

In the Matter Of:

INDIANA HORSE RACING COMMISSION MEETING

IHRC Meeting

November 04, 2015

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INDIANA HORSE RACING COMMISSION
MEETING

HELD ON
NOVEMBER 4, 2015
9:09 A.M.

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APPEARANCES

Thomas Weatherwax, Chairman
Greg Schenkel
George Pillow
Susie Lightle
William McCarty

Deena Pitman, Assistant Executive Director

Lea Ellingwood, Esq.
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AGENDA

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1 CHAIRMAN WEATHERWAX: I would like to call
2 this commission meeting to order. Let me swear the
3 court reporter.

4 (At this time the oath was administered to the
5 court reporter by Chairman Weatherwax.)

6 CHAIRMAN WEATHERWAX: So now we are court
7 reporting. First of all, the agenda, I would like
8 to have a motion or a review of the minutes of the
9 past meeting on July 15th, which you all received
10 in your packet. Are there any notes for
11 correction, changes by my fellow commissioners? Do
12 I hear a motion?

13 COMMISSIONER PILLOW: So moved.

14 CHAIRMAN WEATHERWAX: So moved by George.

15 COMMISSIONER SCHENKEL: Second.

16 CHAIRMAN WEATHERWAX: Second by Greg. All
17 those in favor say "aye."

18 THE COMMISSION: "Aye."

19 CHAIRMAN WEATHERWAX: We have a long agenda,
20 and we are going to go through this in the most
21 efficient manner possible. Lea, first item is
22 something that is familiar to many of us. Please
23 share with us what we're going to have to talk
24 about.

25 MS. ELLINGWOOD: I will be happy to,

1 Chairman. The first matter is the Commission's
2 consideration of the ALJ's Proposed Findings of
3 Fact, Conclusions of Law, and the Recommended Order
4 in the matter of the IHRC Staff versus Granitz and
5 Estvanko.

6 The matter has actually come before the
7 Commission once before. At that time, the
8 Commission was making a decision with respect to
9 the appropriateness of the summary suspension. At
10 this point, you'll be hearing the final disposition
11 or the order regarding the final disposition.

12 The ALJ in this case is a gentleman by the
13 name of Buddy Pylitt, who was assigned to the case
14 by the Chairman. Judge Pylitt held a two-day
15 hearing. I think it was in excess of ten hours.
16 Heard all of the witnesses both presented by
17 Commission Staff and Granitz and Estvanko's
18 counsel, a number of pieces of exhibits, weighed
19 the credibility of all the witnesses and the
20 exhibits that were submitted into evidence and
21 entered a proposed order, conclusion of law, and
22 findings of fact in favor of the Commission Staff.

23 At this point, pursuant to the Indiana
24 Administrative Orders and Procedures Act, each side
25 has been afforded the opportunity to present briefs

1 in support of their position and will have a set
2 time to make an oral argument before you, after
3 which you will need to determine whether or not you
4 want to affirm, modify, or dissolve the ALJ's
5 proposed order in favor of the Commission Staff.

6 If there aren't any questions from you,
7 Mr. Granitz and Mr. Estvanko's counsel will go
8 first.

9 CHAIRMAN WEATHERWAX: What's the time factor?

10 MS. ELLINGWOOD: For this one, each side has
11 15 minutes. I think that's probably well more than
12 they need, given that you've heard a lot about this
13 matter. I have the clock in front of me and will
14 give a three-minute, two-minute, and one-minute
15 countdown, should we need to get to that point.

16 MR. EDDINGFIELD: Good morning, ladies and
17 gentlemen. My name is Joe Eddingfield. I'm
18 counsel for Richard Estvanko and Anthony Granitz.
19 On their behalf, as well as myself, I appreciate
20 the opportunity afforded us here today to be heard.

21 This case stems from September 19, 2014, an
22 incident that was alleged by a barn walker on staff
23 at Indiana Grand alleging that a veterinarian by
24 the name of Doctor Ross Russell entered a stall of
25 a horse trained and in the care of my clients,

1 Mr. Estvanko and Mr. Granitz, by the name of Tam
2 Tuff. The horse was housed in Stall 61 in Barn 6
3 at Indiana Grand.

4 The barn walker alleged that she observed
5 Doctor Russell enter this stall on race day, a date
6 that Tam Tuff was scheduled to race at Indiana
7 Grand, and observed Doctor Russell inject this
8 horse with an unknown substance.

9 Doctor Russell and his staff, upon learning of
10 these allegations a few days later, the specifics
11 of it, countered this by saying they had
12 encountered a barn walker in their work on
13 September 19, 2014, but that this encounter
14 occurred in Barn 7, Stall number 31 at Indiana
15 Grand. And the purpose of being in that stall on
16 that day by Doctor Russell was to draw blood from a
17 horse in Stall 31, Barn 7.

18 These are the competing issues we have. It is
19 a unique case, unique to me in various aspects.
20 I've not been before this Commission other than one
21 time many years ago, but I found this to be a very
22 interesting, and it's a very fact-sensitive case.

23 I would point out to the Commission here
24 today, number one, that no investigation of any
25 substance occurred immediately after this incident

1 was first reported. The incident was not reported
2 until the following day, approximately noon on that
3 following day September 20th when this first
4 became apparent to the Commission, apparent to the
5 stewards at Indiana Grand. Approximately four
6 hours later, summary suspensions, immediate
7 suspensions were issued by the stewards as to
8 Mr. Estvanko, who was at the track as an assistant
9 trainer on behalf of Mr. Granitz, as well as Doctor
10 Russell, Doctor Russell's two vet helpers,
11 Stephanie Burchette and Callie Ramey. All were
12 suspended summarily, given little, if any,
13 explanation as to why they were being suspended,
14 not made privy to the specific allegation that was
15 being made on that day.

16 Another unique aspect of this case is the lack
17 of a positive test result. Tam Tuff finished
18 second at the race that evening at Indiana Grand on
19 September 19th. Had both blood and urine samples
20 taken at that time. Both were sent to the
21 Commission's laboratory, Industrial Labs, who was
22 the contract laboratory testing samples drawn from
23 horses at the time. The test results came back
24 negative as to both blood and urine.

25 With respect to the lack of investigation,

1 it's my understanding at this time as of
2 September 19, 2014, there were two investigators on
3 the staff of the Commission at the time.

4 Mr. Estvanko, Doctor Russell, his two vet helpers
5 were called in by the stewards about 5 p.m. Told
6 them they were suspended summarily effective
7 immediately, little, if any, explanation as to why.
8 None of these people were interviewed by any of the
9 Commission staff, particularly the two
10 investigators that were on staff at that time,
11 never interviewed, never interrogated or questioned
12 as to the alleged incident, never afforded an
13 opportunity to give any statements, make any
14 explanations or to address those allegations before
15 the summary suspension orders came from the
16 stewards. No ability to speak in opposition of
17 what the allegations were there immediately.

18 It's my understanding that none of these
19 people were ever interviewed or questioned beyond
20 that point in time. The only extent of
21 investigation that I am aware of on
22 September 23rd, three days after the report, four
23 days after the alleged incident, the barn walker
24 who made these allegations was called in by one of
25 the investigators, questioned with regard to the

1 specific incident report that that particular barn
2 walker ended up filling out with the assistance of
3 a supervisor of hers, an interview that lasted, I
4 think, all of about 12 minutes.

5 Along that same line, Dee Thoman, supervisor
6 at Indiana Grand, supervisor of the barn walker,
7 Jamie Kolls who made these allegations, was never
8 interviewed. Miss Thoman ultimately has testified
9 in deposition and at the hearing in this matter
10 that she was first approached by Jamie Kolls or
11 told this by Jamie Kolls during a conversation on
12 the morning of September 20. That she took
13 Miss Kolls and re-walked Miss Kolls' route that she
14 had walked that morning when she claimed she
15 observed this incident occur, re-walked it two
16 different times. Assisted Miss Kolls in preparing
17 this report, got the actual document for her to
18 fill out and then assisted her with some of the
19 information that had to be completed on this form
20 and was the one that turned this into the stewards
21 around noon on September 20 to start this whole
22 process.

23 One of the exceptions that we have made with
24 respect to the administrative law judge's rulings,
25 obviously, is the test result. Negative test

1 results for both blood and urine. Samples that
2 were taken approximately eight hours after this
3 alleged incident occurred.

4 Our position in relying on the nature of the
5 administrative rules that govern this process, our
6 position would be that that negative test result
7 should be dispositive. No evidence of any foreign
8 substances, illegal substances should open and
9 close the matter. Commission disagrees, obviously.
10 That's why we have been through the process of
11 hearing.

12 What happened after those test results came in
13 was that Mr. Gorajec solicited a letter from
14 Richard Sams, who was an employee of a laboratory
15 in Lexington, Kentucky. I believe it's LGC
16 Laboratory. A laboratory that once was on contract
17 with the Commission to test blood and urine samples
18 from Indiana Grand, ultimately was fired by the
19 Commission for deficiencies at least in the speed
20 of their testing and their test results.

21 Doctor Sams basically wrote a letter saying
22 that you can't rely on the test results. Reasons
23 being that there are substances, foreign or
24 otherwise, that are out there that they don't have
25 the means of testing for. Part of the letter and

1 part of the findings that the ALJ made with respect
2 to relying on this to impeach the credibility,
3 impeach the accuracy of the Industrial Lab's
4 negative test results was a statement saying that
5 we have attempted to add substances to our database
6 as we become aware of them. There are designer
7 drugs, other substances that we have not added to
8 the database because we are unaware of them, which
9 I have submitted to Judge Pylitt as well as to you
10 folks in the statement of exceptions that I filed
11 early on in this process, is a contradiction within
12 itself basically saying we know something is out
13 there, but we don't know what it is.

14 Doctor Sams testified further that there are
15 over 1500 different substances that they keep in
16 their database at LGC labs. That's a testing
17 protocol that they have. Mr. Sams did not indicate
18 any connection or any knowledge of the database or
19 protocol for testing utilized by Industrial Labs,
20 the laboratory that actually tested these samples.
21 Indicated that he had no connection or no contact
22 with them.

23 Nobody from Industrial Labs was called by the
24 Commission Staff to give any weight, good or bad,
25 to their test results. I found that very peculiar

1 that a contract lab would be utilized, a test
2 result would be rendered but then impeached by a
3 different laboratory or an employee of a different
4 laboratory who had been fired previously by the
5 Commission because of deficiencies. I would have
6 thought the Industrial Labs would have been
7 afforded an opportunity to be heard. Apparently,
8 that did not suit the process of the evidence that
9 the Commission Staff felt was needed to bolster
10 their case.

11 Another doctor testified, Doctor Waterman.
12 He's a contract consultant with the Commission
13 Staff. He's from Arizona, I believe. He's a
14 veterinarian. He did not testify as to having any
15 background in laboratory testing, laboratory
16 protocol. Did have knowledge with respect to
17 equine medicine. Made a similar statement to the
18 extent that, unfortunately, there are substances
19 out there that we just can't test for. Again, no
20 evidence with respect to any connection to
21 Industrial Laboratories, what their database or
22 protocol was with respect to testing.

23 We would believe that testimony should not be
24 used to impeach the credibility and accuracy of the
25 testing that goes on here in Indiana. There has

1 been no evidence that would show that Industrial
2 Laboratories was deficient in any way in rendering
3 a test result with respect to this horse Tam Tuff
4 based on samples taken on September 19th.

5 Basically, Commission Staff's case rests
6 solely on the testimony of barn walker Jamie Kolls,
7 who was employed by Indiana Grand on that date.
8 Miss Kolls on that date, September 19th, began
9 her work shift at approximately 10 a.m. Very first
10 barn she walked to to look at in-today horses was
11 Barn 6, the barn that Tam Tuff was housed in.

12 Based on the records of her day sheets or the
13 record sheets that she kept, Tam Tuff was the third
14 horse that was seen. There's question about her
15 reliability. Her report was filed a day later.
16 Her report had a broad time frame of seeing this
17 event between 10 and 11 o'clock, approximation.
18 The specific time was 12 minutes after she began
19 her shift.

20 Doctor Russell testified that he did encounter
21 Miss Kolls. That she was encountered in Barn 7,
22 Stall 31. The groom that handled the horses in
23 Barn 7, Stall 31 was a groom by the name of Joel
24 Villalta. The administrative law judge found
25 Mr. Villalta's testimony to be consistent that he

1 did not have involvement with that horse in Stall
2 31, Barn 7, as was testified to by Doctor Russell
3 and his staff. We would submit that that's an
4 error. There are substantial facts that are in
5 Mr. Villalta's testimony that would show that his
6 statements were all over the place. He denied
7 being in that stall. He agreed he was in the
8 stall. Ultimately said he could not remember being
9 in the stall. He did confirm that Doctor Russell
10 and staff were in that stall between 10 and 10:30.
11 In testimony before the stewards, saw there was a
12 security person outside of that stall at some point
13 in time, which we would submit was Miss Kolls.

