

BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

COMMISSION MEETING  
NOVEMBER 15, 2016

BE IT REMEMBERED that the above entitled matter came on for hearing on the 15th day of November, 2016, beginning at 10:31 A.M. at 105 West 15th Street, Room 120, Austin, Travis County, Texas, and the following proceedings were reported by SHERRI SANTMAN FISHER, Certified Shorthand Reporter for the State of Texas.

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APPEARANCES

Commissioners:       ROLANDO PABLOS  
                          RONALD F. EDERER  
                          MARGARET MARTIN  
                          GLORIA HICKS  
                          GARY P. ABER  
                          JOHN T. STEEN, III  
                          VICTORIA NORTH  
                          A. CYNTHIA LEON

1 CHAIRMAN PABLOS: Good morning. The time  
2 is 10:31. At this time I'd like to call today's Texas  
3 Racing Commission meeting to order.

4 Could you please call the roll, Mary?

5 MS. WELCH: Yes.

6 Commissioner Gary Aber?

7 COMMISSIONER ABER: Here.

8 MS. WELCH: Commissioner Gloria Hicks?

9 COMMISSIONER HICKS: Here.

10 MS. WELCH: Commissioner Cynthia Leon?

11 MS. LEON: Here.

12 MS. WELCH: Commissioner Margaret  
13 Martin?

14 COMMISSIONER MARTIN: Present.

15 MS. WELCH: Commissioner Victoria North?

16 MS. NORTH: Here.

17 MS. WELCH: Commissioner Robert Schmidt?  
18 Commissioner John Steen?

19 COMMISSIONER STEEN: Here.

20 MS. WELCH: Vice-Chairman Ron Ederer?

21 VICE-CHAIRMAN EDERER: Here.

22 MS. WELCH: Chairman Rolando Pablos?

23 CHAIRMAN PABLOS: Here.

24 Do we have a quorum?

25 MS. WELCH: Yes, sir.

1 CHAIRMAN PABLOS: Are we getting some  
2 feedback? Can anyone lower the volume? Who handles  
3 the -- I think it's better now.

4 MS. WELCH: Try that.

5 CHAIRMAN PABLOS: Thank you. Okay.  
6 Thank you. That's much better. Appreciate it.

7 Item II, public comment. Devon, do we  
8 have anyone signed up for public comment?

9 MS. BIJANSKY: No, sir.

10 CHAIRMAN PABLOS: Okay. Commissioners,  
11 good morning. At this time we're going to take up Item  
12 III, proceedings on racetracks. We're going to have a  
13 discussion, consideration, and possible action on both  
14 A and B, a request by Manor Downs to approve 100  
15 percent change of ownership and a request by PM Texas  
16 LLC to approve a voluntary surrender of its Laredo Race  
17 Park Class 2 horse racing license.

18 At this time I'd like to recognize Mark  
19 Fenner to lay out the item, please. Mark?

20 MR. FENNER: Yes, sir.

21 Commissioners, staff has provided you  
22 with its report and summary of the application  
23 submitted by PM Texas to acquire the license currently  
24 held by Manor Downs. And as we've done previously with  
25 ownership changes, I want to walk you through a

1 checklist of the factors to be considered and to  
2 discuss whether those factors have been satisfied.  
3 Please feel free to ask any questions of me or the  
4 applicant during this process.

5           First, Texas Racing Act Section 6.13(b)  
6 specifies that a transaction that changes the ownership  
7 of an association requires the submission of certain  
8 updated information and the payment of a fee. These  
9 have all been summarized in the report, but I'd like to  
10 walk through those items with you now.

11           First of all, the question is whether a  
12 fee for the background check has been paid. And I can  
13 tell you yes, the applicant has paid a 35,000-dollar  
14 fee. This is to cover both the administrative  
15 processes and the cost of any background check. Most  
16 of this, of course, will be returned as we only charge  
17 for the actual expense of conducting the review.

18           Next is the identification of the  
19 proposed owners and the ownership structure. Now, the  
20 proposed owner of Manor Downs is PM Texas LLC, which is  
21 the owner of Sam Houston Race Park, Valley Race Park,  
22 and Laredo Race Park. PM Texas is composed of two  
23 members, each of which owns 50 percent. One is PM  
24 Texas Holdings LLC. The other is Houston Gaming  
25 Ventures.

1 PM Texas Holdings LLC is wholly owned by  
2 MAXXAM, which is owned by the Hurwitz family, each of  
3 whose family member is a 10-year Texas resident. HGV  
4 is a wholly-owned subsidiary of Penn National Gaming,  
5 which is a publicly traded corporation formed and  
6 incorporated in Pennsylvania. It owns, manages, or has  
7 ownership interests in 27 facilities in 17  
8 jurisdictions which include Thoroughbred, harness, and  
9 greyhound racetracks and both land-based and dockside  
10 gaming facilities.

11 In your materials or the staff report,  
12 Appendix B shows the ownership structure before and  
13 after the acquisition of Manor Downs.

14 The second factor to be considered is the  
15 exact location at which a race meeting is to be  
16 conducted. The applicant has proposed to buy Manor  
17 Downs, which is an existing Class 2 horse racing  
18 facility at 9211 Hill Lane in Manor, Texas. It's  
19 approximately 11 miles northeast of downtown Austin and  
20 a mile and a half from downtown Manor.

21 Now, there are three schools located to  
22 the east of Manor Downs across an undeveloped field.  
23 The nearest point from the schools to the grandstand is  
24 a half a mile. All other areas within a half-mile  
25 radius of the facility are undeveloped. And there is a

1 site map and area map in Appendix D of your materials.

2 The next factor to consider is whether  
3 the site complies with zoning. The area is not zoned,  
4 so there are no zoning issues. And I've confirmed this  
5 on zoning maps both of the City of Austin and of  
6 Manor.

7 The next factor is whether the facility  
8 is leased or owned and, if it is to be leased,  
9 information about the lessor. In this case, Manor  
10 Downs and PM Texas have entered into a two-year option  
11 agreement allowing for the purchase of the property.

12 Identification of any other beneficial  
13 owner of shares that bear voting rights. And all of  
14 the owners have already been identified.

15 They're supposed to provide a detailed  
16 statement of the assets and liabilities of the  
17 applicant. They have provided consolidated financial  
18 statements for the years 2013, '14, and '15, and these  
19 are attached to the report as Appendix C.

20 The next factor to be considered is the  
21 kind of racing to be conducted and the dates  
22 requested. PM Texas proposes a 20- to 30-day mixed  
23 meet, but it has not specified particular dates.

24 Proof of residency. Background checks  
25 were conducted at the time that Penn National purchased

1 its ownership interest in 2011 and all the background  
2 checks were recently updated as part of the ownership  
3 and management review that the Commission conducted in  
4 the summer of 2016.

5 And then finally, they have to provide  
6 any copies of any tote, management, or concession  
7 contracts. In this case, they proposed to bring Manor  
8 Downs within the scope of its already approved tote  
9 contract with Sportech and does not propose to enter  
10 into any management or concession contracts at this  
11 time.

12 So those are the mandatory factors you  
13 are to consider. There are a number of optional  
14 factors you can consider. These are what we refer to  
15 as the public interest factors.

16 They are, first of all, the applicant's  
17 financial stability. And the independent auditor's  
18 report that was included as part of the consolidated  
19 financial statements did not raise any concerns about  
20 PM Texas' finances or their ability to continue  
21 operating as a going concern.

22 The next factor you can consider is the  
23 resources for supplementing the purses. The  
24 consolidated financial statements show that the  
25 applicant has substantial cash on hand.



1           The next is the location of the proposed  
2 track. The applicant has identified Manor Downs as its  
3 most likely location but has stated that it wants to  
4 evaluate current conditions for the first 27 weeks  
5 after approval to consider whether to request  
6 authorization to move to a different location.

7           The next factor that you may consider --  
8 these are optional factors -- the effect of the  
9 proposed track on traffic flow. Manor Downs is an  
10 existing facility that operated on the existing roads,  
11 so we did not require a traffic impact study as part of  
12 the application. If they request a change of location,  
13 I imagine we will request a traffic impact study at  
14 that time.

15           The facilities for patrons and  
16 occupational licensees. The public areas of the track  
17 include covered open area seating for about 1300 people  
18 and an air-conditioned turf club for 130 people.  
19 There's five concession areas, three areas with public  
20 restrooms, each of which is handicap accessible. They  
21 have parking for approximately 1700 cars, one-third of  
22 which is paved and two-thirds of which is open field  
23 parking, with an additional 300 spaces for preferred or  
24 valet parking and accessible parking available nearby.

25           They have jockeys' quarters, test barn,

1 paddock, holding area adjacent to each other and within  
2 a secure area. And of course, the jockeys' quarters  
3 have appropriate facilities within them. The  
4 facilities for race animals includes 500 stalls and a  
5 test barn. The test barn has six stalls, a walking  
6 ring, a lab, and veterinary offices. This is also  
7 within a secure area.

8           The availability of the track of support  
9 services and emergency services. The closest hospital  
10 is University Medical Center Brackenridge which is on  
11 15th Street near here. That's approximately 14 miles  
12 from Manor Downs. The applicant will contract with a  
13 local company to provide on-site emergency medical and  
14 ambulance services.

15           The next factor to be considered is the  
16 experience of the applicant's employees. The facility  
17 will be operated and led by Andrea Young as the  
18 president; Dwight Berube of operations; Wayne Hodes,  
19 marketing; and Matthew Stahlbaum, finance and business  
20 development. Each of these individuals is currently  
21 licensed by the Commission as association officers or  
22 as association management staff and are in good  
23 standing.

24           The next finding or factor is the  
25 potential for conflict with other race meetings.

1 Because they haven't selected particular dates, there's  
2 not a conflict at this time. They state that they will  
3 work with the horsemen and other racetracks in  
4 requesting days for its race meet.

5 The anticipated effect of the race  
6 meeting on the greyhound or horse breeding industry.  
7 The applicant states that reopening Manor Downs will  
8 provide an opportunity for locally bred horses to race,  
9 which will, in turn, develop additional breeding  
10 activities.

11 And finally, the optional factor of the  
12 effect on the state and local economy. They estimate  
13 that reopening Manor Downs would create over a hundred  
14 new permanent jobs and up to 300 new jobs when the  
15 track is conducting live racing.

16 Finally, Texas Racing Act 6.04 requires  
17 the following four findings in order to approve a  
18 change of ownership: First, that the proposed track  
19 and location complies with all zoning laws. There's no  
20 zoning, so this requirement is met.

21 That the proposed track and location  
22 complies with the act and the rules. Manor Downs was  
23 previously approved for racing and has conducted  
24 racing. I believe it meets the requirements of the act  
25 and the rules.

1           A finding that the Commission finds by  
2 clear and convincing evidence that the applicant will  
3 comply with all criminal laws in this state. PM Texas  
4 has been operating in Texas since 2011 with no issues.

5           And finally, that the conduct of race  
6 meetings at the proposed track and location will be in  
7 the public interest. And that's a decision that only  
8 you can make.

9           One last item that I would like to raise  
10 is that Section 6.06, Subsection (h) of the act  
11 prohibits a person from owning more than five percent  
12 in more than three racetrack licenses. Since PM Texas  
13 already owns three licenses, it proposes that if the  
14 Commission approves its purchase of Manor Downs, it  
15 will voluntarily surrender its Laredo Race Park license  
16 simultaneously at the time of its closing on the  
17 transfer of the LLC holding Manor Downs' license.  
18 There's an agreement in the materials in Agenda Item  
19 III-B that documents the terms of this surrender.

20           I'd be happy to answer any questions I  
21 can.

22           CHAIRMAN PABLOS: Thank you, Mark.

23           Commissioners, any technical or  
24 clarifying questions of Mark?

25           COMMISSIONER ABER: Could you clarify the

1 land part, who's leasing it to who?

2 MR. FENNER: Yes, sir. What they've done  
3 is they entered into a two-year option. It's not a  
4 lease. It's an option to buy the site and facilities  
5 of Manor Downs. And what they have proposed is that  
6 they're going to do a 27-week evaluation once you have  
7 approved the transfer, during which they might come to  
8 you and ask for a different location; and if they  
9 don't, then they will construct on that site.

