

1 BEFORE THE
2 TEXAS RACING COMMISSION
3 AUSTIN, TEXAS

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9 COMMISSION MEETING
10 OCTOBER 20, 2009

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19 Reported by: Lorrie A. Schnoor
 Job No.: 80448

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1 BE IT REMEMBERED that the above entitled matter came
 2 on for hearing on the 20th day of October, 2009,
 3 beginning at 10:32 a.m. at 105 West 15th Street, Room
 4 120, Austin, Travis County, and the following
 5 proceedings were reported by Lorrie A. Schnoor,
 6 Certified Shorthand Reporter in and for the State of
 7 Texas, Registered Merit Reporter, Certified Realtime
 8 Reporter, and Board Certified Realtime Professional.

9 APPEARANCES

10
 11 Commissioners: ROLANDO PABLOS
 G. KENT CARTER
 RONALD F. EDERER
 12 ROBERT SCHMIDT
 GLORIA HICKS
 13 VICKI WEINBERG
 C. TOM CLOWE, JR.
 14 ANN O'CONNELL

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1 CHAIRMAN PABLOS: Okay. Good morning.
2 The time is 10:32. I'll call today's meeting of the
3 Texas Racing Commission to order. Good morning
4 everyone. Thank you for being here. Commissioners,
5 thank you.

6 At this time, I'd like to recognize
7 Carolyn to please call role.

8 MS. WEISS: Commissioner Tom Clowe?

9 MR. CLOWE: Present.

10 MS. WEISS: Commissioner Ron Ederer?

11 COMMISSIONER EDERER: Here.

12 MS. WEISS: Commissioner Gloria Hicks.

13 COMMISSIONER HICKS: Here.

14 MS. WEISS: Commissioner Ann O'Connell?

15 MS. O'CONNELL: Here.

16 MS. WEISS: Commissioner Robert Schmidt?

17 COMMISSIONER SCHMIDT: Present.

18 MS. WEISS: Commissioner Vicki Weinberg?

19 COMMISSIONER WEINBERG: Here.

20 MS. WEISS: Vice-Chairman Kent Carter?

21 VICE-CHAIRMAN CARTER: Yes.

22 MS. WEISS: Chairman Rolando Pablos?

23 CHAIRMAN PABLOS: Here.

24 Do we have a quorum?

25 MS. WEISS: Yes, sir.

1 CHAIRMAN PABLOS: Thank you.

2 Mark, do we have anyone signed up to speak
3 under our public comment?

4 MR. FENNER: None for public comment.

5 CHAIRMAN PABLOS: None. Thank you. At
6 this time, we'll go into general business. We'll have
7 discussion and consideration of III-A, budget and
8 finance update.

9 Shelley, could you please give us the
10 update?

11 MS. HARRIS-CURTSINGER: Good morning,
12 Commissioners. behind Tab III.A.1, you will find an
13 update of the agency's fiscal year 2009 budget status as
14 of August 31st, 2009, with approximately 99 percent of
15 expenditures being reported. As of this accounting
16 cycle, the agency is 11 percent under the operational
17 budget projections for fiscal year 2009. We are
18 currently closing out fiscal year 2009 and finishing up
19 the annual financial report which is due to the
20 oversight agencies by November 20th.

21 Also in accordance with Section
22 309.8(e)(1), the agency rules, the rules require after
23 the end of the fiscal year the agency has determined
24 that for now, no changes to the fee schedule will be
25 recommended.

1 As I e-mailed each of you on
2 September 29th, the LBB did approve the activation of
3 Rider 12 that will provide the agency with 1.5 million
4 in general revenue funding. We have this past week
5 successfully moved these funds within the agency's --
6 the state's accounting system to where the agency has
7 access to these funds.

8 I have provided you today an update of
9 fiscal year 2010 budget, and it's at each of your seats.
10 This report shows the actual appropriations the agency
11 was granted by the legislature and the General
12 Appropriations Act within Senate Bill 1 with September's
13 expenditures added to it. Our next step will be to
14 complete the fiscal year 2010 operating budget, which we
15 estimate as of now will be less than the appropriations
16 actually approved.

17 And the agency has received -- on a good
18 note for the agency -- the Sterling Award by the
19 Universal Public Purchasing Certification Council. This
20 is "A national recognized credential body for
21 procurement professionals for maintaining its status as
22 a fully certified agency for three consecutive years."
23 I brought it so that y'all could take a look at it.
24 This means that the agency's purchaser, John Altman, has
25 maintained active certification as a certified

1 professional purchase public buyer for the past three
2 years. Certification reflects established standards and
3 competencies for governmental purchasing personnel and
4 attests to the purchaser's ability to obtain maximum
5 value for the taxpayer's dollar. The Sterling Award was
6 created to formally recognize an agency's commitment to
7 excellence and public procurement, and we are proud to
8 be the recipient of this award. So I've got it here if
9 y'all would like to take a look at that. It's nice to
10 bring good news to y'all occasionally.

11 And if you have any questions, I'm here to
12 answer them.

13 CHAIRMAN PABLOS: Thank you.
14 Commissioners, are there any questions of Shelley?
15 Hearing none, thank you very much. Appreciate it.

16 Next item, Item III-B, report on racetrack
17 inspections. I'd like to recognize Carole Olewin,
18 please.

19 MS. OLEWIN: Good morning, Commissioners.
20 This is a report on racetrack inspection activities. We
21 had seven inspections since the last reporting period.
22 The first five on your report are for Lone Star Park,
23 and these are beginning-of-the-meet inspections. And
24 the next two are for Retama Park, and these were also
25 beginning-of-the-meet inspections. And we have no

1 outstanding items at this time.

2 Do you have any questions?

3 CHAIRMAN PABLOS: Are there any questions,
4 Commissioners? Thank you very much.

5 We'll take item III-C, report and update
6 by executive director and staff regarding legislative
7 and administrative matters. Charla Ann, please.

8 MS. KING: I have a fairly short report
9 today, Mr. Chairman and Members.

10 As a state agency, we have numerous
11 planning processes and reports that are required. And
12 without going into a lot of detail about it, I want to
13 make sure that you're aware of the reports as they take
14 considerable time and resources to produce, and there's
15 one particular report that will need your support to
16 develop.

17 Currently we're completing the development
18 of our business continuity plan, which also includes
19 disaster recovery planning. We updated this plan and it
20 fulfills requirements from the State Office of Risk
21 Management and the Department of Information Resources.
22 The plan also implements recommendations from our most
23 recent internal audit.

24 The plan specifies our response as an
25 agency for recovery procedures after a disaster has

1 occurred. It addresses restoration of agency
2 headquarters and directs our staff members by functional
3 area to restore our functions as quickly as possible.
4 The plan also includes each department's individual
5 recovery plan which outlines the department's critical
6 task, our IT needs, and recovery strategies for the
7 field team.

8 And as we finish up on the business
9 continuity planning, then we're going to be turning to
10 another important area which is records retention. As
11 you know the Texas State Library & Archives Commission
12 requires all state agencies to submit a records
13 retention schedule for approval and recertification
14 every four years. The purpose of the schedule is to
15 produce a list of official state records for the agency
16 and all its departments. It prescribes the period of
17 authorized retention for each category of records. Each
18 agency is required to designate a staff member as their
19 records management officer who serves as the agency
20 representative for records, archives, and information
21 management issues. And Meegan Goode is our designated
22 officer.

23 Staff is now working on a new agency
24 policy for records retention to ensure that the
25 information is consistently kept, and we'll be reviewing

1 the schedule in the upcoming months to identify any
2 needs for revisions. This is an important area. It
3 requires a lot of time and commitment and consistency.
4 We receive many Open Records requests, and we have to
5 handle them all carefully. We work in conjunction with
6 the Attorney General's office to accomplish those
7 requirements.

8 Now before the end of the year, we will
9 also be starting on our annual report. We publish an
10 annual report every year. It's required by the Texas
11 Racing Act. We submit it to the governor, the
12 lieutenant governor, and the speaker every January. And
13 as most of you know, it covers our agency operations and
14 the status of the racing industry.

15 We're also required to obtain a report
16 from DPS on organized crime and illegal gambling
17 activities in Texas, and we submit that information with
18 our report.

19 We found this to be a very valuable
20 report. It answers a lot of questions. We keep it
21 on-line and makes it easier for people to look at our
22 agency and see the kinds of things that we do.

23 Staff will begin working on the report
24 around the time of the next commission meeting in
25 December in order to meet the January 31st deadline, and

1 then we're going to move into the development of the
2 strategic plan.

3 In the spring of every even-numbered year,
4 months before we get to the legislative session, all
5 state agencies are required to submit their strategic
6 plan to the governor and the Legislative Budget Board.
7 It's the first step in the performance-based budgeting
8 process. It covers a six-year horizon. It's a
9 long-term view of the agency and an opportunity for goal
10 setting, and it identifies our specific goals and our
11 outcomes: What are we trying to accomplish.

12 Included in the plan which is a section
13 that I think is very important is an assessment of key
14 internal and external factors affecting the agency. And
15 it's a good way for us to conduct an evaluation of our
16 efforts here at the agency: How are we doing internally
17 and externally.

18 The plan is reviewed by a broad audience:
19 The governor, the legislature, and our client and
20 constituency groups. It's also the starting place for
21 our budget. And in that, we also have performance
22 measurement in the strategic plan, and we're required to
23 revisit and propose possible revisions to the
24 performance measures.

25 Now, unfortunately in our case, the

1 performance measures -- our performance measures that
2 you see at the Legislative Budget Board and in our bill
3 pattern have become less and less useful unfortunately.
4 This is because most of the measures that were selected
5 years ago were mostly tied to industry performance. So
6 as the industries decline, the agency's performance
7 measures has declined as well.

8 So, for example, one of the things that we
9 are measured on is how many animals that we would be
10 inspecting before a race. Well, as we've decreased the
11 number of races, those figures aren't looking very good.
12 We're not meeting our performance measures. So a lot of
13 it we really don't have control over, but we're going to
14 look at the measures to see if any improvements can be
15 made. And we're always open to ideas and input from the
16 Commissioners and other stakeholders as well for the
17 strategic planning process, and so we'll be getting that
18 after we're wrapping up the annual report.

19 That concludes my remarks for today,
20 Mr. Chairman.

21 CHAIRMAN PABLOS: Thank you, Charla Ann.

22 Are there any other questions,
23 Commissioners, of Charla Ann?

24 COMMISSIONER EDERER: I have a question of
25 Charla Ann. I didn't hear. When do you start the

1 planning for the strategic planning?

2 MS. KING: We haven't gotten our deadline
3 for when we have to submit it, but we usually start when
4 we're wrapping up the annual report at the end of
5 January. So I'm -- what I need to do is put together
6 some information to poll you-all, to survey and get your
7 ideas, and I'll probably do that right after the first
8 of the year, start having those discussions so you have
9 a chance to think about it. Then we'll really start
10 writing it in earnest in February, in March, so that
11 we're ready when they tell us when it's due. We don't
12 always know exactly when it's due.

13 COMMISSIONER EDERER: Do you have any
14 guesstimation as to when it's usually due?

15 MS. KING: June.

16 COMMISSIONER EDERER: In June. Thank you.

17 CHAIRMAN PABLOS: Any further questions,
18 Commissioners?

19 Thank you, Charla Ann. I appreciate --

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

21 CHAIRMAN PABLOS: -- the hard work.

22 Next item we'll take up: Report on
23 racetrack meets. I'd like to recognize Doug Trout,
24 please.

25 MR. TROUT: Good morning, Commissioners.

1 Since the September 15th Commission meeting, Lone Star
2 Park started its quarter horse meet and has completed 11
3 performances. To date, attendance is down 25 percent,
4 and the handle is down 22 percent compared to the same
5 number of performances in the 2008 quarter horse meet.
6 Quarter horse racing continues at Lone Star Park for the
7 next six weeks.

8 I reported at the last meeting that the
9 Retama Park turf track was not safe for racing because
10 of the drought. Our stewards, along with Retama
11 management and several trainers, continue to monitor the
12 track on a daily basis. Fortunately, due to the recent
13 rains and work by the Retama track maintenance staff,
14 the turf has recovered.

15 The Retama race office took entries for
16 turf racing for September 24th and 25th, but inclement
17 weather forced those races onto the dirt track. Retama
18 was able to resume turf racing on September the 26th.
19 11 performances were affected by the track condition,
20 with a total of 20 races being moved from the turf to
21 the dirt track.

22 Retama's attendance is down only
23 2 percent, but the handle is down 14 percent compared
24 with the same period during the 2008 Thoroughbred meet.
25 Thoroughbred racing continues at Retama for the next

1 three weeks. Then there is a two-week Thoroughbred lull
2 as racing moves to Sam Houston Race Park on the day
3 after Thanksgiving for a 63-day winter Thoroughbred meet
4 that runs through April the 3rd. This will be the first
5 time turf races have been run at Sam Houston since the
6 installation of the turf course crossing.

7 A crossing area was needed over the turf
8 track -- a concrete access road, if you will -- to
9 provide access to the infield for vehicles supporting
10 musical entertainment events. The 100-foot long by
11 16-foot wide crossing area can be converted back to a
12 turf surface by -- turf surface for racing by utilizing
13 removable grass pallets that are designed to look and
14 feel the same as the rest of the course. Prior to this
15 new surface's use, Commission staff, along with
16 stakeholders, will inspect and test the crossing for
17 suitability and safety.

18 Gulf Greyhound Park continues to run six
19 performances a week with a slight drop in attendance of
20 1.4 percent and drop in handle of 2.5 percent over the
21 same period in 2008.

22 Valley Greyhound Park's attendance is up
23 2.2 percent, and wagering for the year is up 4.7 percent
24 over the same period.

25 This concludes my report. Be happy to

1 answer any questions, sir.

2 CHAIRMAN PABLOS: Any questions,
3 Commissioners?

4 COMMISSIONER SCHMIDT: I have one question
5 of Mr. Trout.

6 Mr. Trout, you say attendance for the
7 quarter horse meet at Lone Star was down 25 percent?

8 MR. TROUT: Yes, sir. Yes, sir.

9 COMMISSIONER SCHMIDT: Do you think
10 that -- thinking that reflects the economy, or have
11 marketing efforts have been curtailed due to the
12 bankruptcy issue? Do you know?

13 MR. TROUT: Sir, you would have to ask
14 someone from Lone Star Park to answer that question.
15 I'm not an expert in that area.

16 COMMISSIONER SCHMIDT: Okay. Thank you.

17 CHAIRMAN PABLOS: Any other questions,
18 Commissioners? Thank you very much.

19 MR. TROUT: Yes, sir.

20 CHAIRMAN PABLOS: Our next item is Item
21 III-D report by rules committee. And I'm taking that
22 up.

23 I want to thank staff for putting on this
24 last rules committee meeting. I think it was extremely
25 well attended by the industry.