14 I would love to have a half hour, folks.

15 CHAIRMAN WEATHERWAX: I think you would just
16 confuse us more.

17 MR. EDDINGFIELD: I'm not trying to do so.
18 It's a very fact-sensitive case there. There's a
19 lot of evidence that was offered both by my clients
20 and the Commission. I don't know how far you folks
21 dig into things as far as reviewing every specific
22 piece of evidence, but I think it would demonstrate
23 that my clients are entitled to vindication for
24 this. We would ask this commission to set aside
25 the determination made by the ALJ.

1 CHAIRMAN WEATHERWAX: Thank you, Counsel. I
2 will assure you the Commission has delved into this
3 quite seriously. It's a very serious case. There
4 are a lot of ambiguities. Some of those things I
5 don't think are too clear. Commissioner Schenkel,
6 did you have a question?

7 COMMISSIONER SCHENKEL: Thank you,
8 Mr. Eddingfield, for your presentation. A couple
9 of things. I guess in a general sense, I didn't
10 sit through the, I think you said, ten hours --

11 MS. ELLINGWOOD: I think so.

12 COMMISSIONER SCHENKEL: -- of presentation
13 that had gone on before the ALJ, but I have read
14 through the documents. What is it you just
15 presented to us today that is any different from
16 what you had presented during that ten hours of
17 testimony or that ten hours?

18 MR. EDDINGFIELD: Nothing. Everything I have
19 stated to you is fact, sir.

20 COMMISSIONER SCHENKEL: There is nothing
21 different from that?

22 MR. EDDINGFIELD: No, sir.

23 COMMISSIONER SCHENKEL: I guess, given that
24 then if that's the case, I mean, I noted that the
25 ALJ, you had said that there was lack of testimony

1 and so forth. There is a number of folks who have
2 been cited as providing testimony and information.
3 And the ALJ, I think there was a statement in here,
4 there's two completely opposite versions of events
5 that had been presented during this hearing.

6 MR. EDDINGFIELD: Yes, sir.

7 COMMISSIONER SCHENKEL: The ALJ, through his
8 laborious efforts of ten hours made his decision.

9 MR. EDDINGFIELD: The key issue is with this
10 barn walker. She testified that Dee Thoman and
11 her, after she told her about this, went to Barn 6
12 to try to confirm the stall. Dee Thoman has
13 testified twice that they walked both Barn 7 and
14 Barn 6 when this first became aware to Dee Thoman.

15 We wonder why. Why was it necessary to walk
16 Barn 7 unless there was some issue or some question
17 in Miss Kolls' mind that she didn't have the right
18 barn and right stall.

19 No investigation occurred. No videotape was
20 created or preserved. My clients were left with
21 very little ability to preserve evidence to
22 vindicate themselves to offer up in their own
23 defense.

24 COMMISSIONER SCHENKEL: With what I have read
25 over the past number of months and then with

1 knowing there was ten hours of hearing conducted on
2 this and hearing you 15 minutes today, at this
3 point, I don't see any reason to doubt the ALJ's
4 decision or to change that, but we will see what
5 they do.

6 CHAIRMAN WEATHERWAX: Any other commissioners
7 have a comment? I just have one observation. This
8 case does boils down to who said what and who saw
9 what.

10 MR. EDDINGFIELD: Yes, sir.

11 CHAIRMAN WEATHERWAX: One of the things that
12 bothers me on the same thing, Commissioner
13 Schenkel, that you're referring to on page 15, two
14 completely opposite versions of events presented
15 during the hearing vary so significantly that they
16 could not be reconciled, according to our own ALJ,
17 was required to accept one version of events over
18 the other.

19 Well, that doesn't give me any clarity. You
20 have to expect that they did the best they could,
21 but we also are charged with trying to take all
22 this information, all this testimony, and either
23 affirm, modify, or --

24 MS. ELLINGWOOD: Yes, Chairman, dissolve.

25 CHAIRMAN WEATHERWAX: Dissolve. Obviously,

1 this is one of those cases that everybody keeps
2 telling me we will never have another case like
3 this. So I appreciate your testimony. We're
4 trying to do the most thorough job we can.

5 MR. EDDINGFIELD: I understand and respect
6 that.

7 CHAIRMAN WEATHERWAX: We also know that it's
8 absolutely impossible or acceptable to have a vet
9 inject any horse that's in today. That's why that
10 debate about the no positive test taken in the
11 blood sample or urine is a moot point if you can
12 prove and if you know that that horse was truly
13 injected on that day. So that's the debate.
14 That's the point.

15 MR. EDDINGFIELD: Yes, sir.

16 CHAIRMAN WEATHERWAX: Thank you.

17 MR. EDDINGFIELD: If you have any inclination
18 to look into this, look at the testimony of Dee
19 Thoman about Barn 7 as well as Barn 6.

20 CHAIRMAN WEATHERWAX: Thank you.

21 MS. ELLINGWOOD: Chairman, at this point
22 Commission Staff, who will be represented by Holly
23 Newell, has a statement. Again, hopefully, you
24 won't need the whole 15 minutes.

25 CHAIRMAN WEATHERWAX: Thank you, Holly.

1 MS. NEWELL: From my boss.

2 COMMISSIONER SCHENKEL: Good luck.

3 MS. NEWELL: Good morning. Chairman
4 Weatherwax, Commissioners. Today, we ask that you
5 affirm Judge Pylitt's Recommended Order of this
6 case. That order concluded that there was
7 prohibited race-day contact with a Thoroughbred
8 filly, Tam Tuff, who received a race-day injection
9 in violation of Indiana's key integrity rules.

10 On June 23rd and 24th of this year, ALJ
11 Bernard Pylitt presided over a ten-hour hearing.
12 Mr. Granitz and Mr. Estvanko were represented by
13 Mr. Eddingfield, who provided thoughtful and
14 qualified counsel. Mr. Granitz and Mr. Estvanko
15 called seven witnesses and entered 17 pieces of
16 evidence into the record. Commission Staff called
17 five witnesses and entered 50 pieces of evidence
18 into the record.

19 The hearing transcript is on that table right
20 on the corner. It's 542 pages long. The three
21 binders to your right of it contain exhibits
22 entered into evidence during the course of that
23 hearing. It's a lot.

24 Today, I have 15 minutes to tell you why Judge
25 Pylitt's recommended order should be adopted by

1 this Commission. I'll remind you that Judge Pylitt
2 had ten hours.

3 After careful deliberation, he issued a 45
4 page Recommended Order. These 15 minutes will not
5 allow me to convey everything I need to convey to
6 you. I will, however, try to hit some of the
7 salient points.

8 Specifically, I'm going to focus on three
9 issues. First, Judge Pylitt spent considerable
10 time hearing the case and considering the evidence.
11 Second, a clean post-race test does not prove there
12 was not a violation of the rules. Finally,
13 Commission Staff's witnesses were impartial and
14 disinterested in any outcome of the proceedings and
15 provided consistent testimony in all material
16 respects.

17 As Mr. Eddingfield said, this is a very
18 fact-sensitive case. And, quite frankly, that's
19 why we had ALJ Pylitt spending ten hours in hearing
20 and many, many more hours in deliberation.

21 Let's start at the beginning, which was more
22 than 13 months ago, September 19, 2014. It was a
23 pleasant, late summer day in Shelbyville.
24 Thoroughbred racehorse Tam Tuff was entered in the
25 sixth race at Indiana Grand. Her home until race

1 time was Stall 61 of Barn 6. Post time was
2 7:25 p.m.

3 About nine hours before that, a veterinarian
4 was in Stall 61 of Barn 6 sticking a needle in Tam
5 Tuff's neck injecting the bay filly with a
6 yellowish liquid. Race day injections to horses
7 are strictly forbidden by the rules of racing.
8 With only very specific exceptions, no substance,
9 foreign or otherwise, may be administered to a
10 horse within 24 hours of race time.

11 71 IAC 8.5-4-12 is clear about the prohibition
12 of veterinarians being in a stall within 24 hours
13 of post time. Specifically, practicing
14 veterinarians and their helpers are prohibited from
15 having contact with a horse within 24 hours of a
16 scheduled race. Race day administrations and
17 improper race-day contact by a vet are strictly
18 forbidden. The violation strikes at the heart of
19 integrity of horse racing.

20 In this case there were three general
21 violations at issue: Prohibited contact with an
22 in-today horse, race day administration of a
23 substance, and trainer responsibility. On
24 October 31st of last year, the stewards considered
25 this matter and concluded that Tam Tuff had

1 received a race day injection. Estvanko and
2 Granitz appealed the stewards' ruling, and ALJ
3 Pylitt was assigned to hear the appeal.

4 The hearing was de novo, which means the ALJ
5 is required to independently weigh the evidence
6 presented in the hearing and make recommendations
7 based exclusively on that record. Judge Pylitt
8 heard testimony and considered evidence and
9 concluded that Tam Tuff had been injected on
10 September 19, 2014, just hours before the filly was
11 scheduled to run.

12 Specifically, the recommended order includes
13 the following findings: Substantial, credible, and
14 reliable evidence support the conclusion that the
15 Thoroughbred racehorse Tam Tuff received a
16 prohibited injection on race day on September 19,
17 2014; and substantial, credible, and reliable
18 evidence support the conclusion that a practicing
19 veterinarian made prohibited contact with a
20 Thoroughbred racehorse, Tam Tuff, September 19,
21 2014; and that Estvanko and Granitz failed to
22 discharge their responsibilities as trainer and
23 assistant trainer.

24 Judge Pylitt's order is thoroughly supported
25 by cited references to the evidence in the record.

1 His order is a fair reflection of what occurred at
2 the hearing in late June. Judge Pylitt observed
3 each witness's demeanor. He saw every piece of
4 evidence. He thoroughly documented the persuasive
5 credible and reliable evidence in his order.

6 In spite of Judge Pylitt's order and evidence
7 supporting his conclusion, Estvanko and Granitz
8 argue that his recommended order was flawed because
9 there was no positive test. However, there is
10 nothing in the IHRC rules that require a positive
11 test to establish a violation of the 24-hour rule,
12 the trainer responsibility rules, or the
13 impermissible contact with horses rule.

14 In this instance, a rule was violated the
15 minute the veterinarian stepped foot into the stall
16 of an in-today horse. Another rule violation
17 occurred the moment the needle pierced Tam Tuff's
18 neck, and the substance was administered. The
19 filly had been administered the substance, foreign
20 or otherwise, and the rule was violated
21 irrespective of lab findings.

22 Yet, they have continued to make much of the
23 post-race test of Tam Tuff being clean. At an
24 observational level, I understand the argument.
25 However, there is no support for the argument in

1 science, sound reasoning, or the IHRC rules. To
2 suggest that Tam Tuff had to have a bad test in
3 order to show she had been injected is
4 unreasonable. There are thousands of substances
5 for which science cannot test. Folks who want to
6 play backside chemist are always trying new things.
7 It can take time to catch up with the latest in
8 cheating.

9 It's perhaps helpful to liken this to sports
10 involving human athletes. Lance Armstrong. Once
11 considered heroic by cycling enthusiasts has now
12 been tarnished by his own cheating and lies.
13 Armstrong won the Tour de France an unmatched seven
14 consecutive times. During the more than 15-year
15 period that he competed on the tour, Armstrong was
16 tested anywhere from 60 to 500 times depending on
17 the reports you believe. And, yet, he never had a
18 positive test, despite the speculation of his
19 rampant use of performance enhancers.

20 In 2013, eight years after his last victory,
21 Armstrong came clean, admitted his cheating,
22 admitted he had been cheating the system for many
23 years, beating the tests by staying one step ahead.
24 For instance, in 1999, his dope of choice was EPO,
25 a blood booster that you all have heard of being

1 used in horses. In 1999, there was no test for
2 EPO. EPO is also one of the substances in common
3 use by the lab involved in the Barry Bonds steroid
4 scandal. Today, we can, and do, test for EPO.

5 The World Anti-doping code includes a
6 provision that samples from the Olympics can be
7 retested up to eight years after the event for
8 which they were taken in order to take advantage of
9 new technology for detection of banned substances.
10 In 2012, the International Olympic Committee
11 retested samples from the 2004 Athens games. Those
12 tests, which employed more modern testing methods,
13 resulted in multiple new positive tests and
14 athletes being stripped of their medals.

15 All of this, by way of example, is that there
16 are, unfortunately, substances for which we do not
17 yet have a test. A clean test is simply not proof
18 that a horse was not injected. It only proves that
19 there is an ongoing game of cat and mouse between
20 cheaters and those tasked with regulating
21 pari-mutuel horse racing.

22 Finally, Estvanko and Granitz continue to
23 attempt to attack the credibility of the Commission
24 Staff witnesses. They fail to do so. In fact, it
25 is the credibility of the Estvanko and Granitz

1 witnesses that ALJ Pylitt determined to be
2 troublesome.