10 CHAIRMAN PABLOS: Any other questions?

11 At this time I'd like to ask the  
12 petitioner, Manor Downs, to please come up.

13 Good morning, Mr. Phillips. How are  
14 you?

15 MR. PHILLIPS: Good morning,  
16 Mr. Chairman, Commissioners.

17 This is the 27th year that I've come  
18 before this Commission and I am very pleased to request  
19 the transfer of 100 percent of the Manor Downs interest  
20 to PM Texas LLC.

21 I'll be glad to answer any questions.

22 CHAIRMAN PABLOS: Commissioners, any  
23 questions?

24 Thank you, Mr. Phillips. Appreciate it.

25 MR. PHILLIPS: Thank you.

1 VICE-CHAIRMAN EDERER: Will you come back  
2 and see us from time to time? We'll miss you.

3 MR. PHILLIPS: You won't have anybody to  
4 beat up on anymore.

5 Thank you.

6 VICE-CHAIRMAN EDERER: Thank you.

7 CHAIRMAN PABLOS: Okay. Now Andrea  
8 Young, please, representing PM Texas.

9 MS. YOUNG: Commissioners, good morning.  
10 Thank you for having us, Commissioners. Chairman  
11 Pablos, thank you for agreeing to hold an extra meeting  
12 before the end of the year to consider this matter.  
13 I'd like to thank the staff in their consideration of  
14 this matter as well.

15 This is a deal that came about very  
16 quickly, more quickly than most deals I'm accustomed to  
17 in the sense that when Howard and his team at Manor  
18 Downs determined they were going to stop paying fees to  
19 the Commission, it was shortly thereafter that I  
20 approached him about the possibility of this  
21 transaction.

22 So staff moved really quickly for us from  
23 the time of completing our transaction, I think in  
24 early September, if that's right, and I think we had an  
25 application in a couple of weeks later. And the

1 Commission really did work very diligently and very  
2 quickly for us and far exceeded any timelines that are  
3 required by statute. So I'd like to just thank you  
4 guys, Mark in particular.

5 I'd also like to thank Howard. You know,  
6 Manor Downs has a great history in Texas. And when I  
7 thought about this opportunity, I thought, you know, it  
8 would be really unfortunate to see such a great track  
9 with such a great history -- I think it's the original  
10 license granted in the state, maybe the second to  
11 open -- to see it go away in what has otherwise been a  
12 distressed time for the industry. So he's been a joy  
13 to work with on this process and, you know, maybe  
14 instead of him, you can beat up on me some.

15 I think Mark laid out the agreement as  
16 it's in our application fairly well to you. For us,  
17 when we viewed this transaction, it was, look, this is  
18 a positive for Texas horsemen first and foremost.  
19 Losing a license, an operating viable license in Travis  
20 County, would be a shame.

21 Simultaneous to that is we have a license  
22 in Laredo that I've been before you every year and told  
23 you for the last several years I can't figure out a way  
24 to get this project off the ground.

25 So this is a project that I think we can

1 get off the ground. It's in a good market. It's in a  
2 better market for the horsemen. And simultaneously, it  
3 also solves a problem with two licenses that were  
4 existing in Laredo. So we clean that up and allow  
5 maybe, you know, a viable option to move forward in  
6 Laredo.

7 I think it's good for the Commission.  
8 Obviously this has been a tough year in terms of  
9 financing and dollars. And the opportunity this  
10 transaction created was the payment of all the back  
11 fees that Manor Downs did owe to the Commission.

12 And finally, I would rely on our history  
13 as operators. I think we've proven ourselves time and  
14 time again to be creative operators in the state and  
15 good operators in the state. I think Mark laid that  
16 out in his statements as well.

17 I will just, you know, kind of head-on  
18 try to address I think what is the one kind of concern  
19 with the transaction and that is, hey, why are you  
20 doing an option on the land and why did you structure  
21 the deal the way you did.

22 So it's very simple. One, this deal  
23 moved very quickly. And when I mean quickly, kind of a  
24 matter of months. And we haven't had the opportunity  
25 to even spend the amount of time at Manor Downs to



1 evaluate it like we'd like to. So we've asked -- in  
2 our application, we laid out a two-year project  
3 timeline for the opportunity to evaluate what's going  
4 on at Manor Downs, what's going on in that  
5 environment.

6 We purposely put a two-year option.  
7 We're paying Howard for that option with an agreed-to  
8 purchase price on the land already stated.

9 I have been very honest with this  
10 Commission, and I always have been, in that, you know,  
11 yes, we might pursue another opportunity, but it's  
12 going to be in Travis County. This is where we want to  
13 be. It's not going anywhere else. And maybe that  
14 happens, maybe it doesn't; but if not, we've got an  
15 excellent existing facility to work from that needs a  
16 lot of work. And even in the best of circumstances,  
17 nobody could get Manor Downs back up and running in  
18 less than 12 months and negotiate race dates with the  
19 horsemen as well.

20 So we're going to be thinking through all  
21 those sorts of things over the coming months. We're  
22 going to be thinking about things like, hey, we don't  
23 have any purse money sitting there today, so how do we  
24 start generating purse money where we could actually  
25 have a live race meet. And those are the types of

1 things we are creative thinkers about and we're going  
2 to go do that creative thinking over the coming months  
3 and, you know, we'll have the opportunity to report  
4 back on that to you.

5 I'm happy to answer any questions you  
6 might have.

7 CHAIRMAN PABLOS: Commissioners, any  
8 questions?

9 I have a question. On the voluntary  
10 surrender, I'm seeing here that it would be effective  
11 upon closing.

12 MS. YOUNG: Correct.

13 CHAIRMAN PABLOS: Please tell me closing  
14 is going to happen quickly and not months from now.

15 MS. YOUNG: It is required within five  
16 days per our asset purchase agreement, yes. So there  
17 are a couple of folks that are sitting in this room  
18 that are going to go back and start working on that  
19 after this meeting, we hope.

20 CHAIRMAN PABLOS: Any questions by any  
21 other Commissioners?

22 Thank you. Appreciate it.

23 MS. YOUNG: Thank you.

24 CHAIRMAN PABLOS: We have some folks  
25 signed up to speak.

1           At this time I'll call Marsha Rountree,  
2 please.

3           MS. ROUNTREE: Good morning,  
4 Commissioners. Marsha Rountree, executive director of  
5 Texas Horsemen's Partnership.

6           A lot of the things I'm going to say are  
7 pretty obvious and it's what you're probably expecting  
8 to hear, but I do want it on record and I want you to  
9 hear it from the horsemen.

10           Losing Manor Downs was a blow to Texas  
11 racing, to the horsemen, Quarter Horsemen in  
12 particular. That's where we started our babies early  
13 in the spring and got the year off to a good start.  
14 And so not having Manor Downs around has been a  
15 hardship for Texas horsemen and racing in this state.

16           And so when we learned that Howard and  
17 Manor Downs was about to surrender or lose their  
18 license and that there would be no facility at Manor  
19 Downs or in Travis County any time soon, it was sort of  
20 a devastating bit of news that we received. So we were  
21 pleasantly surprised when we learned from Andrea that  
22 they had made an offer and were going into negotiations  
23 to purchase the license at Manor Downs.

24           So we do support this decision, the  
25 decision that they've made to purchase the license.

1 They've got a long track history of running successful  
2 race meets in Texas, greyhounds and horses. They do a  
3 great job at running their two meets at Sam Houston  
4 right now and we're looking forward to the time when  
5 they will actually be running a race meet in Travis  
6 County. And so we ask that you support the decision  
7 because the horsemen of Texas support it.

8 Thank you.

9 CHAIRMAN PABLOS: Commissioners, any  
10 questions?

11 Thank you, Marsha. Appreciate it.

12 MS. ROUNTREE: Thank you.

13 CHAIRMAN PABLOS: Mary Ruyle, are you  
14 here, representing TTA?

15 MS. RUYLE: Good morning, Commissioners.  
16 I'm Mary Ruyle, executive director for the Texas  
17 Thoroughbred Association.

18 Our board of directors met via conference  
19 call last night on some other business but expressed  
20 their great pleasure at hearing the news of this  
21 transaction between Manor Downs and PM Texas LLC. They  
22 regard this as a promising step forward and is in total  
23 support because, one, of the additional racing  
24 opportunities this will afford our members. It will  
25 also provide additional opportunities for fan

1 exposure.

2           There are people in Austin, Texas, that  
3 would love to go to the races, would love to learn more  
4 about them, but they're not necessarily going to make  
5 the trek to San Antonio to do that. However, if they  
6 can go out in their backyard and get some exposure to  
7 horse racing, we view that as a win for everybody.

8           And finally, PM Texas has an excellent  
9 record of management and improvement of racing in Texas  
10 and we anticipate this to be a very positive impact on  
11 the entire state and racing for Thoroughbreds and  
12 Quarter Horses and we look forward to working with  
13 them.

14           I'd be happy to answer any questions.

15           CHAIRMAN PABLOS: Commissioners, any  
16 questions?

17           MS. RUYLE: Thank you.

18           CHAIRMAN PABLOS: Thank you.

19           Rob Werstler, please?

20           MR. WERSTLER: Good morning,  
21 Mr. Chairman, Commissioners. Rob Werstler with Texas  
22 Quarter Horse Association.

23           We would also urge the Commission to  
24 approve this transfer of ownership. As Marsha stated,  
25 Manor Downs has always been extremely important to the

1 Texas horse racing industry, but the Quarter Horse  
2 industry in particular. And I can tell you I've gotten  
3 a lot of phone calls from a lot of people that are very  
4 excited that Manor Downs could be up and running again  
5 in the very near future.

6 Thank you.

7 CHAIRMAN PABLOS: Commissioners, any  
8 questions?

9 Thank you, Rob. Appreciate it.

10 Is there anyone else signed up to speak  
11 on this item?

12 MS. BIJANSKY: No, sir.

13 CHAIRMAN PABLOS: Okay, Commissioners.  
14 So we've heard from the interested parties, from staff,  
15 and from the industry. So at this time I'd like to  
16 entertain a motion.

17 Commissioner?

18 VICE-CHAIRMAN EDERER: I so move that the  
19 Commission approve the sale.

20 CHAIRMAN PABLOS: So the motion is to  
21 approve the request by Manor Downs.

22 VICE-CHAIRMAN EDERER: Correct.

23 CHAIRMAN PABLOS: Is there a second?

24 COMMISSIONER HICKS: I'll second.

25 CHAIRMAN PABLOS: Seconded by Hicks. So

1 a motion by Ederer, seconded by Hicks.

2 Okay. So let's have a discussion if you  
3 so wish. Anyone wish to speak? Pretty quiet.

4 I would just like to say that from an  
5 economic development perspective, this is a great  
6 project. I'd also like to add that with respect to the  
7 remaining Laredo license, now that license will have  
8 100 percent of that market and so it should be a little  
9 easier to justify building a track and getting started  
10 there, so I'm really happy about that.

11 So hearing no other comments, I'd like to  
12 bring this up for a vote.

13 All those in favor please signify by  
14 saying aye.

15 COMMISSIONERS: Aye.

16 CHAIRMAN PABLOS: Any opposed?

17 Okay. That motion carries.

18 Now we'll look into the Item B, which is  
19 accepting PM Texas' voluntary surrender for revocation  
20 of its Laredo Race Park license.

21 Is there a motion?

22 COMMISSIONER MARTIN: So moved.

23 CHAIRMAN PABLOS: A motion by Martin.

24 Second?

25 COMMISSIONER STEEN: Second.

1 CHAIRMAN PABLOS: Seconded by Steen.  
2 Any discussion, Commissioners?  
3 Okay. I'll bring this up for a vote.  
4 All those in favor please signify by  
5 saying aye.

6 COMMISSIONERS: Aye.

7 CHAIRMAN PABLOS: Any opposed?

8 Okay. That motion carries.

9 Thank you and congratulations.

10 We'll move on to Item C, the proposal for  
11 decision in SOAH Docket No. 475-16-5482, Texas Racing  
12 Commission versus Longhorn Downs, Inc.

13 I'd like to recognize Devon, please.

14 MS. BIJANSKY: Mr. Chairman,  
15 Commissioners, good morning.

16 Today you have the proposal for decision  
17 in the Longhorn Downs case before you and I'd like to  
18 start by just giving you some history that's brought us  
19 to today.