1 Commissioner O'Connell, thank you for
2 being there.

3 I think we got a lot accomplished. As you
4 will recall back in February, we had our committee on
5 racetrack licensing submit their recommendations, their
6 findings and observations. And at this rules committee
7 meeting, we took up the concept of inactive of licenses.

8 Commissioner Clowe, based on the
9 observations that you've made, we've taken a look at
10 inactive licenses. We had a very good discussion. We
11 addressed it with the industry. And what the group
12 decided and the committee decided was to form a smaller
13 group so that the group itself can come up with
14 recommendations that would, in essence, address the
15 issue of inactive licenses.

16 And to a certain extent, we're doing that
17 with race dates. We're moving forward in that
18 direction. It's on the table. It's something that was
19 not accomplished during the legislative session, and so
20 we're taking a look at addressing this issue through
21 rule-making.

22 So that's one of the reports. I feel very
23 confident that the groups will get together. I don't
24 know if there's a date already set, Charla Ann, for that
25 group to get together.

1 MS. KING: It hasn't been set.

2 CHAIRMAN PABLOS: So I encourage you to
3 get together as soon as possible so that by the next
4 rules committee meeting, we'll have a report and we can
5 further discuss it. I'm very confident that everybody
6 will have the opportunity to provide input and
7 recommendations as well. So I'm very happy and pleased
8 with the progress of that committee.

9 We also took a look at the qualifications
10 and responsibilities of starters and assistant starters.
11 You'll see later on in today's agenda, we've recommended
12 for adoption a couple of rules related to this. There
13 was an issue with respect to the starter's ability to
14 assign assistant starters to horses at random, and now
15 this new rule is going to provide, with steward's
16 approval, the ability to make exceptions to that. And
17 that has to do with, you know, the health and safety of
18 the animals and the integrity of the race.

19 We also took a look at assistant starters
20 and their role. We discovered that there's really no
21 official training for them. And as you might know,
22 assistant starters can affect the outcome of a race.
23 And we want to make sure that they are properly trained.
24 And so, again, there's going to be a group that's going
25 to get together to propose training standards for them.

1 I know we've looked at our sky rules, model rules.

2 And so my wish was to make sure that as we
3 do move forward, we have some standards, not only with
4 respect to the way that the starting is being performed
5 but also following up to the next item with respect to
6 influencing the outcome of a race. We talked about
7 gratuities, and we understood that it's a common
8 practice in the industry to provide gratuities to some
9 of these starters and assistant starters. And so
10 Commissioner O'Connell and I asked a group to get
11 together and figure out a way where we can either
12 curtail any type of appearance of impropriety or take it
13 out altogether. And so they're going to come back to us
14 with some recommendations.

15 Any time the outcome of a race can be
16 affected and there's gratuities involved, I get very
17 nervous very quickly. And I understand it's a
18 tradition, but we want to make sure that any appearance
19 of impropriety is definitely eliminated, and that was
20 the purpose of that.

21 So that being said, that's our report. If
22 y'all have any questions, I'll be happy to answer them.
23 Okay. Hearing none --

24 COMMISSIONER EDERER: I have a question.

25 CHAIRMAN PABLOS: Yes, sir, please.

1 inactive licenses. Now -- all right. So there will be
2 a smaller rules committee that will make recommendations
3 to the Commission or to --

4 CHAIRMAN PABLOS: To the committee.

5 COMMISSIONER EDERER: To the committee.

6 And then the committee will make its recommendations to
7 us?

8 CHAIRMAN PABLOS: Right. What we
9 discovered is that we really haven't had ample time for
10 the industry to lay out it's, you know, vision and
11 recommendations, and so I felt it necessary to provide
12 even more opportunity for feedback. That way, we can
13 rest assured that everyone's had a chance to submit
14 their recommendations and provide their feedback.

15 COMMISSIONER EDERER: If the licenses -- I
16 don't know if we should take -- if I want to talk about
17 this now or when we start talking about race days.

18 CHAIRMAN PABLOS: Well, bring it up now
19 and then we can then --

20 COMMISSIONER EDERER: It seems to me that
21 if these licenses were to become active -- by that I
22 mean set up where they would have the pari-mutuel
23 facilities, because we know they can't build racetracks
24 right now, but they could get started toward that --
25 revenue that would come from this would actually come

1 back to the horsemen. Is that correct?

2 CHAIRMAN PABLOS: I don't know the answer
3 to that. Charla Ann.

4 COMMISSIONER EDERER: Where would the
5 revenue go? I mean because it does kick out revenue,
6 and it does come back to the Commission. Is that
7 correct?

8 MS. KING: If they built facilities and
9 started simulcasting --

10 COMMISSIONER EDERER: Correct.

11 MS. KING: -- it would start to generate
12 purse revenue off the 1 percent of simulcasting, and
13 that would be located with each track. And then it
14 could become available to get into the purse structure.
15 And Sammy can provide more details on that process.

16 COMMISSIONER EDERER: All right. So that
17 would benefit the horsemen ultimately?

18 MR. JACKSON: Correct.

19 COMMISSIONER EDERER: Potentially?

20 MS. KING: Yes, sir.

21 COMMISSIONER EDERER: The same as like
22 Corpus Christi. Corpus is going to have their
23 pari-mutuel is already functioning now, even though they
24 have no race dates or they're minimal. The revenues
25 coming from their pari-mutuel does benefit the overall

1 industry. Is that correct?

2 MS. KING: Yes, sir.

3 COMMISSIONER EDERER: All right. So would
4 it be fair to say that the more the merrier? In other
5 words, the more facilities that are properly
6 functioning, the more benefit to the horsemen?

7 MR. JACKSON: Well, and I would add,
8 Mr. Commissioner, there are multiple beneficiaries in
9 that economic model. There's horsemen who will obtain
10 purse money through that model. There are the breeders
11 who -- that are set aside for specific breed registries,
12 so the breeders would actually, as a separate group,
13 would have economic benefit from that. The state has a
14 specific set aside, so the general revenue fund outside
15 of us, outside of the racing commission, but the
16 comptroller's general revenue fund, if they manage it,
17 would have economic benefit from this, as well as the
18 racetrack itself would have economic benefit because
19 they would be generating revenue toward their bottom
20 line on every dollar wagered as well.

21 But yeah, the more that are there, the
22 more that benefit would be obviously, and then those
23 dollars would be running through those economic models
24 to the benefit of those parties.

25 CHAIRMAN PABLOS: Mark?

1 MR. FENNER: I just want to clarify that
2 this discussion is really now taking place under Agenda
3 Item IV-B and C, the allocation of race dates.

4 CHAIRMAN PABLOS: Okay.

5 MR. FENNER: Just for the record.

6 CHAIRMAN PABLOS: Well, then, let's go
7 ahead and hold that thought, then, if you don't mind.

8 COMMISSIONER EDERER: One more thing. All
9 right. These are some of the issues that are being
10 addressed by the rules committee. Right?

11 CHAIRMAN PABLOS: Right.

12 COMMISSIONER EDERER: Okay.

13 CHAIRMAN PABLOS: Yes, sir.

14 Commissioner Clowe?

15 MR. CLOWE: And pursuant to those items
16 that you brought to our attention, we have before us the
17 issue of two tracks that were asked to set race dates
18 for 2010 and have responded by letter correspondence
19 that we have seen. They're unable to do so and are not
20 requesting dates for 2010 but 2011.

21 And further, my understanding of the
22 statute is that when a license is granted and it's
23 active and race dates are set, then the process begins
24 so that a performance bond is required by the
25 Commission; and if there's nonperformance, there's

1 forfeiture of that bond.

2 MR. FENNER: Well, not exactly. The
3 Commission has the authority to require security bonds
4 from these inactive licenses, but it's optional.
5 However, the granting of live race dates does impose a
6 duty on the part of the racetrack to exercise due
7 diligence in preparing to conduct live racing. So we'll
8 be tracking those inactive licenses as they become
9 active to make sure that they are exercising due
10 diligence.

11 MR. CLOWE: Okay. Thank you for that
12 clarification.

13 Now, additionally for my benefit and maybe
14 for some of the other commissioners, define that
15 situation in regard to the granting of right for the
16 off-track betting at these locations. What options does
17 the Commission have and what duties does the license
18 have in regard to that activity?

19 MR. FENNER: Well, off-track -- true
20 off-track betting is not legal in Texas. Simulcast
21 wagering is only legal in Texas at a licensed racetrack
22 facility, so...

23 MR. CLOWE: All right. Now, do they have
24 to have live racing?

25 MR. FENNER: They have to have live race

1 dates granted to them.

2 MR. CLOWE: To them. So if a track -- I'm
3 trying to get this straight in my mind and maybe some
4 other commissioners will benefit from it as well.

5 If a licensee does not have live race
6 dates in effect, then they cannot legally conduct onsite
7 racing wagering?

8 MR. FENNER: That's correct. They would
9 not conduct simulcasting, to be specific, yes. But
10 you're right.

11 MR. CLOWE: The term is simulcasting?

12 MR. FENNER: Yes.

13 MR. CLOWE: Okay. So in our last action
14 in our last meeting, we granted, I believe, two dog
15 tracks simultaneous -- simulcasting wagering rights, but
16 they have some race dates.

17 MR. FENNER: Yes, sir.

18 MR. CLOWE: And that was the legality of
19 the grant.

20 MR. FENNER: Right. That -- they have
21 live race dates granted for -- I believe it's July of
22 2011.

23 MR. CLOWE: Yeah.

24 MR. FENNER: And as long as they have
25 those live race dates granted to them, then they may

1 apply for simulcasting dates and the executive director
2 has the authority to approve those requested
3 simulcasting dates.

4 MR. CLOWE: And the statute and the rules
5 apply likewise to horse racing as well as dog racing?

6 MR. FENNER: Yes, sir.

7 MR. CLOWE: Okay. That's helpful. Thank
8 you.

9 CHAIRMAN PABLOS: Okay. If there are any
10 other questions, I'd like to hold them for the item that
11 Mark referred to, if that's okay, with respect to this.

12 MR. CLOWE: Well, except to make this
13 comment, and I think the Commissioner has brought it up
14 following your report: These subjects are involved in
15 each other or intertwined.

16 CHAIRMAN PABLOS: Very much so.

17 MR. CLOWE: So, you know, we have on the
18 agenda as an action item these two tracks and the
19 granting of race dates, and then you've reported to us
20 there's a smaller committee that's going to report back
21 to the rules committee. I think we're going to have to
22 have some clarity in our thinking about what action
23 comes first, second, and third.

24 CHAIRMAN PABLOS: Absolutely. Good point,
25 Commissioner.

1 VICE-CHAIRMAN CARTER: Could I get one
2 thing?

3 CHAIRMAN PABLOS: Yes.

4 VICE-CHAIRMAN CARTER: Back to the
5 rules -- the rules committee.

6 CHAIRMAN PABLOS: Yes, sir.

7 VICE-CHAIRMAN CARTER: Do you have the
8 subcommittee appointed already, or is that to be in the
9 future?

10 CHAIRMAN PABLOS: There -- it's not really
11 a subcommittee. It's staff meeting with the industry.

12 VICE-CHAIRMAN CARTER: Okay. All right.

13 CHAIRMAN PABLOS: So there -- you know,
14 you're welcome to attend those meetings, but I didn't
15 want to create more bureaucracy. It's just the staff
16 getting together in the industry and talking about that
17 because, as I mentioned, I felt that there was -- that
18 the industry really hadn't had an opportunity to weigh
19 in on that.

20 VICE-CHAIRMAN CARTER: Thank you.

21 CHAIRMAN PABLOS: Any other comments
22 before we move on?

23 Okay. Then we'll move on to Item E,
24 report on wagering system testing by gaming
25 laboratories.

1 Carole Olewin, please.

2 MS. OLEWIN: Good morning, again,
3 Commissioners. I'm Carole Olewin. Excuse me.

4 In April, staff gave a presentation to the
5 Commissioners on the agency's oversight of pari-mutuel
6 wagering and the history behind the Gaming Laboratories
7 testing of pari-mutuel wagering systems.

8 Today, we're presenting to you the staff
9 report on the wagering system testing project that
10 started in July of 2008 when GLI was awarded the
11 contract to test the pari-mutuel wagering systems
12 operating at Texas racetracks.

13 GLI tested and inspected each of the three
14 tote companies that provide wagering systems in Texas,
15 which are AmTote International, Scientific Games Racing,
16 and United Tote.

17 GLI prepared a detailed audit report of
18 finding for each of these three tote companies. Those
19 findings were given to each of the respective tote
20 companies and they were asked to provide a response to
21 the findings. There are selected remarks by the three
22 tote companies included in the staff report.

23 In addition to the staff report is a copy
24 of GLI's final report on the 2009 tote system testing
25 which highlights the testing procedures, general

1 findings, recommendations, and conclusions of the
2 testing project.

3 Staff feels the wagering system testing
4 project was productive and beneficial. GLI's report met
5 the goals of the racing commission by fulfilling the
6 state auditor's office recommendation for the racing
7 commission to strengthen our EDP review of tote systems,
8 by validating the integrity of tote systems for the
9 patrons, racetracks, and the state comptroller, by
10 identifying problems and solutions and suggesting
11 improvements to pari-mutuel wagering operations by
12 validating methods currently in use by the racing
13 commission to test pricing pool distributions, by
14 testing wagering terminals, and the information
15 technology network at a high level of expertise and by
16 helping to shape the future of tote system regulation of
17 certification.

18 Based upon the findings in the GLI report
19 and the existing Texas Racing Commission Regulatory
20 Oversight Program, staff concludes that AmTote
21 International, Scientific Games Racing, and United Tote
22 are qualified to operate at Texas racetracks, that
23 independent, third-party testing of tote systems proves
24 valuable to tote system regulation and should be
25 continued, that certified laboratories should test and

1 evaluate new tote technology before it is placed into
2 service to ensure the integrity of the tote systems, and
3 that it would be advantageous for the racing
4 commissioners to work in conjunction with RCI
5 jurisdictions to collaborate on future wagering system
6 testing and bull riding and that the racing commission
7 should promulgate additional rules for the regulation of
8 wagering terminals.

9 Joining us today are representatives from
10 three tote companies that I'd like to introduce. If
11 they'll please stand up when I call out their name.
12 Matthew Lackowski with AmTote International; Dave
13 Halfslip with Scientific Games Racing; and Jorge de la
14 Garza with United Tote.

15 Before I turn this over to Kevin Mullally,
16 general counsel and senior director of government
17 relations for Gaming Laboratories, I'd like to provide a
18 brief background on GLI.

19 GLI has served regulatory bodies in the
20 casino gaming, charitable gaming, and lottery business
21 for over 19 years. They are accredited with the
22 International Organization for Standards and employ
23 mathematicians, hardware engineers, software engineers,
24 system and communication protocol engineers, and
25 compliance engineers to perform the functions that are

1 required to run the testing lab.

2 And that concludes my report.

3 CHAIRMAN PABLOS: Are there any clarifying
4 questions, Commissioners?

5 Commissioner Clowe?

6 MR. CLOWE: In the report that you sent us
7 dated October 2009 on Page 7 of 8, under "United Tote,"
8 the second item beginning with the sentence, "However
9 there are areas in the report" -- do you have that?