3 Commission Staff presented impartial
4 witnesses, all of whom the ALJ found believable.
5 Nearly every witness presented by Estvanko and
6 Granitz had a vested interest in the outcome of the
7 proceedings. The one witness called by Estvanko
8 and Granitz who did not have a vested interest, did
9 not refute the Commission Staff's theory of the
10 case.

11 Jamie Kolls is the barn walker who saw Tam
12 Tuff being injected. She provided eyewitness
13 testimony of rule violations. She has not wavered
14 from what she testified she saw in Stall 61 in Barn
15 6. At no point has Jamie hesitated when asked
16 about the specific incident. She saw the
17 injection.

18 Miss Kolls has endured aggressive
19 cross-examination, twice, and a thorough
20 deposition. Her story remains consistent. The
21 horse in Stall 61 of Barn 6 was receiving an
22 injection of yellow fluid in her neck around
23 10 a.m. on September 19, 2014.

24 Estvanko and Granitz's attempts to discredit
25 Kolls have fallen short. If she may have wavered

1 on certain insignificant collateral issues, it has
2 no bearing on the central issue: She saw an
3 impermissible race day injection.

4 On the other hand, Estvanko and Granitz tried
5 to rely on affidavits from people who had no
6 first-hand knowledge of what they attested had
7 occurred. Joel Villalta is a Spanish-speaking
8 groom whose English-speaking boss instructed him to
9 sign an affidavit written in English, which he
10 could not read. Neither Villalta, nor his
11 employer, actually saw what happened on
12 September 19, 2014 in Stall 61 of Barn 6.

13 Interestingly, Villalta's employer is close with
14 the vet who had the needle in his hands injecting
15 Tam Tuff.

16 The Villalta affidavit was intended to be an
17 alibi for the veterinarian who injected Tam Tuff.
18 The affidavit was intended to put the veterinarian
19 in a different stall and a different barn helping
20 the vet draw blood on a different horse, thus
21 calling into question Kolls' report of the
22 incident.

23 Once a court-approved translator became
24 involved, it became clear that Villalta did not
25 understand the content of the affidavit, and he

1 testified before the ALJ that he was not present in
2 the stall that the Estvanko and Granitz witnesses
3 claim he was in. Villalta was initially a witness
4 for Estvanko and Granitz, but once he was able to
5 understand what the affidavit actually said, it
6 quickly became clear that he would not offer an
7 alibi to the veterinarian and would instead refute
8 the veterinarian's version of events. Thus, Mr.
9 Villalta became a witness for Commission Staff.

10 Also important to keep in mind is that this is
11 Mr. Estvanko and Mr. Granitz's appeal. It was
12 their burden to establish that the stewards did not
13 make their ruling based on substantial and reliable
14 evidence. The witnesses and evidence they
15 presented simply did not meet that burden.

16 The witnesses and evidence that the Commission
17 Staff presented showed the stewards did make their
18 ruling based on substantial and reliable evidence.
19 The stewards listened to the witnesses and
20 considered their credibility. Commission rules are
21 clear that the stewards may use their special
22 skills and knowledge in evaluating evidence.

23 They evaluated the evidence presented on
24 October 31st at the hearing. And they concluded
25 that Tam Tuff had received a race day injection.

1 They concluded that Jamie Kolls was not confused
2 about what she saw that morning and where she saw
3 it. There was substantial and reliable evidence to
4 support the stewards' conclusions and rulings last
5 year. And there was substantial and reliable
6 evidence presented to ALJ Pylitt in late June to
7 support his conclusion that the stewards' decision
8 in the matter be upheld.

9 Commission Staff respectfully requests the
10 Commission affirm ALJ Pylitt's recommended order.
11 It is inappropriate to dismantle this
12 recommendation, which stems from a well-contested
13 hearing, in which Estvanko and Granitz had
14 competent and qualified counsel.

15 The Commission Staff proved its case. The
16 evidence supports the conclusion that there was
17 prohibited contact with Tam Tuff, and that the
18 horse was injected on race day. After considering
19 all the evidence presented, Judge Pylitt agreed and
20 made the recommendation contained in his thoughtful
21 and well-reasoned order.

22 We respectfully request the Commission affirm
23 his detailed and well-documented decision.

24 CHAIRMAN WEATHERWAX: One question, Holly.
25 Thank you for your excellent rebuttal. This is

1 something that I hadn't talked to you about. In
2 fact, I haven't discussed this case with anybody in
3 the Commission. Maybe I should have talked to you
4 before this. Defense made a comment about a video.
5 Do we have video tracking in the barns?

6 MS. NEWELL: There are, I believe, six cameras
7 posted on the backside of Indiana Grand. We simply
8 don't have the capacity to track every stall in
9 every barn in every corner. No, there is not
10 substantial video recording on the backside.

11 CHAIRMAN WEATHERWAX: This may be food for
12 thought for the future. I don't know how expensive
13 it is, but it seems to make sense.

14 JON SCHUSTER: It is being considered.

15 CHAIRMAN WEATHERWAX: You could put a camera,
16 now with today's technology, one camera on one end
17 of the barn and another camera on the other end of
18 the barn, and they are date stamped. I guarantee
19 you could see who was in the stall at a given time.

20 JON SCHUSTER: You would be able to see who
21 was in the stall, but you wouldn't be able to see
22 what was going on.

23 CHAIRMAN WEATHERWAX: No, but you could verify
24 whether they were there.

25 JON SCHUSTER: Yes, absolutely.

1 CHAIRMAN WEATHERWAX: You're smart enough to
2 know if there's a stall with a horse that's in
3 racing day with a vet, that's a bad idea, unless
4 you have somebody walking with them. I'm just
5 talking about basic tools we could use to avoid
6 this problem in the future.

7 The other thing, Holly, I know this whole
8 thing comes down to was she looking at the right
9 stall on the right day with the right horse. Of
10 course, that's the whole crux of this case. I
11 agree with you, whether or not the test was
12 positive or not is a moot point. It's a fact. You
13 can't have any injections on race day.

14 So, Commissioner Pillow, did you have a
15 question?

16 COMMISSIONER PILLOW: Is this the first
17 violation we have with these trainers?

18 MS. NEWELL: I believe so. Definitely within
19 the 365-day period. Neither of these trainers have
20 a particularly colorful record or anything of that
21 nature. They may or may not have had some more
22 minor violations, but I can't say for sure. I
23 don't have their reports in front of me.

24 COMMISSIONER PILLOW: We are basing a lot of
25 this, as Chairman Weatherwax said, on he said-she

1 said.

2 MS. NEWELL: Yes.

3 COMMISSIONER PILLOW: We don't know what the
4 horse was injected with, other than it was a yellow
5 substance.

6 MS. NEWELL: Right.

7 COMMISSIONER PILLOW: Veterinarians cannot be
8 in that stall or in that barn at all 24 hours.

9 MS. NEWELL: Correct, that's the 24-hour
10 prohibited contact rule.

11 COMMISSIONER PILLOW: Are we sure that this
12 vet was in that barn?

13 MS. NEWELL: Yes, we believe that that's what
14 we proved in front of ALJ Pylitt. Miss Kolls has
15 been unwavering on Barn 6, Stall 61, 10 a.m.,
16 September 19th, yellow fluid injection in the
17 neck.

18 COMMISSIONER PILLOW: Okay.

19 COMMISSIONER LIGHTLE: There was one thing
20 that really bothered me. But from the sounds of
21 it, as far as everybody is concerned, the fact that
22 he's in there is the basis because you're saying it
23 doesn't matter if it shows yes or no, negative or
24 positive.

25 MS. NEWELL: Right.

1 COMMISSIONER LIGHTLE: The thing that bothered
2 me about her deal is she had a walkie-talkie. Why
3 didn't she use it? For heaven's sake, why wasn't
4 it done until the next day? That bothers me
5 because it was the first thing she did that
6 morning. I mean, that was supposedly her first act
7 that morning. I find that a little troublesome in
8 as much as I know there's been a lot of testimony.
9 And certainly everybody has gone over it and tried
10 to do the best they could. I understand. But that
11 was one of the things that really bothered me about
12 this.

13 You know, I assume walkie-talkie is there for
14 her to do just that. And since this is a really
15 important situation in the barns, I would think she
16 would have known that if she saw this that she
17 should immediately let somebody know about it.
18 That's what the walkie-talkie is there for, I
19 assume.

20 MS. NEWELL: Certainly. And I certainly
21 understand your concern about that.

22 COMMISSIONER LIGHTLE: That's what bothered me
23 about that.

24 MS. NEWELL: Judge Pylitt, in his order, found
25 that Kolls' lack of training in how and when to

1 report suspicious activity around in-today horses
2 is irrelevant to the outcome of this hearing and
3 does not serve as a defense to the allegations of
4 Estvanko and Granitz.

5 That was Judge Pylitt's determination after
6 weighing all the evidence and hearing all the
7 witnesses.

8 COMMISSIONER SCHENKEL: Quick question to make
9 sure I understand. The original ruling from Judge
10 Pylitt recommended suspension for each of the
11 trainers or, no, suspension for one of the trainers
12 and a thousand dollar fine, a fine of \$2,000 for
13 Granitz, and then Tam Tuff and the racing stables
14 that own Tam Tuff return the money to be
15 redistributed. Is it correct, if I recall
16 correctly, Captain Jack Stables has done that?

17 MS. NEWELL: That's currently pending in
18 litigation at other levels of the system.

19 COMMISSIONER SCHENKEL: That is pending also.
20 All right.

21 MS. NEWELL: Right. But, yes, his order does
22 contemplate a purse redistribution.

23 COMMISSIONER SCHENKEL: The suspension and the
24 fines have been.

25 MS. NEWELL: The suspension has been served,

1 and the fines have been paid.

2 CHAIRMAN WEATHERWAX: One more question,
3 Holly. I think I read in this transcript were
4 Doctor Russell had other instances. Were there
5 other problems that have been questioned? Why was
6 that mentioned in this transcript?

7 MS. NEWELL: Respectfully, I don't want to go
8 down that path due to things that are pending that
9 may come before you. I don't want to get in
10 uncomfortable territory.

11 CHAIRMAN WEATHERWAX: This is one of these
12 cases where we learn so much about the case we
13 can't talk about. We're pretending it isn't in
14 front of us. It's like the 900-pound gorilla.

15 MS. ELLINGWOOD: You would probably not have
16 another case like this.

17 CHAIRMAN WEATHERWAX: We will never have
18 another case like this. Thank you, Holly.

19 Any other comments from the Commissioners?

20 MR. GRANITZ: May I approach the bench, sir.

21 MS. ELLINGWOOD: I'm sorry, time has expired.

22 CHAIRMAN WEATHERWAX: I don't think we can let
23 that happen.

24 Commission, we have this noncomplicated case
25 before us. We've heard the testimony. In fact,

1 we've heard it more than once, but now we have to
2 make a decision; affirm, modify, or --

3 MS. ELLINGWOOD: Dissolve.

4 CHAIRMAN WEATHERWAX: Dissolve. Of course, in
5 all the cases we deal with, we're the judge and the
6 jury because we're the last point of decision
7 making. But we hire these people that go through
8 these cases in infinite detail and come up with a
9 recommendation.

10 It's our job to affirm, modify, or dissolve.
11 So now I will open it up to questions from the
12 Commissioners. Comments? Thoughts?

13 COMMISSIONER SCHENKEL: To get a motion on the
14 floor, I move we affirm the ALJ's decision.

15 CHAIRMAN WEATHERWAX: We have a motion to
16 affirm. Do I hear a second?

17 COMMISSIONER MCCARTY: Second.

18 CHAIRMAN WEATHERWAX: Now we have a motion as
19 we see it before us. Discussion. Each of you can
20 vote your own conviction. There will be a roll
21 call. And I presume if it doesn't pass, we do
22 something else. That's the way it works.

23 MS. ELLINGWOOD: We'll cross that bridge if we
24 get there.

25 CHAIRMAN WEATHERWAX: I'm going to ask for the

1 roll call. Aye.

2 COMMISSIONER SCHENKEL: Aye.

3 COMMISSIONER LIGHTLE: Aye.

4 COMMISSIONER PILLOW: Aye.

5 COMMISSIONER MCCARTY: Aye.

6 CHAIRMAN WEATHERWAX: It's passed. Unanimous.

7 Thank you.

8 Okay. Second point deals with the
9 consideration again. Lea, go ahead.

10 MS. ELLINGWOOD: Thank you, Chairman. Next
11 two agenda items actually are related to the Ross
12 Russell case, which means they may caution you to
13 not ask some questions. The first of those matters
14 is the IHRC's consideration of the ALJ's proposed
15 order regarding Motion to Disqualify ALJ Buddy
16 Pylitt in the matter of IHRC Staff versus Ross
17 Russell.