20 As you may recall, in June you had the  
21 Longhorns Down review and renewal before you. At that  
22 time Longhorn Downs had missed its June 1st fee payment  
23 and had notified the Commission that it did not intend  
24 to make any future payments. So you voted to refer the  
25 matter to SOAH, the State Office of Administrative



1 Hearings, for, as the statute provides, a proposal for  
2 decision as to whether to renew the license.

3           Since that time, a hearing was set. The  
4 hearing didn't go forward because, in the meantime, we  
5 had filed a motion for summary disposition, essentially  
6 saying there are no facts in dispute, everyone agrees  
7 the license fees haven't been paid, everyone agrees  
8 what the relevant laws are, so there's no need for a  
9 hearing, go ahead and please decide this kind of on the  
10 agreed facts.

11           And they did that. SOAH said yes, the  
12 facts are uncontested, they failed to pay their fees,  
13 that constitutes grounds for revocation of a license.  
14 So they issued a proposal for decision that's in your  
15 materials recommending revocation of the license.

16           It should be noted that Longhorn Downs  
17 did not participate in that process; and true to their  
18 word, they have not made any future payments -- any  
19 subsequent payments. So the case is before you today  
20 for final action and there's a draft order in your  
21 materials.

22           Several of the parties involved with the  
23 license are here today and do wish to address you.

24           CHAIRMAN PABLOS: Thank you.

25           MS. BIJANSKY: And I'd be happy to answer

1 any questions you have, either now or after they've  
2 spoken.

3 CHAIRMAN PABLOS: Commissioners, any  
4 technical or clarifying questions of Devon?

5 Commissioner Ederer?

6 VICE-CHAIRMAN EDERER: Yes. There was a  
7 hearing set by the administrative law judge?

8 MS. BIJANSKY: Correct.

9 VICE-CHAIRMAN EDERER: And there was a  
10 motion for summary judgment filed?

11 MS. BIJANSKY: Right.

12 VICE-CHAIRMAN EDERER: Was there any  
13 response to the motion for summary judgment?

14 MS. BIJANSKY: No response to anything  
15 that we filed, no response to the PFD. There's been no  
16 participation from that side at all.

17 VICE-CHAIRMAN EDERER: And Longhorn was  
18 notified of the hearing?

19 MS. BIJANSKY: They were.

20 VICE-CHAIRMAN EDERER: Thank you.

21 COMMISSIONER ABER: Who is Longhorn? Who  
22 are the people involved in that? And, you know, this  
23 is so convoluted, you know, and I know -- so -- and  
24 now, you know, last time, the guy that said he wasn't  
25 going to make the payments is not even with that group

1 anymore, right? Blackmer?

2 MR. FENNER: No, sir. Cliff Thomas is a  
3 principal person -- is the person who's been making the  
4 payments for years. He's paid over \$860,000. So he's  
5 still with the group.

6 COMMISSIONER ABER: So in June, at the  
7 June meeting, Blackmer was the one who made the  
8 statement that he wouldn't make the 57,400 payment? It  
9 is, because I've got it right here.

10 MR. FENNER: He sent me an e-mail and I  
11 read it into the record.

12 COMMISSIONER ABER: And you quoted that  
13 he would not make -- he said he wouldn't make any  
14 future payments.

15 MR. FENNER: He was making that statement  
16 as an attorney on behalf of his client.

17 COMMISSIONER ABER: But that guy is no  
18 longer with --

19 MR. FENNER: I believe he's still with  
20 that organization.

21 CHAIRMAN PABLOS: What is your point,  
22 Dr. Aber, with respect to that?

23 COMMISSIONER ABER: Huh?

24 CHAIRMAN PABLOS: What is your point with  
25 respect to that question?

1                   COMMISSIONER ABER: Well, you know, we  
2 never know who owns -- who owns what group of this  
3 thing. And, you know, they've been sitting here paying  
4 these payments for years and we never knew which group  
5 was suing who. Could you clarify that a little bit for  
6 us, whether it's Dallas City Limits or KTAGS or --

7                   MS. BIJANSKY: As to who the players are,  
8 I'm going to have to defer to Mark.

9                   CHAIRMAN PABLOS: So if I may, Mark, the  
10 license holder is?

11                  MR. FENNER: Longhorn Downs.

12                  CHAIRMAN PABLOS: And who are the  
13 principals in Longhorn Downs? I think that's what the  
14 doctor is asking.

15                  MR. FENNER: The person who has been  
16 acting as the owner or the entity is KTAGS.

17                  CHAIRMAN PABLOS: KTAGS.

18                  MR. FENNER: Yes.

19                  CHAIRMAN PABLOS: And who is the  
20 individual who controls KTAGS?

21                  MR. FENNER: His name is Cliff Thomas.

22                  CHAIRMAN PABLOS: Cliff Thomas. Okay.  
23 And is he still with KTAGS?

24                  MR. FENNER: Yes, sir.

25                  CHAIRMAN PABLOS: Which, in turn, is

1 still with Longhorn Downs.

2 MR. FENNER: Yes, sir.

3 CHAIRMAN PABLOS: And is that the  
4 individual who's been writing the checks or that  
5 group?

6 MR. FENNER: Yes. He has written checks  
7 since September of 2012 and over eight hundred and I  
8 think it was sixty-five thousand dollars total.

9 CHAIRMAN PABLOS: So is there any  
10 question as to who the license holder is?

11 MR. FENNER: No. The license holder is  
12 Longhorn Downs.

13 COMMISSIONER ABER: But the question is  
14 who owns Longhorn Downs, though, the principals. And  
15 you say it's this Thomas?

16 MR. FENNER: Well, I understand where  
17 some folks may want to issue some confusion about who  
18 owns Longhorn Downs. However, Longhorn Downs is the  
19 license holder. Longhorn Downs is the entity that has  
20 failed to pay the license fees. So I don't want to --  
21 I don't think we should get twisted up into too much  
22 detail when it's really a very simple case that we took  
23 to SOAH.

24 VICE-CHAIRMAN EDERER: Who was given  
25 notice?

1 MS. BIJANSKY: The initial notice -- two  
2 initial notices were sent to both Jason Blackmer and  
3 Bryan Brown. That was the sort of pre-notice saying  
4 here's a draft hearing notice that we intend to file if  
5 we don't receive payment or some sort of response  
6 justifying the nonpayment and then the hearing notice  
7 itself.

8 VICE-CHAIRMAN EDERER: And when was that  
9 done?

10 MS. BIJANSKY: That was July 20th. And  
11 then the hearing notice was August 2nd.

12 CHAIRMAN PABLOS: And when did we meet as  
13 a body to refer the case to SOAH?

14 MS. BIJANSKY: June 14th.

15 CHAIRMAN PABLOS: And that was a public  
16 meeting.

17 MS. BIJANSKY: Correct.

18 CHAIRMAN PABLOS: Which was posted.

19 MS. BIJANSKY: Right.

20 CHAIRMAN PABLOS: Properly posted?

21 MS. BIJANSKY: Yes, sir.

22 CHAIRMAN PABLOS: Any other questions  
23 before we get into the public comment section?

24 VICE-CHAIRMAN EDERER: Did you receive  
25 any response from either July 20th or the August 2nd?

1 MS. BIJANSKY: The only response I've  
2 received from anyone in this process was, when I sent  
3 the hearing notice to Mr. Blackmer, I sent it by  
4 e-mail, which is allowed under the SOAH rules with  
5 agreement. And I said "I'm e-mailing this to you.  
6 Please let me know if that's okay. Otherwise, I'll put  
7 a copy in the mail to you tomorrow." He responded,  
8 saying "E-mail is fine this time. In the future let's  
9 send everything by mail to be sure everyone receives  
10 everything," which was sort of moot because there  
11 wasn't really anything further other than the motion  
12 for summary disposition, which I did mail.

13 VICE-CHAIRMAN EDERER: That was mailed.

14 MS. BIJANSKY: Uh-huh.

15 VICE-CHAIRMAN EDERER: Okay.

16 CHAIRMAN PABLOS: Okay. Will you --

17 MS. BIJANSKY: Actually, I misspoke. It  
18 was the motion for summary disposition that I e-mailed  
19 and then that conversation ensued.

20 CHAIRMAN PABLOS: Will you stand by in  
21 case we have other questions, please?

22 MS. BIJANSKY: Yes, sir.

23 CHAIRMAN PABLOS: Okay. So any other  
24 questions, Commissioners, before starting?

25 Okay. So we'll have -- we have some

1 folks who have signed up to speak. I have Berry  
2 Madden.

3 MR. MADDEN: Good morning. And thank you  
4 for allowing me to speak today.

5 It's been quite awhile since I've been  
6 before the Commission. I was the president of the  
7 Texas Quarter Horse Association in 2000, I believe, and  
8 was very active in the industry many years ago. A  
9 little history behind this --

10 CHAIRMAN PABLOS: Mr. Madden, please  
11 state who you represent.

12 MR. MADDEN: Yes, sir. I represent  
13 Longhorn Downs. Myself, Bryan Brown, and Joe Archer  
14 were the original three guys who purchased the stock of  
15 Longhorn Downs back years ago. We came before the  
16 Commission several times. Everyone was approved. The  
17 transfer was approved. Just a little bit of history  
18 involved in it.

19 We brought -- at one point in time we  
20 brought Billy Bob in and he brought in Mr. Alameel and  
21 they were trying to purchase the -- and actually did  
22 purchase the stock of Longhorn Downs, leaving us an  
23 override in the profits of the -- of Longhorn Downs.

24 That deal went a little sideways at one  
25 point in time. We came back before the Commission and



1 asked for the license to be transferred to KTAG. And  
2 that was approved.

3 I'd like to apologize, first of all, for  
4 us coming before you today because, unfortunately, I'm  
5 not in the mainstream of everything that's going on and  
6 I wasn't aware, unfortunately, of some of the things  
7 that are happening. Once I was made aware of the  
8 situation and where we were, I got -- myself, Bryan  
9 Brown, Joe Archer had a conference call about trying to  
10 keep our license and save our license.

11 We've had -- to the best of my knowledge,  
12 Mr. Brown has had contact with Cliff Thomas. Cliff  
13 Thomas has agreed to transfer the stock back to us,  
14 back to Longhorn Downs. We're currently working with  
15 Mr. Alameel, trying to get a resolution with him.

16 But what we come before you today is  
17 because of the -- some of us weren't aware of what's  
18 going on. I, unfortunately, was behind the eight  
19 ball. We can save this deal. We can still make it  
20 work. We just need a little bit of extra time.

21 I don't see that the Commission can be  
22 negatively affected by that because I think by our next  
23 meeting, we can have the fees completely brought  
24 current and the license back in good standing and would  
25 have already done so if we would have had a little bit

1 prior knowledge.

2           So I apologize for that. I apologize for  
3 not being involved. But I think if you'll just give us  
4 a little bit more time, we can save the license and we  
5 can save this and hopefully move forward.

6           CHAIRMAN PABLOS: How were you made aware  
7 of this meeting?

8           MR. MADDEN: I got an e-mail -- of this  
9 meeting?

10          CHAIRMAN PABLOS: Or of this situation.

11          MR. MADDEN: Last week I received an  
12 e-mail that this was going to be on the agenda. At  
13 that point in time I started -- my first phone call was  
14 to Bryan Brown and he got Mr. Archer on the phone and  
15 the three of us talked.

16           And, you know, some -- some of the people  
17 believe it's not worth keeping and moving forward.  
18 However, I'm not one of them. I've been a proponent of  
19 Texas horse racing for the last 25 or 30 years. I  
20 think the horse industry is a major, major thing that  
21 we need to continue in the State of Texas. And I'm  
22 here to try to do everything I can.

23           I want to keep the license. I want to  
24 continue to be a part of the license. And again, with  
25 the extra time, we'll be able to do what we need to do

1 to get the Commission their money and get the license  
2 back in good standing.

3 CHAIRMAN PABLOS: Any questions,  
4 Commissioners?

5 COMMISSIONER ABER: Thomas is going to  
6 transfer the ownership to you all.

7 MR. MADDEN: Yes, sir.

8 COMMISSIONER ABER: And who is "you  
9 all"?

10 MR. MADDEN: Well, there's -- Bryan maybe  
11 can speak. We have several small minority owners, but  
12 primarily it's Joe Archer, Bryan Brown, and myself, is  
13 the majority owners.

14 COMMISSIONER ABER: But he's transferring  
15 it to Longhorn Downs and I thought that he was the one  
16 that owned Longhorn Downs, Cliff Thomas.