10 MS. OLEWIN: Yeah, the report that
11 suggests strengthening in design and security?

12 MR. CLOWE: Could you give us a little
13 further explanation of what you mean in the second
14 sentence there, "We believe these issues require the
15 overall industry"? What are you recommending there?
16 What is being recommended there?

17 MS. OLEWIN: These were comments that came
18 from Jeff True who is the president of United Tote.

19 MR. CLOWE: Uh-huh.

20 MS. OLEWIN: And in the details of the
21 report, they go into software management and some
22 terminal management rules and standards, and he felt
23 that the industry as a whole, being the other tote
24 companies, should get together and -- or I believe they
25 should all get together and should be part of any

1 rule-making process or at least suggestions for future
2 rules for software and wagering terminals.

3 MR. CLOWE: So that collaboration is his
4 recommendation, and I guess they're thinking through
5 what the legal limits of that is?

6 MS. OLEWIN: I believe so.

7 MR. CLOWE: Okay. Thank you.

8 CHAIRMAN PABLOS: Any other questions,
9 Commissioners? Okay. I have -- is it Kevin?

10 MS. OLEWIN: Yes.

11 CHAIRMAN PABLOS: Mullally to speak,
12 please. Please come up.

13 MR. MULLALLY: Mr. Chairman, members of
14 the Commission, thank you for the opportunity to talk to
15 you today.

16 I have a lot of relatives in -- several
17 relatives in Texas. It's one of my -- I travel all over
18 the world, and this is one of my favorite cities and
19 favorite venues.

20 The -- I think the first thing I'd like to
21 address before I get into the test results is really
22 what is a test lab and why do we test? Whenever I talk
23 to people and tell them who I represent, I think visions
24 of people in white lab coats walking around with a bunch
25 of test tubes pops through people's heads. That's

1 really not what we are.

2 We're really computer software and
3 hardware engineers. We employ a lot of specialties
4 within those disciplines. As Carol mentioned, we have
5 people that specialize in math, people that specialize
6 in computer software and computer hardware,
7 communication protocols, network security, technical
8 compliance, the process of writing technical standards
9 or helping regulators write technical standards, and we
10 have our own internal QA process that includes a
11 compliance department that maintains our external
12 certifications. Not only do we certify people, but we
13 actually are certified by ISO and not only periodically
14 review our ability to do what we do, but they also look
15 at how we do it to ensure that it's scientifically
16 valid.

17 So if you -- I would like to offer an open
18 invitation if, in the course of your travels, you find
19 yourself in New Jersey or Denver, Colorado or Las Vegas,
20 I would love to have you visit one of our facilities
21 there.

22 We have 110,000 square feet at our
23 headquarters in Lakewood, New Jersey. We have 80,000
24 square feet in Las Vegas. And then we have another
25 50,000 square feet in Denver. We also have nine

1 international offices on almost every continent now.
2 We're in South Africa's -- Africa, Asia, Europe and
3 Australia.

4 So, you know, why do we test?
5 Pari-mutuel's actually the last of the wagering
6 industries to adopt this as a -- and it's really -- I
7 mean, Texas is really showing some leadership in this.
8 It's not -- it has not permeated the entire pari-mutuel
9 industry as of yet. All the other wagering industries
10 independently test their technology to ensure that it
11 meets the statutory and regulatory requirements of each
12 jurisdiction.

13 Pari-mutuel has been slow to do that, and
14 I think that some of the things that are -- you would
15 normally expect to see in a regulatory system are
16 missing on the pari-mutuel side as a result.

17 The reason you test is you want
18 independent verification that the software works, that
19 it does what it's supposed to do. It's part of risk
20 control. It's part of the process of making sure that
21 we try to reduce the chances that something's going to
22 go wrong. The fact of the matter is, you're dealing
23 with technology and things are occasionally going to go
24 wrong.

25 So another aspect of testing is to ensure

1 that you have some type of way to deal with an incident.
2 If there is a malfunction or a patron complaint, how are
3 you available able to independently investigate and
4 report back to the public the results of the
5 malfunction.

6 It combats illegal activity. I'm a former
7 regulator myself. I was for a number of years the
8 director of the Missouri Gaming Commission. I know from
9 experience that the significant majority of internal
10 theft and gaming operations comes from game employees.
11 Some of the people that advised us during training
12 said -- estimated that as much -- that in some gaming
13 operations, as much as \$9 per employee per day leaves
14 the facility through internal theft. And so by having
15 independent testing, you can look at the security
16 controls involved in the system and make sure that
17 they're adequate to try to deter that theft.

18 I really want to thank the Texas staff for
19 leadership on this issue. You know, GLI doesn't do this
20 in a vacuum. One of the things I tell people all the
21 time is that GLI doesn't approve anything. We certify
22 to a standard set by regulators. And so we took the
23 technical standards that were developed by the Texas
24 staff and the additional security requirements that the
25 Texas staff incorporated into their RFP and verified

1 compliance with that and provided the results of those
2 tests to the Texas staff for their evaluation. And
3 ultimately it's your staff and you that make a
4 determination as to whether these systems are compliant.

5 The development of certification
6 procedures starts with the standards; and then from
7 those standards, we develop test scripts for each one of
8 the tote operators where we take all those standards and
9 we develop certain tests to evaluate compliance. And
10 it's going to vary slightly depending on the nature of
11 the hardware and software configuration for each system.

12 It requires, as I mentioned, highly
13 specialized people. You can't just have one engineer
14 that goes and is able to do all of this. You have to
15 have people that specialize in the different
16 technological disciplines. So we had an entire test
17 team assigned to this project for the state of Texas.

18 The basic findings -- I think the good
19 news is, as reported by Carole Olewin, is that tote
20 systems fundamentally work and that overall, their level
21 of compliance with the Texas requirements are good. It
22 was not unexpected for us to find that there were some
23 deficiencies and things that needed to be corrected. I
24 think whenever you have independent third-party review,
25 it's going to be more thorough and more objective than

1 any -- even the best QA process that any development
2 company is going to employ. It's because, A, it's what
3 we do. We do it all over the world. We do it for all
4 kinds of different technologies. And so I think we're
5 probably -- that gives us an edge because we specialize
6 in that, whereas internally with development companies,
7 I think they sometimes become overly familiar with their
8 own software and techniques, and sometimes their QA is
9 not a full-time deal. You have engineers working on
10 something and other engineers QA-ing their stuff when
11 they're not working on something else.

12 So some of the basic findings were that --
13 I think one of the big things, and it was echoed in Jeff
14 True's comments, I think the preliminary discussions
15 indicate that the industry will be able to come to some
16 consensus on this, is that there's a total absence of
17 version control in the pari-mutuel wagering industry.
18 And what that means is, when you go -- if you were to go
19 into a totalisator system room and say, "I'd like to
20 know what version of software you're running," the only
21 thing you're getting from them is their word. They will
22 pull up a help screen or some other type of software
23 verification screen that you haven't independently said
24 that's -- you haven't independently verified, nor do you
25 have any way to independently verify, that that's the

1 version of software that's actually running. Let me
2 give you an example. Let's say they pull up the screen
3 and it says, "Version 3.1." How do you know that's 3.1,
4 other than that's what the help screen says?

5 So what we are suggesting is that the
6 industry provide both the means, the tool, and the
7 procedures to independently verify that that software is
8 what they say it is and that would be some type of
9 logging control when versions are changed on the system.
10 And in pari-mutuel it changes a lot. In other gaming
11 markets, you don't have the frequency of changes in
12 software that you do in the tote industry.

13 For instance, in a casino if I were to go
14 to a slot machine or a system, we can use a tool called
15 GLI Verify and I can do a bit-by-bit comparison -- you
16 know, software is made up of a whole bunch of ones and
17 zeros, and we are able to use a tool to take what I call
18 an electronic fingerprint of that software, and it knows
19 what every one and what every zero in that massive
20 amount of source code is. And if one one or one zero
21 changes, the signatures will not match.

22 Okay. Similar techniques can be used in
23 the pari-mutuel industry so that you have absolute
24 control over the software that's running on your
25 systems. And so that if something goes wrong, you can

1 at least say that we now need to do a forensic
2 examination and we know that the software running at the
3 time of the incident is what we're going to be able to
4 examine in our forensic examination.

5 I'm not going repeat -- you've been given
6 a short summary letter that summarizes the remainder of
7 our findings. We were able to find some things in the
8 race pricing rules that need attention, some terminal
9 security issues that are very provider specific. So I
10 didn't go into a lot of detail in the letter, but more
11 detail is involved in the report. I think these are all
12 things that can be very easy -- relatively easily
13 addressed by the companies.

14 We noticed some disaster recovery
15 deficiencies in some of the operations where they could
16 improve or had certain things that were absent from
17 their disaster recovery plans that you would normally
18 expect to find in a secure operation and some
19 improvements in the documentation. You know, when
20 you're dealing with something of this nature, you don't
21 want to have any undocumented functions that operators
22 can use because that creates some security risk.

23 So again, I think that you should take
24 some pride in the fact that Texas is the first state to
25 do this. RCI, in their conferences, has been talking

1 about this issue for about the last three years. A lot
2 of states have been talking about this issue for a
3 number of years. Texas was the first to take action.
4 Iowa followed your lead. There are a number of other
5 states that are also in more serious discussions about
6 it, but I think that Texas' ability to take the
7 leadership in this has allowed it to happen in such a
8 fashion that I think within a few short years, you'll
9 find it a common regulatory practice as it is in every
10 other sector of the gaming industry in the world.

11 With that, I thank you. And I'd be happy
12 to answer any questions you might have.

13 CHAIRMAN PABLOS: Any questions,
14 Commissioners?

15 Commissioner Clowe?

16 MR. CLOWE: Is your company publicly held?

17 MR. MULLALLY: We are not. It is a
18 private company formed in 1989 by the two founders who
19 remain in charge of the company. They were test
20 engineers in the New Jersey Gaming Laboratory and came
21 up with this idea.

22 The nature of what we do and our demand to
23 remain independent really doesn't allow for us to be
24 public. Really wouldn't make a very good...

25 MR. CLOWE: So I would assume you don't

1 report annual revenue?

2 MR. MULLALLY: We do not. We do -- well,
3 I mean we are licensed in -- I don't know how many
4 jurisdictions around the world. We do business for
5 about 400 regulatory jurisdictions all over the world.
6 So as part of our licensing process, many regulators
7 look at our finances, but they're not publicly reported.
8 Certainly if your staff wants to know anything about our
9 financial structure or anything about the company
10 frankly, we'll be happy to provide that information.

11 MR. CLOWE: Will you disclose that?

12 MR. MULLALLY: To your staff, absolutely.

13 MR. CLOWE: How many employees do you
14 have?

15 MR. MULLALLY: We have about 600
16 worldwide, little over 300 here in the United States.

17 MR. CLOWE: This audit appears to me,
18 based on your letter, to be similar to what I used to
19 call a two-paragraph letter from the auditors on
20 financial auditing. It looks like basically a clean
21 audit. Is that a correct assumption?

22 MR. MULLALLY: Yeah. I think the good
23 news here is that the tote systems work. I think there
24 were some substantive findings in the audit, things that
25 need to be corrected. But no, I don't think there's

1 any -- there's certainly no smoking gun or certainly
2 no -- anything that would make the wagering public
3 uncomfortable with the fact that the -- that their
4 wagering system is both secure and fair.

5 MR. CLOWE: And the management of the
6 entities audited have acknowledged those and I assume
7 the response is positive in regard to those?

8 MR. MULLALLY: Yeah. Each of the
9 companies had the opportunity to comment on the draft
10 report. GLI responded to those comments. And at this
11 point, we just leave it up to the staff to really manage
12 negotiations on compliance. And if they need our --
13 GLI's involvement in that, we're certainly available.

14 MR. CLOWE: So we should look to the staff
15 for the follow-on as a result of your report?

16 MR. MULLALLY: Yes.

17 MR. CLOWE: One last question. From your
18 work, could you give us a comment on the interface
19 between the companies' systems and our internal systems?
20 My understanding is there are portions of our internal
21 system that are actually proprietary, that we've
22 developed ourselves. Did you look at that, or do you
23 have any comments on that?

24 MR. MULLALLY: No, that was not a part of
25 this review, so I would not -- now, I'm not an engineer.

1 I wasn't part of the test team. Our engineers may very
2 well have a comment on it, but it was not covered in the
3 written report.

4 MR. CLOWE: Thank you.

5 CHAIRMAN PABLOS: Any other questions?

6 COMMISSIONER EDERER: GLI is fully
7 functioning in the state of Texas right now as far as
8 what your job is. Is that correct?

9 MR. MULLALLY: It's fully --

10 COMMISSIONER EDERER: Functioning? I mean
11 you are conducting your inspections. You have conducted
12 the inspections.

13 MR. MULLALLY: Yes, we're complete with
14 the inspection.

15 COMMISSIONER EDERER: I guess I'm not
16 using the proper terms in all this. I guess what I'm
17 kind of getting around to is, you also cover casinos
18 everywhere in the United States and throughout the
19 world. Is that correct?

20 MR. MULLALLY: Yes. Yes. We do some work
21 for the Texas Lottery. We do work for almost every
22 lottery in the country. We do -- I mean the thing
23 that -- you know, when I -- the Missouri Gaming
24 Commission also had the Horse Racing Commission, but we
25 didn't have any tracks, so. I was vaguely familiar with

1 report, recommended some follow-up, have already had
2 some discussions with the industry about, you know, how
3 to implement some of those findings, and we'll continue
4 to work with the staff.

5 COMMISSIONER EDERER: If gaming were to
6 come to Texas, would you be available to assist in
7 setting up the testing process and doing this?

8 MR. MULLALLY: Yes. We -- GLI has been
9 involved in every startup that I'm aware of in the
10 United States and advising states on technical
11 standards, regulatory processes, anything to do with the
12 implementation of technology.

13 We have an entire what we call the GLI
14 standard series that governs every aspect of gaming,
15 whether it be electronic bingo systems, kiosks in
16 casinos, wagering systems. We have 22 different
17 standards that regulators can use as templates to create
18 their own technical standards.

19 COMMISSIONER EDERER: Thank you.

20 CHAIRMAN PABLOS: Any other questions?
21 Thank you very much. Appreciate it.

22 MR. MULLALLY: Thank you.

23 CHAIRMAN PABLOS: I have a note here from
24 a representative of AmTote, Matthew Lackowski. Do you
25 wish to speak?

1 MR. LACKOWSKI: Yeah, Lackowski. Sure.
2 You know, please sort of guide me if I have to do -- you
3 know, say my name or --

4 CHAIRMAN PABLOS: Please state your name.

5 MR. LACKOWSKI: Oh, Matthew Lackowski from
6 AmTote International. Hi. Good morning to y'all.

7 The one item that I might mention sort of
8 in response is that AmTote goes through a SAS 70 Type 2
9 audit every year. This is -- if you're familiar with
10 auditing standards, this is a statement on auditing
11 standards specific to service providers, information
12 service providers. And part of the audit is testing how
13 it is that we do business internally. Specifically
14 there are -- how it is that we run our networking
15 operations or how we might -- how we might respond to
16 customer requests for a new software. And then sort of
17 along the lines of the auditing process and included in
18 these things is how it is that we deploy software to
19 production.