18 This may sound familiar to you. It was to me.
19 We have had this motion before the Commission
20 before. This is a second and separate motion. It
21 was filed with the ALJ Buddy Pylitt. Judge Pylitt
22 issued a proposed order denying the motion to
23 disqualify him as the ALJ. And that proposed order
24 is before you now.

25 Objections were timely filed. Briefs have

1 been filed. And each counselor will have the
2 opportunity to present oral arguments again for a
3 total of 15 minutes.

4 We will start with Mr. Sacopulos, as the
5 burden is his. And, Pete, you have 15 minutes. I
6 will give you a countdown.

7 After the conclusion of presentation by both
8 counsel, again, you'll have the responsibility of
9 deciding whether to affirm, modify, or dissolve.

10 MR. SACOPULOS: Good morning. Thank you for
11 allowing me the opportunity to be heard this
12 morning on behalf of my client, Doctor Ross
13 Russell. I'm Pete Sacopulos, and I'm counsel for
14 Doctor Russell.

15 We are here this morning on a second motion to
16 consider whether or not to disqualify ALJ Pylitt.
17 The basis of that is the Findings of Fact and
18 Conclusions of Law and the Recommended Order that
19 you just heard in the first agenda item. The
20 reason we're back is that there is new evidence for
21 you to consider. What Doctor Russell is asking all
22 of you to consider is an opportunity to have
23 somebody that is impartial, that is unbiased and
24 has not prejudged this case decide his case.

25 There is new evidence. And that is found in

1 the Findings of Fact, Conclusions of Law, and the
2 Recommended Order that was issued July 28th of
3 this year. The law in Indiana regarding
4 disqualification is found at 4-21.5-3-10. And it
5 states when an ALJ shows there is a showing of bias
6 or prejudice or interest in the outcome of a
7 proceeding, and/or when there is cause for a judge
8 in a court to be disqualified, then that person
9 sitting as the ALJ should step aside and let
10 somebody who is unbiased and has not predetermined
11 the case to hear the case.

12 In this case that is before you and the
13 findings and conclusions that are before you, if
14 you review those, you will find that Judge Pylitt
15 has made a determination as to the credibility and
16 reliability of witnesses. He has made a
17 determination as to the credibility and reliability
18 of Doctor Russell. He has found he is not
19 credible, that he is not reliable. He has made
20 those same determinations as to his witnesses;
21 Callie Ramey and Stephanie Burchette, and those
22 that he will call in this case.

23 That is very significant, as is his findings
24 in his conclusions that the IHRC Staff's witnesses
25 are credible and are reliable. Now, credibility is

1 a word, but it means a lot in terms of the legal
2 significance. It talks about trustworthiness. So
3 we're making a determination that Doctor Russell
4 himself is not trustworthy. That his witnesses are
5 not trustworthy.

6 It is Doctor Russell's position in this motion
7 this morning that he would like, as you can well
8 imagine, someone other than Bernard Pylitt, who has
9 heard this case and heard these issues and heard
10 lots more than all of you have heard about this
11 case, make a determination in his case.

12 This case involves an event of September 19,
13 2014. I'm not going to go through that.

14 Mr. Eddingfield went through that in length for you
15 and did a fine job. What is clear is is that in
16 Doctor Russell's case, that's scheduled to be heard
17 the first week of December of this year, is there
18 will be the same witnesses. Doctor Russell, there
19 will be the same witnesses called on his behalf.
20 There will be the same witnesses called on behalf
21 of the IHRC Staff. All those witnesses will be
22 offering testimony about an incident that occurred
23 on September 19, 2014 at Indiana Grand in a certain
24 barn in a certain stall involving a certain horse
25 named Tam Tuff.

1 ALJ Pylitt has made a determination as to what
2 happened on those days. You have those in your
3 findings and your conclusions. He has
4 predetermined and prejudged those events. He has
5 predetermined and prejudged Doctor Russell's case.

6 Credibility is defined legally as the
7 worthiness of belief of a witness. And in his
8 findings he has, therefore, found that Doctor
9 Russell is not worthy of belief. That this
10 witnesses are not worthy of belief. Conversely,
11 the witnesses to be called on behalf of the IHRC
12 Staff are worthy of belief.

13 It's Doctor Russell's motion and request of
14 you that he be assigned a new ALJ. Somebody that
15 has not heard this. Somebody that has a fresh view
16 of this and hasn't predetermined or prejudged
17 witnesses and events that occurred or did not
18 occur.

19 ALJ Pylitt has made a number of conclusions.
20 I won't go through them all because as was stated
21 in the previous presentation, it is extensive. But
22 one was, one of his conclusions is, and this
23 regards whether or not this happened -- we heard
24 from the prior discussion, it's a fact-sensitive
25 issue -- whether or not the event occurred on

1 September 19th. This is his finding. At some
2 time between the hours of 10 and 11 a.m. on
3 September 19, 2014, Doctor Russell injected the
4 Thoroughbred filly Tam Tuff with an unidentified
5 substance other than Lasix in Stall 61, Barn 6.

6 That is a determination that he's made. By
7 doing that, he has predetermined and prejudged that
8 the deed has been done. Doctor Russell hasn't had
9 a trial yet.

10 What ALJ Pylitt has done in his findings and
11 conclusions is to say, well, his quote is with
12 regard to the incident of September 19, 2014, he
13 states this is "One brief reference to the
14 September 19th, 2014, incident that appears on
15 page seven." That's an attempt to downplay it.
16 What we have here is that that is the exact,
17 precise incident that resulted in Doctor Russell
18 losing his license. That resulted in Doctor
19 Russell being suspended from that day until this
20 day.

21 And what we have here is Doctor Russell's
22 professional career in the balance. The IHRC Staff
23 is seeking 20 years. This is a career-ending
24 decision. Doctor Russell believes, and I believe,
25 that he is entitled to somebody independent that

1 hasn't pre-heard and prejudged this case. Somebody
2 that hasn't shown bias against him.

3 This case is going to hear, if ALJ Pylitt
4 hears this, we are going to be talking about the
5 same events, those that occurred on September 19,
6 2014. We will be talking about the same witnesses.
7 We will be talking about the same experts. We are
8 going to be talking about same horse, same owners,
9 Captain Jack, the whole crew.

10 ALJ Pylitt in his findings would say that this
11 is a separate matter, a distinct matter. In fact,
12 there may be separate issues, but he's going to be
13 judging all of those issues. He's going to be
14 judging the issues that he has already prejudged if
15 he's allowed to judge Doctor Russell's case.

16 The Indiana law has been interpreted by the
17 Indiana Court of Appeals, there's a case by the
18 name of Thacker versus State cited in our brief.
19 It says there that even an appearance of partiality
20 requires recusal. Even an appearance. In the
21 Indiana Court of Appeals State versus Brown held
22 that a judge should recuse himself when
23 circumstances in which a reasonable person
24 knowledgeable of those circumstances would have a
25 reasonable basis for doubting the judge's

1 impartiality. Doctor Russell has every reason to
2 doubt that.

3 So what this comes down to is, and you'll hear
4 an argument, I believe, from the Staff, well, don't
5 worry because this happens in criminal matters all
6 the time. There is a big distinction between this
7 case and a criminal matter. In this case you're
8 going to have the same ALJ citing the same matter.

9 In a criminal case, if you have co-defendants,
10 remember, you'll have 12 people selected that the
11 state doesn't know and the defense doesn't know
12 that makes that decision. That's a big difference.
13 It's a big case. The question really becomes would
14 an ordinary person, like any of us, feel he or she
15 would receive a fair trial given this prior
16 determination? And the answer is no. And, of
17 course, the question is why. The answer to that is
18 because there has been a prejudgment and a
19 predetermination of the credibility and reliability
20 of one side, the accused and his witnesses. And
21 because of this predetermination on credibility and
22 reliability, Doctor Russell simply cannot get a
23 fair trial with ALJ Pylitt serving as the
24 administrative law judge.

25 He, like everyone else that comes before this

1 Commission, is entitled to a fair trial. And he's
2 entitled to somebody that has not prejudged,
3 predetermined, and shown bias. He's entitled to
4 have his hearing just like Mr. Granitz and
5 Mr. Estvanko did. And for that reason, we would
6 ask that you reject his proposed denial of our
7 motion and rather grant our motion and assign a new
8 ALJ to hear this case. Thank you.

9 CHAIRMAN WEATHERWAX: Pete, you make some good
10 points. One of the most important things I want to
11 get clear is: Did you say you have new evidence?

12 MR. SACOPULOS: The new evidence in terms of
13 the bias is found in his findings and conclusions,
14 which were issued subsequent to our first motion,
15 first request to have him disqualified.

16 COMMISSIONER SCHENKEL: Let me clarify that
17 too because we heard this on July 15th. And we
18 made a ruling.

19 MR. SACOPULOS: Yes, sir.

20 COMMISSIONER SCHENKEL: You, obviously,
21 disagree with that so you file a second motion. So
22 I'm not an attorney. So in certain terms how -- I
23 know we can't submit new evidence today. This is
24 not a hearing. He still has scheduled, Doctor
25 Russell still has scheduled a hearing in December,

1 correct?

2 MR. SACOPULOS: Yes, sir, first week of
3 December, sir.

4 COMMISSIONER SCHENKEL: What have you shown us
5 today that's different from July 15th that would
6 cause us to make a different ruling?

7 MR. SACOPULOS: Yes. What I have shown you
8 differently is --

9 COMMISSIONER SCHENKEL: Other than your
10 disagreement with our ruling.

11 MR. SACOPULOS: Right. That's the same. The
12 difference is his findings, conclusions, and
13 recommended order in the Granitz and Estvanko case,
14 which was issued subsequent to the determination of
15 this commission as to our first motion, which shows
16 a finding that Doctor Russell himself and his
17 witnesses are not reliable and not credible. And
18 that is very, very substantial. And it's different
19 from what we have asked.

20 CHAIRMAN WEATHERWAX: I understand. These are
21 totally connected cases even though we are not
22 supposed to talk about it, which is what your point
23 is.

24 MR. SACOPULOS: Yes.

25 CHAIRMAN WEATHERWAX: This is another thing

1 we're not supposed to talk about probably is the
2 suspension. We haven't heard that before. We're
3 not supposed to know that. We can't ask a question
4 on that.

5 MS. ELLINGWOOD: The administrative complaint,
6 the proposed penalties in the administrative
7 complaint you can know the penalty, but the
8 specifics of the underlying violation, evidence,
9 and things like that will want to shy away from
10 hearing at this portion until the ALJ's had an
11 opportunity to have a hearing and weigh the
12 evidence, hear from the witnesses.

13 COMMISSIONER LIGHTLE: I would like to know
14 why 20 years.

15 CHAIRMAN WEATHERWAX: This, again, is
16 something we're not supposed to know. Thank you,
17 Pete. We'll let our counsel do rebuttal, and we
18 can ask questions of both of you. Robin.

19 MR. BABBITT: Thank you, Chair Weatherwax,
20 Vice-Chair Schenkel, Members of the Commission. I
21 appreciate the opportunity to appear before you
22 today.

23 This reminds me of now the late-great Yogi
24 Berra's statement "It's deja vu all over again." So
25 as you look at me, you'll probably hear things that

1 I said before in the same way that you've heard
2 things that Pete said before.

3 Our position is that this, as a legal issue,
4 has not changed one bit since the discussion that
5 the Commission had at the July 15th meeting.
6 Having said that, let me tell you that when you
7 step back and hear what Pete is saying, yeah, that
8 sounds like it's some pretty good stuff, and
9 doesn't everybody, aren't they entitled to their
10 own day in court, etc. At first blush, those
11 things sound persuasive, but when you look at
12 Indiana case law -- and I'm going to go through
13 some of this. I understand it gets tedious, but I
14 think it's important -- and the canons of judicial
15 ethics, I think it's absolutely as clear today as
16 it was in July that there's absolutely no
17 inappropriateness about Judge Pylitt moving
18 forward.

19 The first thing I'm going to say is, and I
20 appreciate the discussion of the potential
21 sanction, they're not, these two cases are not
22 simply one superimposed on the other. Those
23 issues, what the stall, are part of the
24 administrative complaint, but only part of the
25 administrative complaint. There is a long

1 administrative complaint that picks up other things
2 in addition to that. So I don't want you to
3 suggest that it's just that and nothing more than
4 that. Then we'll have an opportunity before the
5 ALJ to discuss what is an appropriate sanction for
6 the violations that the ALJ determines after
7 hearing all of the evidence over a four-day period.

8 Having said that, the analysis is the same
9 because, yes, you are looking at bias, prejudice.
10 Is there a violation of judicial canons? And let
11 me first tell you what Judge Pylitt said because I
12 want to be very clear, when this motion was filed,
13 I don't believe in just filing paper to file paper.
14 I was asked: Is there any response by Judge Pylitt
15 to the motion? And he put in his order that has
16 been submitted to the Commission, he recognized
17 that on August 21st, I said, "Given that the legal
18 issues in the second motion mirror those raised and
19 addressed by the ALJ and the Commission in the
20 response to the first motion to disqualify, the
21 Staff does not intend to file a response to the
22 most recent filing." It's been heard. Same
23 issues.

