 suggests the Commissioners consider maintaining a
9 status quo on breed splits by extending the horse
10 simulcast breed splits that have been in place at Class
11 1 tracks since 2003.

12 Please know that all breeds are hurting
13 in the present racing climate in Texas and it is not
14 possible to identify who is hurting most.

15 I would be pleased to answer any
16 questions.

17 CHAIRMAN ADAMS: Any questions for
18 Mr. Hooper?

19 COMMISSIONER EDERER: What are we talking
20 about money-wise? You just said a million dollars over
21 a three-year period of time. That's not much money for
22 the -- in my opinion, for you to make up in other
23 areas. I don't understand what your problem is.

24 MR. HOOPER: It's not much money to make
25 up from other areas? What do you mean? How do you

1 make it up?

2 COMMISSIONER EDERER: Well, I mean, you
3 said that you're going to lose a million dollars,
4 \$300,000 a year.

5 MR. HOOPER: A million two.

6 COMMISSIONER EDERER: Is that correct?

7 MR. HOOPER: Yes.

8 COMMISSIONER EDERER: How much -- I guess
9 I'm a little confused as to what you're asking for
10 other than just to keep everything in place and you're
11 saying that you're going to lose a million two if it's
12 changed. That's if everything goes the way it's set
13 out to go right now. And then all of a sudden you're
14 throwing in the VLT's at us. VLT's is -- you know,
15 that's -- before VLT's are going to come together, it
16 seems to me that the racing industry has to come
17 together before that's ever going to come about. So at
18 this point in time I don't think that should even be
19 considered for anything.

20 So I guess what I'm asking is: What's
21 the difference in the percentage that you're asking for
22 right now and the percentage that's being proposed by
23 the rest of the industry?

24 MR. HOOPER: Well, since 2003 the
25 percentages at Lone Star Park have been 85 percent

1 Thoroughbred and 15 percent Quarter Horse; at Sam
2 Houston and Retama, 80 percent Thoroughbred, 20 percent
3 Quarter Horse.

4 COMMISSIONER EDERER: What's the
5 percentage in New Mexico, Quarter Horse and
6 Thoroughbred?

7 MR. HOOPER: I don't know.

8 COMMISSIONER EDERER: By legislation,
9 it's 21 percent as I understand it.

10 MR. HOOPER: Well, New Mexico is a
11 different state than Texas, too.

12 COMMISSIONER EDERER: That's correct.

13 MR. HOOPER: Much different. And New
14 Mexico's potential for growth in Thoroughbred racing is
15 very, very limited, particularly with their closed
16 breed program, compared to the potential growth and
17 development of the Thoroughbred racing and breeding
18 industry in Texas. It has huge growth potential.

19 COMMISSIONER EDERER: Didn't the Texas
20 Thoroughbred Association come to an agreement at one
21 point in time with the group as to the percentage split
22 on simulcasts?

23 MR. HOOPER: This year?

24 COMMISSIONER EDERER: Yes.

25 MR. HOOPER: No.

1 COMMISSIONER EDERER: You have never come
2 to an agreement with anyone.

3 MR. HOOPER: No.

4 COMMISSIONER EDERER: I was under the
5 impression that you had.

6 CHAIRMAN ADAMS: You may have been
7 thinking about the changes we made at the request of
8 the Texas Thoroughbred Association to our recommended
9 breed splits for 2007. If you remember, we voted on a
10 set of breed splits for 2007; and then at the request
11 of the Thoroughbred association, we went back and
12 revised those. And there was an agreement made at that
13 time to recoup those dollars that got taken out of your
14 operating funds that came out of the other funds. Am I
15 correct?

16 MR. HOOPER: Yes. We're dealing on this
17 issue with breed splits on horse simulcasts. What we
18 revisited back in January was the ATB, the accredited
19 Texas-bred incentive program decision that had been
20 made in December.

21 CHAIRMAN ADAMS: But the gentlemen that
22 spoke here before spoke to both issues, did they not?

23 MR. HOOPER: No, we haven't spoken about
24 the ATB yet.

25 CHAIRMAN ADAMS: They spoke to the

1 321.509 and 321.505 at the same time.

2 MR. HOOPER: The escrowed horse purse
3 account, yeah.

4 CHAIRMAN ADAMS: And that's where you may
5 have been confused, Ron, because that's where I was
6 confused on this issue.

7 COMMISSIONER EDERER: Yeah, I think it
8 was.

9 MR. HOOPER: Commissioners, it was our
10 board of directors' decision that we needed to make a
11 stand at some point relative to -- on behalf of our
12 members, our 2100 members. The breeding industry in
13 Texas is declining for all breeds. The number of
14 Texas-breds that are raised by breed are declining
15 because of our noncompetitive situation with
16 neighboring states which have their incentive programs
17 and their purses at tracks subsidized by revenue that's
18 flowing to them from slot machine operations at those
19 tracks. We don't have that benefit and we're in a
20 serious noncompetitive position and any loss of dollars
21 is critical.

22 COMMISSIONER EDERER: Isn't that going to
23 continue as long as you're fighting among yourselves,
24 until you can all come together? It's going to
25 continue to decline. Everyone is declining. You agree

1 with that. But yet you want a bigger piece of the
2 pie.

3 MR. HOOPER: No, we don't want a bigger
4 piece. We just want to hold our share, thank you.

5 COMMISSIONER EDERER: Okay. Fine.

6 VICE-CHAIRMAN CARTER: I have a
7 question.

8 CHAIRMAN ADAMS: Yes.

9 VICE-CHAIRMAN CARTER: Clarify a couple
10 of things you said for me. When did you say you all
11 signed an agreement on the VLT's with the Quarter
12 Horses?

13 MR. HOOPER: November 13th.

14 VICE-CHAIRMAN CARTER: If I'm reading
15 this right, this agreement with all the people meeting
16 on this splits, was that not signed on November 13th by
17 all these members?

18 MR. JACKSON: Yes.

19 VICE-CHAIRMAN CARTER: So you and the
20 Quarter Horse weren't at this meeting? You were at a
21 different meeting on the same day?

22 MR. HOOPER: The agreement was signed by
23 Dr. Jacquelyn Rich, our president, and Dr. Tommy Hays,
24 president of the Texas Quarter Horse Association, at
25 Bill Clifton's office in Waco.

1 VICE-CHAIRMAN CARTER: So the board
2 wasn't meeting on that day.

3 MR. HOOPER: No. No, sir.

4 VICE-CHAIRMAN CARTER: Okay. I just
5 thought maybe you guys were meeting on one topic and
6 all the other guys were meeting on the other topic.

7 MR. HOOPER: No. We had an industry
8 meeting that day. The Texas -- Texans For Economic
9 Development had a meeting. And after that meeting a
10 number of signatures were affixed to the agreement that
11 you have in front of you.

12 VICE-CHAIRMAN CARTER: Okay. So you made
13 a statement earlier that you were not part of this
14 meeting and you were not invited to this meeting?

15 MR. HOOPER: We weren't -- we did not
16 participate in any of the conference calls. When I
17 became aware of a proposed agreement, which is the
18 agreement that you have now, it was on a Friday
19 afternoon, November 2nd, and I actually saw it on my
20 desk and what the possible impact dollar-wise it would
21 mean to Thoroughbreds on Monday, November the 5th. And
22 then I made some phone calls to some industry
23 representatives.

24 VICE-CHAIRMAN CARTER: And did your board
25 meet to discuss these proposals after you got that on

1 your desk?

2 MR. HOOPER: Our board met by a
3 conference call later that week, yes. And subsequently
4 we've had two executive committee conference calls
5 relative to this topic.

6 VICE-CHAIRMAN CARTER: And the board
7 uniformly rejected the proposal made by the rest of the
8 people? Is that correct?

9 MR. HOOPER: It felt like we should
10 request that the status quo of breed splits on horse
11 simulcasts at the Texas tracks be maintained as they
12 had since 2003 for at least another year.

13 VICE-CHAIRMAN CARTER: One thing that I
14 want to get clear, do you feel like you were left out
15 of this process? Or you just don't agree with it?

16 MR. HOOPER: We are normally very much
17 included in any processes in Texas that affect
18 Thoroughbreds. And in this one, yes.

19 VICE-CHAIRMAN CARTER: You feel you were
20 left out of the process.

21 MR. HOOPER: Yes.

22 VICE-CHAIRMAN CARTER: Did you want to be
23 included in it?

24 MR. HOOPER: Of course.

25 VICE-CHAIRMAN CARTER: Okay.

1 CHAIRMAN ADAMS: Any other discussion,
2 any other questions for Mr. Hooper? Yes, sir.
3 Mr. Sowell.

4 COMMISSIONER SOWELL: Yes, sir.
5 Mr. Hooper, I'm looking at the information that was
6 presented to the Commission prepared by Mr. Sammy
7 Jackson, who is, of course, our deputy director of
8 finance and regulatory control and probably everything
9 else that needs to be done that nobody else wants to
10 do, right, Sammy?

11 MR. JACKSON: No comment, sir.

12 COMMISSIONER SOWELL: In looking at this
13 schedule concerning the purses provided to the industry
14 by the local tracks versus -- and also those that are
15 provided by simulcasting, it appears that in reference
16 to what Mr. Ederer was discussing with you earlier,
17 your situation is simply that you want to retain the
18 percentage that you had since, gosh, 2001 based on the
19 chart that -- or the information that Mr. Jackson has
20 provided. It's been 78.40 percent each year at least
21 from 2001 through 2007. Is that correct?