20 And one of -- I mean one of the things
21 that AmTote is extremely -- sort of differentiates
22 itself from other totalisator providers and is proud of
23 is that we have a very strict and understood program of
24 deploying software for the back-end systems. It's
25 audited every year. It's a well understood process

1 internally. And if anyone would like a copy of our SAS
2 70 from last year or any previous years or come -- or
3 going forward, we would certainly be happy to supply
4 that.

5 So with respect to version control, this
6 would be an item that we would respond with. We do have
7 version control. And most importantly, it's version
8 control that's being tested by an independent auditor, a
9 financial auditor. Okay.

10 CHAIRMAN PABLOS: Thank you. Do you have
11 any questions? Thank you very much.

12 MR. LACKOWSKI: Thanks.

13 CHAIRMAN PABLOS: Charla Ann, I want to
14 congratulate you on your vision of getting this in
15 place. As Commissioner Clowe -- I guess the only next
16 step would be to ask if you have a plan in place to
17 ensure you address the findings and recommendations.

18 MS. KING: Thank you, Mr. Chairman. The
19 credit for this -- I saw the presentation when I was at
20 an RCI conference and thought this sounded like a good
21 idea, but of course I needed to bring the idea back and
22 provide it to Sammy and to Carol. And they're really a
23 lot of credit -- all the credit really needs to go to
24 Sammy and Carol and their working with Mr. Mullally and
25 that group. And Sammy has a plan, as he always does.

1 So we can ask Sammy and Carol to share that plan with us
2 now.

3 MR. JACKSON: Well, Mr. Chairman, I
4 would -- happy to report we've actually already begun on
5 the plan and started working with it.

6 We had a conference call with the RCI
7 wagering integrity group a couple of weeks ago where we
8 mentioned some of the issues that need -- that were
9 brought forward in this report were not only issues for
10 Texas but they were national issues. And Carol is the
11 chair of the RCI auditing committee, and they have
12 tasked her to work with the auditing group to come up
13 with some standard wagering pool rule proposals so that
14 they can be implemented across the nation hopefully.
15 And there will be additional discussions at the RCI
16 board level on wagering integrity issues and there is
17 some talk about contact to bring forth some of these
18 things.

19 In addition to those activities that we've
20 already initiated, we -- as you may remember, we placed
21 back into our legislative appropriation request last
22 year the continuation for the authorization and
23 authority to contract for this vendor again, and we got
24 that approval.

25 How that was set up for the funding is

1 that it's basically a every two-year rotation. That's
2 how much money we have in there, and they recover for
3 this. So we will be following back up on that routine
4 again to go through this cycle. And in the meantime, we
5 will be working with the tote companies to implement
6 some of the recommendations as well as we will continue
7 to perform our own EEP pricing package testing of the
8 tote company before each meet and follow up with what we
9 have done in the past, whereas -- I would make this
10 statement that GLI is wonderful and has enhanced our
11 abilities, by no means did they replace what we were
12 already doing and were acknowledged for in North America
13 as being one of the leaders in that area.

14 So we will continue to have a path of what
15 we have been doing for the past ten years and making
16 sure that wagering is done in the proper and integrity
17 context of the public in Texas expects.

18 Yes. And as Charla Ann -- I was just
19 reminded that this was an answer to the state auditor
20 findings that was done in 2006. And I -- this kind of
21 answers the question that Commissioner Clowe asked
22 earlier about our independent -- our own systems. That
23 in 2006 was reviewed by the IT auditors of the state
24 auditor's office and was found to have a clean bill of
25 health. Their recommendation was to enhance the testing

1 of the information that we got from the tote companies
2 to ensure that.

3 MR. CLOWE: I appreciate that. And I
4 think that's an important part of this because if I
5 remember correctly in my visits, I was told that a
6 substantial amount of the software is proprietary to the
7 Texas Racing Commission.

8 MR. JACKSON: That is correct.

9 MR. CLOWE: I think you get the credit for
10 designing so much of it. And I like that, but at the
11 same time, I would want for the future for that to be
12 audited and documented so that as time passes, it can be
13 not only maintained but improved as well.

14 MR. JACKSON: That's -- and that is --

15 MR. CLOWE: You know, this computer world
16 is changing so rapidly that we're fortunate that we have
17 such a good system, but we want to maintain it and move
18 it forward.

19 MR. JACKSON: I appreciate that. And we
20 will work toward that end.

21 MR. CLOWE: There is a connection there,
22 as I see it, that's vitally important that we ought to
23 stay up with what we're buying or what the operators are
24 buying, and we need to be on top of that.

25 MR. JACKSON: Right.

1 CHAIRMAN PABLOS: Thank you, Sammy. Thank
2 you, Commissioner. Any further questions or comments?

3 Okay. Thank you very much.

4 All right. We'll move on to our next
5 item: Proceedings on racetracks, report on bankruptcy
6 proceedings of Magna Entertainment and auction of Lone
7 Star Park. Gregg Scoggins, please. Thank you for being
8 here today, Mr. Scoggins.

9 MR. SCOGGINS: Good morning. Thank you
10 for the invitation. Gregg Scoggins, vice president of
11 regulatory and business affairs for MEC. I'm here on
12 behalf of MEC and Lone Star Park.

13 I want to bring the Commission up to date
14 on events. As you recall last month, I was here letting
15 people know about the entry of a stalking horse
16 agreement with an entity called Global Gaming Solutions,
17 and there was an auction held on October 9th at which
18 time there was a determination made that the global
19 gaming entity was the only entity deemed to be eligible
20 to participate in that auction.

21 There was another interested bidder in the
22 form of Penn National Gaming which wanted to be --
23 wanted to participate but for various reasons was deemed
24 not eligible.

25 The auction took place. Global Gaming,

1 being the only bidder, was granted the preliminary
2 status as winning bidder. There was a hearing held last
3 Wednesday at which point Penn National and members of
4 the creditors committee in the bankruptcy proceeding
5 requested that the auction be reopened to allow Penn
6 National to participate in the auction.

7 The significance for Lone Star and MEC is
8 that the Penn National bid -- the global gaming bid was
9 about 27 million. The Penn National bid, they had
10 offered 40 million, but there were some strings to
11 the -- that they wanted to have attached to the deposit
12 that were initially unacceptable, and they have since
13 been resolved.

14 The bankruptcy court at a hearing last
15 week ruled that the hearing will be reopened. There
16 will be a new auction held this Friday at 9:00 a.m. in
17 New York at our counsel's office, Weil, Gotshal &
18 Manges. There will be two participating bidders, those
19 being Global Gaming again, as well as Penn National.

20 After the results of that auction, there
21 will be a hearing on October 28th at which the court
22 will entertain a sale order for purposes of approving
23 the outcome of that auction.

24 So if there are any questions, I'm happy
25 to entertain those at this time.

1 CHAIRMAN PABLOS: Thank you.

2 Commissioners, any questions?

3 Thank you for that update. It really
4 helps to know straight from you what's going on, so I
5 really appreciate that, coming down here and letting us
6 know. Please keep us posted.

7 MR. SCOGGINS: Yes, sir. We'll do. Thank
8 you.

9 MS. KING: Mr. Chairman, I would like to
10 recognize the representative from the Attorney General's
11 Office who's here who's been assisting the Commission in
12 these proceedings.

13 CHAIRMAN PABLOS: Please.

14 MS. KING: Mr. Casey Roy, if you'd rise,
15 please, so they know who you are. Thank you very much
16 for your help.

17 CHAIRMAN PABLOS: Thank you. Okay. We'll
18 move on to our next item. We'll take Items B and C
19 together. We have Item B, allocation of live race dates
20 under Commission Rule 303.41 for the period beginning
21 January 1, 2010 and ending December 31st, 2010 for
22 Laredo Race Park, Laredo Downs, Valle de los Tesoros,
23 Saddle Brook Park and Austin Jockey Club.

24 Item C is allocation of live race dates
25 under Commission Rule 303.41 for the period beginning

1 January 1, 2011 and ending August 31st, 2011 for Laredo
2 Downs, Valle de los Tesoros and Austin Jockey Club.

3 Mark, would you please give us a
4 background on this?

5 MR. FENNER: Commissioners, at the last
6 Commission meeting, we took up the issue of allocating
7 race dates for 2010 and the first eight months of 2011
8 for all the race tracks. There were a number of
9 racetracks that did not request race dates particularly
10 in 2010.

11 There was a motion to table those
12 racetracks and that motion was seconded and approved by
13 the Commission, so we reposted the allocation of race
14 dates for these racetracks that are before you and that
15 you read to them. And we've received race date requests
16 now from all of them for 2011, and you have letters in
17 your materials that support their -- their requests.
18 This is an opportunity for them to come up and explain
19 their requests and for you to ask any questions you may
20 have of them.

21 CHAIRMAN PABLOS: Okay. Fair enough.
22 Commissioner Clowe, you have a question?

23 MR. CLOWE: Mr. Chairman, before we do
24 what the general counsel has suggested, could we have a
25 recitation of the history of these tracks and if they

1 have had race dates granted in the past or if they're
2 operating under this performance provision in our rules
3 so we know what the history is that brought us to today?

4 CHAIRMAN PABLOS: If I understand you
5 correctly, you'd like for Staff to advise you of each
6 track's history as it relates to their license? Is that
7 what you're asking?

8 MR. CLOWE: Yes. And if they have had
9 race dates granted in the past and if they have posted
10 performance bonds or where they are with us.

11 MR. FENNER: I can give you a -- I don't
12 think I'll be able to identify specific dates off the
13 top of my head, but I can give you --

14 MR. CLOWE: Just in general.

15 MR. FENNER: Yes, sir.

16 MR. CLOWE: Sure.

17 MR. FENNER: Well, I can tell you -- let's
18 start with Saddle Brook. That was originally licensed
19 in 1989 in Lubbock. It was Lubbock Downs. It never
20 built a facility. It was moved in 2001 to Amarillo.
21 They began construction in 2003 but stopped early in
22 2004 related to some EPA problems, some sewage treatment
23 problems. They were never granted race dates. At one
24 point, they did come forward and request race dates but
25 they pulled those down just before the Commission

1 meeting.

2 Longhorn Downs was also originally
3 licensed in 1989. It has also never built a facility.
4 It does not currently have any site either. It has
5 originally licensed for Round Mountain, which is out in
6 the Hill Country. It was moved to Dallas, then came
7 back to Round Mountain, came to Austin. There was a
8 request to change it to Pflugerville, which did not --
9 was not approved. Then at the last Commission meeting,
10 we had the request to change ownership to Dallas City
11 Limits. That was also not approved. Neither Saddle
12 Brook, nor Longhorn Downs were requested to put up
13 performance bonds.

14 The Laredo Downs and Laredo Race Park were
15 granted in 2007. I believe the Laredo Downs was
16 March 2007. Laredo Race Park took a little longer. I
17 think that was in August 2007. Those were part of a
18 contested case proceeding.

19 Both of them were granted race dates.
20 Laredo Downs was granted six race dates for
21 December 2010. Laredo Downs put up a \$140,000
22 performance bond, which they have forfeited. Laredo
23 Race Park has had race dates approved for -- two race
24 dates approved for the very end of July 2011. They also
25 put up \$140,000. That is currently pending Commission

1 reviews. You may remember at the June Commission
2 meeting Mr. Borg came up and asked for some
3 consideration as to whether to change the security
4 order, but certainly they've missed enough simulcasting
5 dates that it's in jeopardy.

6 MS. KING: The dates that were granted
7 were granted in '10.

8 MR. FENNER: Correct. I'm sorry.
9 Corrected, 2010.

10 Finally, Valle de los Tesoros in McAllen
11 was also granted in March 2007. They put up \$180,000
12 performance bonds. They were also granted live race
13 dates in December of 2009. I may have misspoke earlier
14 about Laredo Downs. Their dates for December were also
15 in '09. They put up \$180,000 in security.

16 MR. CLOWE: I think you said '07 for
17 Laredo Downs.

18 MR. FENNER: The license was granted and
19 the live race dates were for December --

20 MR. CLOWE: 2009.

21 MR. FENNER: -- 2009. And Valle de los
22 Tesoros has forfeited \$180,000 bond.

23 MR. CLOWE: Thank you. That is very
24 helpful.

25 CHAIRMAN PABLOS: Any other clarifying

1 questions of Mark? Okay.

2 We have several folks signed up to speak.

3 Let's take them in the order that they were handed to

4 me. Andrea Young representing Laredo Race Park.

5 MS. YOUNG: Good morning. My name's

6 Andrea Young. I'm with Laredo Race Park.

7 As Mark just summarized for you, and I'll

8 kind of resummarize from our perspective a little bit,

9 we have a race date -- two race dates granted in 2010

10 currently and were granted additional race dates at the

11 last meeting when I came before everyone here for 2011.

12 At that same time, I gave an update on where we were

13 with Laredo Race Park in our discussions with Webb

14 County. Subsequent to that, and it's outlined a little

15 bit in the letter that you have in your packet, we've

16 made additional progress.

17 I have had probably at least several

18 conversations with Staff, including one conference call

19 with Charla Ann and with Sammy Jackson. Our current

20 status is we submitted a lease to Webb County for the

21 golf course location that we've been talking about now

22 for about the past six months at the end of the

23 September, it was about around September 23rd, really

24 the same date this letter was dated. Subsequently, it

25 was placed on the Webb County Commissioners Court agenda

1 for their meeting that they held last week not as an
2 item to be voted on but rather as an item to be
3 discussed in executive session with the hope that then
4 it would come forth to be discussed and voted on at the
5 next meeting.

6 We have several calls and requests in to
7 Webb County officials to get an update on kind of what
8 happened in executive session, but it's probably very
9 similar to when you guys go into executive session and,
10 you know, that's not necessarily a part -- it's not a
11 part of the public record. So we're trying to get an
12 update on that. I'd hoped to maybe even have something
13 as early as today, but certainly I think by the end of
14 this week, we'll know specifically when that item is
15 going to be posted for a vote.

16 Again, like I've described previously,
17 then it's our hope to come back to Staff in the industry
18 on our change of location which we feel, because it's
19 within Webb County, and in discussions with Mark that
20 that should not really be a major hindrance and we
21 should be able to move -- he looks at me strangely now,
22 but we think, you know, there's enough there. And, you
23 know, as we've talked with Staff about the location, I
24 think everyone feels good about the location and maybe
25 even some cases a little bit better about the location

1 compared to our previous location.

2 So that's where we are. We have not
3 requested additional dates. Again, we have dates
4 already granted in both 2010 and '11. For me doing that
5 I think would be putting the cart before the horse.
6 We've got to get this wrapped up with Webb County and
7 then we can start addressing all those issues.