17 MR. MADDEN: He owned the stock of  
18 Longhorn Downs. It was transferred to him.

19 COMMISSIONER ABER: And this  
20 Dr. Alameel?

21 MR. MADDEN: Yes, sir.

22 COMMISSIONER ABER: What is the deal  
23 there?

24 MR. MADDEN: Well, he was the original  
25 person that we had sold the license to. We were in

1 litigation. We have contacted Mr. Alameel's  
2 attorneys. They're here today. Unfortunately, he's  
3 out of the country. But we feel at this point that  
4 we'll be able to come to a resolution with them and be  
5 able to put that lawsuit aside.

6 COMMISSIONER ABER: So Mr. Alameel was  
7 the one that brought the original suit against you  
8 all?

9 MR. MADDEN: He brought the original suit  
10 against us, I believe. And Bryan might could speak to  
11 that a little bit better, these attorneys back here  
12 behind me. He brought the original suit because we  
13 tried to take the license back from him for  
14 nonperformance.

15 COMMISSIONER ABER: Okay.

16 VICE-CHAIRMAN EDERER: When was the  
17 original suit brought? Four or five years ago?

18 MR. MADDEN: Yes, sir. Maybe even  
19 longer.

20 VICE-CHAIRMAN EDERER: And what makes you  
21 think you're going to be able to get together with  
22 Alameel now?

23 MR. MADDEN: You know, a lot of water has  
24 gone under the bridge.

25 VICE-CHAIRMAN EDERER: A lot.

1 MR. MADDEN: A whole lot. I think -- I  
2 think cooler heads have prevailed with all the  
3 litigation, all the money that's been spent. I can't  
4 sit here today and guarantee that will be done,  
5 although with the conversations that we've had with the  
6 attorneys for Mr. Alameel, I feel very comfortable that  
7 once we sit down and get in front of each other that  
8 we'll be able to get our differences resolved.

9 CHAIRMAN PABLOS: Any other questions,  
10 Commissioners?

11 VICE-CHAIRMAN EDERER: This matter has  
12 been pending since July, I mean, this part of it.  
13 Since June actually.

14 MR. MADDEN: Yes, sir.

15 VICE-CHAIRMAN EDERER: Why are we just  
16 now hearing from anybody?

17 MR. MADDEN: Well, I think because all of  
18 the -- you know, the correspondence was being sent to  
19 Mr. Thomas and I haven't had any conversations with  
20 Mr. Thomas --

21 CHAIRMAN PABLOS: Does Mr. Brown  
22 represent you?

23 MR. MADDEN: Mr. Brown is a part of our  
24 partnership.

25 CHAIRMAN PABLOS: So you're saying

1 Mr. Brown had no knowledge of this?

2 MR. MADDEN: No. I don't know what  
3 Mr. Brown -- I think he -- yes, sir.

4 CHAIRMAN PABLOS: Mr. Brown, will you  
5 please come up?

6 Bryan, did you have any knowledge of this  
7 when this was first brought to the Commission's  
8 attention?

9 MR. BROWN: Absolutely. And if I could,  
10 I wouldn't mind providing a little more background on  
11 not only the past three or four months but the prior  
12 time period and how we've kind of gotten to this  
13 situation we're in because I know some of the  
14 Commissioners haven't been involved with this quite as  
15 long as others.

16 So if it pleases the Commission, I  
17 wouldn't mind giving a little more background. And it  
18 follows a bit with what Mr. Madden was saying.

19 CHAIRMAN PABLOS: I'm just not interested  
20 in delving into all the litigation issues. I mean,  
21 right now we have a license holder who has indicated to  
22 us that they were not going to not only pay what is  
23 owed but pay in the future. We have referred this  
24 matter to SOAH. SOAH has come with their  
25 recommendation. And now here we are.

1                   You know, the whole issue with  
2 Dr. Alameel and the ownership of the groups, I mean, to  
3 me, that's irrelevant at this point. You know, we've  
4 notified you, Bryan, as a representative. We have  
5 issued all notices that have been required. And I  
6 don't appreciate being put in this situation at the  
7 11th hour, you know, having you, sir, come to us and  
8 tell us that you hadn't heard about this and that  
9 Dr. Alameel has been out of town and all these  
10 excuses.

11                   MR. BROWN: I did not say that, sir. I  
12 did know about it. I absolutely knew about it. But  
13 let me -- if I could explain.

14                   CHAIRMAN PABLOS: Go ahead.

15                   MR. BROWN: So just to make sure  
16 everything is clear, as Mr. Madden said, I was an  
17 original partner, still am, in the Austin Jockey Club  
18 who sold the stock in Longhorn Downs, first attempted  
19 to sell it to Dallas City Limits and then subsequently  
20 sold it to KTAGS Downs. Litigation -- and I won't go  
21 into details on the litigation. Litigation by Dallas  
22 City Limits then ensued. That's been about a five- or  
23 six-year period of time that that's happened.

24                   At the present time the stock of Longhorn  
25 Downs is held by basically the Court in Houston. It is

1 in the registry of the Court. The stock cannot be  
2 acted upon by any party, whether it's KTAGS or Dallas  
3 City Limits or the Austin Jockey Club. We're all  
4 powerless to do much of anything about that stock.

5 The Commission recognizes KTAGS Down  
6 Holding Company, LLC, as the rightful owner of that  
7 stock; and so for the past several years, KTAGS has  
8 represented Longhorn Downs as the owner and the  
9 Commission has acknowledged that.

10 I've been a consultant of KTAGS for all  
11 that period of time. Yes, I was noticed for KTAGS. My  
12 allegiance at that point in time was to KTAGS. And  
13 I've continued to represent them until today.

14 So, yes, we were notified. I did pass  
15 along the notifications to the Austin Jockey Club, to  
16 Mr. Archer. So the whole world -- we cannot argue that  
17 we weren't notified. The whole world and our world was  
18 notified and we had due time to do something.

19 What wasn't able to happen, however, is  
20 for us to get together with Dr. Alameel and his group.  
21 Quite frankly, none of us thought it was possible. We  
22 were continuing to litigate this matter. There's a  
23 Supreme Court case appeal that's being dealt with from  
24 a Dallas District Court case and then there's the  
25 Houston case involving the actual stock itself in



1 District Court. So we weren't able to move forward  
2 with any kind of proposal to you, the Commission, with  
3 the litigation going on.

4 We were able -- and quite frankly, I  
5 think that the agenda item scared everybody enough to  
6 drop swords and get together last week. And I've had  
7 great conversations with Snapper Carr, who's been in  
8 contact with Dr. Alameel, who is out of the country and  
9 has been out of the country since June, which  
10 complicates our ability to get things done.

11 All we're asking right now is to allow  
12 you -- or allow us to come back to you at the next  
13 meeting with a plan. You can reject that plan. I can  
14 tell you that part of that plan will be to bring all  
15 the past due fees, whatever it is in February at that  
16 point in time, current.

17 We want to build a racetrack. We have a  
18 group including Dr. Charles Graham, who's in the Austin  
19 Jockey Club partnership, Mr. Madden, and others that  
20 want to build a racetrack. You know, where that would  
21 be, who the exact group it would be, we need to come  
22 back to you with the details of that in February.

23 We have no illusions about gaming. It's  
24 not going happen this session. It probably won't  
25 happen maybe in my lifetime. But we want to build a

1 racetrack. So we just want the opportunity to come  
2 back in February.

3           The question came up why don't you just  
4 ask for a new license to be issued. That would involve  
5 the Commission opening up an application period. If  
6 there's competing interests, competing applicants, it  
7 would be a matter that would go to SOAH. I've been  
8 through that before. It takes a year. It costs a lot  
9 of money, upwards of a million dollars in legal fees  
10 for each party, I think, in the last case. It takes up  
11 a lot of the Commission's time. And meanwhile, you're  
12 not getting paid any license fees through the Longhorn  
13 Downs Class 2 license.

14           So we just ask that you allow us to come  
15 back in February, if that's the next Commission  
16 meeting, present a plan to you, and hopefully it's  
17 something that you're agreeable to. If not, you can  
18 move on with the revocation. And that's all.

19           CHAIRMAN PABLOS: Any questions,  
20 Commissioners?

21           MR. BROWN: I don't know if I provided  
22 too much detail or not enough. Just please let me  
23 know.

24           CHAIRMAN PABLOS: Mr. Steen?

25           COMMISSIONER STEEN: Are you gentlemen --

1 are you -- are you proposed purchasers of this or are  
2 you -- are you currently involved in Longhorn Downs  
3 now? I'm confused as to what you're before us  
4 representing.

5 MR. BROWN: Sure. So just so I'm not  
6 getting crossways with any of the entities, I'm  
7 representing myself. I think Mr. Madden is probably,  
8 in actuality -- I know he said Longhorn Downs, but he's  
9 representing himself. He wants to be with Dr. Graham,  
10 myself, Dr. Alameel in some fashion, part of a group  
11 that comes to you in February with a plan to move  
12 forward with the acquisition of the license, of the --  
13 excuse me, of the stock in Longhorn Downs, dropping all  
14 the litigation that has occurred to date, which is  
15 another big benefit, I think, to everyone because,  
16 unfortunately, this is a -- the litigation is a cloud  
17 that probably won't go away. And Mr. Carr, who's here  
18 representing Dr. Alameel, can talk to that. But that  
19 would have to go away or else none of us are going to  
20 want to be involved. We're not going to get involved  
21 in a license that's clouded by litigation.

22 But I'm here representing myself. In the  
23 past I have been the consultant who's been in front of  
24 you representing KTAGS.

25 COMMISSIONER STEEN: Okay.

1 CHAIRMAN PABLOS: Anyone else?

2 Thank you, gentlemen.

3 VICE-CHAIRMAN EDERER: But hang around.

4 MR. BROWN: We're not going anywhere.

5 CHAIRMAN PABLOS: I have Rob Werstler  
6 signed up to speak.

7 MR. WERSTLER: Good morning again,  
8 Mr. Chairman, Commissioners. Rob Werstler with Texas  
9 Quarter Horse Association.

10 We would just ask you to grant the 90-day  
11 extension. It appears to me that it behooves the  
12 industry, it's best for the industry, for not another  
13 license to go away, to see if they can come back with a  
14 viable plan to keep this license viable. Also it's  
15 important to the funding of the Commission.

16 But on a personal note, I would like to  
17 say I've known Berry Madden for almost 20 years. He's  
18 a man of his word. And if he says he'll do something,  
19 he's going to do it.

20 And I'll answer any questions that you  
21 may have.

22 VICE-CHAIRMAN EDERER: But he obviously  
23 doesn't have any control. For five years it's been a  
24 mess. What makes anybody think in the next 90 days  
25 they're going to put this Humpty Dumpty back together?

1 It ain't going to happen.

2 MR. WERSTLER: That's why we feel so  
3 positive because, as Mr. Madden stated, he was our  
4 president in 2000, so --

5 VICE-CHAIRMAN EDERER: But you've got  
6 Alameel out there who likes to file lawsuits.

7 MR. WERSTLER: I believe his attorney is  
8 here, so he may --

9 VICE-CHAIRMAN EDERER: I understand. And  
10 we're looking forward to hearing from him.

11 CHAIRMAN PABLOS: Rob, I have a  
12 question.

13 MR. WERSTLER: Yes, sir.

14 CHAIRMAN PABLOS: So this license, what  
15 county is it anchored in?

16 MR. WERSTLER: I believe it's Travis.  
17 It's around up there in the bend right off 130  
18 before --

19 CHAIRMAN PABLOS: So you're saying that  
20 it's good for you --

21 MR. WERSTLER: Creedmoor.

22 CHAIRMAN PABLOS: It would be good for  
23 you to have two tracks in Travis County?

24 MR. WERSTLER: I think Travis County  
25 would be much better than two in Laredo, and we had two

1 in Laredo up until this morning. So I think especially  
2 since they're both Class 2's, normally Manor Downs  
3 wanted to run small race meets, so if you had -- I  
4 think Travis County could definitely support two small  
5 race meets.

6 CHAIRMAN PABLOS: Any other questions,  
7 Commissioners?

8 COMMISSIONER ABER: You know, how much  
9 money have they spent on the license since this has  
10 been in court? I don't think they've really had the  
11 opportunity to do anything while they're in court. And  
12 it's still not settled. I don't think it would hurt  
13 anything to give them another 90 days and all the money  
14 and us get the -- us get the fees if they're willing to  
15 pay the fee. Are you all willing -- are they willing  
16 to pay the fees?