24 That's precisely what we said. We came in
25 before. There was an allegation in July, which was

1 not an accurate allegation, that we had simply or
2 that Judge Pylitt had simply said I affirm the
3 decision of the Board of Stewards. That hadn't
4 happened yet. We'd had a hearing. There was no
5 decision.

6 And, quite frankly, think about this because I
7 think it's an interesting situation to highlight.
8 We came in and said there's absolutely no bias or
9 prejudice. If they wanted to intervene in the
10 Estvanko and Granitz case, if they thought that was
11 important, they could have filed a motion. They
12 didn't. They sat through the hearing. They heard
13 it. We didn't know what the decision was going to
14 be. All the evidence had been put on. Judge was
15 deliberating. And his decision didn't come out
16 until after the Commission's meeting. I said it
17 doesn't matter what the decision is, and I'll tell
18 you why, and I went through the analysis.

19 Now, if Judge Pylitt had come out with another
20 decision, I don't have any right to come and say,
21 oh, by the way, this decision is against me. I'm
22 entitled on behalf of the Commission Staff to a
23 fair hearing. And Pete's not entitled to that
24 either. If it had gone the other way, I couldn't
25 stand up and say, oh, gosh, I'm prejudiced by that.

1 You can't hear Judge Pylitt.

2 You've made the appropriate decision. Now,
3 let me tell you why the decision was appropriate.
4 Pete has accurately, I think, calculated that his
5 new evidence is Judge Pylitt's findings in the
6 Estvanko and Granitz case, again, a slice of what's
7 involved in the Russell case.

8 And what did Judge Pylitt say about the Motion
9 to Disqualify? I'm going to read paragraph five
10 from the Findings of Fact. "Nothing in the record
11 from the Estvanko and Granitz Recommended Order
12 issued July 28, 2015 suggests that ALJ Pylitt is
13 incapable of giving Doctor Russell a fair hearing
14 or that he is prejudice or biased against Doctor
15 Russell."

16 Then in his conclusions, number five, "Doctor
17 Russell presented no new evidence that ALJ Pylitt
18 is prejudiced or biased against Doctor Russell or
19 has any interest in the outcome of the proceeding
20 as required by IC4-21.5-3-10." Paragraph six,
21 "Doctor Russell presented no new evidence that any
22 legal cause exists for which ALJ Pylitt may be
23 disqualified to hear his case."

24 And then skipping to number nine because of
25 limitation of time, "Doctor Russell's

1 administrative complaint shall be determined upon
2 the evidence presented at during the scheduled four
3 day hearing," which is the scheduled hearing in
4 December.

5 Now, so Judge Pylitt -- and remember the
6 context here because we went through this before.
7 Judge Pylitt is not only an ALJ. He is a former
8 Hamilton County superior judge. He knows the
9 canons of judicial ethics. He understands what he
10 can and cannot do. He understands Indiana law, I
11 will submit to you, more so than petitioners with
12 respect to the second motion.

13 Let's talk for a moment about the canons
14 because it's very important to focus on a
15 particular canon that has been cited by us in the
16 first brief, and we've cited it in our filing last
17 Friday. Here it is. With respect to
18 disqualification, it basically says a judge can't
19 be biased or prejudiced. So it can't do any of the
20 following things. And subsection five, it's 2.11a,
21 subsection five. I'm going to read it for you in
22 the way that they want it to read, which is not the
23 way it reads. Then I'm going to read it to you in
24 the way it reads.

25 So let me read it in the way they want you to

1 read it. "The judge," and I'm going to leave out
2 -- "The judge while a judge" -- the same applies to
3 judges and administrative law judge or judicial
4 canon. That's not an issue here -- "has made a
5 public statement," and they want it simply to say
6 that commits or appears to commit the judge to
7 reach a particular result or rule in a particular
8 way in the proceeding in controversy. That's not
9 what it says. That's what they want you to think
10 it says.

11 What it says is "The judge while a judge has
12 made a public statement," and this is important,
13 "other than in a court proceeding, judicial
14 decision, or opinion." That's what the canons say.
15 So the canons say if you make a public statement
16 out there about a pending case, and it shows bias
17 or prejudice, we're going to ding you from the
18 case.

19 Now, that's what the canon says. And it
20 exempts, it says, oh, a public statement that you
21 make about a particular set of facts in a court
22 proceeding, judicial decision, or opinion doesn't
23 qualify as bias or prejudice. That's what the
24 canons say.

25 Now, there's been some discussion about some

1 cases. And, yes, we cited the Jones case because
2 it's an important case. I'm going to cite it again
3 real quickly. Jones versus State because it deals
4 with handling a case, which is a criminal case.
5 First, let me say that a criminal defendant would
6 come into you and say you're dealing with a
7 privilege, which is the ability to exercise a horse
8 racing license. My client is dealing with liberty,
9 which is a more significant interest. So the
10 criminal defense lawyer would say we've got more of
11 a reason to want to make certain that a judge is
12 not biased or prejudiced.

13 What does the Indiana Court of Appeals say in
14 the Jones case? Remember this case. Here's what
15 the charge was, criminal charges two defendants,
16 Jones and Edelen jointly charged with three counts
17 of possession of narcotics. They're jointly
18 charged.

19 Jones is out of state. Edelen was tried at a
20 bench trial before this judge in 1976. Now, Pete
21 comes up and says, well, there's a jury so we've
22 got the situation where you've got 12 jurors. No,
23 no, no, no. This Court of Appeals decision said
24 the judge sat in a bench trial so the judge
25 determined the guilt of Edelen, the co-defendant.

1 And three years later Jones comes back. He's in
2 Florida, had some important business, wasn't in the
3 state, comes back to Florida. And in 1979 said
4 this judge cannot sit on my case because you've
5 already determined in a bench trial my
6 co-defendant, who was jointly charged with three
7 counts of possession of narcotics, was guilty.

8 In a lengthy decision the court has said not a
9 basis. They go through and say, first of all, it's
10 not -- when we talk about judicial statements, they
11 have to be extra-judicial statements, again, not in
12 the context of a particular court proceeding. In
13 three pages, let me just read you some of this
14 stuff. The only prejudice which will disqualify a
15 judge is a personal prejudice for or against the
16 party. Not present in this case where you're
17 trying the same facts.

18 Jones did not direct us to any specific
19 instance in the record where an actual prejudice of
20 Judge Jasper is claimed to be demonstrated. That's
21 particularly true in this case. Nobody has pointed
22 to anything that Judge Pylitt did in that 542 page
23 transcript, which was inappropriate, that showed
24 any bias or prejudice. Let me tell you, if it was
25 there, they would have pointed it out to you, but

1 there's nothing there.

2 Rather, Jones, in this case, his argument is
3 the mere fact that Judge Jasper's participation in
4 the prior bench trial of co-defendant Edelen
5 precluded the same judge from participating in
6 Jones trial. Court of Appeals says such clearly is
7 not the law. So you can send somebody to jail, a
8 co-defendant, same set of facts that you tried in a
9 bench trial before, that's not the law. That
10 doesn't disqualify the judge. Then they go in and
11 they cite five more decisions in other
12 jurisdictions that say absolutely there's nothing
13 wrong with this.

14 In this particular case, there is nothing
15 wrong with this. Judge Pylitt got it absolutely
16 right. He said he's keeping an open mind. He's
17 going to review all the evidence that comes before
18 him in December. He'll make his recommended
19 decision, as he's done in every case that he's
20 handled for this commission.

21 Now, Jones, the only reference to Jones is
22 what he's arguing today. And we think he's way off
23 base on that.

24 The Brown case was interesting. That was the
25 Dwayne Brown case, who was the former clerk of the

1 court. And he tried to disqualify every member of
2 the Court of Appeals from sitting on his case as
3 biased and prejudiced. The court in that case held
4 that they weren't disqualified. So he's citing you
5 the Brown case in support of his argument when the
6 courts said, no, I'm sorry.

7 And what did they say? As part of that
8 decision they said "Adverse rulings and findings do
9 not in and of themselves establish a judge's bias
10 or prejudice." Adverse rulings and findings do not
11 in and of themselves establish the judge's bias or
12 prejudice. The only thing he's arguing is the
13 basis for his bias and prejudice are the adverse
14 rulings and findings. That's what the Brown case
15 is.

16 I'm going to quickly talk about Thacker, and
17 then I'm going to sit down. Thacker was an
18 interesting case because this case the trial judge,
19 and this is out of the decision of Thacker,
20 attended an oral argument on an appeal before the
21 Indiana Court of Appeals following which he
22 publicly commented. Okay. He went outside the
23 Court of Appeals. Then he said that Thacker had
24 received a fair trial, that the evidence against
25 Thacker was devastating, that no one claimed during

1 oral argument that Thacker was not guilty. And it
2 was common for lawyers to blame the misfortunes of
3 their clients upon the trial judge. So he walked
4 out of the Court of Appeals and made all of these
5 public statements. And then the Court of Appeals
6 said, oh, by the way, if you can make those public
7 statements, that's a disqualification.

8 Now, that raises the question: Were there any
9 public statements made outside of the opinion that
10 they've cited? And the answer is no. You were all
11 here. And there was a transcript of the hearing
12 that was made. And let me, if I can find -- yeah,
13 Judge Pylitt made two statements in the July 15th
14 meeting.

15 First, Chair Weatherwax, you asked if you
16 wanted to offer anything. Here's his response, "I
17 think counsel in briefs pretty well set forth the
18 issues. I think it would probably be inappropriate
19 for me to comment one way or the other." That was
20 his public statement. I'm not going to say
21 anything because it would be inappropriate; unlike
22 the Thacker case that they cite in support where
23 the judge walks outside the Court of Appeals and
24 says the evidence against this defendant is
25 devastating. Judge Pylitt said I'm not going to

1 say anything because I can't say anything. Then
2 there was another statement he made in response to
3 a procedural status of Co-Chair Schenkel that he
4 answered, but it was nothing about the merits of
5 the case.

6 There is absolutely no basis, as there wasn't
7 a basis the first time to disqualify Judge Pylitt.
8 And I would simply remind the Commission. I made
9 this point one other time. And what goes around
10 comes around. There was a provision in the AOPA
11 that says, and it's IC4-21.5-3-28C, any individual
12 serving alone or with others in a proceeding may be
13 disqualified for any reasons that an administrative
14 law judge may be disqualified.

15 So you've got situations where sometimes there
16 are actors that are involved in a common set of
17 facts, and they end up coming before the Commission
18 whatever way; one proceeding, multiple proceedings.
19 But if they're in multiple proceedings, as this one
20 is, what that says is if you buy into Doctor
21 Russell's argument, then technically, and Judge
22 Pylitt is prejudiced because he's already made a
23 decision, and you've already affirmed his decision,
24 so are you all prejudiced? The answer is, no, you
25 are not. You are absolutely not. And no one

1 should move to strike you. Although, if you said
2 Judge Pylitt was prejudiced, then it might come
3 back that someone would use that against you saying
4 you, as a commission, disqualified this guy for
5 hearing a situation that related to a common set of
6 facts, and you now can't do that because you can be
7 disqualified for the same reasons as the ALJ.

8 We believe that your first ruling was
9 absolutely appropriate, and that you ought to rule
10 consistently on the second motion to disqualify.

11 CHAIRMAN WEATHERWAX: Thank you, Robin, for a
12 wonderful overload, but I also think you relate to
13 the seriousness of this situation in our own
14 position as judges. That's the correlation I got.

15 MR. BABBITT: Thank you.

16 MR. SACOPULOS: I have some additional
17 comments to make, a quick response.

18 CHAIRMAN WEATHERWAX: Quick, Pete, make it
19 very quick.

20 MR. SACOPULOS: First is with regard to a
21 canon, the canon that we were relying on talks
22 about a matter in which, it's 2.11A6D. It talks
23 about a matter in which a judge or an ALJ has
24 previously presided over a matter in another court.
25 He has presided over this matter in the Estvanko

1 and Granitz matter.

2 With regard to the case that Mr. Babbitt
3 attempted to distinguish, that was the guilt of a
4 co-defendant. Here we have the retrying of the
5 same person. He has already determined that this
6 act was done. Now he will sit in judgment of him
7 again, which is, in essence, a second trial of the
8 predetermination.

9 The issue of a public statement is not the
10 issue. The issue is he has made a determination as
11 to the credibility and reliability of the
12 respondent, who is accused, and has his
13 professional career in the balance. That is the
14 issue.