8 So that's where we are. I'm happy to
9 answer any additional questions that you may have.

10 CHAIRMAN PABLOS: Are there any questions,
11 Commissioners?

12 VICE-CHAIRMAN CARTER: I have one.

13 MS. YOUNG: Sure.

14 VICE-CHAIRMAN CARTER: In my packet,
15 they've got some 2011 days granted to Laredo Race Park
16 in August.

17 MS. YOUNG: Uh-huh.

18 VICE-CHAIRMAN CARTER: Did the Laredo
19 Downs, Laredo Race Park and the other -- did y'all
20 collaborate on these dates, or did you just
21 independently send in dates?

22 MS. YOUNG: I send in my dates for Laredo
23 Race Park -- when we put them in August 2011, we're
24 actually -- you know, this will be a mixed meet for
25 Laredo Race Park, and we've contemplated that. It --

1 obviously having the quarter horses, we know after going
2 through -- and certainly the commissioners that serve on
3 the race dates meeting, we know we have a gap and an
4 issue in the state in August when it comes to quarter
5 horse racing, so that's really why we put those dates
6 there. We think, you know, that can really help fit
7 that window and that current need, but I did not -- we
8 did not discuss --

9 VICE-CHAIRMAN CARTER: No prior racing
10 between the tracks?

11 MS. YOUNG: Well, between, you know, the
12 tracks that are racing and ours and not the other two.

13 VICE-CHAIRMAN CARTER: Okay. All right.

14 CHAIRMAN PABLOS: Questions? Thank you
15 very much.

16 MS. YOUNG: You're welcome.

17 CHAIRMAN PABLOS: Next signed up to speak
18 is Drew Alexander representing Saddle Brook Park.

19 Mr. Alexander. Good day, how are you?

20 MR. ALEXANDER: I'm good. I'm Drew
21 Alexander, president and CEO of Saddle Brook Park in
22 Amarillo. And I want to know -- Ronald, I appreciate
23 your comments earlier because that's kind of where I'm
24 going on some of the things that you've talked about.

25 I think I probably sent you more

1 information than you would like to have about our
2 racetrack and all of the environmental and the floor
3 plans and the glossary and racing terms and so forth,
4 but that's something that I wanted to write like that,
5 so I hope you enjoy reading it.

6 I talked to Mark a couple of weeks ago,
7 and you mentioned environmental problems that we had
8 early on, and those are gone. And you asked me, "How
9 can they be gone?" And it's simple, that it's been such
10 a long time that Amarillo has grown in the direction of
11 where our racetrack is -- and there's another town by
12 the name of Bushland on the other side of us, and
13 Amarillo contracted last year to take all their
14 wastewater. So it -- now then, we have fiber-optics and
15 we have sewer within a hundred yards of us. I guess if
16 you wait long enough, you'll get what you want. I don't
17 know.

18 But we're in a position that we would like
19 to build a simulcast facility and operate that. And we
20 didn't apply for race dates in 2010 because it seemed a
21 little ludicrous to apply for race dates that you know
22 you can't make. 2011, late August, makes more sense to
23 us. So we also know that we can't operate a simulcast
24 until we've been approved for race dates, so that's why
25 we did what we did.

1 But I would like to have the Commission,
2 the Staff, at least think about letting these smaller
3 tracks build a simulcast facility and operate them and
4 take the purse money -- I've been talking to the Texas
5 Horsemen's Partnership about this -- give them the purse
6 money to spread out among the other tracks that are
7 running. They don't have the money to run purses. I
8 mean they don't have any purse money. I mean they're
9 all going broke.

10 It's -- Texas is not going to be a race
11 state in three years if something doesn't happen. We've
12 got to all work together and try to make some changes
13 and work with each other and do some things that are
14 going to try to save the racing business in Texas
15 because it's about gone.

16 And I think one of the ways to do that, we
17 won't call it off-track betting -- it won't be -- but we
18 can get our simulcast facilities open, we can be giving
19 that simulcast purse money to the Texas Horsemen's
20 Partnership, let them spread it around to the other
21 tracks that are running and try to make them -- try to
22 make them at least viable for a few years until
23 something else happens. And in the meantime, we can
24 slowly build the rest of our track.

25 And that's pretty much our plan. And

1 that's what we want to do. I know we have to have
2 permission from the racing commission to do -- to do it
3 in that way, but we can't go -- nobody can go out and
4 build a new racetrack today and have it survive. I mean
5 you have to either simulcast first and a little bit at a
6 time and try to support the other tracks while we're
7 doing it, and that's what we want to try to do. We've
8 got all of our plans, we've got our contractors, we've
9 got our bids, we've got the land, we've got everything
10 we need. So that's where we are. And I'll answer any
11 questions you might have for me.

12 CHAIRMAN PABLOS: Any questions,
13 Commissioners? Thank you, Mr. Alexander.

14 MR. ALEXANDER: Not at all. Okay. Thank
15 you.

16 CHAIRMAN PABLOS: Signed up and wishing
17 not to speak, we have Greg LaMantia representing Valle
18 de los Tesoros and Laredo Race Park, Laredo Downs.

19 MR. LaMANTIA: Good morning. Greg
20 LaMantia with VDLT and LRP in McAllen and Laredo. We
21 requested dates in '11 to give us the most flexibility
22 we can have.

23 I know that we're trying to put the group
24 together to talk about the rules. Bryan Brown has
25 agreed to put a group together and start coming up with

1 some ideas so we can bring it in front of y'all and come
2 up with some information that will work.

3 Specifically on McAllen, as of this
4 morning, I talked to the city manager of McAllen and
5 they are working with the city manager of Hidalgo to
6 bring us sewer and water which will be much cheaper than
7 bringing a line from McAllen only. And so that's
8 between the two lawyers of the two municipalities
9 working that out and in the city councils.

10 In Laredo, you know, we -- we'd like to
11 move. Everybody's aware of that. We've been making the
12 Commission aware of that. We're just waiting to get
13 everything in order to try to come to y'all, and we're
14 not quite ready to do that yet. So I'll answer
15 anybody's questions if I can.

16 CHAIRMAN PABLOS: Any questions,
17 Commissioners?

18 VICE-CHAIRMAN CARTER: I got one.

19 CHAIRMAN PABLOS: Doctor.

20 VICE-CHAIRMAN CARTER: Were you part of
21 the date selections for the race dates that you applied
22 for in 2011?

23 MR. LaMANTIA: Yeah. I told our attorney
24 to take the latest date that we could get in '11.

25 VICE-CHAIRMAN CARTER: Okay. Are you

1 aware that you picked essentially the same date for
2 Laredo Down --

3 MR. LaMANTIA: No, I'm not. Excuse me.

4 VICE-CHAIRMAN CARTER: -- and Valle de los
5 Tesoros?

6 MR. LaMANTIA: I'm aware that we picked
7 the same for our two entities, yes, sir.

8 VICE-CHAIRMAN CARTER: Okay. So how are
9 you going to make that work? You going to have enough
10 horses to race in both McAllen and Laredo?

11 MR. LaMANTIA: I don't know, but we wanted
12 the most flexibility we could get. If that's a problem,
13 then we'll be happy to back one of the two up so that
14 they're not on top of each other.

15 VICE-CHAIRMAN CARTER: Looks like we've
16 got a lot of dates been requested that are the same.
17 And if we're going to put some reality into this, dates,
18 it doesn't seem like that's going to work, particularly
19 the Old Rio Grande Valley racing at the same time.

20 MR. LaMANTIA: Dr. Carter, we'll be happy
21 to change those if that makes more sense.

22 VICE-CHAIRMAN CARTER: Thank you.

23 CHAIRMAN PABLOS: Any other questions?

24 COMMISSIONER EDERER: Laredo Downs has
25 forfeited a bond. Is that correct or am I not --

1 MR. LaMANTIA: I think you'll find -- I
2 wasn't going to say anything, but I think we're the only
3 person that's paid over \$330,000 within an active track.
4 Two.

5 CHAIRMAN PABLOS: Thank you, Mr. LaMantia.

6 MR. LaMANTIA: Thank y'all.

7 CHAIRMAN PABLOS: Next signed up to speak
8 is Bryan Brown representing Austin Jockey Club.

9 Good day. How are you?

10 MR. BROWN: Very good. Good morning,
11 Mr. Chairman, Commissioners. I'm Bryan Brown, vice
12 president of the Austin Jockey Club.

13 We've applied for 12 race dates in 2011
14 starting in late July, on July 29th, and extending
15 through August 21st. We were very specific to include
16 just Thoroughbred dates for this application. These
17 dates fit within the current racing calendar, so we're
18 very strategic and targeted in these dates. And then we
19 would see coming back to the Commission when it would be
20 appropriate to apply for quarter horse dates. And we're
21 not trying to slight the quarter horsemen. We just
22 believe the dates that we could access in 2011 that
23 would make sense from a quarter horse standpoint cannot
24 be applied for today.

25 We take the words of the Commission Staff

1 very seriously, that the inactives have to start making
2 progress, and we look forward to working with Staff
3 towards that end. And we're very serious about these
4 race dates.

5 We did not feel it would be appropriate to
6 apply for race dates in 2010 because there's really no
7 viable way for us to be able to race and have a facility
8 open and operating at that time.

9 I'd be happy to answer any questions that
10 you have.

11 CHAIRMAN PABLOS: Any questions?

12 COMMISSIONER EDERER: So you have no
13 intention of opening -- doing anything in 2010, and the
14 race dates you're applying for are 2011. You already
15 gotten those, I believe.

16 MR. BROWN: No, we have not received
17 those.

18 COMMISSIONER EDERER: Not received.
19 What -- where are you going to do this?

20 MR. BROWN: We've got two pieces of land
21 that we're looking at right now, and we're very, very
22 preliminary, but both very viable, we believe. And we'd
23 like to work with Staff and bring the -- bring them in
24 on as early as possible. We've already had one pretty
25 good meeting with the Staff, and we'd like to bring them

1 in on our plans as quickly as we can.

2 COMMISSIONER EDERER: Can you tell us
3 where they are, or is that --

4 MR. BROWN: They're in southern Travis
5 County.

6 COMMISSIONER EDERER: In Travis County?

7 MR. BROWN: Yes.

8 COMMISSIONER EDERER: Do you have two
9 separate locations you're working on?

10 MR. BROWN: Yes.

11 COMMISSIONER EDERER: All right. Are you
12 planning on doing anything in 2010?

13 MR. BROWN: Part of what we'd like to
14 discuss with Staff is opening up some type of simulcast
15 facility in 2010. We definitely want to be preopening
16 with our simulcast enough in advance so that we can
17 generate purse money and be able to operate a real live
18 meet.

19 COMMISSIONER EDERER: All right. Before
20 he -- they would open any facility, of course they'd
21 have to have approval from us. Is that correct?

22 MS. KING: Yes, sir. Yes, Commissioner.
23 They have to work with the Staff. We have a lot of
24 specific requirements in the statute and the rules for
25 overseeing construction of facilities, and so we would

1 work and coordinate with each of the entities as they
2 start to ramp up their efforts to put these racetracks,
3 starting with simulcasting facilities. That's the
4 traditional approach.

5 COMMISSIONER EDERER: So this doesn't just
6 apply to Mr. Brown and Austin? It also applies to
7 Laredo Downs?

8 MS. KING: That's correct.

9 COMMISSIONER EDERER: So they're kind of
10 both in the same situation?

11 MS. KING: They are all in the same
12 situation.

13 COMMISSIONER EDERER: Don't have
14 facilities but want to set up pari-mutuels in 2010, if
15 they get a facility, and if they can work that out with
16 the track -- excuse me -- with the Staff?

17 MS. KING: That's correct.

18 COMMISSIONER EDERER: And if that's worked
19 out with the Staff, then you'll have to come back to the
20 Commission for final approval to allow them to have the
21 pari-mutuel betting on these facilities?

22 MS. KING: The way that the authority is
23 crafted, it allows the executive director to go forward
24 with approval on simulcasting after live race dates are
25 granted. And so that -- that would be a review process,

1 and the executive director would bring any matter of
2 such importance to the Commission to ensure that the
3 Commission is fully informed and is comfortable with the
4 approach that's being taken, as I'm authorized and ruled
5 to do that as well, to bring any specific matter to you.

6 And so I believe that it's going to take a
7 lot of discussion and structuring of the activities that
8 the racetracks are intending to take so that we can
9 bring reports back to the Commission at each of the
10 meetings about the progress that they're making and how
11 these -- how they're going to move forward in a way that
12 everyone's comfortable. And that includes us being able
13 to staff appropriately to oversee the activities that
14 they're undertaking.

15 COMMISSIONER EDERER: Saddle Brook is also
16 included in this?

17 MS. KING: Yes, sir.

18 COMMISSIONER EDERER: Same group? The
19 only difference with Saddle Brook is they know where
20 they're going?

21 MS. KING: They have their location.

22 COMMISSIONER EDERER: Right.

23 MS. KING: That's correct. And the others
24 have the location -- in this case with Austin Jockey
25 Club, we have visited with them and made it clear that

1 the more quickly they find the location and get busy in
2 resolving these issues, the less the Staff has to focus
3 on evaluating the need for referral for suspension or
4 revocation to SOAH.

5 Let me remind everyone that that is where
6 the Commission left off with Austin Jockey Club, was to
7 find a location. That was back in 2005 right before I
8 joined the Staff, and we saw that they tried to change
9 the ownership last time. It did not work. Now it's
10 incumbent upon them to quickly find a location.

11 COMMISSIONER EDERER: Well, my concern, of
12 course, is we've got these three for sure, these three
13 licenses -- Saddle Brook, Laredo Race Park and Austin
14 Jockey Club -- that have been around for a long time;
15 Laredo Race Park the least as far as duration is
16 concerned; and, you know, Saddle Brook since '89 and
17 Austin Jockey Club since who knows when. And nothing's
18 happened. And what you're telling me now and what the
19 three license holders are telling us is that they are
20 going to go forward in 2010 and come up with a definite
21 plan. Is that correct?

22 MR. BROWN: That is correct.

23 COMMISSIONER EDERER: And they are asking
24 for race dates in 2011, not in 2010, because they know
25 they're not going to get anything. I mean 2010, they're

1 not going to be able to function. Is that correct?

2 MS. KING: Yes, sir.

3 COMMISSIONER EDERER: All right. And if
4 they don't come up with something, then the Commission
5 can sanction, and there's -- what are our options at
6 that point in time?

7 MR. FENNER: First, the executive director
8 could impose an administrative penalty just for the
9 failure to conduct live racing. And in their case,
10 their -- they have 12 days which is the authority to
11 impose a \$10,000 penalty for each day, so we're looking
12 at a fine of up to \$120,000.

13 Beyond that, it could involve a referral
14 to the State Office of Administrative Hearings for a
15 revocation under Rule 309.5, Subsection B, which is the
16 rule that requires them to exercise due diligence in
17 preparing to conduct live racing. So you have quite an
18 extreme of remedies that are available to the Commission
19 or sanctions.