17 UNIDENTIFIED SPEAKER: Yes, sir.

18 CHAIRMAN PABLOS: They should have  
19 brought a check today to --

20 COMMISSIONER ABER: Now?

21 VICE-CHAIRMAN EDERER: Or in 90 days?  
22 Let's wait. He can't answer that right now.

23 CHAIRMAN PABLOS: Yeah. Any questions of  
24 Rob? Any other questions?

25 Okay. Thank you.

1 I have Snapper Carr signed up.

2 MR. CARR: Mr. Chairman, members of the  
3 Commission, my name is Snapper Carr. I'm a consultant  
4 and attorney here in Austin, Texas, representing Dallas  
5 City Limits, LLC, which is also the principal owner,  
6 Dr. David Alameel.

7 Thank you for the time today and thank  
8 you for a moment. I think some of the questions that  
9 are raised here highlight the very things that I over  
10 the years have had the chance -- we started in on this  
11 in 2011 was my firm's involvement with this matter. We  
12 had a fairly significant hearing of this Commission  
13 that was the first time I testified before you February  
14 7th of 2012. That's when the current ownership or the  
15 license holder was transferred to KTAGS.

16 At that time we were here in opposition  
17 to that because there was pending litigation. My  
18 client has received a Trial Court judgment. We had an  
19 appeals court that we were waiting on. Our request at  
20 that time was to wait because there was confusion that  
21 would prevent us from effectively moving forward at  
22 that time.

23 Your counsel, Mr. Fenner, and others at  
24 that time rightfully noted that this transfer could  
25 occur, but it would occur taken subject to the

1 contractual rights that the Court established for  
2 Dallas City Limits.

3 I then came back to you -- and I thank  
4 you for indulging me on this because I think it's to  
5 the heart of why -- it will kind show you where we're  
6 at and why it's been hard moving forward.

7 The Fifth Court of Appeals, the Dallas  
8 Court of Appeals, then issued a statement and this  
9 Commission actually intervened in that matter and  
10 before the Supreme Court and briefed on certain topics  
11 and they spoke to what your transfer to KTAGS was. And  
12 that was an approval of a license change and it was  
13 subject to the contractual ownership rights that this  
14 Commission could not interfere with at that time. And  
15 that was clearly stated.

16 That then went to the Supreme Court. The  
17 Supreme Court has since validated that opinion, sent it  
18 back to the Trial Court. A final judgment was entered  
19 for my client. Attorneys' fees of some \$650,000 were  
20 awarded to him. It went back to the Supreme Court. We  
21 were again affirmed by the Texas Supreme Court. And  
22 literally, we are now at the 11th hour. The last  
23 scintilla of litigation that could be had in this  
24 matter is being finalized and that was a motion for  
25 rehearing before the Texas Supreme Court.



1           They've asked for another briefing. It  
2 is our strong opinion that the Supreme Court, as they  
3 have done in the past, will reject that motion and we  
4 will be done. We will then all be before you with the  
5 ownerships and contractual ownership rights clearly  
6 established amongst the parties.

7           It has been hard to move forward with  
8 anything while you had litigation pending. In essence,  
9 we had viewed this kind of as an abatement period. But  
10 now we do have clarity as to that ownership.

11           My client has stated -- I've visited with  
12 him when he's overseas -- that he does have a desire to  
13 bring this fee up to current and to continue those  
14 payments and to work with the Austin Jockey Club  
15 members that remain to bring -- not only to get this  
16 current, but to move this forward so it is no longer an  
17 inactive license.

18           My client has spent millions of dollars  
19 in furtherance of this license and for ownership of  
20 it. And we strongly understand the desire for  
21 resolution and to somewhat take this off the plate. I  
22 would respectfully submit to you that simply voting to  
23 invalidate this license today will not bring closure  
24 for this Commission nor my client or any of the other  
25 parties involved.

1                   CHAIRMAN PABLOS: What does that mean?

2                   MR. CARR: If this client -- I mean, I  
3 won't speculate. But as I've stated, my client has  
4 invested millions of dollars, was not noticed from a  
5 legal perspective at SOAH, received no notice. From  
6 your days, Mr. Chairman, on the Public Utility  
7 Commission, you will know that SOAH defaults to  
8 inclusion of all necessary parties with notice.

9                   This Commission was aware of that legal  
10 standing as noted in the transcript from February of  
11 2012, the lawyers involved with all sides. We simply  
12 did not receive official legal notice of a proceeding  
13 that would subject the license -- we would have  
14 provided testimony. There was no hearings that  
15 occurred in that matter. It was done, as your counsel  
16 noted, on summary disposition, which means it was all  
17 done via paper passing hands between lawyers at the  
18 administrative agency.

19                   We see no downside for this Commission --  
20 I would echo the comments of the Commissioner, that we  
21 see no downside for delaying us to try to get this  
22 moved forward. All the parties understand the  
23 consequences of not coming together at this juncture.  
24 And we believe there is a path forward, especially now,  
25 given that the litigation has come to a conclusion with

1 regards to the ownership issues and a willingness of  
2 the parties to find a path not only to get this brought  
3 current but to advance it and move it forward for the  
4 betterment of the state and the industry as a whole and  
5 certainly the parties that have been stakeholders in  
6 this matter.

7 VICE-CHAIRMAN EDERER: Did I  
8 misunderstand you? I thought you said that it was  
9 still pending before the Supreme Court.

10 MR. CARR: There is a motion for  
11 rehearing on their decision that they've already  
12 rendered, which was to affirm the Fifth Court of  
13 Appeals and the Trial Court judgment that's been  
14 entered. So as we sit today, the Supreme Court has  
15 spoken on this matter, although one of the parties,  
16 KTAGS, filed a motion for a rehearing to see if that  
17 could be reopened.

18 VICE-CHAIRMAN EDERER: So it's not  
19 settled.

20 MR. CARR: It is settled in our mind in  
21 that we have a --

22 VICE-CHAIRMAN EDERER: But it's not  
23 settled legally. It's still a mess.

24 MR. CARR: We see this as being at the  
25 end of a very long litigation process that started from

1 the entering of a contract and --

2 VICE-CHAIRMAN EDERER: So now, after all  
3 of these years and all these millions of dollars that  
4 everybody has spent, now you all are going to say  
5 Kumbaya and go happily off together as partners? Is  
6 that what you're telling me?

7 MR. CARR: We're going to sit down -- now  
8 that the Supreme Court has affirmed, in an order, a  
9 Fifth Court of Appeals decision and a jury trial  
10 decision in favor of my client, that they have the  
11 ability to sit down and say we have enough clarity now  
12 to come up with a plan to move this forward and the  
13 parties are comfortable enough to enter into that  
14 agreement, yes, sir.

15 VICE-CHAIRMAN EDERER: It seems like to  
16 me, Snapper, that you've won everything that you've  
17 gone after in this case.

18 MR. CARR: In the -- in the litigation  
19 system, yes, sir.

20 VICE-CHAIRMAN EDERER: Yes. And now  
21 you -- in your opinion then, it seems to me that you  
22 own that license.

23 MR. CARR: It was the opinion of the  
24 Courts that looked at this that my client owns the  
25 contractual rights to the license currently held by

1 Longhorn Downs.

2 VICE-CHAIRMAN EDERER: So what do you  
3 want all these other people for? You've -- for five  
4 years you've been trying to get rid of them and now all  
5 of a sudden you want them all as your partners?

6 MR. CARR: Austin Jockey Club has always  
7 been a partner to this matter. There hasn't -- that  
8 hasn't been in dispute. They are currently the named  
9 party to Longhorn Downs. And so that hasn't been in  
10 dispute. And it very well could be that my client  
11 sells his interest.

12 I won't speculate as to what the plan  
13 looks forward that we bring forward to you to advance  
14 it, but what I can put on the record for you today is  
15 my client is committed to bringing the fees up. He was  
16 unaware that this amount was due or not going to be  
17 paid. And we also want to bring a path forward to  
18 advance this license in its entirety, not just to get  
19 the fees paid.

20 CHAIRMAN PABLOS: Mark, I have a  
21 question. Would the proposed new owner have to go  
22 through approval as a license holder?

23 MR. FENNER: Yes, sir. Under the act,  
24 each transaction that involves an acquisition or a  
25 transfer of a pecuniary interest of an association must

1 receive prior approval from the Commission. So before  
2 Dallas City Limits acquired any interest in the  
3 license, it would have to receive approval from you.

4 MR. CARR: We would agree with that.

5 CHAIRMAN PABLOS: Any other questions,  
6 Commissioners?

7 VICE-CHAIRMAN EDERER: So if they had a  
8 new license, they'd have to do the same thing.

9 MR. FENNER: Yes, sir.

10 VICE-CHAIRMAN EDERER: I have one  
11 question for you as far as notice is concerned.  
12 Mr. Carr did raise the issue that he had not been given  
13 any notice.

14 MR. FENNER: Yes, sir. It's our view  
15 that since the Commission has never approved their  
16 acquisition or a transfer of any pecuniary interest to  
17 Dallas City Limits that the only parties that could  
18 have an ownership interest and were, in fact, parties  
19 were the KTAGS and the Austin Jockey Club entities.  
20 And you've heard that the KTAGS group was notified  
21 through Mr. Blackmer. Mr. Brown has acknowledged  
22 actual notice of the proceedings. So the parties have  
23 been notified.

24 MR. CARR: We appreciate that fact. This  
25 Commission was well aware, I think evident by the

1 discussion, of the long history that Dallas City Limits  
2 has had. Respectfully, again, it's not only a matter  
3 of the notice we would have received by this  
4 Commission, but the failure to receive notice in any  
5 SOAH proceeding. And again, that's a matter that we  
6 would have issue with on a go-forward basis, that this  
7 is something that is of significance.

8           We certainly understand, again, the  
9 position that the Commission is in and the desire to  
10 see resolution of this. There is no one that has more  
11 desire to see this resolved than our client. This has  
12 been years and, again, millions of dollars that have  
13 been invested in a dispute at this point and we would  
14 like to see it move into something positive not only  
15 for the industry, this Commission, and the parties  
16 involved. And we think we can do that.

17           Again, we understand the downside if  
18 we're unable to do that by the time we come to your  
19 next meeting. I think we all are going into this with  
20 eyes wide open, to your point, Commissioner, about the  
21 difficulties of reaching a final conclusion. I think  
22 this will help drive that conclusion. At the same time  
23 we don't see the downside in extending that period at  
24 this juncture.

25           CHAIRMAN PABLOS: So you're saying that

1 you need extra time to come to some resolution. What  
2 does success look like? I mean, objectively, what does  
3 that mean?

4 MR. CARR: A plan to move the license  
5 forward to become a fully functional racing facility  
6 and knowing who the parties are, with clarity, at that  
7 time. I believe by the time we get here, the final --  
8 I can't make any guarantees for our Supreme Court  
9 neighbors nearby, but we would expect that the final  
10 pieces of even any outstanding motions might be  
11 resolved by that period as well.

12 COMMISSIONER ABER: Mr. Chairman, I'd  
13 like to say I don't see why it would hurt to postpone  
14 this or we're going to be in -- the way SOAH handled  
15 this, we're going to be in some difficulties, I think.  
16 So what do you think?

17 CHAIRMAN PABLOS: Well, I'm certainly not  
18 inclined to table this. You know, if you believe that  
19 you didn't receive notice properly, well, you know, let  
20 it be. I think, you know, we, from our end -- I can't  
21 speak for SOAH, but I think I'm pretty convinced that  
22 we did what we needed to do. I certainly understand  
23 the situation you're in and your client is in. But  
24 I'll leave it to the Commission to decide, you know,  
25 what it wants to do by bringing this up for a vote.



1                   So any other questions?

2                   MS. LEON: Let me ask you, is this --  
3 this location of this Longhorn Downs, is this in Travis  
4 County?

5                   MR. CARR: It's in Travis. Currently the  
6 KTAGS group asked for it to be sited in the Creedmoor  
7 area. And the Commission approved that.

8                   MS. LEON: And we just approved something  
9 in Travis County. Is that correct?

10                  MR. CARR: And I took note of the  
11 discussion of the previous and the discussion of the  
12 financial aspect. My client stands here today, with me  
13 representing him, willing to help bring this Commission  
14 up to date on the fees that are owed and on a  
15 go-forward basis to have those quarterly fees paid to  
16 this Commission and to the industry for the benefit of  
17 the industry as well. Obviously, if the license is  
18 revoked, I think your chances of seeing any dollars  
19 from this will be next to none.

