

**In the Matter Of:**

*Indiana Horse Racing Commission*

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**IHRC Meeting**

*July 15, 2015*

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INDIANA HORSE RACING COMMISSION  
MEETING

HELD ON  
JULY 15, 2015

9:00 A.M.

AT

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APPEARANCES

Thomas Weatherwax, Chairman  
 Greg Schenkel  
 George Pillow  
 Susie Lightle  
 William McCarty  
  
 Joe Gorajec, Executive Director  
  
 Lea Ellingwood, Esq.  
 Holly Newell, Esq.  
 INDIANA HORSE RACING COMMISSION  
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1 CHAIRMAN WEATHERWAX: Good morning. Apologize  
2 for being late. I would like to call our  
3 Commission meeting to order.

4 Do I have my little script here for swearing  
5 in?

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

8 CHAIRMAN WEATHERWAX: Okay. The agenda, first  
9 of all, you've seen and probably had a chance to  
10 look at the minutes of our April 16th meeting.  
11 Do you have any questions or comments? Have you  
12 all looked at them?

13 COMMISSIONER SCHENKEL: I move approval.

14 COMMISSIONER MCCARTY: Second.

15 CHAIRMAN WEATHERWAX: We have a motion of  
16 approval. All those in favor, say "aye."

17 THE COMMISSION: "Aye."

18 CHAIRMAN WEATHERWAX: The first item on the  
19 agenda deals with -- and, Lea, I think you're going  
20 to share this us, Indiana Horse Racing Commission  
21 versus Thomas Amoss.

22 MS. ELLINGWOOD: Thank you, Chairman. You  
23 have before you a settlement agreement in the  
24 matter of the IHRC Staff versus Thomas Amoss. You  
25 will recall that this matter was before the

1 Commission at the last meeting, at which time the  
2 Commission issued a final order regarding a fine  
3 and license suspension against Mr. Amoss.

4 Mr. Amoss subsequently timely appealed the  
5 Commission's order to a trial court. However,  
6 since that time, Mr. Amoss and Commission Staff  
7 reached a settlement that includes terms  
8 satisfactory to both parties. Those terms are  
9 outlined in the agreement before you. The parties  
10 respectfully request the Commission approve this  
11 settlement agreement. I'm happy to answer any  
12 questions that I can, as I imagine are both counsel  
13 are present as well.

14 CHAIRMAN WEATHERWAX: Have you had a chance to  
15 review the findings? Looks like the settlement of  
16 this went from a 60 day to a 45 day, and the \$5,000  
17 fine still stands.

18 MS. ELLINGWOOD: Yes, sir.

19 CHAIRMAN WEATHERWAX: Comments, questions for  
20 the staff? Okay. Do I hear a motion to accept  
21 this agreement?

22 COMMISSIONER MCCARTY: So moved.

23 COMMISSIONER SCHENKEL: Second.

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

1 THE COMMISSION: "Aye."

2 CHAIRMAN WEATHERWAX: It's passed. Number  
3 two, horse racing commission in consideration of  
4 the settlement agreement in the matter of Bradley  
5 Moffit. And, Holly, are you going to do that one?

6 MS. NEWELL: Yes, sir. In your packet you  
7 have the settlement agreement between Commission  
8 Staff and Bradley Moffit. Bradley Moffit is a  
9 Standardbred trainer who raced a horse in the  
10 seventh race on May 31, 2014. That horse's  
11 post-race samples tested positive for darbepoetin  
12 alfa. Darbepoetin alfa is also known as DPO.  
13 We're going to go with that because it's a lot  
14 easier for me.

15 It is a synthetic form of EPO. And EPO is  
16 erythropoietin. It's a blood doping agent. Lance  
17 Armstrong admitted to using EPO, if that kind of  
18 puts it in a separate context for you.

19 DPO is a synthetic form of EPO. And what  
20 these drugs do is a regeneration of red blood  
21 cells. It's a performance enhancing drug. The RCI  
22 classifies this as a 2A drug. A drug with a high  
23 potential to affect performance.

24 The executive director issued an  
25 administrative complaint last year. And he

1 recommended a \$5,000 fine and a 15-year suspension.  
2 However, the parties discussed the matter, and we  
3 were able to reach an agreement that has Mr. Moffit  
4 suspended for ten years with no fine.