22 MR. HOOPER: That's correct. That's --
23 when I say 85/15 and 80/20, that's after there are
24 small percents taken off the top for the Arabians and
25 the Paints.

1 COMMISSIONER EDERER: Right. I'm just
2 talking about the figure that he's got here that shows
3 the Thoroughbred percentage each of those years.

4 MR. HOOPER: Yes, that's correct.

5 COMMISSIONER SOWELL: And so when you say
6 you're just trying to hold your own, that's your own
7 that you're referring to.

8 MR. HOOPER: Yes, sir.

9 COMMISSIONER SOWELL: And it's based --
10 again, I'd like you to repeat what you said earlier
11 about the statistics that reflect what draws people to
12 the track, what draws people to make wagers, and that
13 sort of thing, who they're betting on, how that's
14 divided up between the breeds, and so forth. I don't
15 know that you covered all of that, but it might be
16 helpful for us to hear what that is if you have it
17 committed to memory. And if you don't, I missed my
18 guess.

19 MR. HOOPER: Well, you're talking about
20 the live product or the simulcast product?

21 COMMISSIONER SOWELL: Simulcast.

22 MR. HOOPER: Simulcast -- the statistical
23 data that our statistical guru generates every year,
24 Mr. Jackson, will show that on the import simulcast
25 handle, the Thoroughbreds -- Thoroughbred racing, the

1 Thoroughbred product, will account for 78 -- 79 to 81
2 percent of all the dollars that are wagered on import
3 simulcasts and the greyhound industry on the import
4 simulcasts accounts for between 10 and 12 percent and
5 the Quarter Horse industry is right around five percent
6 annually. Harness racing, which doesn't even appear in
7 the statute, that accounts for three percent. And then
8 you've got one percent with all your other breeds.

9 COMMISSIONER SOWELL: So the group
10 covered by your organization, and perhaps others as
11 well, but it's simply based on if you're drawing the
12 people to wager, your product, then that is about the
13 number of -- the percentage number of simulcast revenue
14 that should go to the Thoroughbred industry as opposed
15 to other industries and I think that's probably
16 something that has existed for a lot more years than
17 the 2001 beginning that Mr. Jackson has here in his
18 compilations. Is that correct?

19 MR. HOOPER: Yes, sir.

20 COMMISSIONER SOWELL: And the
21 Thoroughbred position then is that anything that is
22 less -- anything for the Thoroughbred industry that is
23 less than that 78 to 81 figure that you mentioned had
24 been statistically consistent as being produced by the
25 simulcasting of Thoroughbred races -- anything less

1 than those numbers is not fair to the Thoroughbreds
2 simply because the Thoroughbreds are the ones that are
3 producing that level of the purses at all the tracks.
4 Is that correct?

5 MR. HOOPER: Yes, that's correct. You
6 know, we're dealing with Thoroughbreds and Quarter
7 Horses here and we're dealing with 78 to 80 percent of
8 import simulcasts are on Thoroughbreds, five percent
9 are on Quarter Horses. And again, as I said in my
10 testimony, since the advent of simulcasting and the
11 growth of it -- and it's been exponential growth. I
12 mean, it started out very limited in the early '80's
13 and now 85 percent of the dollars that are wagered
14 around the country are wagered on simulcast races
15 rather than the live product.

16 It used to be the live product that was
17 the engine that drove the train. It's the simulcast
18 product that's the engine that drives the train now.
19 And the bulk of that simulcasting is on Thoroughbred
20 racing because it is a national and international form
21 of racing unlike the other -- our sister breeds, which
22 are much more regional in scope.

23 COMMISSIONER SOWELL: So simply stated,
24 the position of the Thoroughbred industry is simply
25 that if you continue with what you've had at least

1 since 2001, the 78.4 percent of the simulcasting
2 allocation percentages, then that may not be exactly
3 fair but it's reasonably fair as far as the
4 Thoroughbred industry is concerned.

5 If you start whittling that down, then
6 the Thoroughbreds are not, in your opinion, receiving
7 the appropriate percentage of the simulcasting revenue
8 but it's going to somebody else and out of the goodness
9 of your hearts some of that might be okay but not as
10 much as the group that we saw a minute ago and have
11 reached an agreement without your participation, that
12 what they're proposing might be fair to them but you
13 don't think it's fair to the Thoroughbreds. Is that
14 correct?

15 MR. HOOPER: Well, I think when you say
16 78.4, you're dealing -- the two tracks that that would
17 cover would be Retama and Sam Houston. Lone Star would
18 be higher than that. Lone Star would be up around 83.
19 But, yes, your analysis is correct.

20 COMMISSIONER SOWELL: So simply stated,
21 again, all you're saying is that Thoroughbreds ought to
22 get -- on the basis of fairness, ought to get
23 approximately what they produce and the others should
24 have an allocation divided up among what's left.

25 MR. HOOPER: That might be one way to do

1 it, yes.

2 COMMISSIONER SOWELL: Thank you.

3 CHAIRMAN ADAMS: Any other questions for
4 Mr. Hooper? Yes, ma'am, Charla Ann.

5 MS. KING: I have a comment.

6 Dave, I have a question for you. Because
7 of the testimony that you provided, I want to make sure
8 that I understand the process that the TTA used in
9 order to make this decision to reject the industry
10 agreement.

11 I was under the understanding that the
12 board did not consider this year's breed split proposal
13 at its November 8th meeting, that it only addressed --
14 let me finish -- that it only addressed VLT's and that
15 that was a conscious choice to focus on VLT's first;
16 and then later, at an executive committee meeting by
17 teleconference on November 16th, that was when the
18 executive committee had rejected the industry
19 proposal. However, I was detecting in the comments to
20 Dr. Carter that the whole board did consider the
21 proposal in the November 8th meeting. So I was hoping
22 you could clarify that for us.

23 MR. HOOPER: We -- if I provided you
24 misinformation earlier, I stand to be corrected or want
25 to correct that. But my testimony to Dr. Carter today

1 was correct. We did talk about it at the November 8th
2 meeting, yes.

3 MS. KING: At the meeting on November
4 8th. So that they had the industry proposal -- you got
5 it on the 5th and then you considered it at your board
6 meeting on the 8th.

7 MR. HOOPER: Yes. We discussed it.

8 MS. KING: Okay.

9 VICE-CHAIRMAN CARTER: One more
10 question. I'm curious as to how you perceive maybe
11 this happened, because I know we assign these working
12 groups to discuss this and myself and Commissioner
13 Ederer attended a meeting at the Texas Horsemen's
14 Partnership on September 6th, I believe, and we
15 discussed this very thing about the industry getting
16 together and working together as a group.

17 You weren't there that day, but a
18 representative was sent in your place. I believe you
19 guys were having another meeting. And we discussed the
20 importance of you all working together to come up with
21 a solution at the end.

22 And I might say that this has been a
23 change of focus for the racetracks. In the past the
24 racetracks have always been standing behind you. And
25 so they all got together and I don't understand how you

1 got left out of the whole process. In fact, I have a
2 little trouble believing that you totally got left out
3 of the process because you guys had a representative
4 there on the 6th. This seems unusual to me.

5 MR. HOOPER: Well, on September 6th we
6 had a conflict with the meeting that you participated
7 in. I did send our editor, Denis Blake, to represent
8 us because we were having a board meeting that had been
9 scheduled for at least three months, I believe, and
10 that was the conflict.

11 At that time I think we were also
12 resolving the language that would be incorporated as
13 criteria for the discussion of -- that would go into
14 each of the respective breed splits. And, yes, I know
15 there was encouragement to all work together; and
16 normally, you know, we're intimately involved.

17 VICE-CHAIRMAN CARTER: So do you think if
18 we postponed this decision and allowed you guys to work
19 together, that could be done?

20 MR. HOOPER: No. I think you need to
21 make a decision today.

22 VICE-CHAIRMAN CARTER: Okay. Thank you.

23 CHAIRMAN ADAMS: Any other questions for
24 Mr. Hooper?

25 I hear none. Thank you, Mr. Hooper.

1 MR. HOOPER: Thank you, Mr. Chairman.

2 CHAIRMAN ADAMS: Mr. Azopardi?

3 MR. AZOPARDI: Good morning,
4 Commissioners. My name is Tommy Azopardi. I'm the
5 executive director of the Texas Horsemen's
6 Partnership. I had not signed a card today because two
7 of my staff members, Mr. Blanton and Mr. Jordan, were
8 up here earlier showing the support of the Texas
9 Horsemen's Partnership for this agreement.

10 For the benefit of some of the newer
11 Commissioners, the Texas Horsemen's Partnership is
12 comprised of a Thoroughbred board and a Quarter Horse
13 board. And it's very difficult at times for those
14 groups to work together. But the Horsemen's
15 Partnership for over 10 years has had real good luck
16 and real good success in bridging that gap. And so I
17 wanted to appear before you today to just clarify a
18 couple of things that I heard.

19 I kept hearing a lot of conversation
20 about the Thoroughbred industry is not supportive of
21 this. I want to clarify that the Texas Horsemen's
22 Partnership, and specifically the Texas Thoroughbred
23 HBPA, the horsemen's organization, the organization
24 that is recognized in the Racing Act as being the legal
25 titleholder to purses, did sign off on this and they

1 signed off on it unanimously as a board.

2 Secondly, about the participation -- and
3 since Bryan quoted a president, I'll quote Ronald
4 Reagan when he was debating Jimmy Carter and he said,
5 "Well, there you go again."