15 CHAIRMAN WEATHERWAX: Thank you, Pete, for
16 that added clarification. Okay. Commissioners, we
17 have this before us again. This is a proposal to
18 try to disqualify Buddy Pylitt on the same case
19 that we just heard. Therefore, we need to make a
20 determination. So what's the feeling of the
21 Commission? Do I hear a motion to deny this
22 request?

23 COMMISSIONER SCHENKEL: I would so move.

24 COMMISSIONER MCCARTY: Second.

25 CHAIRMAN WEATHERWAX: Have a motion to deny

1 and a second. I'll take a roll call.

2 MS. ELLINGWOOD: Just for clarification, I
3 want to make sure that the vote is to adopt the
4 ALJ's proposed order, which would deny the motion.

5 CHAIRMAN WEATHERWAX: We are affirming the
6 motion to deny. I have learned in the legal world
7 things are not always simple. Commissioner
8 Lightle?

9 COMMISSIONER LIGHTLE: Aye.

10 COMMISSIONER SCHENKEL: Aye.

11 CHAIRMAN WEATHERWAX: Aye.

12 COMMISSIONER PILLOW: Aye.

13 COMMISSIONER MCCARTY: Aye.

14 CHAIRMAN WEATHERWAX: Motion is denied,
15 affirmed, I should say, five to zero.

16 Now we go to mediation. Same case. Trying to
17 suggest that we do that, which is a good idea. Do
18 you want to start that? But I would also like
19 Commissioner McCarty.

20 MS. ELLINGWOOD: Sure. I wanted to give a
21 procedural background with respect to where we are.
22 This is a little bit different. You don't have a
23 proposed order before you to affirm, deny, or
24 modify. You're making the decision yourself.

25 Russel, through counsel, has filed a motion

1 with you, which essentially asks the Commission to
2 force Commission Staff to enter into mediation in
3 the Russell matter. To the best of my knowledge,
4 this is an unprecedented request. The Indiana
5 Administrative Orders and Procedures Act, which
6 governs all the disciplinary actions that we do,
7 contemplates mediation; although, the horse racing
8 act itself doesn't have any requirements or rules,
9 and we don't have any administrative rules with
10 respect to mediation.

11 So briefs have been filed in the matter, which
12 you have all received and have had a chance to take
13 a look at. No oral argument will be presented in
14 the matter, but attorneys for both parties are
15 available if you've got any questions with respect
16 to the information that has been filed with you.

17 So you would need to determine whether or not
18 to approve the motion to require mediation.

19 CHAIRMAN WEATHERWAX: But it's with staff, not
20 us?

21 MS. ELLINGWOOD: Correct. The way it would
22 work is a mediator would be selected. And staff
23 would be, staff and counsel for Doctor Russell
24 would be forced to enter into the mediation
25 process.

1 CHAIRMAN WEATHERWAX: But if we did that, it
2 would have to be a public hearing like this?

3 MS. ELLINGWOOD: No, the mediation itself
4 wouldn't be public.

5 CHAIRMAN WEATHERWAX: It would be done before
6 it gets here.

7 MS. ELLINGWOOD: Right. Practically speaking,
8 and I would certainly defer to counsel on this, but
9 I would presume that approving the motion for
10 mediation practically would push back the
11 resolution of the case potentially. I think as one
12 person mentioned, the hearing is currently
13 scheduled for early December.

14 We would have to select a mediator, get him or
15 her up to speed with respect to the facts of the
16 case, go through the mediation process. It's not
17 guaranteed to resolve the matter. It's simply a
18 potential way to do it. You could also resolve the
19 matter through settlement negotiations or just go
20 ahead and have the hearing itself and wait for the
21 judge to weigh the evidence and come up with a
22 proposed order.

23 CHAIRMAN WEATHERWAX: Commissioner McCarty,
24 did you want to add something?

25 COMMISSIONER MCCARTY: Well, I'm interested in

1 how concerning mediation into this process would
2 impact both parties because there would be
3 additional time. So I'm interested in what the
4 additional time element means to the parties
5 involved.

6 Other than that, I just observe that I'm
7 familiar with the mediation process in a different
8 agency. I think it's a constructive mechanism and
9 should be seriously considered.

10 I am reluctant to order it. At the same time
11 ordering it -- I mean, you have to have willing
12 parties or you don't have to. You don't have to.
13 But it helps if the parties are willing to
14 participate in mediation.

15 And so the idea of ordering the parties to the
16 mediation table is a little troubling to me. On
17 the other hand, what does the additional time that
18 would probably be required do to both participants?

19 MS. ELLINGWOOD: One thing I failed to
20 mention, and I thank you for bringing it up. If
21 both parties were so inclined, they certainly could
22 enter into mediation without you requiring them or
23 your permission to do so. This would force all
24 parties into mediation.

25 COMMISSIONER SCHENKEL: I guess taking off of

1 Commissioner McCarty's comments too, and this is a
2 question procedurally. Obviously, the time element
3 is one issue. But would this in effect negate the
4 hearing process that presently is scheduled for?
5 Would it negate it and do away with it or would it
6 just push it back?

7 MS. ELLINGWOOD: At least initially it would
8 push it back. Only way it would negate the need
9 for a hearing is if both parties were able to come
10 to an agreement with respect to the resolution,
11 much like you would in a settlement conference.

12 COMMISSIONER SCHENKEL: So, I guess,
13 procedurally too the other question, Bill, I have
14 on that, does this establish, in effect, a new
15 procedure for this commission in dealing with
16 issues like this? I'm not saying that's wrong, but
17 I think we have to look at it in the big picture.
18 Is this now or would this lead to where instead of
19 having ALJs appointed to hear cases and so forth,
20 are we going to be faced with mediation procedures?

21 MS. ELLINGWOOD: It could arguably potentially
22 establish a precedent moving forward.

23 COMMISSIONER SCHENKEL: Not saying that's a
24 bad thing but right now that exists, that potential
25 exists. I mean, there's always -- somebody could

1 always file a motion for mediation. But,
2 typically, that's not the way we adjudicate and
3 handle things at this point.

4 I think that, Bill, goes to your point of the
5 time element and so forth. I mean, some of these
6 cases need some resolution in a fairly timely
7 manner rather than being drug out procedurally, I
8 guess, is one of my concerns.

9 COMMISSIONER LIGHTLE: Has it been done
10 before?

11 CHAIRMAN WEATHERWAX: I have a question for
12 counsel. Don't we already have that procedure now?

13 MS. ELLINGWOOD: Other administrative agencies
14 certainly benefit from the use of mediation. This
15 agency has never.

16 COMMISSIONER LIGHTLE: That was my question.

17 COMMISSIONER SCHENKEL: But we could.

18 MS. ELLINGWOOD: You certainly could. If you
19 were to do that, just generally, I would establish
20 or I would recommend establishing some rules that
21 outline that procedure in addition to what is
22 outlined in the Indiana Administrative Orders and
23 Procedures Act. We haven't looked specifically at
24 that because, again, this issue hasn't come up
25 before.

1 CHAIRMAN WEATHERWAX: This is a clarification
2 for my benefit. I thought if we have cases that
3 come, first of all, they come to the stewards and
4 judges, then you, and then we get them. If there's
5 any point during that process, somebody agrees for
6 mediation, do you do that or can you do that?

7 MS. ELLINGWOOD: We've never had a mediation
8 before. Cases have been resolved before they have
9 come to you through settlement negotiations.

10 COMMISSIONER SCHENKEL: Settlement
11 negotiations is not mediation.

12 CHAIRMAN WEATHERWAX: That's not the same.

13 MS. ELLINGWOOD: Yes.

14 COMMISSIONER MCCARTY: I have a follow-up
15 question. As we discuss this, do we, in fact, have
16 statutory authority to order mediation?

17 MS. ELLINGWOOD: AOPA has a provision that
18 would allow, that I believe would allow you to do
19 that. It would allow you to order mediation. That
20 statute is a general statute applying to, you know,
21 agencies broadly, not specifically the horse racing
22 commission. There's nothing in our statute that
23 contemplates that through our rules, although our
24 rules and statutes do contemplate settlement
25 negotiations, other processes that are already in

1 place for resolving cases short of having a
2 hearing.

3 You could do that, but I would recommend
4 taking some time to establish a process and really
5 wrap your hands around how you want that mediation
6 to look.

7 CHAIRMAN WEATHERWAX: Well, this is obviously
8 food for thought. I mean, we're the ones that
9 finally have to make a decision on all these
10 different cases. Each one is different, but you
11 set the parameters. You're the one that put the
12 charges together. You're the one that puts the
13 penalties together before it ever gets to us. And
14 you're guided by precedent or law or something.

15 MS. ELLINGWOOD: Yeah. When staff initiates a
16 disciplinary complaint or when the judges or
17 stewards initiate some type of a disciplinary
18 action against somebody, precedent is very, very
19 important. As I told you, we don't have a lot of
20 new things come along. Of course, I've been wrong
21 before.

22 CHAIRMAN WEATHERWAX: I've heard that song
23 before.

24 MS. ELLINGWOOD: Precedent is very important.
25 You want to treat similarly situated defendants or

1 licenses the same. And so by requiring mediation,
2 you may be setting a precedent. In this case you
3 may be setting a precedent to require mediation in
4 other cases.

5 I want to be clear. You do have the statutory
6 authority to require this. I believe you have the
7 statutory authority to require it. Whether you
8 think it's good policy to do so is entirely up to
9 you.

10 CHAIRMAN WEATHERWAX: Other questions from
11 other Commissioners? Is this something that we
12 have to vote on?

13 MS. ELLINGWOOD: Yes.

14 CHAIRMAN WEATHERWAX: It's just like a normal
15 issue before us?

16 MS. ELLINGWOOD: Exactly. You would either
17 vote to approve the motion requiring mediation or
18 you would deny the motion requiring mediation.

19 CHAIRMAN WEATHERWAX: So, therefore, we should
20 have a motion to deny this if we don't want to go
21 there.

22 MS. ELLINGWOOD: Yes, if you're so inclined.

23 COMMISSIONER LIGHTLE: I will make the motion.

24 CHAIRMAN WEATHERWAX: That's my motion to deny
25 this.

1 COMMISSIONER LIGHTLE: I'll second.

2 CHAIRMAN WEATHERWAX: All those in favor say
3 "aye."

4 THE COMMISSION: "Aye."

5 CHAIRMAN WEATHERWAX: It is unanimous. What's
6 next here?

7 MS. ELLINGWOOD: The next matter is the
8 Commission's consideration of the ALJ's proposed
9 Findings of Facts, Conclusions of Law, Recommended
10 Order for Summary Judgment in the matter of Staff
11 versus Donald Grego.

12 Mr. Grego is a licensee who had a drug
13 positive for two separate drugs. He was --
14 stewards issued a ruling against him. He timely
15 appealed the ruling. The Chairman assigned an ALJ
16 to hear the matter.

17 During the course of the proceeding, Staff
18 filed a Motion for Summary Judgment, which was
19 approved by or granted by the ALJ. And that motion
20 is before you today. So normally, as you know, you
21 have three choices; affirm, modify, or dissolve.

22 One thing we have not really discussed because
23 it hasn't been relevant in the cases before you is
24 that AOPA requires objections to a proposed order
25 be filed with the Commission within 15 days. And

1 if objections aren't filed as required by the
2 statute, then the Commission very respectfully must
3 affirm the ALJ's proposed order.

4 So that's what's happened here. Objections
5 were not filed within the 15-day deadline. And so
6 I believe that AOPA requires you to adopt the ALJ's
7 proposed order.

8 Now, that being said, we are required to allow
9 them to file briefs, which you've received in your
10 material. We were allowing them to give an oral
11 argument. But I just wanted to make sure you
12 understand that your options are very limited with
13 respect to the actions you can take, even though
14 you will be hearing from counsel for both sides.

15 You will be hearing from both parties. Each
16 party has 10 minutes, not 15. And if you've got
17 any questions, I'm happy to answer those. We can
18 get started. I don't know if Mr. Grego has counsel
19 here.

20 CHAIRMAN WEATHERWAX: He's the defendant?

21 MS. ELLINGWOOD: No. His counsel isn't here.
22 Does Commission staff counsel want to?

23 MS. NEWELL: We are comfortable resting on the
24 pleadings that was filed.

25 CHAIRMAN WEATHERWAX: This was a case where

1 this man was personally drug positive?

2 MS. ELLINGWOOD: No, the horse.

3 CHAIRMAN WEATHERWAX: The horse was drug
4 positive.

5 MS. ELLINGWOOD: For two different drugs.

6 CHAIRMAN WEATHERWAX: He didn't appeal it in
7 the proper time.

8 MS. ELLINGWOOD: The stewards issued a ruling
9 against him. He did finally appeal the ruling.
10 And then Holly filed a Motion for Summary Judgment,
11 and the ALJ found in favor of that motion. That
12 motion is before you now. Because no objections
13 were timely filed, your only choice is to adopt the
14 proposed order.