5 To put this in a little bit of context, the  
6 Canada commission recommended a \$100,00 fine and a  
7 ten-year penalty for a trainer who had horses that  
8 tested positive for EPO. And the RCI recommends a  
9 \$100,000 fine and a ten-year suspension as well, or  
10 at least one of their boards has moved toward that.

11 I think the executive director also wanted to  
12 talk a little about this particular drug. It's  
13 fairly unique.

14 CHAIRMAN WEATHERWAX: Yes, Joe, because I've  
15 never seen a penalty or a fine this severe in my  
16 life.

17 JOE GORAJEC: And you probably won't see too  
18 many. When you look at blood doping agents, EPO  
19 and its close cousin DPO, you're looking at the  
20 worst of the worst. If there was a pyramid of  
21 drugs, EPO would sit at the top as far as the  
22 severity of the events. And, of course, the  
23 penalty follows the severity of the offense.

24 When you look at the RCI classification  
25 guidelines, a Class 1 is, in a Class 1 through 5

1 system, with one being the worst, typically, a  
2 first offense would call for a minimum of a  
3 one-year suspension. This is a drug kind of in its  
4 own category. It's the worst of the worst.

5 We're one of the very few jurisdictions in the  
6 country now to have called an EPO positive. EPO  
7 positives are very hard to come by because of the  
8 fact that it doesn't stay long in the horse's  
9 system. It can have performance enhancing effect  
10 when the horse competes but not have the drug in  
11 its system when the horse competes.

12 So to find a positive for EPO, we have to be  
13 either very diligent or very lucky. In this  
14 particular case, we were very lucky. But that's  
15 not to say we aren't diligent also. We do test for  
16 EPO. And, like I said, we are one of the few  
17 jurisdictions in the country to have a positive  
18 test. You're very unlikely to come across a  
19 suspension of this length again unless it is, for a  
20 positive test, unless it is EPO or a similar such  
21 drug.

22 CHAIRMAN WEATHERWAX: Do we test for this all  
23 the time?

24 JOE GORAJEC: Yes. We focus our test for EPO  
25 in out of competition because EPO is a drug that

1 has a very short detection window, anywhere from 48  
2 to 96 hours. But the effects of the drug can last  
3 for weeks. So this was a very unusual case because  
4 it was actually caught in a post-race sample.

5 Most horsemen who would use this drug would be  
6 smart enough not to inject a horse with the  
7 substance close to race day. So if they're smart  
8 and they are utilizing this drug, they are  
9 utilizing it maybe a week or two prior to the  
10 horses racing. When they do that, the drug is not  
11 in the horse's system when the horse races. So the  
12 only way we can find it is when we test horses out  
13 of competition, when we go to the barn in the  
14 morning and draw blood and send it to the lab for  
15 special testing. Or we go to visit a farm or a  
16 training center, and we draw blood and send it to a  
17 lab to do testing.

18 We have a very aggressive out-of-competition  
19 testing program. In fact, of all the commissions  
20 that do out-of-competition testing, I think we rank  
21 third in the number of samples that we collect.

22 CHAIRMAN WEATHERWAX: That's why we would not  
23 normally see this type of severity because you  
24 would never find this kind of problem. I haven't  
25 seen this since I've been here.

1           JOE GORAJEC: No one really knows how often  
2 this drug is being utilized. Having said that, the  
3 fact that we have an aggressive out-of-competition  
4 testing scheme here would make one believe that to  
5 the extent it's being abused, it's most likely  
6 being abused in other states before Indiana because  
7 other states don't have aggressive  
8 out-of-competition testing programs.

9           CHAIRMAN WEATHERWAX: Questions from our  
10 Commissioners regarding this particular item?

11           COMMISSIONER SCHENKEL: I just want to make  
12 sure I understand that the revised agreement that  
13 you sent us, Lea, shows that this goes from  
14 March 18, 2015 to 2025, right?

15           MS. ELLINGWOOD: Yes, there was a  
16 typographical error in the original settlement  
17 agreement. The parties agreed to the dates.

18           COMMISSIONER SCHENKEL: Even though this  
19 occurred in 2014, and he's been under suspension  
20 since then, right?

21           MS. NEWELL: Mr. Moffit was summarily  
22 suspended. However, his summary suspension was  
23 lifted. He has not being under suspension since  
24 the drug was detected.

25           COMMISSIONER SCHENKEL: He's been allowed to

1 participate?

2 MS. NEWELL: His summary suspension lasted a  
3 period of time. And during that time, he sort of  
4 closed up his business.