6 I'm friends with Mr. Hooper, but I do
7 have to correct a statement. I talked to the board
8 president, I believe it was on November the 3rd, of the
9 Texas Thoroughbred Association and explained the type
10 of process we were going through and the parameters of
11 the agreement and was told at that time that the Texas
12 Thoroughbred wanted to solely focus on VLT revenue
13 splits and that they wanted to focus on one thing at a
14 time.

15 We were told by Ms. King that we had a
16 November 13th deadline by which to submit an agreement
17 or it would trigger some of the criteria that you all
18 approved at the last Commission meeting which would
19 have required the racetracks to submit extensive data
20 on all kind of statistical information, from group
21 sales to on-track attendance, things like that, and so
22 we were trying to get this done by November 13th.

23 It was never our intention to exclude
24 anybody and I had thought, by making that phone call,
25 that we had extended the opportunity for them to

1 participate.

2 When Mr. Hooper came back from vacation,
3 he did see the agreement on his desk. In fact, I had
4 made sure he had a specific spreadsheet of how those
5 percentages would affect everybody.

6 And, Commissioner Ederer, you're
7 correct. It's about 325,000 the first -- or 358,000
8 the first year and I believe \$425,000 in -- \$425,000 in
9 2009 and 2010.

10 The Thoroughbred HBPA didn't want to give
11 that money up. They have a membership. They represent
12 6,000 members of the Texas Horsemen's Partnership.
13 They don't want to give up any money either. But they
14 saw it was very important to come to an agreement and
15 we felt like that was about as thin as you could slice
16 the pie and still come up with an industry agreement.

17 So I just wanted to clarify those
18 things. And I'll answer any questions about the
19 process and how we came to those numbers and how we
20 came to those agreements if you want me to.

21 CHAIRMAN ADAMS: Questions?

22 VICE-CHAIRMAN CARTER: I'm sorry. You
23 said it, but I didn't quite -- who did you extend the
24 invitation to participate to?

25 MR. AZOPARDI: It was a conversation I

1 had with the TTA president, Dr. Jackie Rich. And it
2 was more of making sure she understood where we were
3 going. She had had some questions. She had heard that
4 we were talking to the racetracks about breed splits.
5 And I told her what we were doing. And at that point
6 was when she said, "I need to focus on one thing at a
7 time."

8 And we do very much applaud the work that
9 the TTA and the TQHA did on reaching that agreement. I
10 might add that we weren't party to that agreement, but
11 we very much support that. They've had those dialogues
12 for months and we were not included in any of those;
13 but there again, we support what they've done. We
14 think they did a very good job.

15 As far as the signatories, somebody said
16 that they didn't have a line to sign that. We
17 purposefully did not put the breed registries on there
18 because of the fact that under the Racing Act it is
19 those two organizations, the Texas Horsemen's
20 Partnership partners, the Texas Thoroughbred HBPA and
21 the Texas Horsemen's Benevolent and Protective
22 Association, that are the legal titleholders. So
23 that's why we styled this agreement between the
24 affected parties.

25 CHAIRMAN ADAMS: Very good,

1 Mr. Azopardi.

2 Any other questions?

3 Thank you, sir.

4 I think we've had sufficient input.

5 There's no one else signed to speak. So the Commission
6 will discuss and come to a decision on this issue. Is
7 there anyone who would like to address -- who would
8 like to lead the discussion at this point or should --
9 yes, Mr. Ederer.

10 COMMISSIONER EDERER: I have a comment.

11 In the September meeting, at the working group meeting,
12 the meeting was not necessarily a friendly how-are-you
13 type meeting, we're all here to concede, and this type
14 of thing. In fact, the meeting was very contentious.
15 And I think that the group has come a long way now to
16 come up with a proposal. And I applaud them for that.

17 I know that the racetracks were adamant
18 in their stance and that they had to come around. I
19 know that the Quarter Horse Association had to come
20 around. All groups did come around and obviously have
21 come up with an agreement that, like I said, I applaud
22 them.

23 CHAIRMAN ADAMS: If you thought it was
24 contentious then, you should have been there when Sonny
25 and I started in the first working group a year and a

1 half ago. So I know exactly where you're coming from
2 and I know that everyone had to give to get to --

3 COMMISSIONER SOWELL: Have we ever
4 figured out the number of casualties that occurred at
5 that meeting? A real toll, wasn't it?

6 CHAIRMAN ADAMS: Okay. Any other
7 discussion? Any other comments? I --

8 COMMISSIONER SOWELL: May I ask one
9 question?

10 CHAIRMAN ADAMS: Certainly.

11 COMMISSIONER SOWELL: I would like
12 Mr. Jackson to explain the recommendations of staff
13 provided in the memorandum of November 20th, 2007.
14 This is pretty long-winded; but Sammy, generally
15 speaking, can get it boiled down to the salient points;
16 and I think that might be helpful.

17 CHAIRMAN ADAMS: Can you summarize it in
18 a small package?

19 MR. JACKSON: Yes, sir, I believe I can.
20 And I would like to say I applaud all the participants
21 in the industry as well because, in reality, I think
22 what you had today was what the Commission embarked
23 upon a year ago at this time when we didn't have
24 agreement and industry people working together to try
25 to come to an agreement.

1 So I think what our previous chairman
2 embarked the Commission staff on to do, which was to
3 come up with a rule and criteria to pull the industry
4 and have them work together, has, in fact, happened.
5 I'm very pleased. And I would like to extend, on
6 behalf of the staff, a big thank you to all of those
7 who participated in this effort.

8 And Commissioner Ederer is obviously
9 correct with his comments that these meetings were very
10 contentious. And there were many working group
11 meetings without Commissioner participation, with some
12 of the board members of some of the organizations there
13 as well. And it was conveyed all along the process
14 that negotiations, you know, was the best source for
15 this to come about in the end. And I think we've seen
16 a good bit of that today.

17 Just in summary, what I prepared for you
18 was basically a synopsis of where the breed splits are
19 at the moment and what this small change would mean to
20 each of the racetracks. Staff supports this
21 recommendation by the racetracks. And we look forward
22 to working in the future on this again. I think it's a
23 positive move and it really has indicated a great deal
24 of work by all the parties to come to this before us at
25 this time.

1 CHAIRMAN ADAMS: Thank you, Mr. Jackson.

2 Any other questions?

3 Hearing none, the Chair will entertain a
4 motion to approve the proposed allocation of purse
5 revenue under Rule 321.505(a) as described in the
6 agreement submitted by Retama Park on behalf of the
7 racetracks and horsemen's organizations.

8 COMMISSIONER EDERER: So moved.

9 CHAIRMAN ADAMS: It's been moved. Do I
10 have a second?

11 COMMISSIONER PABLOS: Second.

12 CHAIRMAN ADAMS: It's been moved and
13 seconded.

14 All those in favor?

15 COMMISSIONERS: Aye.

16 CHAIRMAN ADAMS: Any opposed?

17 The motion carries.

18 The next item, Item E, is a motion to
19 approve -- and we did have discussion on both of these
20 items as we went along here, did we not? I'm not
21 trying to get ahead here.

22 The next item is the distribution of
23 escrowed purse accounts under Commission Rule 321.509.
24 And the Chair would recommend a motion to approve the
25 proposed distribution of escrowed purse accounts under

1 this rule also described in the agreement submitted by
2 Retama Park on behalf of the racetracks and the
3 horsemen's organizations.

4 VICE-CHAIRMAN CARTER: So move.

5 CHAIRMAN ADAMS: It's been moved. Do I
6 have a second to 509?

7 MR. ANGELO: Second.

8 CHAIRMAN ADAMS: Seconded.

9 Any discussion?

10 All those in favor?

11 COMMISSIONERS: Aye.

12 CHAIRMAN ADAMS: Any opposed?

13 The motion carries.

14 Item No. F, allocation among various
15 breeds of horses of the Texas-bred incentive program
16 revenue generated by simulcasting for 2008 under
17 Commission Rule 321.505(b). Mr. Jackson?

18 MR. JACKSON: Good afternoon, sir. We
19 have not received any information from any of the breed
20 registries on this agenda item. Staff has not had
21 anything to look at and review. And because of that,
22 at this time, unless the industry has something to
23 bring forward, we would just recommend that this be
24 tabled to the next Commission meeting in hopes that the
25 breed registry will have submitted stuff to the staff

1 to prepare for you in advance of the next Commission
2 meeting for you to consider.

3 CHAIRMAN ADAMS: And it is my
4 understanding that that was expected and needed for us
5 to proceed on this.

6 MR. JACKSON: That's correct.

7 CHAIRMAN ADAMS: Okay. I do have three
8 individuals that have signed in to speak, but what are
9 the wishes of the Commission? Do we want to go ahead
10 and table this or do we want to hear what the industry
11 has before we do that and then go from there? What's
12 the feeling?

13 COMMISSIONER SOWELL: I think we should
14 hear it.

15 CHAIRMAN ADAMS: Okay. No problem. Then
16 first Mr. Drew Shubeck.

17 MR. SHUBECK: Chairman, I originally
18 signed up to speak on this issue. I would have
19 supported one of the breed organizations; but since
20 nothing has been submitted, I will withhold my comments
21 until something has.