20                  MS. NORTH: Mr. Chairman, I have a  
21 question.

22                  CHAIRMAN PABLOS: Yes, ma'am.

23                  MS. NORTH: Someone said earlier that  
24 Joseph Archer knew about the SOAH proceedings.

25                  MR. CARR: I can't -- I can't speak to

1 anybody other than Dr. Alameel and Dallas City Limits.  
2 We have no involvement. I will say there are other  
3 lawyers that have handled -- and a very large law firm  
4 here in Texas that has offices throughout the state  
5 that represents them in the litigation. They also  
6 received no notice. They practice regularly before  
7 SOAH and in Travis County District Court and an  
8 administrative practice and received no notice as  
9 well.

10 And to that end, we understand this moved  
11 quickly; but again, we see no downside in allowing  
12 something that this Commission has clearly known since  
13 2012, at a minimum, has been in outstanding  
14 litigation.

15 MS. NORTH: According to the Texas  
16 Secretary of State's website, Joseph Archer is the  
17 registered agent for Longhorn Downs. Is that not  
18 correct?

19 MR. CARR: I can't speak to the Longhorn  
20 Downs matter. Other representatives that are here  
21 might be better to ask.

22 MR. FENNER: I'm going to address a  
23 little bit the notice to Mr. Archer. I can tell you  
24 that I talked to Joe Archer on July 7th and notified  
25 him by telephone of the referral of the license to SOAH

1 for nonrenewal proceedings. I can tell you that on  
2 July 21st we mailed a copy of the demand letter and a  
3 draft notice of the administrative hearing to  
4 Mr. Archer. We sent that by e-mail.

5           Once the SOAH granted the motion for  
6 summary disposition and sent us that notice, I left  
7 voice messages for both him and for Joe -- and for  
8 Bryan Brown. I did not receive a call back from  
9 Mr. Archer.

10           MR. CARR: Mr. Chairman, if I may maybe  
11 put one other offering on the table here to -- we're  
12 asking for a delay to your next meeting, which, in  
13 effect, I guess, counts for 90 days, to get us into the  
14 February matter. I mean, nothing prevents this  
15 Commission from uniformly accepting the proposal for  
16 decision and revoking the license at that time if you  
17 do not like what comes forward.

18           CHAIRMAN PABLOS: I'm clear on that. I'm  
19 just not clear on what you intend to do in 90 days.  
20 It's just not clear to me. And there's a lot of  
21 speculation in your comments, you know, promises to pay  
22 and promises -- or hopes that you would come together  
23 as parties. And so there's nothing specific that's  
24 been stated that you would -- that we would objectively  
25 be able to look at and determine whether you have

1 achieved those objectives or not.

2 MR. CARR: We're sitting down with the  
3 other parties. We have been in opposition to the other  
4 parties before this Commission, I think, at every turn  
5 except for one, one hearing in the last five years  
6 where we supported the continuation of the inactive  
7 license while this litigation was making its way  
8 through the court system.

9 All parties have shown a willingness to  
10 put financial resources behind this, including, I think  
11 it's been mentioned, the 800 and some odd thousand  
12 dollars this Commission has received while that  
13 litigation has moved forward.

14 If there was a belief that we weren't  
15 going to see some possible outcome for this, I don't  
16 think any of the parties would be willing to invest  
17 that type of resources, time, or financial commitment  
18 to it.

19 We have a strong commitment of the  
20 parties now to sit down, come up with a viable plan,  
21 and get the license current. Without a license to have  
22 that discussion, obviously I think everyone loses. And  
23 again, I would be remiss if I didn't reiterate that it  
24 is probably not the last stop then for my client. He  
25 has too much invested at this point not to review that

1 matter.

2 CHAIRMAN PABLOS: What is the amount due  
3 right now, Mark?

4 MR. FENNER: Two payments, \$115,000.  
5 Another quarterly payment will be due the beginning of  
6 next month.

7 CHAIRMAN PABLOS: So perhaps as a show of  
8 goodwill by your client, if your client would be  
9 willing to pay that amount within the next seven  
10 business days or something fairly close to that, I  
11 would probably be inclined to table. And if he's  
12 really serious about this, I'd like to have him, you  
13 know, have some skin in the game because promising to  
14 pay, promising to get together is not good enough for  
15 me, you know.

16 And so perhaps -- and I'm just throwing  
17 this out, Commissioners. If there's a -- if there's  
18 a -- you know, a gesture of goodwill at that level,  
19 then perhaps we -- you know, we can certainly consider  
20 that. But otherwise, you know, we're just getting into  
21 speculation and promises that I just -- I don't even  
22 want to consider, for me. And I'm speaking for  
23 myself.

24 VICE-CHAIRMAN EDERER: Is that possible?

25 MR. CARR: I can certainly -- again, my

1 client is currently out of the country and has been.  
2 He plans on returning, to tend to this matter, within  
3 the next week.

4 CHAIRMAN PABLOS: Are you able to reach  
5 him via cell phone maybe?

6 MR. CARR: I will certainly put this  
7 forward.

8 I would again note, as your counsel has,  
9 that this Commission has heretofore not recognized any  
10 standing for my client. So to now be put in the  
11 position of coming up with \$115,000 on quick order when  
12 he's not even the named owner by this Commission --

13 CHAIRMAN PABLOS: But you can't have it  
14 both ways.

15 MR. CARR: -- is problematic.

16 CHAIRMAN PABLOS: But you can't have it  
17 both ways.

18 MR. CARR: But we -- that's why we have  
19 to sit down with who this Commission does recognize.  
20 And so I think there would -- let me back up.

21 There's a commitment from my client. He  
22 has said all along he will bring this up to speed and  
23 up to current. He has not been requested to do so by  
24 this Commission, in writing or otherwise, to this  
25 point, and nor by SOAH, and was unaware of any past due

1 amounts until two weeks --

2 CHAIRMAN PABLOS: What got us to this  
3 point is a past due amount, correct?

4 MR. CARR: Pardon?

5 CHAIRMAN PABLOS: What got us to this  
6 point is the fact that the fee hasn't been paid.

7 MR. CARR: Correct.

8 CHAIRMAN PABLOS: So in my mind, if the  
9 fee gets paid --

10 MR. CARR: Then it's cured.

11 CHAIRMAN PABLOS: -- then we're good.  
12 Right?

13 MR. CARR: Yes, sir.

14 CHAIRMAN PABLOS: But I'm not willing to  
15 wait 90 days to figure out whether your client is  
16 really serious about paying it or not. That's all.  
17 That's all I'm saying.

18 Yes, sir.

19 MR. MADDEN: Again, Berry Madden. Berry  
20 Madden. And I am the majority stockholder in Austin  
21 Jockey Club.

22 Unfortunately, again, there's no excuses  
23 for this. I wasn't notified by Mr. Archer until last  
24 week. Mr. Brown and I talked.

25 I don't know what the right number is.

1 Mr. Alameel is out of the country. And I'm going to  
2 say this, coming from a personal standpoint. The  
3 problem we ran into, first of all, is we had -- you  
4 know, Mr. Archer was involved in this. He was a good  
5 friend of mine and partner. However, he's an  
6 attorney. He's got friends that are attorneys. And  
7 when you get attorneys together, sometimes things don't  
8 work out the way they're supposed to. And I can only  
9 apologize for that, for sitting back and allowing it  
10 go.

11 I wanted to have a meeting with  
12 Mr. Alameel five years ago. It wasn't seen fit by the  
13 attorneys.

14 I am involved. Mr. Brown is involved. I  
15 think we can get in front of Mr. Alameel. And I'll be  
16 the first to tell you, if we can't get this thing done  
17 in two weeks, then I'll write the check myself and  
18 we'll come back and try to do something different. But  
19 since he's out of the country, I don't know the  
20 timing.

21 CHAIRMAN PABLOS: So let me understand --  
22 wait. Let me understand your comment. You're saying  
23 that you would be willing to bring this license up to  
24 speed in two weeks if Dr. Alameel wouldn't?

25 MR. MADDEN: No. I'm not saying he -- I



1 don't know if we can get ahold of him to try to resolve  
2 the -- if I can just get in front of Dr. Alameel,  
3 there's no doubt in my mind that we'll either come to a  
4 resolution --

5 CHAIRMAN PABLOS: We're not going to  
6 commit Dr. Alameel.

7 MR. MADDEN: Yeah. But all I'm asking  
8 for is a meeting with him. I think we can sit down. I  
9 think this thing could have been worked out awhile  
10 ago. We've talked now, Mr. Carr, Mr. Brown, myself. I  
11 think Dr. Alameel is very willing to put all this  
12 behind him. I'm very willing. Mr. Archer is not going  
13 to be involved from a legal standpoint from this point  
14 forward. In fact, there was a recommendation made just  
15 the other day for me to be the president of Austin  
16 Jockey Club. I think that will be happening pretty  
17 quickly.

18 All I'm saying is that I won't drag this  
19 out. I'll make sure. We'll sit down. If cooler heads  
20 can prevail, we'll move forward with this thing. If  
21 they can't, the Austin Jockey Club, we'll -- I'll write  
22 a check for this.

23 CHAIRMAN PABLOS: So is that a commitment  
24 to write a check within two weeks to bring this license  
25 forward by you?

1 MR. MADDEN: I will either write a check  
2 or, if we can't get our matters resolved and it doesn't  
3 look like we can get it worked out, we'll throw our  
4 hands up and walk away from this.

5 CHAIRMAN PABLOS: So you're recommending  
6 that we issue a contingent --

7 MR. MADDEN: Will two weeks work? I just  
8 don't know, because Mr. Alameel is out of the country.  
9 So that's the only thing I can't speak to.

10 MR. CARR: When I spoke to Dr. Alameel --

11 CHAIRMAN PABLOS: By the way, being out  
12 of the country is no excuse. That doesn't work for  
13 me. Okay? So being out of the country is -- with  
14 telecommunications today, that is absolutely not an  
15 issue.

16 MR. CARR: Fair enough. He has been out  
17 of the country for a number of months on other  
18 business, so the issue of notice is why that was  
19 brought up. And I'm not --

20 CHAIRMAN PABLOS: That's why I'm trying  
21 to have some flexibility here.

22 MR. CARR: Yes, sir. So what we -- what  
23 I spoke to my client about last time, one, there was a  
24 strong commitment to sit down with Mr. Madden and the  
25 folks at the Austin Jockey Club and come up with a

1 resolution. He has already committed to that  
2 wholeheartedly, looks forward to it. Again, that is  
3 made easier by the fact that we are at the end of the  
4 litigation that was lengthy and costly.

5 I spoke to him and said I anticipated you  
6 all having another meeting in 30 days and so he had  
7 already committed that we would have the financial  
8 situation brought up to speed within 30 days. I'm  
9 certain that two weeks would work for him as well.  
10 Like I said, he planned on returning within this week  
11 back to the U.S., so that should work.

12 To be candid, though, 30 days would give  
13 us the time to not only get the fees and to sit down  
14 and have something discussed. But regardless, there is  
15 a commitment from him to bring that up to speed.

16 CHAIRMAN PABLOS: What I would be willing  
17 to propose to my fellow Commissioners for consideration  
18 would be some type of a contingent order here to give  
19 you two weeks to pay or it revokes automatically. I  
20 wouldn't be willing to go more than two weeks. Being  
21 out of the country is no excuse. If he's out doing  
22 other business, well, this is other business, too. And  
23 so if you're willing to make that commitment today,  
24 then I would be willing to ask Mark to help us craft a  
25 motion in that regard.

1                   And that addresses your notice issue.  
2 Right? But the fact that the fee has not been paid and  
3 you asking us to wait 90 days to see whether your  
4 client will pay or not does not give me the warm and  
5 fuzzy that I need to be able to do what you're saying  
6 to do.

7                   MR. MADDEN: I hate to throw one more  
8 wrench in this.

9                   CHAIRMAN PABLOS: Go ahead.

10                  MR. MADDEN: Nobody wants to hear this,  
11 but my daughter is getting married on November the 19th  
12 at Camp Lucy up here. So my wife, unfortunately, has  
13 got me pretty booked for the rest of this week; in  
14 fact, is not real excited I was here today.