15 COMMISSIONER SCHENKEL: So moved.

16 CHAIRMAN WEATHERWAX: So we have a motion to
17 approve as submitted.

18 COMMISSIONER LIGHTLE: I second.

19 CHAIRMAN WEATHERWAX: Second. All those in
20 favor say "aye."

21 THE COMMISSION: "Aye."

22 CHAIRMAN WEATHERWAX: The motion has been
23 approved.

24 Next, Holly, you have Findings of Fact,
25 Conclusion of Law regarding Mr. Yoder.

1 MS. NEWELL: Yes. And procedurally speaking,
2 this one is very similar to the one Lea just
3 explained. This case involved trainer Jeffrey
4 Yoder and a cobalt positive. Lea represented the
5 Commission Staff in filing the administrative
6 complaint against Mr. Yoder. Mr. Yoder had counsel
7 and then didn't have counsel.

8 And, ultimately, Miss Ellingwood filed her
9 Motion for Summary Judgment. He did not submit any
10 sort of response to the Motion for Summary
11 Judgment. Judge Lauck, the ALJ who was assigned to
12 the case, issued a recommended order granting
13 summary judgment, and the penalty of \$5,000 fine,
14 one-year suspension, and forfeiture and
15 redistribution of the second place purse.

16 Mr. Yoder did not file any objection. So as
17 Lea previously instructed, your options are fairly
18 limited.

19 CHAIRMAN WEATHERWAX: Has this time period
20 already passed?

21 MS. NEWELL: Yes, the judge's order, judge's
22 recommended order was issued September 17th. So
23 he had until early October and did not file
24 objections.

25 CHAIRMAN WEATHERWAX: Okay. Any questions

1 from the Commissioners?

2 COMMISSIONER PILLOW: One question, Holly. I
3 know the cobalt issue has been around us ever since
4 I've been on this Commission. Was Mr. Yoder's
5 levels above the limit that was before --

6 MS. NEWELL: Yes.

7 COMMISSIONER PILLOW: -- we raised the limits?

8 MS. NEWELL: Yes. This particular conduct
9 occurred before the Commission revisited the cobalt
10 issues.

11 CHAIRMAN WEATHERWAX: This isn't the case
12 where we had lab issues that they didn't know they
13 had a problem?

14 MS. NEWELL: No.

15 CHAIRMAN WEATHERWAX: This is not one of
16 those.

17 MS. NEWELL: He violated the rule as it
18 existed prior to the Commission revisiting the
19 rule. Correct?

20 MS. ELLINGWOOD: Yes.

21 COMMISSIONER PILLOW: You're saying his levels
22 were higher.

23 CHAIRMAN WEATHERWAX: Than the current
24 threshold.

25 MS. NEWELL: He actually tested positive at

1 249 parts per billion. It makes the rules really
2 not an issue. He was well out of the ballpark.

3 COMMISSIONER PILLOW: That clarifies that.

4 CHAIRMAN WEATHERWAX: So we have this motion
5 to approve the summary judgment, as Holly has
6 mentioned. Do I have a motion?

7 COMMISSIONER PILLOW: So moved.

8 COMMISSIONER MCCARTY: Second.

9 CHAIRMAN WEATHERWAX: All those in favor say
10 "aye."

11 THE COMMISSION: "Aye."

12 CHAIRMAN WEATHERWAX: Okay. Number six is
13 back to you, Lea.

14 MS. ELLINGWOOD: Yes, I was afraid you would
15 have missed me. This last one is like the two
16 before. You have the situation where we had a
17 trainer with a positive drug finding for a drug
18 called tripelennamine. And an administrative
19 complaint was filed. Holly represented Commission
20 Staff in the matter.

21 She filed a Motion for Summary Judgment with
22 the ALJ assigned to the case. The ALJ did find in
23 her favor. That motion is before you. Again, no
24 objections were filed. So the Commission,
25 fortunately or unfortunately, has no choice but to

1 adopt the ALJ's.

2 CHAIRMAN WEATHERWAX: What was the penalty or
3 suspension and fine?

4 MS. ELLINGWOOD: He was fined \$500 and
5 suspended for 15 days. And then, as you always
6 have, the horse was disqualified, and the purse
7 redistributed.

8 CHAIRMAN WEATHERWAX: Thank you. So do I hear
9 a motion?

10 COMMISSIONER MCCARTY: So moved.

11 CHAIRMAN WEATHERWAX: Second?

12 COMMISSIONER LIGHTLE: Second.

13 CHAIRMAN WEATHERWAX: All those in favor say
14 "aye."

15 THE COMMISSION: "Aye."

16 CHAIRMAN WEATHERWAX: Unanimous. Number seven
17 is the Staff versus Peter Wrenn.

18 MS. ELLINGWOOD: Yes. You are considering the
19 settlement agreement that was entered between
20 Commission Staff. I represented the Commission
21 Staff in the matter and Joe Chapelle, who
22 represented Mr. Wrenn. Mr. Chapelle is here today
23 if you have any questions for him.

24 We had a couple of driving violations against
25 Mr. Wrenn. He was well represented by counsel. We

1 were able to come to a settlement in the matter
2 that was agreeable, the terms of which were
3 agreeable to both parties. They have been outlined
4 in the agreement that's been provided to you.

5 At this point, Commission Staff would
6 respectfully request that you approve the
7 settlement agreement. The suspension has already
8 been served. I think it's a noncontroversial
9 issue. But, again, both Joe and I are here if you
10 have any questions.

11 CHAIRMAN WEATHERWAX: Mr. Wrenn.

12 MR. CHAPELLE: Mr. Chapelle. Joe Chapelle on
13 behalf of Peter Wrenn. We have reached an
14 agreement. It's been fully executed. I believe as
15 Ms. Ellingwood has stated, the suspension has
16 already been served. There are some other
17 provisions in the agreement. However, our position
18 is we have an agreement with the staff and would
19 request that it be approved.

20 CHAIRMAN WEATHERWAX: Thank you for being
21 here. Any questions of the Commission to counsel?
22 Thank you.

23 COMMISSIONER SCHENKEL: Move adoption.

24 CHAIRMAN WEATHERWAX: We have a motion to
25 move.

1 COMMISSIONER PILLOW: Second.

2 CHAIRMAN WEATHERWAX: All those in favor say
3 "aye."

4 THE COMMISSION: "Aye."

5 CHAIRMAN WEATHERWAX: Holly, Staff versus
6 Aragon.

7 MS. NEWELL: Yes. Mr. Aragon is a jockey. He
8 had two issues in September. On September 15,
9 2015, he was riding the horse Big Chance. And the
10 stewards determined that he was riding carelessly
11 in violation of our rules. They issued a ruling
12 that contemplated a seven-day suspension.

13 On September 25th he was riding Keke Dream
14 Catcher and drifted in without being clear, which
15 is an interference issues. The stewards issued a
16 ruling that contemplated a three-day suspension.
17 So Mr. Aragon was looking at ten days. He
18 requested a hearing before an ALJ on appeal.

19 We did schedule that hearing but were able to
20 settle this matter just a few minutes before it
21 went in front of the ALJ. And we reached an
22 agreement that Mr. Aragon would serve seven days.
23 And the traditional purse distributions would
24 happen for Big Chance. Keke Dream Catcher's
25 placement was not changed because she placed low.

1 And it was determined that it didn't actually
2 affect the outcome of the race.

3 And we just respectfully request you approve
4 this settlement agreement. Mr. Aragon is not here.
5 He was represented by the Jockey's Guild before the
6 hearing though.

7 CHAIRMAN WEATHERWAX: Very good. Do I hear a
8 motion?

9 COMMISSIONER PILLOW: So moved.

10 CHAIRMAN WEATHERWAX: Second?

11 COMMISSIONER LIGHTLE: Second.

12 CHAIRMAN WEATHERWAX: All those in favor say
13 "aye."

14 THE COMMISSION: "Aye."

15 CHAIRMAN WEATHERWAX: Next we have Holly
16 again.

17 MS. NEWELL: We're getting close to the end.
18 This is the settlement agreement between Commission
19 Staff and Richard Estvanko relating to a Ritalin
20 positive. Ritalin is a Class 1 drug. Mr. Estvanko
21 was represented by counsel in our settlement
22 negotiations. We reached an agreement that he
23 would have a three-year ban from Indiana. And that
24 was broken down as one and a half years banned from
25 racing all together so a one and a half year

1 suspension and an additional one and a half year
2 period in which he would not seek licensure in
3 Indiana.

4 CHAIRMAN WEATHERWAX: Does that mean he can't
5 race anywhere else?

6 MS. NEWELL: For the first year and a half,
7 generally speaking, reciprocity would apply, and he
8 would not be able to race in any other
9 jurisdiction, but that's a jurisdictional choice
10 whether or not they want to.

11 CHAIRMAN WEATHERWAX: What you described is a
12 settlement that's already been reached?

13 MS. NEWELL: Yes. Mr. Estvanko was
14 represented by counsel during the course of the
15 settlement negotiations. His counsel is based in
16 Evansville and did not appear for this.

17 CHAIRMAN WEATHERWAX: Consider a motion for
18 this settlement. Questions?

19 COMMISSIONER MCCARTY: I move for approval on
20 this settlement.

21 CHAIRMAN WEATHERWAX: Commissioner McCarty
22 moves for approval.

23 COMMISSIONER PILLOW: Second.

24 CHAIRMAN WEATHERWAX: Second. All those in
25 favor say "aye."

1 THE COMMISSION: "Aye."

2 CHAIRMAN WEATHERWAX: Holly, this is the
3 Commission rulings for this last quarter.

4 MS. NEWELL: We have eight pages so quite a
5 few rulings were in the heart of racing season.
6 That's sort of to be expected, but to the extent
7 that any of these, you had questions about, I'm
8 happy to answer them.

9 CHAIRMAN WEATHERWAX: Is this about the normal
10 for this, the busiest time of the year?

11 MS. NEWELL: Yeah, I don't think that this
12 number is particularly uncommon. You're going to
13 see that spike right during the heart of the meet.

14 CHAIRMAN WEATHERWAX: Sure. Anything in
15 there, Commissioners, that you see that you want to
16 ask questions on? We can see what the fine was,
17 what the dollar fine was and what the purpose was.

18 Very good. Thank you, Holly. This is just
19 for advisement?

20 MS. NEWELL: Yes.

21 CHAIRMAN WEATHERWAX: Very good. Jessica.

22 MS. ELLINGWOOD: Actually, I was going to --
23 oh, I didn't see you back there. I was going to
24 wing it.

25 CHAIRMAN WEATHERWAX: Jessica, consideration

1 of emergency rule.

2 JESSICA BARNES: You can wing it if you want
3 to. Might be kind of fun.

4 You have an emergency rule in front of you.
5 This is actually a rule that was up for expiration
6 by the end of the year. And when we took a look at
7 it, a light bulb kind of went off in my head, and I
8 thought, oh, there are some little inconsistencies
9 with what has been approved by the Commission when
10 they approved the Standardbred breed development
11 program and what was listed in the rule. So this
12 clarifies those inconsistencies.

13 What is listed here is basically adding in the
14 caveat that if an Indiana horse, a two or three
15 year old, is in a claiming race or where it has a
16 claiming tag on it, there is not a breeder's award
17 on that type of race. And that has been approved
18 by the Commission when the program was approved.
19 So this just gels the two together.

20 Those awards are paid out in December at the
21 end of the meet; so, hence, the emergency rule
22 stance part of it because this rule is up for
23 expiration. It has to be readopted. These awards
24 will be paid out in December.

25 CHAIRMAN WEATHERWAX: This may be a dumb

1 question. But this is something we need to do to
2 do what we are already doing?

3 JESSICA BARNES: Yes.

4 CHAIRMAN WEATHERWAX: Almost like you have got
5 to be done.

6 MS. ELLINGWOOD: This isn't going to happen
7 again though.

8 CHAIRMAN WEATHERWAX: You don't want to get
9 too involved because you can really be so mixed up.

10 JESSICA BARNES: This is when the program
11 change was made by breed development and
12 recommended to the Commission, there was
13 disconnect. And we failed to realize that we
14 needed to make an applicable rule change.

15 CHAIRMAN WEATHERWAX: So we do have to adopt
16 this?

17 JESSICA BARNES: Yes.

18 CHAIRMAN WEATHERWAX: To make it go to the
19 proper -- do you understand it? Clarity on this
20 emergency rule? May I have a motion maybe we just
21 say by adoption.

22 COMMISSIONER SCHENKEL: So moved.

23 CHAIRMAN WEATHERWAX: Second. I will second
24 it. All those in favor say "aye."

25 THE COMMISSION: "Aye."

1 CHAIRMAN WEATHERWAX: Thank you, Jessica.

2 Old business, do we have any? Yes.

3 MIKE BROWN: My board and the people we
4 represent just wanted to weigh in on a couple of
5 items relating to the Granitz case. We don't have
6 standing in it. We didn't apply to intervene or
7 anything like that, but we were troubled by a
8 couple of items involved in consideration. One is
9 the idea of trainer responsibility as it was
10 interpreted in this case.