22 CHAIRMAN ADAMS: Okay. I was afraid
23 that's what you were doing here.

24 Mr. Ed Wilson?

25 MR. WILSON: Mr. Chairman, fellow

1 Commissioners, I'm Ed Wilson, president of the Arabian
2 Breeders Association.

3 We had worked to try to have this issue
4 resolved. It caused quite a lot of problem last year
5 and I certainly didn't want to go back through that
6 again this year as we did in the past. And it was my
7 understanding as of last Wednesday that all the breeds
8 had agreed to a plan and then I understand that maybe
9 the Quarter Horse has not agreed to sign off yet.

10 So I would -- I would propose that you
11 consider this and go ahead. What the agreement was,
12 that two percent would go to the Arabians, one percent
13 would go to Paints, and then the balance would be split
14 two-thirds to Thoroughbreds and a third to Quarter
15 Horses. And my understanding, as I said, is that all
16 the breeds had agreed to this as of last week. So
17 maybe if I have a misunderstanding, I apologize.

18 CHAIRMAN ADAMS: Any questions for
19 Mr. Wilson?

20 VICE-CHAIRMAN CARTER: Did you have a
21 meeting to discuss this?

22 MR. WILSON: Basically it was phone
23 conversations between us. We had been trying to get
24 something resolved because we knew what the deadline
25 was, but it seemed that the other breeds were working

1 on VLT's legislation and all that kind of stuff that
2 they were proposing and we never could really get
3 anybody to sit down and talk about it. So we just kept
4 trying and kept on the phone until through last week
5 trying to get something resolved.

6 CHAIRMAN ADAMS: Thank you, sir.

7 Mr. Hooper?

8 MR. HOOPER: Mr. Chairman, members of the
9 Commission, I come before you now with my white hat
10 on. I'm pleased to tell you that there is a draft
11 agreement between Texas Arabian Breeders Association,
12 Texas Paint Horse Association, Texas Quarter Horse
13 Association, and Texas Thoroughbred Association; and
14 the percentages are as mentioned on this page by
15 Mr. Wilson.

16 I have three signatures. I'm only
17 lacking the Quarter Horse Association signature. But
18 it is my understanding that with the resolution of the
19 item that you just took up, the breed splits on horse
20 simulcasts and the escrowed horse purse account, that
21 Dr. Tommy Hays is ready to sign this agreement.

22 We would be willing -- it was suggested
23 by Sammy earlier that maybe this should be tabled until
24 the next meeting and then we can give you a one-page
25 clean sheet with everyone's signature on it or you've

1 got the option that if Dr. Hays wanted to sign it
2 today, we could do it today as well.

3 CHAIRMAN ADAMS: Thank you, Mr. Hooper.

4 Any questions?

5 Is Dr. Hays with us today?

6 VICE-CHAIRMAN CARTER: Mr. Hooper, could
7 you repeat those percentages again?

8 MR. HOOPER: I'd be pleased to. At the
9 Class 1 tracks, Lone Star Park, Retama Park, and Sam
10 Houston Race Park, the funds shall be allocated 66.67
11 percent to Thoroughbreds and 33.33 percent to Quarter
12 Horses after a two percent deduction off the top for
13 Arabians and a one percent deduction off the top for
14 Paints.

15 At Gillespie County Fairgrounds and Manor
16 Downs, the funds shall be allocated 33.33 percent to
17 Thoroughbreds and 66.67 percent to Quarter Horses after
18 a two percent deduction off the top for Arabians and a
19 one percent deduction off the top for Paint horses.
20 And this agreement shall be effective for a three-year
21 period, 2008, '09, and '10.

22 CHAIRMAN ADAMS: Thank you, sir.

23 VICE-CHAIRMAN CARTER: Thanks.

24 MR. HAYS: I'm Dr. Tommy Hays, 2007
25 president of the Texas Quarter Horse Association. And

1 we are in agreement with the ATB splits that are on the
2 proposal right now, so we will be willing to sign
3 today.

4 CHAIRMAN ADAMS: Okay, sir. I think that
5 should suffice for our needs. Thank you very much,
6 sir.

7 Any other discussion?

8 The -- hearing none, the Chair will
9 entertain a motion to --

10 COMMISSIONER SOWELL: So move.

11 CHAIRMAN ADAMS: That the breed
12 registries have submitted an agreement and that we've
13 heard testimony from the parties that they're in
14 concurrence on that agreement. And so it's been moved
15 by Commissioner Sowell.

16 COMMISSIONER SCHMIDT: Second.

17 CHAIRMAN ADAMS: And seconded by
18 Commissioner Schmidt.

19 All those in favor?

20 COMMISSIONERS: Aye.

21 CHAIRMAN ADAMS: Any opposed?

22 The motion carried.

23 I'd like to exercise the power of the
24 Chair here to announce that the Commission will be
25 going into executive session at this time. It is 12:20

1 p.m., and I think we probably -- are we going to break
2 for lunch at the same time? Are we going to do that
3 all together? Or should we try to come back out of
4 executive session and complete the rest of the agenda
5 and just -- you don't think there's anything --

6 MR. FENNER: I think we could probably
7 come out and wrap this up and break -- and complete the
8 Commission meeting before going to lunch.

9 CHAIRMAN ADAMS: Does anybody have a
10 problem with that?

11 COMMISSIONER SOWELL: No. Is there a
12 place a guy can get a drink of water around here?

13 MS. KING: In the executive session you
14 can do that.

15 CHAIRMAN ADAMS: So let me make my
16 announcement here about we are now entering executive
17 session at 12:20 to confer with our attorneys regarding
18 the Trinity Meadows lawsuit and to seek advice from our
19 attorneys regarding Texas Disciplinary Rules of
20 Professional Conduct. And we'll be back as soon as we
21 can complete that. Thank you.

22 (Recess for executive session from 12:22
23 p.m. to 1:01 p.m.)

24 CHAIRMAN ADAMS: Okay. We are
25 reconvening out of executive session. The time is now

1 11:59 -- 12:59.

2 COMMISSIONER EDERER: We're missing
3 Sonny.

4 CHAIRMAN ADAMS: We have -- we've lost
5 Sonny. We have discussed the Trinity Meadows lawsuit
6 and we have sought the advice of our attorney as a
7 privileged communication under the Texas Disciplinary
8 Rules of Professional Conduct regarding Trinity
9 Meadows. And the Chair will now entertain a motion
10 regarding Rule 311.51 to seek an Attorney General's
11 opinion as to whether the rule exceeds the Commission's
12 authority.

13 Any discussion on the issue?

14 COMMISSIONER SCHMIDT: So move.

15 COMMISSIONER SOWELL: Second.

16 CHAIRMAN ADAMS: It's been moved and
17 seconded.

18 COMMISSIONER SOWELL: And you haven't
19 lost me. A momentary delay.

20 CHAIRMAN ADAMS: Okay. We have a motion
21 and a second in front of the Commission.

22 Any discussion?

23 MR. FENNER: Commissioners, just to
24 clarify that we also discussed in executive session --
25 provided legal counsel under the professional rules

1 regarding 311.51.

2 CHAIRMAN ADAMS: Okay. So amended.

3 And any discussion?

4 All those in favor?

5 COMMISSIONERS: Aye.

6 CHAIRMAN ADAMS: Any opposed?

7 The motion carries.

8 Staff will initiate the request to the
9 Attorney General regarding that issue.

10 We'll get back to our main agenda here.
11 The next item is proceedings on rulemaking, discussion,
12 consideration, and possible action on the following
13 issue: Chapter 309, racetrack licenses and
14 operations. Mr. Fenner?

15 MR. FENNER: Commissioners, under Texas
16 Government Code 2001.039, we have to review every State
17 administrative rule every four years. The Commission
18 last reviewed the set of rules in Chapter 309 in 2003.
19 Therefore, it's time to review them once again.

20 To formally initiate this process, you go
21 ahead and vote to publish it in the Texas Register; and
22 that will allow the public time to comment regarding
23 those rules and whether the need for them still
24 exists.

25 Now, Chapter 309 is regarding the

1 Texas -- the racetrack licenses and operations. This
2 covers both operations and facilities. It has some
3 rules that apply to both types of tracks. It also has
4 some provisions that are specific to the type of track,
5 such as greyhound or horse. It also focuses a lot on
6 the licensing process, the qualifications to receive a
7 racetrack license and the situations or the
8 qualifications or characteristics that makes one
9 susceptible to having a license denied, revoked, or
10 suspended.

11 As you probably remember, this has been a
12 very hot topic for the Commission lately. We have some
13 racetrack licenses out there that have been inactive
14 for a very long time that the Commission has expressed
15 some interest in doing some things about.

16 But the rules and the statute could use a
17 review and a little more tweaking to make sure that
18 they reflect the policy of this Commission. So we're
19 looking for an opportunity, as part of this rule review
20 process, to work with some of you Commissioners in
21 reviewing those rules and make sure that it reflects
22 what you all think they need to say.

23 CHAIRMAN ADAMS: Okay. Any questions?
24 Discussion?

25 I have no one signed in on Item -- the

1 Chapter 309 item, so the Chair would entertain a motion
2 to publish Chapter 309 for rule review in the Texas
3 Register and open the public comment period.

4 Do I have a motion or a second?

5 COMMISSIONER SOWELL: So move.

6 COMMISSIONER EDERER: Second.

7 CHAIRMAN ADAMS: Moved by Commissioner
8 Sowell, seconded by Commissioner Ederer.

9 All those in favor?

10 COMMISSIONERS: Aye.

11 CHAIRMAN ADAMS: Any opposed?

12 The motion carries.

13 The next item --

14 MS. KING: Mr. Chairman?

15 CHAIRMAN ADAMS: Yes, ma'am.

16 MS. KING: I would like to recommend that
17 we establish a working group to discuss Chapter 309.
18 This is a very detailed, fairly lengthy, very important
19 chapter as Mark just described; and we think it's
20 important to have some more meetings and some more
21 intensive review with Commissioner participation.