15                  CHAIRMAN PABLOS: Daughters come first.  
16 What about three weeks?

17                  MR. MADDEN: Yeah, three weeks -- if  
18 you'll give us two weeks after this week, I --

19                  CHAIRMAN PABLOS: Are you good with three  
20 weeks? So I'm only speaking for myself right now and  
21 I'm trying to figure out what to propose to my fellow  
22 Commissioners.

23                  Yes, sir. I don't know who that  
24 gentleman was.

25                  MR. CARR: That's my law partner, Curtis

1 L. Seidlits.

2 CHAIRMAN PABLOS: Okay. So --

3 MR. MADDEN: I'm good with that.

4 CHAIRMAN PABLOS: You're good with that?

5 MR. MADDEN: Yes, sir.

6 CHAIRMAN PABLOS: Mr. Carr, are you good  
7 with that, with me proposing that to my fellow  
8 Commissioners?

9 MR. CARR: Yes. And I would like to have  
10 one request just so we avoid any difficulty. If  
11 Mr. Fenner and staff could also include us in any  
12 notice pertaining to questions about this as we move  
13 forward, that would just help us avoid any --

14 CHAIRMAN PABLOS: That's clear.

15 MR. CARR: Thank you.

16 CHAIRMAN PABLOS: Okay. So,  
17 Commissioners, do you have any comments --

18 VICE-CHAIRMAN EDERER: I have a question  
19 for Mr. Carr.

20 CHAIRMAN PABLOS: Go ahead.

21 VICE-CHAIRMAN EDERER: Mr. Carr, you made  
22 a comment earlier. You said that your client was not  
23 going to -- I'm not saying your exact words, but that  
24 he was not going to let this matter drop, that he was  
25 going to go forward no matter what happened.

1 MR. CARR: The Administrative Procedure  
2 Act allows for appeal of SOAH decisions.

3 VICE-CHAIRMAN EDERER: I understand. And  
4 so you're prepared to do that if need be.

5 MR. CARR: I won't speculate. But I  
6 would --

7 VICE-CHAIRMAN EDERER: I understand.

8 MR. CARR: -- venture to say that it's  
9 logically to assume that someone is going to protect an  
10 asset that they've invested millions of dollars in.

11 VICE-CHAIRMAN EDERER: It's not a veiled  
12 threat. I mean, it's a real possibility, is what it  
13 is, of course. It's not a threat. It's a real  
14 possibility. And that's what my question was. That is  
15 a real possibility that you're well aware of.

16 MR. CARR: If he asked what his legal  
17 avenues were, that would be the first one that came to  
18 mind.

19 VICE-CHAIRMAN EDERER: And next question  
20 for you.

21 MR. MADDEN: Yes, sir.

22 VICE-CHAIRMAN EDERER: Right now,  
23 apparently, all the litigation that's up there -- all  
24 the problems with the litigation can be solved as soon  
25 as the Supreme Court makes up its mind on the matter

1 that's pending. Why don't you just withdraw it?

2 MR. MADDEN: Well, again, I'm not an  
3 attorney and we've had several attorneys representing  
4 us. There was other litigation in Houston, to my  
5 understanding, which Austin Jockey Club prevailed on.  
6 So it's more than just this one decision. We have an  
7 opposing Houston judge that's ruled in a different  
8 way. So again --

9 VICE-CHAIRMAN EDERER: The same thing.

10 MR. MADDEN: Yeah. So this could go  
11 on --

12 VICE-CHAIRMAN EDERER: All you have to do  
13 is just withdraw -- you know, I know the court system  
14 very well; and if you let them get out of something,  
15 they're going to do it in a second.

16 MR. MADDEN: Right.

17 MR. CARR: And that is part of the  
18 request we'll be making when we sit down at a meeting  
19 to try to resolve some of these outstanding issues.

20 MR. MADDEN: Right. Put all this behind  
21 us.

22 CHAIRMAN PABLOS: So what I would  
23 recommend, Commissioners, if there are no other  
24 comments, I would recommend a two-tiered approach here,  
25 where we would give you three weeks to get that license

1 fee up to speed, including the next payment that's due,  
2 which is -- December? Or what is that, Mark?

3 MR. FENNER: Yes, December 1.

4 CHAIRMAN PABLOS: I'm sorry?

5 MR. FENNER: December 1st.

6 CHAIRMAN PABLOS: Okay. Three weeks.

7 And then you'll have 90 days from today to come to this  
8 Commission with a plan on how to move forward, knowing  
9 well that you still have to deal with KTAGS. Right?  
10 And that your client would still have to go through the  
11 same process of getting licensed. Correct?

12 MR. CARR: Absolutely.

13 CHAIRMAN PABLOS: So, Commissioners, I  
14 would like to put that on the table for discussion.  
15 I'd like to know --

16 COMMISSIONER STEEN: I have a question.

17 CHAIRMAN PABLOS: Yes, sir.

18 COMMISSIONER STEEN: So does anyone here  
19 represent KTAGS or Longhorn Downs? Is anyone here to  
20 talk for them? Because I feel like they might be  
21 cooperating in --

22 CHAIRMAN PABLOS: No. He said he was  
23 representing himself and was no longer representing  
24 Longhorn Downs. That's a great question.

25 MR. BROWN: That's a great question. I'm



1 not here representing KTAGS. However, I was empowered  
2 to deliver the message, which is they would agree to  
3 the postponement of the revocation proceedings and  
4 agree to work with the other parties to try to work  
5 something out.

6 COMMISSIONER STEEN: So they're going to  
7 cooperate in all of this even if we don't have the  
8 Supreme Court matter resolved in the next two weeks is  
9 what they're saying?

10 MR. BROWN: I want to be real specific  
11 because I asked the question of Jason Blackmer and  
12 wanted to make sure that I didn't miscommunicate to  
13 you. The specific request I had is will you support  
14 the request to delay the revocation to allow all the  
15 parties to get together and work something out. That  
16 was it. I didn't ask are you going to be cooperative,  
17 which is your question.

18 I don't want to put words in their  
19 mouth. But they did want to at least have the chance  
20 to have the proceeding move forward so that the  
21 discussions could take place.

22 COMMISSIONER STEEN: Mark, a question for  
23 you. Can anyone besides KTAGS, Longhorn Downs, even  
24 make this payment?

25 MR. FENNER: I would encourage that only

1 a representative of Longhorn Downs make the payment.  
2 You would not want to accept a check from Dr. Alameel  
3 or Dallas City Limits. You don't want to create some  
4 sort of equitable interest in the license that doesn't  
5 exist already.

6 MR. BROWN: So could I address that?  
7 Because that has happened in the past. Different  
8 parties have made payments. And I've worked with  
9 Mr. Fenner to get the agreement by the party -- in this  
10 case, it would be KTAGS -- to agree to allow someone  
11 else to make the payment. And we have done that in the  
12 past.

13 MR. FENNER: We have done that in the  
14 past where it was presented by Dallas -- I mean, Austin  
15 Jockey Club, you know.

16 CHAIRMAN PABLOS: So along with the  
17 payment, we need some type of a written statement from  
18 KTAGS allowing for that payment to be made.

19 MR. BROWN: Correct. And there is  
20 precedent for that.

21 CHAIRMAN PABLOS: And you're confident  
22 that you can get that.

23 MR. BROWN: I don't want to say that.

24 CHAIRMAN PABLOS: But remember, we're  
25 conditioning this --

1 MR. BROWN: Without it, we won't be able  
2 to make the payment and none of this makes sense. So I  
3 think we have no choice but to agree to that.

4 CHAIRMAN PABLOS: Commissioner Steen, are  
5 you satisfied?

6 COMMISSIONER STEEN: Yes.

7 CHAIRMAN PABLOS: Okay.

8 MS. NORTH: Mr. Chairman?

9 CHAIRMAN PABLOS: Okay. So Commissioner  
10 North?

11 MS. NORTH: Thank you, Mr. Chairman. I  
12 have a question for Mr. Carr.

13 Are you willing to waive any notice  
14 issues if the Commission agrees to give you three weeks  
15 to bring the payments current?

16 MR. CARR: I'm not in a position to do  
17 that. I'm sorry. That's not something I spoke with my  
18 client and I can't give away a legal right that he may  
19 possess on an investment that is of millions of  
20 dollars.

21 What I commit to today is what he  
22 committed to, to bring the license fee up to speed now  
23 that he is aware of it and to work with the remaining  
24 parties to advance a plan to the benefit of this  
25 industry as a whole. I'm not in a position today to

1 negotiate away rights that he may currently possess.

2 CHAIRMAN PABLOS: So, Commissioner Leon,  
3 do you have any questions?

4 MS. LEON: No.

5 CHAIRMAN PABLOS: Commissioner Ederer,  
6 you were speaking up when I interrupted you.

7 VICE-CHAIRMAN EDERER: Well, I was --  
8 along the lines of what you're talking about, the  
9 potential of two weeks or three weeks, however many --  
10 I guess we need three. Like you said, you've got the  
11 best excuse of anybody.

12 Could there be a caveat as far as the  
13 letter of agreement that you submit to us with the  
14 payment that it be the intention of the parties to end  
15 all litigation?

16 MR. CARR: It is certainly our desire to  
17 have had this litigation ended long ago. And I  
18 believe -- as someone that has followed it at great  
19 lengths, I believe we are at the end of that very long,  
20 long road that we've been upon. So I think as part of  
21 any agreement moving forward, there is an understanding  
22 that the litigation has to be put to rest.

23 VICE-CHAIRMAN EDERER: And this agreement  
24 would -- it would address that?

25 MR. CARR: I believe so. I believe it's

1 probably the only way that it can advance.

2 VICE-CHAIRMAN EDERER: I agree. I think  
3 it would have to be in writing that all litigation be  
4 dropped and that you go forward and that as far as any  
5 potential that you would have for lack of waiver, that  
6 would be also.

7 MR. CARR: If there is an agreement, it  
8 is -- it is, again, my client's desire to advance a  
9 license, not to find more litigation for themselves.

10 Thank you.

11 MS. LEON: Chairman, you should have a  
12 specific date and time that this is received in the  
13 offices.

14 CHAIRMAN PABLOS: Yes. We'll  
15 certainly --

16 MS. LEON: I mean, we say three weeks.  
17 We should have a specific date and time.

18 CHAIRMAN PABLOS: Thank you. We'll make  
19 sure to add that.

20 Okay. So are there any other questions  
21 of these gentlemen?

22 Okay. Thank you.

23 MR. BROWN: Thank you, Commissioners.

24 CHAIRMAN PABLOS: So why don't we do  
25 this. And we'll take a break and give Mark time to

1 craft a motion. But let's at least agree that we're  
2 talking about three weeks in order to make full  
3 payment, with obviously a written statement from the  
4 license holder allowing for that payment to be made.  
5 There would be a 90-day-from-today period where the  
6 party would come with a workable plan with objective  
7 goals. Right? So that we know the timeline with the  
8 goals. And that litigation be dropped, Commissioner?

9 VICE-CHAIRMAN EDERER: Yes. A caveat  
10 that all litigation would be terminated.

11 MS. LEON: But the 90 days would be moot  
12 if within three weeks they don't come up with the  
13 money.

14 CHAIRMAN PABLOS: Yeah. The license will  
15 be revoked in three weeks if payment is not made by a  
16 certain time and a certain date.

17 Is there anything else that you would  
18 like to add to that motion, Commissioners?

19 I think, you know, we're being flexible,  
20 Mr. Carr. I think this is perhaps the best work, you  
21 know, around to what we have going on. But at the same  
22 time, you know, I do want to state that the reason  
23 we're here is because of the lack of payment.

24 And so if we can get the payment up and  
25 going, if we can get the parties to drop the lawsuit,

1 and by our next Commission meeting, which presumably is  
2 in 90 days -- and by the way, it will be the first  
3 scheduled meeting in the next year -- to have a  
4 workable plan with very objective, clear goals and  
5 timeline, I think I can live with that. I don't know  
6 if you have any comments based on that.

7 Mark, go ahead.

8 MR. FENNER: So I want to make sure I  
9 understand something. So the Commission is prepared to  
10 offer this compromise; but if they don't make the due  
11 date, they still retain the right to sue for lack of  
12 notice?