20 COMMISSIONER EDERER: Uh-huh.

21 MR. FENNER: Also during the time between
22 now and then, the rules committee may wish to assess
23 this situation and determine whether there are other
24 remedies that it would like to develop, other
25 approaches, but right now the clearest path is to

1 administrative penalties for failure to conduct live
2 racing or a referral for failure to exercise reasonable
3 diligence.

4 COMMISSIONER EDERER: Well, we all know
5 there's a lot of things happening or will be happening
6 between now and 2011, or in 2011, which will have a
7 tremendous effect as to where these racetracks go and
8 what we do with these licenses.

9 I guess what my concern is is they've been
10 hanging around a long time, and I want to at least have
11 the ability -- to have this Commission have the ability
12 to do something with these licenses at least by 2011 if
13 something doesn't go forward. Are we in that position
14 now? Did I make myself clear?

15 CHAIRMAN PABLOS: I didn't understand you.

16 COMMISSIONER EDERER: All right. In 2011,
17 if in fact something does not happen as far as the --
18 any of these license holders starting racing, can we
19 then take action?

20 MR. FENNER: From a legal standpoint, I'll
21 tell you that your remedies are -- the 309.5 is your
22 strongest remedy. I do think it is right for evaluation
23 by the rules committee to -- because it goes straight to
24 revocation, and you may want to consider something less.
25 This is an issue that the Sunset Commission identified

1 as being something that we needed bolstering in.

2 COMMISSIONER EDERER: Uh-huh.

3 MR. FENNER: And I can't tell you that I
4 have or the Commission has all the authority that you
5 might want.

6 COMMISSIONER EDERER: Uh-huh. Well, it
7 seems premature at this point in time to take any action
8 of course because of what's going on, but I think it is
9 something that we need to look into, and I think
10 everybody would benefit from that. If in fact they can
11 open up facilities to have pari-mutuel betting, well
12 then that's fine. If they can't and the rules are such
13 that we think that we need to do something about getting
14 rid of those licenses, then we need to have the ability
15 to do that. And the rules committee is going to be
16 taking that up, as I understand it.

17 CHAIRMAN PABLOS: Before we proceed with
18 further discussion, are there any other questions of
19 Mr. Brown?

20 MR. BROWN: Am I looking good standing up
21 here?

22 MR. CLOWE: Commissioner, on your left
23 there --

24 COMMISSIONER HICKS: Not for Mr. Brown.

25 CHAIRMAN PABLOS: Okay. Now, let's enter

1 into a discussion just by -- you know, but I'd like to
2 kind of summarize, and correct me -- please step in if
3 I'm wrong. What I'm hearing here and what I'm hearing
4 from these license holders is that obviously before they
5 can even think of opening and building a track, you
6 know, they'd like to do simulcast. But before they can
7 do simulcast, they have to have a site identified, and
8 some of these licensees do not.

9 And so it seems that, you know, there's
10 efforts being made in getting there. I think that this
11 Commission's insistence in moving in that direction is
12 evident. I think at least from my vantage point, this
13 is one of the first times where we've actually pressed
14 this issue.

15 And Commissioner Clowe, who -- through
16 your work and your committee, you've identified the
17 issue. Sunset Commission identified it. Although we
18 weren't able to really do anything with it this
19 legislative session, I think the rules committee can
20 really take this up and address it, but I'd like to open
21 this up for discussion and let's talk about this because
22 obviously this is a serious problem for the licensees
23 with respect to the industry in general. And so that's
24 why, with respect to our rules committee, I want to --
25 for the industry itself to have ample time for input and

1 discussion. Perhaps there's something out there that,
2 you know, we haven't considered as a Commission that --
3 that might allow us to make more informed decisions.
4 And so I'll open it up for discussion.

5 COMMISSIONER WEINBERG: Well, excuse me.
6 My microphone does not work. The light did not come on.
7 But being the -- I guess the new commissioner up here, I
8 was just wondering the history of the existing tracks
9 that are already running. Has any -- did their
10 simulcast start after the actual building was opened and
11 the live race dates, or what is the precedent set here?

12 MR. FENNER: Yes, ma'am. Lone Star was a
13 very good example of that. They began simulcasting I
14 believe a year in advance of when they planned to begin
15 live racing. And the purpose of that was for them to
16 build purses that would later be distributed at the live
17 racing.

18 COMMISSIONER WEINBERG: Did they have city
19 approval, construction started on their actual location?
20 At what point --

21 MR. FENNER: Yes, they were turning -- I
22 can't tell whether they were turning dirt, so to
23 speak --

24 COMMISSIONER WEINBERG: Okay.

25 MR. FENNER: -- at the date that the live

1 race dates were granted, but they were moving quickly
2 once the live dates were granted.

3 COMMISSIONER WEINBERG: So I guess my real
4 question is: What is your comfort level to know it's
5 really going to happen before you have given the rights
6 to do simulcast?

7 MS. KING: I think that -- I think that
8 comfort level is something that we need to determine in
9 each individual case with each track and make sure that
10 the Staff feels like they're moving forward in a way
11 that they've positioned themselves to generate purse
12 money that's actually going to be used at their facility
13 in a reasonable amount of time.

14 And I think that the Commission's
15 expectation about that is important to us in determining
16 that, which is an important part of the discussion here
17 today, so that we can get a good feel from the
18 commissioners about that issue.

19 In terms of the context, it was sometime
20 ago, I guess a couple of years ago, we changed the rules
21 on the allocation of race dates for an expanded time
22 frame. It was originally a 12-month period. It was
23 seen at that time that the tracks and the horsemen
24 needed a running start -- no pun, but a running start to
25 get that money generated before they were actually going

1 to use it, and a 12-month period was insufficient.
2 That's what was determined by the Commission. So that
3 flexibility was provided.

4 The use of that flexibility we want to be
5 very careful with and make sure that they're using it
6 for its intended purpose, which is to develop the purse
7 funds for that racetrack, so that we're looking for
8 guidance from the Commission and have them set their
9 expectation in this process so that we can use that in
10 going forward and then checking back with you about the
11 appropriateness of that.

12 CHAIRMAN PABLOS: Of the tracks that are
13 being operated right now, which one was the last one to
14 be built and what year was that? Does anyone know?

15 MS. KING: Lone Star Park.

16 CHAIRMAN PABLOS: That was the last one?
17 And what year was that?

18 MS. KING: Yes, sir.

19 CHAIRMAN PABLOS: When was ground
20 breaking?

21 MS. KING: '97. 1997.

22 CHAIRMAN PABLOS: '97. 12 years ago.
23 Okay.

24 COMMISSIONER SCHMIDT: Mr. Chairman, I
25 have three questions of Staff.

1 Mark, just getting back to your point
2 about due diligence, as a nonattorney, if you could help
3 me. Due diligence means first following a business
4 plan -- I guess what I'm saying is: Do we need to wait
5 till 2011 to see a building built or not built and then
6 there will be done due diligence, or will a year from
7 now, if the site is not identified, if a track is not
8 graded, if land hasn't been purchased and so on and so
9 forth, are there benchmarks that we can use from a legal
10 perspective to determine whether or not due diligence
11 has been employed and have to build a track?

12 MR. FENNER: Well, if the guidance from
13 the Commission is that we really expect that if these
14 live race dates are granted that those tracks would be
15 built, then we would probably follow the model that we
16 used with the remodeling of Corpus Christi. We would
17 meet with the racetrack and get from them what their
18 proposals are, what their benchmarks are.

19 In the case of Laredo Downs, Valle de los
20 Tesoros, Laredo Race Park, that shouldn't be too
21 difficult -- well, maybe Laredo Park -- Race Park a
22 little while because they're moving, but Valle de los
23 Tesoros and Laredo Downs, Saddle Brook to a certain
24 extent have already laid out during their application
25 process some benchmarks for their construction. So we

1 would revisit those with them, confirm what those dates
2 were, and then reporting back to the Commission at each
3 meeting on progress. And it should become apparent
4 pretty quickly whether or not they're meeting those
5 benchmarks because August 2011 is not that far off.

6 COMMISSIONER SCHMIDT: It seems to me it
7 would be apparent a year from now.

8 MR. FENNER: Or less.

9 COMMISSIONER SCHMIDT: Or less.

10 I guess the question I have is of
11 Mr. Jackson. And I don't want to catch you by surprise,
12 but it's just following up on Commissioner Ederer's
13 earlier comments. Are there models, financial models,
14 or data or historical models that are available to
15 see -- to estimate the loss of purse revenue from our
16 failure to simulcast at these five sites?

17 MR. JACKSON: Oh, yes.

18 COMMISSIONER SCHMIDT: In other words, if
19 we were to make the horsemen whole in terms of their
20 purse structure, can we estimate the amount of money
21 that we've lost from not having simulcast from 2008,
22 2009 and 2010 with reasonable accuracy?

23 MR. JACKSON: Yes. In fact
24 Commissioner -- Dr. Schmidt, I would say in working up
25 the bonding for the tracks that we did in 2007, we

1 utilized the projections within the application and
2 utilized those to project the Texas Bred Incentive
3 Program funds and purse money in coming up with that
4 calculation for the bonds. So yes, we could do that.

5 COMMISSIONER SCHMIDT: I guess following
6 up with Mr. Fenner, is: Is there within the statute --
7 if we wanted to make the -- the horsemen whole and not
8 revoke the licenses, can we impose penalties equal to
9 those amounts of money? Is that -- is that --

10 MR. FENNER: It's possible, but the way to
11 do that would be by issuing a Commission order on
12 security for compliance, much as you've done before.

13 When the original licenses were granted,
14 Rule 309.6 sets out that these calculations will be
15 done. They also calculate the simulcast tax and to
16 reimburse the State for the simulcast taxes loss.

17 So yes, you could issue an order requiring
18 them to put up a performance bond, and if they don't
19 begin simulcasting by the date that you establish within
20 the order, then the amounts can be forfeited. So it's
21 something that you would have to set in place
22 beforehand.

23 COMMISSIONER SCHMIDT: Just so -- just so
24 I understand my own thinking, so I understand these
25 issues -- it's a little complex -- is we could, A, do

1 nothing; B, we could issue some type of order; or C, we
2 could proceed with revocation if the tracks weren't
3 available depending on how we structured this?

4 MR. FENNER: Or an administrative penalty
5 for failing to live -- run the live dates.

6 COMMISSIONER SCHMIDT: The last thing I'd
7 just like to ask Charla -- and I don't want to
8 monopolize this discussion in any way, but let's say
9 hypothetically gaming rules changed in Texas, and
10 suddenly hypothetically all the issues that have been
11 holding back these tracks from being built suddenly went
12 away and they all started to try to actually meet their
13 dates in 2011. It's my understanding that we need to
14 supervise the building of all these facilities. Do you
15 have the manpower to actually supervise the building of
16 five tracks in a one-year period of time?

17 MS. KING: That's an excellent question,
18 Commissioner. We do not have on-hand at this point in
19 time the teams that would be required. We have some
20 expertise in doing that, but in terms of sending people
21 out into the field to provide the level of oversight of
22 construction that we need to, we would have to -- we'd
23 have to staff up.

24 Now we have contingency riders in our
25 appropriation for that purpose, so we do have the

1 authority to collect the revenue and put that into
2 place; but if everybody did it simultaneously, we would
3 need a reservation from each of them. And that's why
4 the planning process is so important so that we can see
5 what would we need to do in that case.

6 And indeed the requirements for us to
7 participate and have a general oversight role in the
8 construction of the tracks and the facilities, that
9 authority and that direction was provided during the
10 Sunset Review during the 1990s because of the issues
11 that occurred in the construction of the tracks that are
12 already on-line and the things that were found in that
13 process. And so the legislature spoke very clearly
14 about the need for us to do that, but it would require
15 some amping up, some planning time, some coordination.
16 We have the resources and authority to go forward, but
17 we'd need time to do that.

18 CHAIRMAN PABLOS: Commissioner Clowe.

19 MR. CLOWE: Commissioner Schmidt, you laid
20 out three options, and I wanted to address the second
21 one.

22 It's my understanding from the general
23 counsel that in order to allow simulcasting by a rule or
24 statute, the Commission must have granted race dates to
25 a license holder. And what's the timing on that on

1 these tracks that are either not asking for race dates,
2 or they're not asking till 2011?

3 MR. FENNER: Uh-huh.

4 MR. CLOWE: When could the Commission, if
5 it so desired, allow simulcasting based on the granting
6 of race dates in August of '11, for example?

7 MR. FENNER: If you granted race dates for
8 August of '11 and they had facilities to begin
9 simulcasting, it would be legal for them to request
10 simulcasting dates immediately.

11 MR. CLOWE: Okay.

12 COMMISSIONER EDERER: So all of the
13 license holders then at this point in time could, if
14 they all do have race dates, they could begin
15 simulcasting as soon as they have a facility?

16 MR. FENNER: Yes, sir.

17 COMMISSIONER EDERER: An approved
18 facility? And that would be Laredo Race Park, Laredo
19 Downs, Valle de los Tesoros, Saddle Brook and Austin
20 Jockey Club?

21 MR. FENNER: Yes, sir.

22 COMMISSIONER EDERER: All right. They all
23 have race dates at the present time?

24 MR. FENNER: No, sir, they don't all have
25 live race dates.

1 COMMISSIONER EDERER: Who does not?
2 Saddle Brook is asking for some, I believe, for 2011?
3 MR. FENNER: Right.
4 MS. KING: Saddle Brook has been granted
5 their dates at the last meeting. We asked them to
6 submit dates for '10, but they -- as Mr. Alexander
7 indicated, '10 is not feasible.
8 Now, Austin Jockey Club has not had any
9 dates granted at all.
10 MR. CLOWE: And they don't have a
11 location.
12 COMMISSIONER EDERER: Right.
13 MS. KING: Those who don't have dates for
14 '11 also include Laredo Downs and Valle de los Tesoros.
15 CHAIRMAN PABLOS: But dates in general --
16 who does not have dates at all?
17 MS. KING: At all, that would be Austin
18 Jockey Club.
19 CHAIRMAN PABLOS: That's it? And I guess
20 your question, Commissioner, is being that every license
21 holder other than Austin Jockey Club does have dates,
22 can they begin to simulcast? Do they have the authority
23 to simulcast because of these race dates that they've
24 been awarded?
25 COMMISSIONER EDERER: Legally.

1 MR. FENNER: Yes.

2 COMMISSIONER EDERER: All right. They
3 would still have to be approved of course by Staff and
4 by the Commission, but legally they could go ahead and
5 function. Is that right? All right.

6 I think -- I'm going at this in a
7 roundabout way. I understand that Laredo Race Park has
8 in fact forfeited a considerable amount of money. Is
9 that right?

10 MS. KING: They have posted a security
11 bond, but we have not -- that has not been forfeited at
12 this time.

13 COMMISSIONER EDERER: Have any of these
14 license holders forfeited any bonds?

15 MS. KING: Yes, Laredo Downs and Valle de
16 los Tesoros, the McAllen track and one of the Laredo
17 tracks, as Mr. LaMantia testified to, that was correct.