22 CHAIRMAN ADAMS: And do I have any
23 volunteers for our working group at this time or should
24 I take it under advisement?

25 MS. KING: You do have some volunteers.

1 CHAIRMAN ADAMS: Okay. Commissioner
2 Pablos, Commissioner Schmidt. Will two do?

3 MS. KING: Two will be fine. We had a
4 previous volunteer that --

5 CHAIRMAN ADAMS: You've lost him. He's
6 lost again.

7 Commissioner Sowell, would you like to
8 serve on this?

9 COMMISSIONER SOWELL: Yes, but only
10 because -- only because while we're on a working group,
11 a Commissioner is entitled to receive double his normal
12 salary.

13 CHAIRMAN ADAMS: Two times zero?

14 COMMISSIONER SOWELL: Yes.

15 MS. KING: Three is fine.

16 COMMISSIONER SOWELL: I'll be happy to
17 help.

18 CHAIRMAN ADAMS: So we have our three
19 Commissioners on the working group. Thank you,
20 Ms. Charla Ann.

21 MS. KING: Thank you.

22 CHAIRMAN ADAMS: The next item is the
23 proposal to repeal Section 311.51, interim license to
24 conduct race meetings. Mark Fenner?

25 MR. FENNER: Commissioners, as you may

1 recall, at the last Commission meeting we opened up
2 Chapter 311 for rule review. After we did that, I
3 received some correspondence from an individual
4 requesting an application for an interim license to
5 conduct a race meeting.

6 I was not aware of such an application
7 form, so I did some research and I found -- as in the
8 materials you'll have in your packets shows, I found
9 that there was such an application form that was
10 considered by the prior executive secretary and she
11 brought it to the Commission 10 years ago. The
12 Commission reviewed that application form, found that
13 there were problems with the rule, determined in their
14 minds at that time that it was not a good policy, and
15 they rejected the application form, just outright
16 rejected the application form.

17 In retrospect, I think that the proper
18 thing to have done at the time would have been for the
19 Commission to take up that rule and make a decision at
20 that point whether they wanted to keep it or not; but
21 that did not happen.

22 And so now when I have this brought to my
23 attention some 10 years later and I have this
24 outstanding request for an application form and then I
25 review and see what happened 10 years ago, I think that

1 it's incumbent upon me to bring it to you and ask for
2 your guidance as to whether you think the need for that
3 rule still exists or whether you think that rule should
4 be repealed or modified.

5 We did discuss this a few minutes ago in
6 executive session about whether or not this exceeds
7 statutory authority. I thank you for authorizing me
8 to -- or for authorizing the request for an Attorney
9 General's opinion on that very topic. Whether it
10 exceeds statutory authority is a different issue of
11 whether it's good policy.

12 I'm interested in hearing what you all
13 have to say and what you all think about that. And I
14 think you all have read the materials that I provided
15 to you, some materials that also came from the
16 applicant -- or the person requesting an application
17 form. I believe that he is -- a representative of that
18 group has signed up to comment on this agenda item.

19 That's all I have to say at this time.

20 CHAIRMAN ADAMS: Okay. I would recommend
21 that we -- we do have individuals signed in to speak,
22 and I'd recommend that we hear them and then that we do
23 open it up for discussion and we have a lively
24 discussion here to figure out where we need to go with
25 this. So if that's okay with the rest of the

1 Commissioners, we'll proceed here with Mr. David
2 J. Freeman with the Lawley Group.

3 MR. FREEMAN: Mr. Chairman, members of
4 the Commission, my name is Dave Freeman. I'm
5 representing the Lawley Group. I'm not their
6 attorney. I work as a consultant. The Lawley Group is
7 the group that purchased the original debt instrument
8 for and subsequently bought out of bankruptcy and
9 foreclosure the property at Trinity Meadows in Willow
10 Park, Texas. As a little bit of background, Trinity
11 Meadows was, as you well know, a racetrack that was
12 operational back in the mid '90's before it ran into
13 some difficulties.

14 We feel or I feel -- again, a little bit
15 of background, at one time I was the executive
16 secretary of this Commission when this rule was
17 drafted. I'm also the former director of the Minnesota
18 Racing Commission and sat for years on the Association
19 of Racing Commissioners International model rules
20 committee. And I do believe I'm very familiar with the
21 rules.

22 Rule 311.51 actually was a result of a
23 request of the industry when it was trying to build
24 racetracks that would provide some protection for banks
25 or lending institutions in the event of foreclosure.

1 And during the years from '93 when that was first
2 requested up until '99, revisions to that rule has
3 been -- have been made and amendments and
4 clarifications on the rule have been made.

5 Frankly, I appreciate Mr. Fenner sending
6 to me the transcript of the meeting wherein former
7 Chairman Christopher and Commissioner Gilliland had
8 discussion, the brunt of the discussion, with respect
9 to Rule Section 311 -- what is now 311.51, and the
10 application.

11 With all due respect, I don't entirely
12 agree with the conclusion that Mr. Fenner has come to.
13 I think, as I read it, it was more of a -- they were
14 concerned about some things that were not in the
15 application form itself.

16 We're also, frankly, a little troubled by
17 the timing of this. As you recall, at the October 4
18 meeting, the Commission -- you Commissioners voted to
19 review Chapter 311, of which obviously 311.51 is a
20 part. 311.51 -- and you opened up 311 for rule review
21 and discussion and sought input and there were some
22 amendments made to 311. 311.51 was never a part that
23 we can find in any testimony or in any transcripts or
24 anything that 311.51 had been considered.

25 So year after year after rule review, the

1 only thing that we personally feel that could have
2 changed between that October 4 meeting when 311.51 was
3 not considered for amendment or repeal or you were
4 asked to validate that section is that we simply asked
5 for an application form to be submitted, you know,
6 that's prescribed by the executive secretary, now an
7 executive director, and then submitted to the
8 Commission for its review.

9 So frankly, we really believe that the
10 rule is still necessary. We believe it's valid. We
11 have letters that Mr. Fenner has provided you from the
12 former director of your Commission, the Attorney
13 General's office. And frankly, we -- in my experience,
14 in my years of experience in drafting and amending and
15 working with the rulemaking process, the question of
16 the statutory authority being exceeded never came up.

17 If you have any questions, I'd be glad --
18 this is interesting. I'm a little nervous today. It's
19 the first time I've ever spoken in front of this
20 Commission where I was on the other side of the table.
21 It's a little different feeling. I can tell you that.

22 But we strongly urge that Section 311.51
23 remain intact, that we don't believe that -- it's our
24 opinion that it doesn't need repealing. And in the
25 interim, while this is all discussed, we once again

1 kindly ask, can we just have the application form as we
2 were promised we'd get 10 years ago?

3 Do you have any questions?

4 CHAIRMAN ADAMS: Any questions?

5 I don't see any at this time, sir.

6 Yes, Mr. Fenner.

7 MR. FENNER: Mr. Freeman?

8 MR. FREEMAN: Yes, sir.

9 MR. FENNER: When you say that Trinity
10 Meadows was promised the application form 10 years ago,
11 were you the executive secretary at the time?

12 MR. FREEMAN: I was not. The interim --
13 well, general counsel, then the executive -- the
14 interim and then finally the executive secretary, Paula
15 Flowerday, said that it would be forwarded to the
16 Lawley Group once it was complete.

17 CHAIRMAN ADAMS: Okay, sir. Thank you
18 very much.

19 MR. FREEMAN: Thank you.

20 CHAIRMAN ADAMS: The next speaker signed,
21 Brent Hamilton?

22 MR. HAMILTON: Mr. Chairman, Brent
23 Hamilton. I am counsel for the Lawley Group and wanted
24 to just take a moment to clarify the difference between
25 the Lawley Group and the persons that are seeking an

1 interim license application and the Trinity Meadows
2 Raceway, Inc. And I think it's important to understand
3 the distinction between the two.

4 As you will see in the packet of
5 information that was provided to you, the Lawley Group
6 was the legally recognized name of the individuals who
7 purchased the original financing instrument that -- for
8 the financing and construction of the Trinity Meadows
9 racetrack in Willow Park, Texas. Okay?

10 The Lawley Group, subsequent to
11 bankruptcy, purchased that facility in lieu of a
12 foreclosure. In fact, a foreclosure was posted and
13 then was later prevented by the filing of the
14 bankruptcy.

15 The actual corporation that had the
16 license at that point in time prior to the foreclosure
17 was Trinity Meadows Raceway, Inc. The Lawley Group was
18 the group of individuals who was comprised by Jim
19 Dunigan and Larry Lawley who owned and currently own
20 the racetrack in Willow Park, Texas.

21 And the facility is still capable with --
22 still capable of being a viable racing facility, and
23 these folks are simply asking that they be afforded the
24 opportunity of the interim license as was discussed in
25 a letter with prior -- prior to -- a prior letter with

1 the staff and in correspondence with the Texas Attorney
2 General.

3 So I think it's important to make the
4 distinction between those two. It's a legal
5 distinction, but it's also an important distinction for
6 review of the rule.