5 JOE GORAJEC: Excuse me, I just want to make  
6 this clear. Once his suspension was lifted was  
7 after the meet. He was not relicensed in Indiana.  
8 So he would be eligible to compete or eligible to  
9 receive a license, but we did not license him again  
10 this year.

11 COMMISSIONER SCHENKEL: The other question I  
12 have is this is a ten-year suspension. There's no  
13 monetary fine.

14 JOE GORAJEC: Correct.

15 MS. NEWELL: Correct.

16 CHAIRMAN WEATHERWAX: Questions from our  
17 Commissioners? Thank you, Holly.

18 Do I hear a motion to accept this?

19 COMMISSIONER SCHENKEL: So moved.

20 COMMISSIONER LIGHTLE: Second.

21 CHAIRMAN WEATHERWAX: All those in favor say  
22 "aye."

23 THE COMMISSION: "Aye."

24 CHAIRMAN WEATHERWAX: Number three, settlement  
25 agreement also with staff and Salvador Rojas.

1 MS. NEWELL: I think it's Rojas.

2 CHAIRMAN WEATHERWAX: Who's going to do that  
3 one?

4 MS. NEWELL: I will. Mr. Rojas is a  
5 Thoroughbred racehorse trainer. He participated in  
6 the ninth race on May 17th of last year. His horse  
7 tested positive for dexamethasone. Dexamethasone  
8 is a Class 4C drug. The uniform guidelines  
9 recommend no suspension for a first offense. It is  
10 not a drug like EPO that is one that is considered  
11 performance enhancing and one that is of grave  
12 concern to regulators.

13 However, it was a positive. He did test over  
14 the threshold limit. And he did avail himself of a  
15 split sample. And the split did confirm he was  
16 over that threshold limit. Mr. Rojas has agreed to  
17 a \$1,000 fine and a purse redistribution, which is  
18 in accordance with the uniform guidelines.

19 CHAIRMAN WEATHERWAX: He's not suspended.

20 MS. NEWELL: No.

21 CHAIRMAN WEATHERWAX: He just has a fine and  
22 return back the purse.

23 MS. NEWELL: Right.

24 CHAIRMAN WEATHERWAX: Any questions,  
25 Commissioners? Do I hear a motion to accept this?

1 COMMISSIONER PILLOW: So moved.

2 COMMISSIONER MCCARTY: Second.

3 CHAIRMAN WEATHERWAX: We have a motion and a  
4 second. All those in favor say "aye."

5 THE COMMISSION: "Aye."

6 CHAIRMAN WEATHERWAX: It's passed. Item four,  
7 I guess, has been removed from the agenda.

8 Item number five, consideration of the  
9 settlement agreement in the matter of the horse  
10 racing commission staff and Carolyn Murphy. Holly.

11 MS. NEWELL: This is very similar to what we  
12 just heard with Mr. Rojas. Carolyn Murphy is  
13 another Thoroughbred trainer. She participated in  
14 the first race on June 6, 2014 and also had a  
15 dexamethasone positive. So it's the same drug we  
16 just heard about. She did test over the threshold  
17 limit. She declined to have a split sample. We  
18 have reached the terms of a \$1,000 fine and purse  
19 redistribution that is recommended by the uniform  
20 guidelines.

21 CHAIRMAN WEATHERWAX: This points out the  
22 fact -- is this a therapeutic medication?

23 MS. NEWELL: It is.

24 CHAIRMAN WEATHERWAX: This is something you  
25 give the horse to make it feel better or be

1 healthier.

2 MS. NEWELL: Yes.

3 CHAIRMAN WEATHERWAX: But there was just too  
4 much given.

5 MS. NEWELL: Correct.

6 CHAIRMAN WEATHERWAX: These people know what  
7 the threshold is. Do they use this drug regularly?

8 MS. NEWELL: Joe can probably speak to that,  
9 but I think Dex is a pretty popular drug.

10 JOE GORAJEC: Yes, it is.

11 CHAIRMAN WEATHERWAX: The world is using it.  
12 It's just you can't use too much.

13 JOE GORAJEC: It's usually not a dosage thing  
14 that causes people problems as far as using too  
15 much. They administer it too close to post time.  
16 So it's a timing issue usually more than a dosage  
17 issue.

18 CHAIRMAN WEATHERWAX: The settlement was a  
19 thousand dollar fine.

20 MS. NEWELL: And purse redistribution.

21 CHAIRMAN WEATHERWAX: Commissioners, do you  
22 have any other questions regarding the Carolyn  
23 Murphy settlement? Do I hear a motion?