18 COMMISSIONER EDERER: Do -- I tend to get
19 them mixed up.

20 Do they -- either one of these two
21 presently have any bonds that has been posted?

22 MR. FENNER: No, sir.

23 COMMISSIONER EDERER: It has been
24 forfeited? There is no other bond? All right. The
25 other three tracks, do they have any bonds posted?

1 MS. KING: Laredo Race Park has theirs
2 posted, but there is no bond posted for Saddle Brook
3 Park and Austin Jockey Club.

4 COMMISSIONER EDERER: Why?

5 MS. KING: Saddle Brook and Austin Jockey
6 Club were never -- from what I understand, were never
7 required to post a bond. And so we are coming back to
8 visit this issue with the Commission really for the
9 first time.

10 COMMISSIONER EDERER: So we have two
11 licensees that have no bonds posted?

12 MS. KING: That's correct.

13 COMMISSIONER EDERER: Is that right?
14 Doesn't it seem that all license holders and all
15 requirements for each license holder should be uniform
16 and that we shouldn't have one that has a bond and
17 another one that doesn't have a bond and one that loses
18 its bond and another one that its bonds is just sitting
19 there?

20 CHAIRMAN PABLOS: And that's where
21 Commissioner, in my mind, I'm trying to harmonize, as
22 Commissioner Clowe said, what we're trying to do at the
23 rules committee and what is happening in this
24 discussion. And certainly that's -- that's a discussion
25 that, you know, we're taking up because, you know, the

1 situation here is that these three licenses with bonds
2 were awarded two years ago, and so the Commission at
3 that time had the foresight to ask for that. But in
4 1987 or '89, whenever it was for the other two, that was
5 never brought up. And so now the question is: Should
6 it be brought up? Should we have parity? Should we ask
7 for security of the other two?

8 And that's -- I mean you're right on point
9 with that. And that's what we're trying to determine.
10 That's part of the discussion that we're going to have
11 with the industry as it relates to that. And so just
12 trying to harmonize those two is a difficult task.

13 Commissioner Clowe?

14 MR. CLOWE: That's why I asked for the
15 recitation of the history at the beginning so that we
16 could see that they are clear inequities that exist.

17 None of us were on this board when so much
18 of this happened. And Commissioner Schmidt and I ran
19 into this in the task that we were assigned to look at
20 this licensing situation. The industry is in dire
21 financial condition. There's no question about that.
22 And as a businessman, you know, I'm very empathetic to
23 their dilemma, but it is what it is.

24 And I went back and reviewed the sunset
25 report because I wanted to refresh my recollection of

1 what the recommendations were. And it's clear,
2 although, you know, we almost got sunsetted, nothing
3 happened on that, but the intent is clear that these
4 licenses should be used or some action should be taken.

5 And my view as a commissioner is bound by
6 the statute and by the rules. We can't go outside of
7 what the statute and the rules lay down for us. So I
8 think what we're doing, in a manner of speaking, is
9 pushing this and trying to be as giving as possible, but
10 there comes a time when, you know, we're going to have
11 to make some hard decisions. It may not necessarily be
12 today, but that's the responsibility we took on when we
13 became Commissioners or members of this board.

14 And it is not a good situation. We have
15 an industry that is in decline. My understanding
16 talking to the owners and operators is good horses are
17 leaving Texas. The purse amounts are diminishing. Same
18 thing is true in the tracks for the dogs. And yet what
19 we're hearing is, we're working on this, we're going to
20 get something going; but in many cases, there just
21 hasn't been any action at all. And I think it's a very
22 serious problem for us to have to deal with.

23 CHAIRMAN PABLOS: Any other comments?

24 Yes.

25 COMMISSIONER SCHMIDT: I guess just from

1 my perspective, I think there are two issues that the
2 rules committee or we as a Commission need to just -- I
3 think it's really in our court. It's not in their
4 court. And the obvious issue is, I don't think we're
5 going to see a track built in this state until there's a
6 change in the gaming rules. So once we accept that --
7 and I also empathize with the tracks' problems with
8 respect to a dire financial situation.

9 But I think also there's sort of the -- we
10 have granted an exclusive franchise to these license
11 holders to build tracks. They have come to the state
12 and asked them for these licenses, and we've given them
13 an exclusive franchise, and now the tracks haven't been
14 built. I can live with that. I can live with that at
15 this point.

16 What concerns me, however, is the second
17 point, which Commissioner Clowe made, is that the
18 horsemen can't survive. There's no reason to run a
19 horse race -- run a horse in a horse race in Texas at
20 this point because your chances of making money on that
21 horse is about one in five. So it really does concern
22 me is the amount of money that we're losing in terms of
23 the horsemen's fund, and I think we ought to consider
24 that as we go forward.

25 MR. CLOWE: You know, I guess we might as

1 well identify the 500 pound gorilla that's in the room.

2 MR. ALEXANDER: Hey, I'm standing up here.

3 (Laughter)

4 MR. CLOWE: I have had a number of owners
5 and operators say to me, you know, "If we don't get
6 expansion of gaming in this state so that we can expand
7 our gaming operations, we're -- we're dead." And
8 they've said that to me privately and publicly.

9 And I can tell you from the years of
10 experience I had at the Lottery Commission, gaming is
11 abounding in this state, illegal gaming. And the state
12 is losing revenue, losing income in addition to horses
13 and horse racing. And I think one of the reasons that
14 was given to us in our last meeting on the accommodation
15 of the dog tracks and having simulcasting was they
16 didn't have enough dogs to run three tracks. So the
17 same thing is happening there.

18 And so, you know, for us as members of
19 this board now, I think the time has come that we've got
20 to face up. And candor is part of it to me. We might
21 as well just say, now, you know, here's the problem and
22 talk about it in the public meeting. I think that's our
23 responsibility. And whatever decisions we make or don't
24 make should be based on a high level of candor about
25 what the problem is of racing in Texas.

1 COMMISSIONER EDERER: Very well said.

2 CHAIRMAN PABLOS: And that being said, I
3 think, you know, as we move forward with this, we're
4 basically in a situation where our rules are forcing the
5 issue, and everything I'm hearing is with respect to
6 horse racing in Texas. I mean we have a declining
7 industry, and so that is the inherent conflict there
8 that we have to address. And now in front of us we have
9 this issue of the race dates.

10 Mr. Alexander, did you have a comment?

11 MR. ALEXANDER: Yes, I do have a comment.

12 CHAIRMAN PABLOS: Please, go ahead.

13 MR. ALEXANDER: There seems to be almost a
14 diabolical desire to force these tracks that haven't
15 been built to get built. And we all know what the
16 economy is like today. And every racetrack in Texas
17 that has been built -- all of the dog tracks, all the
18 horse tracks -- have all gone broke except for two of
19 them: One Greyhound track and one horse track. Some of
20 them more than once.

21 So if you're standing out there talking --
22 and, you know, in this economy particularly with --
23 racetracks don't make any money on horse races. They
24 just don't. They make their money simulcasting, and
25 then they lose it all when they have live races. That's

1 exactly what's going on. It's -- and even the
2 simulcasting is down 27, 28 percent over last year
3 because there aren't as many horses to -- horse races
4 around the country. Other tracks are shutting --
5 cutting down a number of their tracks too.

6 You know, I can -- it's everywhere. But
7 to force somebody to -- let's say, "We're going to take
8 your license if you don't go build this track, although
9 we understand you're going to go broke when you do" does
10 not make any sense to me. That's why I said if we can
11 all work together and simulcast -- starting to do our
12 simulcasting and throw our extra money into the tracks
13 that are racing today, help them with their purse money,
14 it'll help everybody.

15 But we're not -- it's a dying industry.
16 It's not a hurting industry. It's dying. I've got
17 horses I run all over the country. I don't run any
18 horses in Texas. There's no money. You can't -- I mean
19 El Paso is a great place to go run horses because they
20 have the gaming and they have the purses. Zia Park,
21 Ruidoso; Lexington, Kentucky, all over the country.

22 But to force -- and the other thing we're
23 talking about, we need to make all these rules the same
24 for everybody, but we have these -- you have these
25 tracks that were issued in 19 -- 1986, licensed for

1 somebody in Lubbock that died, his wife sold it to Lone
2 Star Park who sold it to the Kaminiskis who sold it to
3 me, that sort of thing, those -- that's where
4 grandfathering comes in as far as I'm concerned.

5 You know, this is what was going on when
6 you had this track. Okay. We're going to change the
7 rules, but you're grandfathered. Next time you do it,
8 same thing, you get grandfathered in. That's really the
9 only way you can do something like that and be fair to
10 somebody that's had a license for a long time.

11 But we haven't built them because we can't
12 make any money. All it's going to do is break us, and
13 we know that, so that's why we've got to have your help.

14 CHAIRMAN PABLOS: Thank you.

15 COMMISSIONER EDERER: Tell me,
16 Mr. Alexander, would Saddle Brook be in a position if
17 there are -- do you have any race dates?

18 MR. ALEXANDER: I have race dates in 2011.

19 COMMISSIONER EDERER: All right. 2011.
20 Are you -- is Saddle Brook in a position to begin the
21 process of going forward? In other words, can you build
22 a facility that's going to put in pari-mutuel betting?

23 MR. ALEXANDER: Are you talking about
24 simulcasting?

25 COMMISSIONER EDERER: Simulcasting.

1 MR. ALEXANDER: Yes, I can, but I need --
2 I need the Commission, who is going to oversee the
3 building of my racetrack, to -- to allow me to do some
4 things that maybe they wouldn't have done three or four
5 years ago.

6 COMMISSIONER EDERER: You've had the
7 license since '89?

8 MR. ALEXANDER: Right.

9 COMMISSIONER EDERER: So I mean nobody's
10 saying you have to build a track tomorrow. What you're
11 saying is you're talking about assisting the industry in
12 going forward and having the simulcasting. What we're
13 saying is either do it or let's have somebody else do
14 it. You know, you've had the license since 1989.
15 You've now got race dates for 2011. My question to you
16 is: Will you -- can you build a facility; and if you
17 can, when will you start the process?

18 MR. ALEXANDER: Well, I don't know whether
19 you have it in on your desk or not, but I sent copies of
20 everything to the racing commission to distribute it to
21 you and it has all the plans and everything there, if
22 you haven't seen them.

23 CHAIRMAN PABLOS: Okay.

24 COMMISSIONER EDERER: Mark, what is the
25 status for Saddle Brook?

1 CHAIRMAN PABLOS: Well, excuse me. One
2 second here. I had already closed the public comment
3 section.

4 MR. ALEXANDER: I'm sorry.

5 CHAIRMAN PABLOS: No, and that's okay. I
6 thank you for your comments, and now we need to continue
7 our discussion. I just wanted to bring you in. That
8 way we --

9 MR. FENNER: And in that context --

10 CHAIRMAN PABLOS: Thank you,
11 Mr. Alexander.

12 MR. ALEXANDER: Yeah, sure.

13 MR. FENNER: We are posted for race dates.
14 We've been talking about some things that I think are
15 related to race dates and demonstrate the -- you know,
16 why the impact of race dates and the issues that you're
17 looking for when you're considering whether race dates
18 should be granted, but you know I do have some concerns
19 about how too far off this agenda item we go. We've
20 probably pushed some boundaries.

21 CHAIRMAN PABLOS: Dr. Carter, you had a
22 comment or a question?

23 VICE-CHAIRMAN CARTER: I'm sorry. The
24 terminology diabolical desire kind of bothered me, and I
25 wanted to clarify that there's nothing diabolical about

1 our desire to have people live up to a condition of
2 granting licensure. That's kind of our job. I'm sorry
3 if you think it's a diabolical plot against you, but --
4 but that's not what it is.

5 MR. ALEXANDER: It wasn't meant that way.

6 CHAIRMAN PABLOS: No, thank you. Thank
7 you very much for that comment.

8 Now, Mark, I do have one question with
9 respect to our rules and our racing act. Is there
10 anywhere that provides for a time period between the
11 time simulcasting begins and live racing needing to
12 begin? I mean is there a time period there that
13 provides for that other than the live race dates?

14 MR. FENNER: No, there's not a maximum
15 time period set out in either of the statutes or rules
16 that limits how far in advance of a live race date
17 someone may begin simulcasting. That requires judgment
18 by the executive director who approves that simulcast,
19 and I'm sure she would look to guidance from the
20 Commissioners.

21 CHAIRMAN PABLOS: With respect to the
22 revocation issue, I think the language in the rules or
23 the act talk about due diligence or at least a concerted
24 effort to begin the process of live racing. Could you
25 reiterate what that means?

1 MR. FENNER: It's Commission Rule 309.5.

2 CHAIRMAN PABLOS: What does that state
3 with respect to the efforts of a licensee?

4 MR. FENNER: Well, it's pretty short. It
5 just says that the -- "If the Commission determines that
6 an association is failing to exercise reasonable
7 diligence in preparing a racetrack to begin racing on
8 the date approved by the Commission, the Commission may
9 revoke the license and grant the license to another
10 applicant."

11 CHAIRMAN PABLOS: Would reasonable
12 diligence include simulcast operations? I mean --

13 MR. FENNER: I think that is reasonable to
14 say that simulcasting is a reasonable part that's
15 preparatory towards the conduct of live racing.
16 Otherwise, you cannot generate the purses that's
17 required for live racing.

18 But on the other hand, simulcasting
19 without sincere effort towards conducting live racing, I
20 think, generates genuine policy concerns for you as the
21 Commission.

22 CHAIRMAN PABLOS: Exactly. Okay. I just
23 wanted to have that clarification.

24 MR. CLOWE: That's a good question. And
25 to invoke 309.5, it seems to me, based on his answer,

1 you'd almost have to fail to conduct live racing.
2 Failing to conduct simulcasting would not be adequate
3 based on the way he laid it out. I think that's very
4 much to the point.

5 So to take it further --

6 CHAIRMAN PABLOS: Yes, sir.

7 MR. CLOWE: -- if you'd like --

8 CHAIRMAN PABLOS: Please.

9 MR. CLOWE: -- if this Commission
10 determined to, by the granting of live race dates in
11 2011, allow simulcasting to begin as soon as possible
12 under the supervision of the executive director and
13 members of the Staff and that as soon as possible would
14 be determined on an individual basis, if in 2011 live
15 racing was not conducted, then you could invoke 309.5
16 and revoke licenses, if that was your line of thinking.

17 CHAIRMAN PABLOS: Understood. Yes. I
18 mean, you know we have several concerns. You know, we
19 have the concern about our staff being able to handle
20 this and, you know, we've got these five licenses that
21 might come in at the same time, and I just don't know if
22 we're able to handle that.

23 And so now we have the situation where,
24 you know, the rules committee is also taking a look at
25 this. And I guess, you know, what's in front of us is,

1 you know, with respect to the granting of these live
2 race dates, I ask you what your will is, you know, what
3 is the wisdom of moving forward in this direction based
4 on what we've heard today and based on what we know
5 about the industry, the challenges and, you know, our
6 own experiences?