7 I'll certainly entertain any other
8 questions that anyone has, but I wanted to make that
9 distinction.

10 CHAIRMAN ADAMS: Yes.

11 COMMISSIONER PABLOS: Mr. Hamilton, I've
12 read your letter to Mr. Fenner; and I have to tell you,
13 it's pretty strong, what you wrote on here; and, you
14 know, coming out and saying that Mr. Fenner might be
15 trying to usurp the Commission's rules is a pretty
16 strong statement.

17 Also here, I guess in your conclusions,
18 you say that you're entitled to or your client is
19 entitled to an interim license; and I just wanted to
20 remind you that the license is a privilege and not a
21 right. So you're not entitled to it. You have to
22 first prove to us that you've satisfied all our
23 requirements. And so I wanted to make that very
24 clear. But the tone of your letter bothers me and I
25 just wanted to make that clear for the record.

1 MR. HAMILTON: Thank you, sir. If I
2 could speak to that.

3 CHAIRMAN ADAMS: Certainly.

4 MR. HAMILTON: There's been quite a
5 background between myself and Mr. Fenner, probably that
6 you don't have the context of; and in the event that I
7 have upset you by the tone of my letter, I certainly
8 apologize for that. But I want to make this point very
9 clear.

10 There is -- by the rule, there are three
11 steps that have to be met. First, the person has to
12 fill out an application. Okay? Secondly, they have to
13 prove their eligibility. And third, they have to prove
14 their qualifications.

15 The Lawley Group is not asking for a
16 license to be granted. And I certainly understand that
17 it's a privilege, and it's a privilege that all of you
18 take very seriously and we appreciate that. But we are
19 simply asking to engage in the process and have
20 asked -- the Lawley Group has asked to engage in the
21 application process for a period of 10 years, and
22 instead of simply sending a form -- which, as I look on
23 your website, all of the other forms are listed. All I
24 have to do is click on it and I can get a form.

25 We're just simply asking for the form

1 to -- so that we can engage in the process and we just
2 want to be focused on the form right now. And so if my
3 letter has offended, I apologize; but we're asking for
4 a very simple request and we feel like we -- it ought
5 to be met.

6 Thank you. Any other questions?

7 COMMISSIONER EDERER: The Lawley Group
8 originally bought the purchase -- bought the paper or
9 gave the loan?

10 MR. HAMILTON: The Lawley Group
11 originally purchased the paper from Texas Bank.

12 COMMISSIONER EDERER: And when did it do
13 that?

14 MR. HAMILTON: It did so prior to the
15 bankruptcy in 19 -- and I have the actual instrument
16 and I'll provide it to you.

17 COMMISSIONER EDERER: Just the date.
18 Give me a ballpark.

19 MR. HAMILTON: It's 1996, '97-ish.

20 COMMISSIONER EDERER: And then in '97 you
21 asked for an application?

22 MR. HAMILTON: Yes. The Lawley Group's
23 attorney, Stephen Wilcox -- and the context was they
24 had purchased the debt instrument intending to
25 foreclose. There was an involuntary bankruptcy and so

1 they get it in lieu of foreclosure. Their attorney
2 says, "Before we buy this out of bankruptcy, we would
3 like some assurance that we are going to be able to
4 protect ourselves and protect our debt"; and that's
5 when the letter from Paula Flowerday came saying, "We
6 will forward to you an interim license application";
7 and one has never come.

8 COMMISSIONER EDERER: I understand. But
9 has the Commission heard from you any time for the last
10 10 years until just recently? In other words, why the
11 big delay? Why 10 years?

12 MR. HAMILTON: Well, there has been, in
13 other avenues, attempts by these same persons to gain a
14 horse racing license.

15 COMMISSIONER EDERER: But the last time
16 that you attempted to get an interim license was 10
17 years ago.

18 MR. HAMILTON: Correct.

19 COMMISSIONER EDERER: And now you're back
20 again.

21 MR. HAMILTON: Correct.

22 COMMISSIONER EDERER: 10 years later.

23 MR. HAMILTON: And there has been -- but
24 there has been, by Mr. Dunigan and by Mr. Lawley, a
25 series of appearances either as Squaw Creek Downs -- or

1 as Squaw Creek Downs at the Commission in an attempt to
2 return horse racing to Willow Park.

3 MR. FENNER: May I address that?

4 CHAIRMAN ADAMS: Yes.

5 MR. FENNER: That is correct in the fact
6 they took opportunity of the full process. They
7 completed and filed an application for a racetrack
8 license that went through a full hearing before the
9 State Office of Administrative Hearings and had a
10 decision before the Commission. The Commission
11 ultimately decided to reject that application for a
12 racetrack license for Squaw Creek Downs.

13 So they did avail themselves of the full
14 administrative process, at least the Squaw Creek Downs
15 process.

16 MR. HAMILTON: And just for
17 clarification, those were not the same persons as are
18 making a request today. And I understand that there
19 was six months of review of this rule, that there
20 was -- this rule has been in existence for 14 years. I
21 think it's an important rule for people who want to
22 finance the construction of or refinance these
23 facilities. And those of you that are in business
24 understand financing capital and why business people
25 use financing capital.

1 We want to engage in the process on
2 behalf of the Lawley Group; and for us to engage in the
3 process, we have to get the application form. And, you
4 know, a lot of the things that have been suggested to
5 these two individuals, Larry Lawley and Jim Dunigan,
6 with regard to their purchase of those facilities have
7 not worked.

8 The one suggestion that was in paper, not
9 only from the Texas Attorney General's office but from
10 the Racing Commission staff itself, was "Go get an
11 interim license. Then come back and make an
12 application and then move forward from there."

13 And so this is an avenue that they seek
14 to engage in the process. The rule is there. They
15 would like to be afforded the opportunity to engage in
16 that process. And maybe the tone of my letter was a
17 little strong, but it was a response to a very simple
18 request, "Will you please send us the form?" And of
19 course, it was met with a lot of other issues other
20 than "We'll send you the form" or "We'll promulgate
21 one," because the rule does say that the executive
22 secretary will prescribe the form, not the Commission.

23 Any other questions that I can help you
24 folks with?

25 CHAIRMAN ADAMS: Yes, sir, Mr. Pablos.

1 COMMISSIONER PABLOS: But to that point,
2 the Commission ultimately approves or disapproves what
3 the executive secretary does, correct?

4 MR. HAMILTON: Well, I think the form
5 actually is prescribed. The rule, as I read it, does
6 not require the Commission to approve the form; but it
7 does require the Commission to approve whether someone
8 is qualified to receive an interim license.

9 COMMISSIONER PABLOS: But the Commission
10 can require the executive secretary to bring issues
11 such as this one for its approval or disapproval,
12 correct?

13 MR. HAMILTON: I certainly believe that
14 you have the authority to entertain any issue that
15 comes before your staff or that concerns your staff.

16 CHAIRMAN ADAMS: Any other questions?

17 Thank you, sir.

18 MR. HAMILTON: Thank you.

19 CHAIRMAN ADAMS: Next signed, Bryan
20 Brown.

21 MR. BROWN: Good afternoon,
22 Commissioners. Bryan Brown with Retama Park.

23 We believe this rule is important and
24 have always believed this rule is important. We became
25 a part of Retama Park as a debt holder originally. We

1 never had to look to this rule. We never had to pursue
2 an interim license.

3 But we believe that down the road, if
4 we're all fortunate enough to need to expand our
5 facilities for whatever reason and need to go out and
6 borrow money, that a rule, whether it's this rule or
7 something very similar, will be important to give
8 financiers an opportunity to acquire a license in case
9 there's a problem. And whether this rule is looked at
10 for language adjustment or whatever, we do believe that
11 something like this needs to be a part of the rules.

12 And I can't comment obviously on whether
13 it exceeds your authority or not, but I do believe debt
14 holders in the future are going to want something like
15 this to finance hopefully major expansions to our
16 facilities.

17 CHAIRMAN ADAMS: Any questions for
18 Mr. Brown?

19 Thank you, sir.

20 MR. BROWN: Thank you.

21 CHAIRMAN ADAMS: Okay. There's no one
22 else signed up to speak. What are the wishes of the
23 Commission?

24 VICE-CHAIRMAN CARTER: Can I ask a
25 question? Reading through here, it doesn't look like

1 they really ever approved the form.

2 MR. FENNER: That's correct.

3 VICE-CHAIRMAN CARTER: Is that true?

4 MR. FENNER: That's correct.

5 VICE-CHAIRMAN CARTER: At that time they
6 rejected it.

7 MR. FENNER: Yes, sir.

8 VICE-CHAIRMAN CARTER: So we really don't
9 have a form to send them, do we?

10 MR. FENNER: That's correct. When Paula,
11 the previous executive secretary, explored the idea of
12 an interim license, I believe she acted in complete
13 good faith. She developed an application form. She
14 brought it to the Commission, showed it to them, asked
15 for approval. And the Commission rejected it. I don't
16 believe that Paula or any of the prior Commission staff
17 ever acted in bad faith in identifying the interim
18 license as an avenue within the rules to the Lawley
19 Group.

20 But the fact remains that she did develop
21 a form. She brought it to the Commission. The
22 Commission rejected it. And since that time, there's
23 been no further action.

24 CHAIRMAN ADAMS: Well, Mr. Fenner, I
25 personally feel that -- and hopefully the outcome of

1 our request to the Attorney General will answer that
2 question. I personally don't feel that we have the
3 authority to grant an interim license for a racetrack.
4 I mean, it goes -- it goes in the face of all of what
5 we do to approve a licensee.