13 CHAIRMAN PABLOS: Correct.

14 MR. FENNER: Okay. You're okay with  
15 that.

16 CHAIRMAN PABLOS: Well, they have that  
17 right.

18 MR. FENNER: They could waive it now.

19 CHAIRMAN PABLOS: But he mentioned that  
20 he wasn't prepared to do that. I'm fine with it.  
21 Look, I mean, I'm an attorney. Right?

22 MR. FENNER: Yeah. I've heard some great  
23 things about attorneys today.

24 CHAIRMAN PABLOS: So, no, that's very  
25 clear, Mark, and thanks for clarifying that.

1 Definitely.

2                   So if there's no payment by this  
3 three-week deadline, the license is revoked. If there  
4 is payment, then they have the remainder of the 90 days  
5 to come up with a plan.

6                   MS. LEON: After 90 days would it be  
7 revoked or they don't have the 90 days?

8                   CHAIRMAN PABLOS: Well, you know, that's  
9 why I'm asking for very objective goals. If it's a  
10 clear path -- and keep in mind, this license would  
11 still be up for consideration, you know, the annual  
12 review anyway.

13                   MS. LEON: Right.

14                   CHAIRMAN PABLOS: So at the annual review  
15 we'll be able to catch that anyway. So we've got, you  
16 know, some backstops there. And that all litigation be  
17 dropped, no exceptions.

18                   Are we good with that, Mark?

19                   MR. FENNER: I'm going to need a few  
20 minutes.

21                   CHAIRMAN PABLOS: Okay. Why don't we  
22 reconvene, let's say, at 12:30. That's 30 minutes.

23                   MS. LEON: Can it be earlier?

24                   CHAIRMAN PABLOS: I just don't want to  
25 put too much pressure -- Mark, how long do you think



1 you'll need in a very --

2 MR. FENNER: Can I have 15 minutes?

3 CHAIRMAN PABLOS: We will reconvene at  
4 12:15.

5 (Recess from 11:56 a.m. to 12:20 p.m.)

6 CHAIRMAN PABLOS: Okay, folks. We're  
7 ready. The time is 12:21 and we're back on the  
8 record.

9 At this time, Commissioners, I'd like to  
10 ask Mark to read a proposed motion that addresses the  
11 issues we discussed.

12 Mark?

13 MR. FENNER: Yes, sir.

14 Now, in your materials, you'll see that  
15 there is an order of the Commission. We're going to  
16 operate from that. And what we'll do is on page two of  
17 the order of the Commission, where it reads "It is  
18 hereby ordered that Respondent's racing association  
19 license is revoked" and then there's a second paragraph  
20 underneath that about "This order takes effect," this  
21 would strike "This order takes effect on the date it is  
22 entered," the rest of that paragraph.

23 And what the order will be, it says "It  
24 is hereby ordered that Respondent's racing association  
25 license is revoked effective December 6, 2016, without

1 need for further action by the Commission unless,"  
2 number one, "Respondent pays all license fees due at  
3 that time," and then in parentheses, \$172,500, close  
4 paren; number two, "Authorized representatives of  
5 Dallas City Limits, the Austin Jockey Club, and KTAGS  
6 authorize the payment on behalf of Longhorn Downs at  
7 the time of payment"; and number three, "All litigation  
8 between and among the parties be settled."

9 "Further, representatives of Longhorn  
10 Downs are hereby ordered to submit, within 90 days of  
11 this order, a plan that clarifies, among the parties,  
12 the proposed ownership of Longhorn Downs and  
13 establishes clear" -- excuse me, "and establishes  
14 specific timelines and clear and objective benchmarks  
15 for establishing and opening an operating racetrack.  
16 Issued and entered this day," and that will be today's  
17 date.

18 CHAIRMAN PABLOS: Mr. Carr? Mr. Carr?

19 MR. CARR: Yes.

20 CHAIRMAN PABLOS: Will you please come  
21 up?

22 MR. FENNER: I want to clarify one  
23 thing.

24 CHAIRMAN PABLOS: Go ahead, Mark.

25 MR. FENNER: Where it talks about

1 authorize the payment, at the time of payment, add "in  
2 writing," the authorization in writing.

3 CHAIRMAN PABLOS: My question is: Has  
4 that -- is that -- does that motion address the items  
5 that we all discussed together prior to this?

6 MR. CARR: I believe it does. I was  
7 trying to make notes as we followed along. And it  
8 referenced representatives of Longhorn Downs and KTAGS  
9 as well, obviously KTAGS. But who are we referring to  
10 with regards to representatives of Longhorn Downs?

11 MR. FENNER: That would be among you all  
12 to decide.

13 MR. CARR: Okay. Fair enough.

14 CHAIRMAN PABLOS: And it goes back to  
15 having the authorization from the license holder for  
16 payment.

17 MR. CARR: Absolutely. And very clear  
18 that we need to have the payment fee brought up in good  
19 standing and have a path forward so that we don't  
20 become delinquent again. And then clearly we want to  
21 sit down -- we were already, in this recess, making a  
22 discussion to sit down and then bring a plan forward  
23 that I think -- well within that 90-day period to this  
24 Commission at your next meeting.

25 CHAIRMAN PABLOS: Very well. Thank you.

1 MR. CARR: Thank you.

2 CHAIRMAN PABLOS: Okay, Commissioners.  
3 So we've heard the motion. Does anybody want to bring  
4 that motion up? Do I hear anyone?

5 VICE-CHAIRMAN EDERER: I'll make the  
6 motion.

7 COMMISSIONER ABER: Second.

8 CHAIRMAN PABLOS: A motion by Ederer,  
9 seconded by Aber.

10 Okay. Any other discussion on this  
11 item?

12 COMMISSIONER STEEN: May I ask two  
13 questions?

14 CHAIRMAN PABLOS: Yes, sir.

15 COMMISSIONER STEEN: Number one, so this  
16 SOAH -- potential SOAH action would remain on the table  
17 through the February meeting.

18 MR. FENNER: No. What this does is it  
19 resolves it by December 6, 2016, with the payment, with  
20 them authorizing the payment in writing, and with the  
21 litigation between and among the parties be settled.  
22 The 90-day plan is a further order that they would be  
23 in violation of if they did not comply with.

24 CHAIRMAN PABLOS: SOAH was based on --

25 COMMISSIONER STEEN: And what would be

1 the consequences of not complying with that?

2 MR. FENNER: A violation of a Commission  
3 order is separate grounds for revocation of a license.

4 COMMISSIONER STEEN: Okay.

5 CHAIRMAN PABLOS: And then also,  
6 Commissioner, we have a backstop in the annual review.

7 COMMISSIONER STEEN: Okay. One other  
8 question. It was just discussed who would be -- who  
9 would authorize the Longhorn Downs, who would be the  
10 signatory, I guess, on this. Do we not think the  
11 person that's been making the payments for the last two  
12 years or whatever it is should be --

13 MR. FENNER: Well, what this really says  
14 is it's authorized representatives of the three  
15 organizations, which is KTAGS, Austin Jockey Club, and  
16 Dallas City Limits. They have to -- they have to all  
17 authorize the payment on behalf of Longhorn Downs. So  
18 they have to make an agreed -- "We all authorize it.  
19 We're all signing off."

20 COMMISSIONER STEEN: So it's authorized  
21 persons of those entities.

22 MR. FENNER: Yes.

23 COMMISSIONER STEEN: That's all.

24 CHAIRMAN PABLOS: Okay. Any other  
25 discussion or questions?

1 MS. NORTH: Mr. Chairman?

2 CHAIRMAN PABLOS: Commissioner.

3 MS. NORTH: The Comptroller's office  
4 hasn't had a sufficient amount of time and a sufficient  
5 amount of information to properly evaluate this  
6 decision, so we're going to abstain from this vote.

7 CHAIRMAN PABLOS: Very well. Thank you.

8 Anyone else?

9 Okay. Well, at this time -- Mark, did  
10 you say something?

11 MR. FENNER: No, sir.

12 CHAIRMAN PABLOS: At this time I'd like  
13 to bring this up for a vote. All those in favor please  
14 signify by saying aye.

15 COMMISSIONERS: Aye.

16 CHAIRMAN PABLOS: Any opposed?

17 Okay. That motion carries. Thank you.

18 Let's move on to our last item.

19 MR. FENNER: We'll be distributing the  
20 order to you as soon as we can.

21 CHAIRMAN PABLOS: Thank you.

22 MS. LEON: And to the parties as well.

23 MR. FENNER: Once you sign it.

24 CHAIRMAN PABLOS: Okay. Item IV,  
25 proceedings on rulemaking.

1 Mark Fenner, please?

2 MR. FENNER: Yes, sir.

3 This is a rule proposal for addressing a  
4 problem of program and paper trainers. This has been  
5 discussed at the rules committee and then at the  
6 committee on out-of-competition testing recently.

7 And a program or paper trainer is someone  
8 who's listed on the program as the trainer of a horse,  
9 but the horse has actually been in the care and custody  
10 and training of somebody else. It's frequently a  
11 person whose license has been suspended or revoked or  
12 who's not qualified for a license.

13 The trouble is that the handicapping  
14 public uses the identification of a trainer as a  
15 handicapping tool. And so when the trainer is listed  
16 on there who is not the actual trainer, you're  
17 providing misleading information to the public about  
18 the training of that horse.

19 What this would do is, first of all,  
20 amend Rule 301.1, Definitions, to add a specific  
21 definition of a program trainer and then amend 311.104,  
22 Trainers, to provide that being a program trainer or  
23 for an owner to name a program trainer on an entry form  
24 is a detrimental practice and it's inconsistent with  
25 maintaining the honesty and integrity of racing. These

1 are reasons for which you can revoke a license and you  
2 can also exclude somebody from a racetrack's grounds.

3 That's my summary of it. I'm sure that  
4 members of those committees could help.

5 CHAIRMAN PABLOS: Anyone from the rules  
6 committee wish to add any comments?

7 VICE-CHAIRMAN EDERER: No. I think that  
8 that was a very good presentation.

9 MR. FENNER: I do have one further  
10 thing. In the definitions, you'll see that at the very  
11 end of the current definitions there is an active  
12 license and inactive license definitions and they're  
13 out of alphabetical order, so we're making some edits  
14 to put them in alphabetical order.

15 CHAIRMAN PABLOS: Okay.

16 VICE-CHAIRMAN EDERER: Recommend  
17 approval.

18 CHAIRMAN PABLOS: So we have a motion to  
19 publish the rule proposals described in Items IV-A and  
20 IV-B in the Texas Register for public comment.

21 Is there a second?

22 COMMISSIONER HICKS: Second.

23 CHAIRMAN PABLOS: Seconded by Hicks.

24 Any discussion?

25 Okay. I'll take this up for a vote. All



1 those in favor please signify by saying aye.

2 COMMISSIONERS: Aye.

3 CHAIRMAN PABLOS: Any opposed?

4 Okay. That motion carries.

5 We will be going into executive session,  
6 Commissioners, for no more than -- no more than five  
7 minutes, I promise.

8 So at this time, the time being 12:30,  
9 we'll enter into executive session under Government  
10 Code 551.074(a)(1) to deliberate the appointment,  
11 employment, evaluation, reassignment, duties,  
12 discipline, or dismissal of the executive director.  
13 Thank you.

14 (Recess from 12:30 p.m. to 12:34 p.m. for  
15 executive session)

16 CHAIRMAN PABLOS: Okay. The time is  
17 12:34. We're reconvening out of executive session at  
18 this time. We have discussed the executive director's  
19 position. And what I have done is I have --

20 MR. FENNER: You're doing it now. You  
21 didn't make any decisions within --

22 CHAIRMAN PABLOS: No, no. What I have  
23 done is I have asked Commissioners to volunteer to  
24 participate in a search committee for an executive  
25 director. So at this time I'd like to appoint

1 Commissioner Steens -- Commissioners Steen, Martin, and  
2 Leon to be part of that committee.

3 Chuck Trout has announced his intention  
4 to retire. The period is left open and there's  
5 flexibility to begin the process to identify an  
6 executive director. So we will continue the process.  
7 Mark has everything on file from the last time around,  
8 so it should be an easy process to follow.

9 Any questions, Commissioners?

10 Okay. Hearing none, the time is 12:35.  
11 At this time I'd like to adjourn today's Texas Racing  
12 Commission. Thank you.

13 (Proceedings concluded at 12:35 p.m.)  
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1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3

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

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


14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,  
15 Texas, this 28th day of November, 2016.

16

17

18

19

20   
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