7 Dr. Carter.

8 VICE-CHAIRMAN CARTER: Yeah, I'd like to
9 answer your question about my opinion on that matter,
10 and that I was part of the racing community when Lone
11 Star Park opened its pari-mutuel facility in advance to
12 racing. I think it's a good example of how the
13 pari-mutuel facility helped establish a good solid purse
14 structure so that when they opened that racetrack, it
15 was a very successful racetrack, and it had very strong
16 purse structure despite struggling in other places. So
17 there is a model out there for pari-mutuel betting
18 before actual live racing.

19 Now, they did demonstrate due diligence,
20 follow-up with the construction of the facility, and
21 open live racing. I think that's a good model of
22 something that worked and something that we can
23 consider.

24 And I think there's nothing -- I would be
25 in favor of grabbing all the dates that everybody

1 requested, probably not the exact dates, but maybe the
2 number of dates, so we could put some reality into it so
3 they're not all the same dates, but that number of date
4 so that they could set their sites, know what they were
5 going to do, if they needed to get their -- their
6 pari-mutuel facilities up and running, they could do
7 that, and they could start accumulating purse structure,
8 accredited Texas bred monies, and all that stuff to help
9 supplement the industry, but then I think Charla Ann
10 mentioned earlier, probably some benchmarks of moving in
11 the right direction be established and followed. I
12 think that would give them an opportunity to succeed and
13 move forward.

14 CHAIRMAN PABLOS: And I think that will
15 also give us an opportunity to continue our discussion
16 in the rules committee as to how we address the inactive
17 license issue.

18 And you're right, Commissioner Clowe.
19 It's all intertwined. And so the tough part is being
20 able to harmonize everything we're trying to do.

21 MR. CLOWE: And you know, many years on
22 the Lottery Commission made we very sensitive to the
23 anti-gaming community in this state. And they are
24 there, and they are very bored. And if this board votes
25 to grant these live race dates and this simulcasting

1 appears all of a sudden in these communities in Texas --
2 and I just want to say this so that the board would not
3 be caught unaware -- you know, we may see a negative
4 reaction to the development of this betting in locations
5 where there's no live racing or evidence of live racing
6 going on.

7 If you go to Gillespie Downs, for example,
8 that's a unique facility, and I envision that as a
9 profitable, I think, simulcasting operation. And the
10 track is there, but it's not a big deal like it is in
11 Lone Star or Retama.

12 And I would just have to -- I'm sitting
13 here thinking about what reaction there might be to this
14 board authorizing that much new gaming which is really
15 what it will be seen by anti-gaming forces. I'd just
16 like to lay that out so no one will be surprised if that
17 point is made at some point in time.

18 CHAIRMAN PABLOS: That's a point well
19 taken. I just -- you know, as of today, there's only
20 one licensee who doesn't have dates assigned, and so
21 as -- even before today's meeting, we already have that
22 ability. The license holders have the ability to do the
23 simulcasting anyway.

24 With respect to additional gaming, as you
25 say, I think this is part of what's already been

1 awarded, a part of the licenses that have been awarded.
2 It just so happens that simulcasting is part of the
3 process.

4 I understand what you're saying if there
5 is no evidence of a track is being built, and that's why
6 I asked the question about the timing as it relates to
7 building a track or at least starting to build a track.
8 And so that's a point well taken.

9 I just do believe that the gaming, or the
10 additional gaming, that's been part of these licenses
11 being awarded when they were. It's not that we're
12 adding any gaming or that we're encouraging additional
13 gaming. What we're doing is we're enforcing the rules
14 as they relate to the obligations of these license
15 holders. I just wanted to put that on the record as
16 well, Commissioner.

17 MR. CLOWE: And as the chair of this
18 board, that would be your answer when the time comes.

19 CHAIRMAN PABLOS: That's my answer now and
20 it will forever be.

21 Yes.

22 COMMISSIONER WEINBERG: Well, and just one
23 thing I would like to add, I mean several of these
24 tracks, you have a firm location, you have a CD ready to
25 go with you, everybody in the community is aware of

1 this.

2 No offense to Austin Jockey Club. I've
3 been on this Commission for three meetings, and every
4 meeting there's a different town and a different
5 location. So, therefore, I think that it needs to be in
6 our rules to where you have a firm location, the land is
7 purchased, the City has approved it, and you have plans
8 drawn, and then you can go ahead and get started with
9 your simulcast because I do know it takes time to get
10 the actual facility built. But when you have that
11 commitment, the City people shouldn't come back at you
12 because that -- like you said, that's already been
13 granted.

14 CHAIRMAN PABLOS: Thank you. And Austin
15 Jockey Club is well aware that this Commission is
16 encouraging it to come forth very quickly with that
17 location. And as Bryan Brown stated, it seems that they
18 do have a location or at least two in Travis County, so
19 we do look forward to hearing from Bryan Brown on that
20 item as soon as possible.

21 So what is the pleasure of the Commission
22 as it relates to these dates? What do we want to do?

23 Doctor.

24 COMMISSIONER SCHMIDT: Mr. Chairman, I'd
25 like to make a motion that we grant the number of dates

1 requested by each track listed in our outline here and
2 not specific dates from January 1st, 2011 through
3 August 31st, 2011.

4 CHAIRMAN PABLOS: Okay. I have a motion
5 to grant the number of dates as stated and not
6 necessarily the dates the specific dates themselves.
7 Correct?

8 COMMISSIONER SCHMIDT: In reference to
9 Dr. Carter's comments that the first three requests all
10 have an August 19th race date. I think there's a lot of
11 overlap that could be worked out among them.

12 CHAIRMAN PABLOS: Okay. I have a motion.
13 Let me take it. Is there a second on that motion?

14 COMMISSIONER EDERER: I'll second the
15 motion.

16 CHAIRMAN PABLOS: Okay. Motion second and
17 now discussion.

18 MS. KING: From a technical perspective,
19 the requirements in the rule are to approve actual
20 dates. That doesn't mean that we shouldn't continue to
21 work on the overlap issue, but the rule requires that
22 the Commission issue actual dates.

23 CHAIRMAN PABLOS: Let me ask you this,
24 Charla Ann. Based on Dr. Carter's concern about the
25 dates, would it be a wise thing to do to table this item

1 for our next meeting so that we can -- it seems that we
2 have certain issues that we need to kind of hammer out
3 first. What would be the drawback in doing that?

4 MR. JACKSON: Just table it to the next
5 meeting, or my other option would be to grant them as
6 they are knowing we have to make some fixes and that
7 Staff work with the tracks to come back on the ones that
8 need to be adjusted and make that proposal at a later
9 meeting.

10 CHAIRMAN PABLOS: Okay. So we have the
11 option of waiting till the next meeting or granting as
12 they are but with the option to fix the dates. Is that
13 what I'm hearing?

14 COMMISSIONER EDERER: To adjust the date.

15 CHAIRMAN PABLOS: Commissioner, do you
16 have a comment?

17 COMMISSIONER EDERER: No. As it has been
18 stated, though, I don't know whether we could -- I don't
19 believe that the motion is proper.

20 COMMISSIONER SCHMIDT: I'd like to
21 withdraw my motion.

22 CHAIRMAN PABLOS: Okay. So we have a
23 motion withdrawn.

24 We have two options. We can wait till our
25 December meeting to address these dates, or we can take

1 the dates as they are today with the understanding that
2 they will be adjusted.

3 Now, are there any other concerns that we
4 have raised today that go in line with Dr. Carter's
5 concerns about the specific dates themselves that we
6 also need to address that might prevent moving forward?
7 I mean, I --

8 MR. JACKSON: No, I think that's it.

9 CHAIRMAN PABLOS: Okay. So those are our
10 two options. What is the will of this body?

11 COMMISSIONER EDERER: I think that -- are
12 we discussing or should I make a motion?

13 CHAIRMAN PABLOS: You can discuss.

14 COMMISSIONER EDERER: I think that we
15 should go forward because we keep putting everything off
16 for two months and two months. So I think we can always
17 adjust the dates. That's an easy thing to do. So I
18 think what we should do, I would like to put a motion on
19 the table for -- to approve the dates for the tracks as
20 submitted.

21 COMMISSIONER SCHMIDT: I would second that
22 motion.

23 CHAIRMAN PABLOS: With the understanding
24 that we would work on the dates based on Dr. Carter's
25 concern.

1 I have a motion to approve, second. Is
2 there any further discussion on this item? All those in
3 favor for this motion, please signify by saying aye.

4 COMMISSIONERS: Aye.

5 CHAIRMAN PABLOS: Any opposed? Okay.
6 That motion carries.

7 MR. CLOWE: Could I ask a question?

8 CHAIRMAN PABLOS: Yes, sir, please.

9 MR. CLOWE: Based on the motion that's
10 just been adopted by the Commission, I'm asking a
11 question. It's my understanding that when the race
12 dates are worked out based on Dr. Carter's concern, then
13 they're codified and established, then at the discretion
14 of the executive director simulcasting can begin when
15 the requirements for building, etcetera, are met.

16 MS. KING: Yes, sir, that's my
17 understanding.

18 MR. CLOWE: Okay. Thank you.

19 CHAIRMAN PABLOS: Okay. Thank you.

20 Commissioners, our next item is Item V-A
21 rule proposals.

22 Mark, please.

23 MR. FENNER: Commissioners, the first
24 proposal is to amend Commission Rule 313.49, which is
25 the starter rule. The current rule requires the starter

1 to assign assistant starters to horses at random, which
2 is not a requirement that's in the national model rule.
3 This proposal will retain the requirement to assignment
4 at random but will allow for exceptions, with a
5 steward's approval, if necessary to ensure the safety of
6 the racing participants and the integrity of racing.
7 This was discussed at the rules committee, and Staff
8 recommends approving this for publication in The Texas
9 Register.

10 CHAIRMAN PABLOS: Are there any questions
11 of Mark? Anyone signed up to speak?

12 Okay. So we have -- we have a proposal to
13 publish the proposed amendments as described in Agenda
14 Items V-A, 1 through 2, in the Texas Register for public
15 comment. Do I have a motion?

16 MR. CLOWE: So move.

17 CHAIRMAN PABLOS: Is there a second?

18 COMMISSIONER WEINBERG: Second.

19 CHAIRMAN PABLOS: Any further discussion?

20 All those in favor, please signify by
21 saying aye.

22 COMMISSIONERS: Aye.

23 CHAIRMAN PABLOS: Any opposed? That
24 motion carries.

25 Next we have Item V-B, rule review. Mark,

1 please.

2 MR. FENNER: By the way, that motion
3 included the assistant starter's rule. I hope -- I
4 didn't cover that. Does anybody have any questions --
5 let me cover the assistant starter's rule --

6 CHAIRMAN PABLOS: Please.

7 MR. FENNER: -- so if anybody has any
8 question about it.

9 MR. CLOWE: It was A 1 and 2?

10 MR. FENNER: Yes, sir.

11 Two is prohibiting certain types of
12 unethical conduct by the assistant starters at the
13 starting gate, and this aligns the Texas rules with the
14 RCI -- or the national model rules for assistant
15 starters. Voted to publish that. And if anybody has
16 any questions.

17 CHAIRMAN PABLOS: I'll just take another
18 vote. That way it's there.

19 MR. CLOWE: So moved.

20 CHAIRMAN PABLOS: Motion. Second?

21 COMMISSIONER WEINBERG: Second.

22 CHAIRMAN PABLOS: Okay. Any comment?

23 Those in favor of adopting the second item, please
24 signify by saying aye?

25 COMMISSIONERS: Aye.

1 CHAIRMAN PABLOS: Any opposed? That
2 motion carries.

3 Now, let's move on to B.

4 MR. FENNER: I'll cover both Chapters 313
5 and 315.

6 This is the readoption of the Chapter 313
7 which relates to officials and the rules of horse
8 racing; Chapter 315, officials and rules of Greyhound
9 racing. This was published for public comment in
10 December 2008. We have done a lot of work in reviewing
11 the rules within each of those two chapters over the
12 course of the past year and have made several changes.
13 We've received no comments on these chapters outside the
14 context of the rule proposals themselves. Therefore,
15 we'd recommend readopting all of Chapters 313 and 315
16 with the changes we've already made.

17 CHAIRMAN PABLOS: Commissioners, any
18 questions? Mark?

19 Okay. So we have a motion to readopt
20 Chapters 313 and 315 in accordance with Texas Government
21 Code 2001.039.

22 Do I have a motion?

23 COMMISSIONER EDERER: So move.

24 CHAIRMAN PABLOS: Is there a second?

25 COMMISSIONER SCHMIDT: Second.

1 CHAIRMAN PABLOS: Motion and a second,
2 Dr. Schmidt.

3 All those in favor, please signify by
4 saying aye.

5 COMMISSIONERS: Aye.

6 CHAIRMAN PABLOS: Any opposed? Okay.
7 That motion carries.

8 We will not be entering executive session.

9 Do we have any old or new business to
10 attend? I know we have some dates that we need to
11 discuss for next year. Charla Ann.

12 MS. KING: Yes, we have a proposal before
13 the Commissioners about the schedule for the Commission
14 meetings, and we've handed that out. And we've heard
15 from some of the Commissioners. We wanted to make sure
16 that everybody has that and is considering it and can
17 get back to Staff about that proposal because we want to
18 get that set up for -- so people can plan accordingly,
19 so we want to call that to your attention. And also in
20 that memo, we also identified potential meetings for the
21 rules committee since they follow on very closely with
22 the Commission meetings.

23 CHAIRMAN PABLOS: That's important. And
24 our next meeting is scheduled for Wednesday,
25 December 2nd.

1 MS. KING: That's correct, sir.

2 CHAIRMAN PABLOS: Okay. So please make a
3 note of that.

4 Any other old or new business,
5 Commissioners?

6 Okay. At this time 12:53, I'll adjourn
7 this meeting of the Texas Racing Commission. Thank you
8 very much.

9 (Proceedings concluded at 12:53 p.m.)

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1 C E R T I F I C A T E

2
3 STATE OF TEXAS)
4 COUNTY OF TRAVIS)
5

6 I, LORRIE A. SCHNOOR, Certified Shorthand
7 Reporter in and for the State of Texas, Registered Merit
8 Reporter, Certified Realtime Reporter and Board
9 Certified Realtime Professional, do hereby certify that
10 the above-captioned matter came on for hearing before
11 the TEXAS RACING COMMISSION as hereinbefore set out.

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

17 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at
18 Austin, Texas this 27th day of October, 2009.
19

20 _____
21 Lorrie A. Schnoor, RMR, CRR, BCRP
22 Texas CSR #4642
23 Expiration: 12/31/2011
24 Firm Registration No. 87
25 Sunbelt Reporting & Litigation Services
1016 La Posada Drive, Suite 294
Austin, Texas 78752
Tel. (512) 465-9100
Job No. 80448