6 I mean, here's a perfect example. Here's
7 a group who have come to us and requested a full-blown
8 request and were rejected. They did not meet the
9 requirements. The Commission at that time chose to
10 deny them the license. But yet there would be
11 something else in the code or in the statute that would
12 allow them to get a license, an interim license, and it
13 doesn't make sense.

14 It doesn't make sense that we would have
15 the authority to grant -- or be in a position where we
16 were considering a license, interim license, when
17 they've already been rejected for a full -- under the
18 full-blown deal.

19 The Legislature's intent, in my opinion,
20 was to have this license to be very well guarded and
21 very restricted; and if they can't meet the
22 requirements under the full license, why would they be
23 allowed to get an interim license?

24 So I cannot personally support anything
25 going down that line until we hear from the Attorney

1 General as to whether we have the authority to even
2 grant this kind of a license.

3 MR. FENNER: Yes, sir.

4 CHAIRMAN ADAMS: And as you said, we
5 discussed that earlier. So that's my position.

6 Any other discussion? Do we want to --

7 VICE-CHAIRMAN CARTER: One more
8 question. Do other racing jurisdictions have interim
9 licenses?

10 MS. KING: I have contacted ARCI to ask
11 them that question. They gave me some leads on talking
12 to some other states. So we're going to put out a
13 survey question to determine that. The concern is
14 perhaps it's not referred to as an interim license, so
15 we're going to have to contact the other general
16 counsels about that. And so we should be able to make
17 some progress in answering that question in the near
18 future.

19 CHAIRMAN ADAMS: Well, I personally would
20 like to see, Charla Ann, you pursue that and let's
21 report back at your earliest convenience to the
22 Commission as to what you find out and what's happening
23 in other states and what's allowed and what's not
24 allowed.

25 MS. KING: Yes, sir, Mr. Chairman. Thank

1 you.

2 MR. ANGELO: Mr. Chairman?

3 CHAIRMAN ADAMS: Yes.

4 MR. ANGELO: In view of the fact that
5 we've voted already to request an AG's opinion and that
6 we also at this time have someone asking for the
7 application under this rule as it presently exists, I
8 think it would be appropriate that we postpone action
9 on whether or not to repeal it at this time. And if it
10 would be appropriate, I'd make a motion to that
11 effect.

12 CHAIRMAN ADAMS: Okay. Is there a second
13 to that?

14 COMMISSIONER SOWELL: Second.

15 CHAIRMAN ADAMS: Okay. It's been moved
16 and seconded that we postpone action on this agenda
17 item. Are we tying that to the response from the
18 Attorney Generals?

19 MR. ANGELO: Yes.

20 CHAIRMAN ADAMS: Until we hear a response
21 from the Attorney General's office. In the meantime
22 Charla Ann will proceed with her investigation on how
23 other states handle interim licenses or whatever they
24 call them. Okay?

25 MS. KING: Yes, sir.

1 CHAIRMAN ADAMS: Any discussion?

2 All those in favor?

3 COMMISSIONERS: Aye.

4 CHAIRMAN ADAMS: Any opposed?

5 The motion carries.

6 Okay. We'll move on to the next item,
7 proposed amendments to 313.111. John Ferrara?

8 MR. FERRARA: Good afternoon,
9 Commissioners. 313.111, age restrictions, is in place
10 to ensure that a horse above the age of 12 is
11 competitive. Unfortunately, during this 2007
12 Thoroughbred race season, we had a Thoroughbred by the
13 name of Proven Cure who was a -- had an outstanding
14 career, who was still a good horse and was still
15 competitive; but the way the rule is written right now,
16 the horse became ineligible and had to leave the state
17 and went to Oklahoma to run.

18 So we have proposed a change to the
19 rule. The previous was the horse had to win in the 12
20 months previous to the start; and we've changed that to
21 the horse had to finish first, second, or third in the
22 12 months previous to the start.

23 We also went one step farther and said
24 "Upon due consideration of the horse's prior
25 performance, the board of stewards has given specific

1 authority for the horse to start." The board of
2 stewards, with their expertise and their years of
3 looking at films, they're able to go back and look at
4 the past performance, review the films, and they're
5 able to determine if the horse is still competitive.

6 Do you have any questions on the --

7 CHAIRMAN ADAMS: Any questions for
8 Mr. Ferrara? Yes.

9 COMMISSIONER SCHMIDT: I have one
10 question, sir. Just round numbers, the Lone Star Park
11 meet, how many horses over the age of 10 are
12 competitive or would this rule affect?

13 MR. FERRARA: Very few, but you see very
14 few horses above the age of 10. And truthfully, this
15 rule here very seldom comes into effect and that's why
16 it's probably been in the rule book for so long and
17 it's never been addressed. But again, it came up this
18 year.

19 COMMISSIONER SCHMIDT: Maybe one horse
20 per meet then?

21 MR. FERRARA: If we're lucky, there's one
22 a meet.

23 COMMISSIONER SCHMIDT: Thank you.

24 COMMISSIONER EDERER: None of us want to
25 see a horse go down as he's running; and the older the

1 horses are, of course, the more apt they are to go
2 down. I see you've got some precautions in here,
3 though, saying that the stewards have to review the
4 past performance and that type of thing.

5 It seems to me that this is kind of a
6 case-specific type of thing. That's what you're
7 looking for. I mean, it isn't going to happen very
8 often. But when it does happen, you want to be able to
9 give the horse a break is what you're saying.

10 MR. FERRARA: Exactly. Because like I
11 say, this horse had an outstanding career and --

12 COMMISSIONER EDERER: But maybe he should
13 have been retired.

14 MR. FERRARA: No. He was --

15 COMMISSIONER EDERER: You know, it's --

16 MR. FERRARA: Commissioner, he was
17 competitive. You can run fourth and get beat by a
18 length and a half and you're competitive, or you can
19 run and get in trouble and run behind and still be
20 competitive. And that's why this was added so the
21 board of stewards can review those films and make an
22 educated determination, is this horse competitive.

23 COMMISSIONER EDERER: To make sure there
24 wasn't just three horses in the race and that type of
25 thing.

1 Well, you know, I see why you want it;
2 but I certainly wouldn't want to encourage older horses
3 to -- trainers to -- of course, trainers aren't going
4 to be putting their older horses in there if they're
5 planning on winning anything probably.

6 MR. FERRARA: I agree.

7 COMMISSIONER EDERER: I certainly would
8 discourage the older horses from running. But I don't
9 know. I guess I don't have much of an opinion on this
10 one way or the other except we don't want to be a
11 geriatric track over here for horses. We've got a new
12 breed here. We're going to have the old breed. Of
13 course, I like the old guys. That's okay. I
14 understand. I fit in there a little better.

15 MR. FERRARA: I'd like to bring up a
16 case. We had a nine-year-old maiden start at Retama, a
17 first-time starter, and the horse ran off the
18 racetrack. And we brought that to the associations and
19 they changed their rule now that you can't run a
20 nine-year-old maiden anymore at a Class 1 racetrack.
21 So we're not -- we're not going to allow a horse that's
22 not competitive to run.

23 COMMISSIONER EDERER: And you say that
24 other states do allow it. You said Oklahoma did allow
25 this horse to run?

1 MR. FERRARA: They did. Now, most
2 states, it's up to the Racing Commission. I've been a
3 steward in Louisiana; and beyond the age of 12, the
4 Commission makes the determination, is this horse still
5 competitive. I worked as a racing secretary in
6 Nebraska; and again, beyond the age of 12, the
7 Commission determined if this horse is still
8 competitive.

9 But we're asking the board of stewards
10 because they may have seen this horse run the last two
11 races and realize the horse is still competitive.

12 CHAIRMAN ADAMS: Thank you for that.
13 Thank you.

14 VICE-CHAIRMAN CARTER: I have a
15 question. How old was John Henry when they retired
16 him?

17 MR. FERRARA: I'm not sure, but I believe
18 he might have been 10.

19 VICE-CHAIRMAN CARTER: And he was winning
20 world-class, Breeders' Cup quality races.

21 MR. FERRARA: Exactly.

22 VICE-CHAIRMAN CARTER: So there are
23 exceptional individuals out there and you're asking for
24 a way to deal with those and I support that.

25 MR. FERRARA: Thank you.

1 COMMISSIONER SOWELL: Mr. Chairman, on a
2 personal note, I would like to point out that some of
3 us are kind of like the old horses. We might still
4 want to be competitive, and maybe we can't, but we
5 don't want somebody to regulate us out of business. So
6 I'm for the old horses.

7 CHAIRMAN ADAMS: Thank you, John.
8 I hope we don't have any more comments.

9 Mr. Hooper?
10 Did he -- he signed on this item, but
11 he's left the building.

12 COMMISSIONER SOWELL: He's gone to take a
13 nap.

14 CHAIRMAN ADAMS: Speaking of old horses.
15 Okay. No one else signed on this item.
16 Are there any discussion?

17 The Chair will entertain a motion to
18 publish the proposed Rule 313.111 in the Texas Register
19 for public comment.

20 COMMISSIONER SOWELL: I'll move it be
21 approved.

22 MR. ANGELO: Second.

23 VICE-CHAIRMAN CARTER: Second.

24 CHAIRMAN ADAMS: Moved and seconded.

25 All those in favor?

1 COMMISSIONERS: Aye.

2 CHAIRMAN ADAMS: Any opposed?

3 The motion carries. Thank you.

4 The next item, proposal to amend 319.363,
5 testing for total carbon dioxide. Dr. Marsh?

6 MR. MARSH: Commissioners, the request
7 today is to change the violation level of total carbon
8 dioxide levels from 39 millimoles per liter to 37
9 millimoles per liter.