11 I talked to my counterparts in other states
12 and other jurisdictions. They, of course, all have
13 a trainer responsibility rule too. We're not
14 trying to overturn that by any means. But I could
15 not find any cases in which the trainer didn't do
16 anything. That gives us pause to consider.

17 The trainer wasn't in the stall. The trainer
18 was not giving instruction for the vet to allegedly
19 be in the stall. The test came back, if not
20 negative, at least not positive, which is another
21 consideration for us, by the way. The trainer
22 didn't do anything in this case, but they were
23 responsible for the thing that they didn't do.

24 That gives us a lot of trouble. We think that
25 trainer responsibility is a rule that's been in

1 place. It's accepted. It's part of the tenets of
2 regulation. We are hoping that this is about an
3 outer extreme of trainer responsibility because we
4 don't think the trainers did anything in this case.
5 And it sets a bad precedent for interpretations
6 going forward.

7 The other thing that my board was troubled by
8 was the idea that a test that comes back without a
9 positive doesn't mean it's a negative. That kind
10 of turns what we've grown to accept on the backside
11 of the track. If a test can be sent away and still
12 come back and be prejudicial in the sense that
13 maybe you're just smarter than us and used a
14 substance that we didn't know about, that gives us
15 pause to consider. Everybody back there presumes
16 when they send a test off and it comes back
17 negative, it's negative. We hope we won't go too
18 far with that. My board wanted me to make those
19 observations.

20 CHAIRMAN WEATHERWAX: Thank you, Mike. That's
21 a good point. Okay. I didn't know if that was old
22 business, but it's a current issue. That's for
23 sure.

24 Deena, do you have any old business?

25 DEENA PITMAN: No, I think we can move onto

1 new business, unless you want to hear from staff
2 regarding a response to Mike.

3 CHAIRMAN WEATHERWAX: Yeah, that's fine. I
4 would like to hear that.

5 MS. NEWELL: I don't really want to delve into
6 this anymore, particularly until the substance has
7 been decided. To the extent that the commission
8 was going to decide to waiver from the record
9 established by the hearing, you need to rely on
10 specific evidence in the hearing, not any new
11 information provided by Mr. Brown or anybody else.

12 But just a couple of points: Trainer
13 responsibility rule does include the obligation
14 that a trainer guard and protect the horses in his
15 or her care. If you are going to pull that back,
16 then if a trainer is up at the track watching a
17 horse breeze and something is happening in his
18 stalls, he's no longer responsible. If you're
19 going to have trainer responsibility, you have to
20 have trainer responsibility.

21 COMMISSIONER SCHENKEL: My question would be
22 if that were the case, who is accountable?

23 MS. NEWELL: Correct.

24 COMMISSIONER SCHENKEL: There has to be
25 accountability at some point somewhere.

1 MS. NEWELL: Secondly, the positive test
2 versus negative test. I understand why Mike is
3 concerned about this. However, what's very
4 important in this case is that no violation of a
5 foreign substance is prohibited rule was found.
6 The 24-hour medication rule was violated, but we
7 didn't have any finding of the positive test rule.
8 That's a separate rule. There was no such finding
9 that had occurred.

10 CHAIRMAN WEATHERWAX: Well, thank you both for
11 that. I have new business. If we are supposed to
12 go to that now. You may or may not know that we
13 made a statement during the start of the
14 Standardbred sale at the State Fairgrounds where
15 we're going to have the first ever summit.

16 That date has been changed to accommodate the
17 horsemen and you folks; Thoroughbred, Standardbred,
18 and Quarter Horse. That's on the 20th of
19 November from one to three at the State Fairgrounds
20 Farm Bureau building, which is close to where you
21 go into the gate to the right. And it's back there
22 close to where the horses are kept.

23 This is going to be important because we will
24 give to you in the near future some of the
25 guidelines of what we want to accomplish, but we

1 think as commissioners, it's very important that we
2 hear from you. We get input from you. We want to
3 do the right things. And we want to make this
4 happen now before we get into next year's season.

5 So we made the change to November 20th at
6 one to three on purpose so that you folks could be
7 there. I'm talking to you, I mean, the horsemen,
8 owners, trainers, breeders, jockeys. But whoever
9 can be there, please give us the most clear,
10 productive, positive suggestions that we can
11 implement.

12 So that's just simply food for thought for the
13 record. And Deena will be putting this notice out
14 to the public explaining all that.

15 Last on new business, of course, the update on
16 the executive director search, a formal job
17 description has to be completed. We haven't done
18 that yet. But we will be working on that. And
19 once we do all that, we will share that with you
20 and the public. But that's something that we feel
21 we must do. We want to.

22 So that, to me, Deena, is the only two new
23 items that I have.

24 MS. ELLINGWOOD: I have one more for you.

25 CHAIRMAN WEATHERWAX: Go ahead.

1 MS. ELLINGWOOD: Yes. Thank you, Chairman.
2 In 2012, the legislature, recognizing that
3 everybody is very busy and technology is advancing
4 by leaps and bounds, decided to allow Commissioners
5 to participate in meetings through electronic
6 communication. Essentially what that means is
7 telephone. To be able to do that though, the
8 agency has to have a policy outlining certain
9 requirements, minimum requirements. And that
10 policy has to be approved by the majority of the
11 board. It needs to be posted on the website.

12 So I have put together a draft policy which
13 has been circulated to you. With some edits, it's
14 been updated to what I think is the final draft,
15 unless there's some changes that you want to have
16 made. I would at this point respectfully request
17 that you approve the policy that would allow you to
18 participate via meeting telephonically after today.

19 CHAIRMAN WEATHERWAX: Commissioner Schenkel,
20 why don't you point out some of the --

21 COMMISSIONER SCHENKEL: Yes. Let me, so we
22 can have discussion, I'll move the acceptance of
23 this.

24 CHAIRMAN WEATHERWAX: I will second.

25 COMMISSIONER SCHENKEL: And I think this is

1 very important from the standpoint, and
2 circumstances always dictate a lot of times, we're
3 in a unique circumstance where we're going to have
4 to go through probably more frequent meetings, the
5 five us, as we look for a new executive director.
6 And physically we are scattered around. This is a
7 great example of why I think this is important.

8 I don't want the public to think we are going
9 to start having commission meetings, and there will
10 be five telephone hookups up here, and you will see
11 five empty chairs. That's not the point of this.

12 In fact, it says at least two people shall be
13 present physically at any meeting. So I don't want
14 people to think we are all going to stay at home in
15 our pajamas, and we're going to connect by
16 telephone, and we won't be here.

17 But I think it's also important to understand
18 that because we are going to go through this
19 search, there may be times where we need to look at
20 and discuss applicant's resumes, applicant's
21 qualifications. We will not make the decisions, I
22 don't think, in a closed setting like that. It's
23 going to be or not even a closed session. There
24 will always be notice given.

25 But I think it's important that we have the

1 flexibility so that if we need to spend 15 minutes
2 talking about a couple applicants, for example,
3 that Chairman Weatherwax or Commissioner McCarty
4 don't have to drive an hour and a half one way for
5 a 15-minute meeting. I think it will help the
6 efficiency and effectiveness of the Commission to
7 have this flexibility, even though I hope it does
8 not become common practice. I've been on other
9 boards where it's been used very effectively.

10 CHAIRMAN WEATHERWAX: I don't have any
11 intention of abusing it or using it too much. But
12 sometimes when you're trying to make things happen,
13 and these are important things, this will be a very
14 useful tool not to be abused because we're still
15 going to have many meetings in our normal scheduled
16 protocol for what we are doing here right now.

17 So, therefore, we have this motion and second.

18 COMMISSIONER MCCARTY: I have a question.

19 CHAIRMAN WEATHERWAX: Sure. Commissioner
20 McCarty.

21 COMMISSIONER MCCARTY: One, I notice it is now
22 two commissioners must be physically present.

23 MS. ELLINGWOOD: Yes.

24 COMMISSIONER MCCARTY: Is everybody
25 comfortable with that as opposed to three?

1 MS. ELLINGWOOD: Two is the statutory minimum.
2 If you participate telephonically and there are
3 only three of you, that still constitutes a meeting
4 because three of you are considered present.

5 COMMISSIONER MCCARTY: Right. I'm just asking
6 is everybody comfortable.

7 CHAIRMAN WEATHERWAX: Is your point you think
8 we should have more than two?

9 COMMISSIONER MCCARTY: I don't know. I raise
10 the question.

11 CHAIRMAN WEATHERWAX: This is statutory
12 guidelines?

13 MS. ELLINGWOOD: What you have before you is
14 the statutory minimum with respect to the number of
15 people you have to have physically present. You
16 certainly can increase that. That's a policy
17 decision.

18 COMMISSIONER MCCARTY: You said statutory
19 requirement. Is that the statutory requirement if
20 it's a seven-member commission?

21 MS. ELLINGWOOD: It's statutory minimum. It's
22 two or one-third of the board.

23 CHAIRMAN WEATHERWAX: So this would be forty
24 percent for us.

25 COMMISSIONER MCCARTY: We're overachieving.

1 COMMISSIONER SCHENKEL: I agree with Bill.
2 That's a conversation that I had by e-mail
3 yesterday with Lea. I guess I'm comfortable with
4 the two from the standpoint of, again, we're
5 meeting the quote unquote minimum statutory
6 requirements but keeping it flexible for the five
7 of us. If we were a nine-or-ten-member commission,
8 I don't think two is enough personally. So, I
9 mean, in my mind it's somewhat relevant to the fact
10 there are only five of us.

11 MS. ELLINGWOOD: And you can certainly change
12 that. This is our first attempt at the policy. So
13 down the road if you feel like three is really the
14 number.

15 CHAIRMAN WEATHERWAX: Now, will we have our
16 court reporter with everything we do?

17 MS. ELLINGWOOD: Yes. Telephonic
18 participation doesn't really change anything about
19 the meeting. You're still going to have the court
20 reporter. You will still have to post the notice.
21 One thing I also want to point out is you can
22 participate in the executive session via telephone.

23 COMMISSIONER MCCARTY: That was my other
24 question. This applies to executive decisions.

25 MS. ELLINGWOOD: This applies to all meetings

1 the Commission may have. So other than that, all
2 the requirements certainly still apply.

3 CHAIRMAN WEATHERWAX: Do we have any other
4 comments or questions?

5 COMMISSIONER MCCARTY: This is basically a
6 policy. It doesn't require rule making?

7 MS. ELLINGWOOD: No.

8 COMMISSIONER MCCARTY: In fact, if we decided
9 two was not functioning well, we could change the
10 policy.

11 MS. ELLINGWOOD: Yes.

12 COMMISSIONER SCHENKEL: Without going through
13 the rule making process. That's a good point.

14 CHAIRMAN WEATHERWAX: This gives us legal
15 authority to do what we would like to do.

16 MS. ELLINGWOOD: Yes. All agencies have the
17 authority to do this, but they are required --

18 CHAIRMAN WEATHERWAX: To establish a policy.

19 MS. ELLINGWOOD: They're required to adopt a
20 policy.

21 CHAIRMAN WEATHERWAX: Once we do this, this
22 will get posted on the public's web page, and
23 they'll know what we did.

24 MS. ELLINGWOOD: Yes, we'll post it on the
25 website, I think today. Any meeting you have

1 subsequent to the adoption of the policy falls
2 under the policy.

3 COMMISSIONER MCCARTY: Including executive
4 session.

5 MS. ELLINGWOOD: Yes.

6 CHAIRMAN WEATHERWAX: I understand the motion
7 or the policy we are trying to put forward. Any
8 other questions?

9 All those in favor say "aye."

10 THE COMMISSION: "Aye."

11 CHAIRMAN WEATHERWAX: Passes unanimously.

12 Is there any other business to come before our
13 commission? If not, we stand adjourned. Thank
14 you.

15 (At this time the IHRC meeting was adjourned.)

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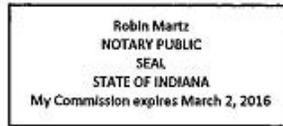
1 STATE OF INDIANA
2 COUNTY OF JOHNSON

3
4 I, Robin P. Martz, a Notary Public in and for
5 said county and state, do hereby certify that the
6 foregoing matter was taken down in stenograph notes
7 and afterwards reduced to typewriting under my
8 direction; and that the typewritten transcript is a
9 true record of the Indiana Horse Racing Commission
10 meeting;

11 I do further certify that I am a disinterested
12 person in this; that I am not a relative of the
13 attorneys for any of the parties.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my notarial seal this 18th day of
16 November 2015.

17 *Robin P. Martz*
18



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22 My Commission expires:
23 March 2, 2016

24 Job No. 101907
25

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