10 The test itself is a major -- it is a
11 blood gas analysis of serum from venous blood to
12 determine the level of total carbon dioxide. This is
13 done to prevent the practice of overloading race
14 animals with bicarbonate or other alkalinizing
15 substances on race day in an effort to prevent fatigue
16 of muscle tissue and therefore prolong the endurance of
17 the performance.

18 This is a relatively new rule. It was
19 passed in January of 2006. And I want to give you a
20 little background on where we got the 39 and why we
21 want to change it to 37.

22 We were one of the first jurisdictions in
23 the country to have a rule regulating carbon dioxide
24 levels. It was a new science. Prior to even coming
25 before the Commission, we did a test survey, a

1 nonbinding survey, in which we actually bled the
2 horses, sent the blood to the lab, and got the TCO₂
3 levels basically to see if we even needed a rule, was
4 this practice happening in Texas. And we determined
5 yes, it was. And so the rule needed to be proposed.

6 I was the one that came up with the 39
7 level. I reviewed all the literature I could find and
8 most of it over 10 years old. I looked at the
9 statistics from our survey, which was four weeks worth
10 of about a hundred horses a day. And I determined 39
11 was a fair level.

12 Another factor was that none of the
13 research was done with horses that were on furosemide,
14 which the majority of our Thoroughbred horses that race
15 in Texas are. So I went to the 39 level and
16 recommended it and it became a rule.

17 We began our actual testing in April of
18 2006 at Lone Star Park. Our testing looked good. Our
19 figures were good. And we were real pleased. In the
20 fall of 2006 at Retama Park, we started seeing elevated
21 TCO₂ levels across the board. We saw high numbers. We
22 saw high averages. We just didn't like the looks of
23 things.

24 So I got with Ken Peck at the lab and I
25 said, "Let's look and see what's happening. Let's try

1 to figure out why everything is creeping up on us,"
2 which Ken did. And he did a marvelous job and it was
3 really a head-scratching situation because we had no
4 answers at first. We had none. We tried everything.

5 Finally Ken got together with the
6 laboratories in Iowa and Ohio. We sent paired
7 samples. And we wound up revising our testing
8 procedures. And our testing procedures now are much
9 more on the normal levels of the national average, so
10 we're in line with the nation on our TCO2 testing.

11 We implemented the changes in the fall --
12 in the spring of 2007, February of 2007. We've been
13 following our results since then. And therefore, I
14 request that we lower the level because of our -- a
15 change in our testing procedures.

16 Any questions?

17 CHAIRMAN ADAMS: Yes, sir.

18 COMMISSIONER SCHMIDT: Yes, sir. I
19 support your recommendations here. I just had two
20 quick questions. One is: TCO2 levels, how accurate is
21 your test? The 37 percent measurement, what's the
22 range there? Is it 35 to 39 or is it a one percent
23 error or a quarter percent error?

24 MR. MARSH: One millimole.

25 COMMISSIONER SCHMIDT: I guess the second

1 one is in terms of -- some of the horses at Lone Star
2 run in fairly extreme heat. Have you considered that
3 perhaps over time we need a Texas standard versus an
4 Iowa standard? In other words, our CO2 levels may be
5 different just because of exposure to the heat that our
6 horses see in Texas. Is that a reasonable assumption
7 or did you consider that?

8 MR. MARSH: That is an assumption and
9 that's why we continue to monitor our levels on a
10 weekly basis and see where our readings are standing so
11 we are aware of what's going on.

12 COMMISSIONER SCHMIDT: Thank you.

13 CHAIRMAN ADAMS: Any other questions?

14 Thank you, Dr. Marsh.

15 We have no one else signed to speak on
16 this issue. The Chair would entertain a motion to
17 publish the proposed amendment of Rule 319.363 in the
18 Texas Register for public comment.

19 VICE-CHAIRMAN CARTER: So move.

20 COMMISSIONER SCHMIDT: Second.

21 CHAIRMAN ADAMS: Moved and seconded.

22 All those in favor?

23 COMMISSIONERS: Aye.

24 CHAIRMAN ADAMS: Any opposed?

25 The motion carries.

1 The next item, proposal to amend 321.407,
2 approval of wagering on simulcast import races. Lila
3 Smith, pari-mutuel administrator.

4 MS. SMITH: Good afternoon,
5 Commissioners. I'm excited to bring this before you.
6 When we first started approving simulcast approvals, we
7 had a five-day wait. Then several years ago we went to
8 a three-day wait because of streamlining our
9 procedure. Some of you were here last year when we
10 started our online simulcast and it has streamlined it
11 so well that we feel that we can go to one day, which
12 the simulcast directors all have wanted for a long
13 time.

14 So I would recommend changing from three
15 days that the request has to be in to us, the Racing
16 Commission, to one day.

17 CHAIRMAN ADAMS: Any questions?

18 Thank you, ma'am.

19 Mr. Brown and Mr. Shubeck, are you in
20 favor of this?

21 MR. BROWN: Yes, we are.

22 MR. SHUBECK: Yes, we are.

23 CHAIRMAN ADAMS: Can we shorten this
24 by --

25 MR. BROWN: We're very hungry. You can

1 shorten it.

2 CHAIRMAN ADAMS: So are we.

3 So any questions then?

4 MR. ANGELO: Move approval.

5 COMMISSIONER EDERER: Second.

6 CHAIRMAN ADAMS: It's been moved and
7 seconded that we publish this proposed amendment in the
8 Texas Register.

9 All those in favor?

10 COMMISSIONERS: Aye.

11 CHAIRMAN ADAMS: Any opposed?

12 The motion carries.

13 Okay. The last item is amendment to Rule
14 303.16, historically underutilized business.
15 Mr. Fenner?

16 MR. FENNER: Commissioners, this is a
17 rule change that we -- that you all approved for
18 proposing in the Texas Register at the last Commission
19 meeting. It has been published in the Register. We
20 received no comments on this rule. It's a purely
21 technical correction in our historically underutilized
22 business rule to realign the pointer in it to the new
23 location of that program at the comptroller's office.

24 CHAIRMAN ADAMS: There is no one signed
25 to speak on this, so the motion -- the Chair would

1 entertain a motion to adopt the amendment to Rule
2 303.16 as published in the Texas Register.

3 COMMISSIONER EDERER: So move.

4 VICE-CHAIRMAN CARTER: Second.

5 CHAIRMAN ADAMS: Moved and seconded that
6 we do so.

7 All those in favor?

8 COMMISSIONERS: Aye.

9 CHAIRMAN ADAMS: Any opposed?

10 The motion carries.

11 I have nothing further on the agenda, so
12 the meeting is now adjourned. Wait a minute.

13 MS. KING: Next meeting date.

14 CHAIRMAN ADAMS: It's not on my agenda.

15 MS. KING: It's on the next page.

16 MR. FENNER: It's on page 11 of 11.

17 CHAIRMAN ADAMS: There is no other page.

18 VICE-CHAIRMAN CARTER: You can use mine.

19 CHAIRMAN ADAMS: Okay. There is a
20 scheduled next Commission meeting proposal of February
21 the 7th. Has everyone had a chance to check their
22 calendar on that? Is that okay, Mr. Pablos?

23 COMMISSIONER PABLOS: I just have a point
24 of privilege after this so you won't adjourn.

25 CHAIRMAN ADAMS: We're being very

1 technical now. Is the 7th okay then?

2 Okay. So it's done.

3 Yes, Mr. Pablos.

4 COMMISSIONER SOWELL: February 7th?

5 CHAIRMAN ADAMS: February 7th.

6 COMMISSIONER PABLOS: Mr. Chairman,
7 forgive me, everyone. I know we're all hungry. But I
8 did want to thank Charla Ann and staff for arranging a
9 trip for me to the Sam Houston Race Park this weekend.
10 Lila Smith was very kind in touring me. I got to see
11 most of the areas of the park. I thank you for putting
12 up with my four-year-old boy's questions. It seemed
13 that he was a Commissioner asking all the questions and
14 not me.

15 But I do want to encourage everyone on
16 this Commission to visit the parks, be out there,
17 listen to what our staff is saying. I think it's
18 important, a lot of eye-opening comments. And so I
19 just wanted to express my gratitude to you all. Thank
20 you very much. That's it.

21 CHAIRMAN ADAMS: Yes, ma'am?

22 MS. KING: You're very welcome,
23 Commissioner. We will be at Lone Star Park on Friday
24 and Saturday this weekend if anybody wants to be at
25 Lone Star Park. We're going to be doing some touring

1 with sunset. So please come by and let us know.

2 CHAIRMAN ADAMS: And those of you all who
3 have not gone to Lone Star, that's -- you need to do
4 that.

5 Thank you very much. The meeting is
6 adjourned.

7 (Proceedings concluded at 1:49 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3

4 I, SHERRI SANTMAN FISHER, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-captioned matter came on for
7 hearing before the TEXAS RACING COMMISSION as
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said
10 hearing were reported by me, accurately reduced to
11 typewriting under my supervision and control and, after
12 being so reduced, were filed with the TEXAS RACING
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,
15 Texas, this 3rd day of December, 2007.

16

17

18

19

20

21

22 SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 12-31-07
23 Sunbelt Reporting & Litigation Services
Firm Registration No. 87
24 6448 Highway 290 East, Suite E105
Austin, Texas 78723
25 (512) 465-9100