24 COMMISSIONER MCCARTY: I move to approve the  
25 settlement agreement.

1 COMMISSIONER LIGHTLE: Second.

2 CHAIRMAN WEATHERWAX: We have a motion and a  
3 second. All those in favor say "aye."

4 THE COMMISSION: "Aye."

5 CHAIRMAN WEATHERWAX: Number six, Lea, I think  
6 you and Holly can help us with this one. This one  
7 is a little more complicated. It deals with  
8 conclusions of law and recommendations for Mickel  
9 Norris. Lea.

10 MS. ELLINGWOOD: Yes. Thank you, Chairman.  
11 Commission Staff issued an administrative complaint  
12 against Mike Norris on November 7, 2014. On the  
13 26th, Bernard Pylitt was assigned as the ALJ in  
14 the matter. Judge Pylitt held a hearing on the  
15 matter on May 6th and 7th. And having heard and  
16 weighed all the evidence, the ALJ issued proposed  
17 findings of fact, conclusions of law, and a  
18 recommended order.

19 On June 25th, Norris filed objections to the  
20 ALJ's proposed findings. A prehearing order was  
21 issued by the Commission, which allowed parties to  
22 brief their positions and to make oral arguments in  
23 the matter. Those briefs, which were filed on July  
24 7th, have been provided to you, and oral arguments  
25 will now be heard.

1           Each side will have ten minutes, beginning  
2 with Mr. Shanks since he has filed the objections.  
3 I will signal when you each have three, two, and  
4 one minute left.

5           At the conclusion, the Commission will close  
6 the record and begin deliberations. The Commission  
7 must either affirm, modify, or dissolve Judge  
8 Pylitt's proposed order or remand the matter back  
9 to the ALJ for further proceedings.

10          I think if there aren't other questions from  
11 you, we can begin.

12          CHAIRMAN WEATHERWAX: Very good.

13          MS. ELLINGWOOD: Just to clarify, each party  
14 has ten minutes. I think I may have said five.

15          MR. SHANKS: You said 10. I would request  
16 that if I do not take the entire ten minutes, that  
17 I have at least a couple minutes for rebuttal,  
18 Mr. Chairman.

19          CHAIRMAN WEATHERWAX: Sure.

20          MR. SHANKS: I will try to make this  
21 relatively brief. Okay. Here we go. Thank you  
22 very much.

23          This is a very interesting case, as you've  
24 noticed from what you had for bedtime reading. In  
25 brief, the staff is making a mountain out of a

1 molehill in this case. There were five positives  
2 of hydrocortisone succinate. The first result was  
3 not reported by the lab until 70 days after the  
4 first positive.

5 Now, the Commission had anticipated things  
6 like this by rule and determined that if there were  
7 multiple positives, and there was a delay in the  
8 lab responding with the results, that those  
9 positives would be considered as one. Now, if that  
10 rule is followed, then this case would have been  
11 done a long time ago. And the Norrises would not  
12 have been put in the financial and emotional  
13 situation that they find themselves.

14 Had the lab followed the contract and provided  
15 the results within five days to the Commission,  
16 many of these positives would have been avoided  
17 because there would have been an opportunity then  
18 for Mr. Norris and the veterinarian to alter the  
19 administration of the drug. What the staff is  
20 alleging as an aggravating circumstance to justify  
21 this, what I think is a horrendous recommendation  
22 for penalty, is that there was race-day  
23 administration.

24 You are probably familiar with that rule,  
25 within 24 hours of the first post time, not the

1 post time of the horse that's running but of the  
2 first post time. Well, we had experts testify on  
3 that. I had to go to Baton Rouge, as did Holly, to  
4 depose the toxicologist down at the University of,  
5 Louisiana State University. And we also went to  
6 Lexington to depose Doctor Sams, who is the  
7 director of LGC. Doctor Waterman was flown in from  
8 Denver to testify. As you know, he's a consultant  
9 to the Commission.

10 This has been in my opinion blown far out of  
11 proportion. The five positives of hydrocortisone  
12 succinate in my opinion should have been considered  
13 as one. Now, there was a sixth drug, and there was  
14 a split test on that. And there is no issue with  
15 regard to that.

16 One of the things that is mentioned is that  
17 Mr. Norris did not take responsibility for these  
18 drugs. Well, he has no choice. Under the terms of  
19 his licensure, he is responsible for the welfare of  
20 these horses as well as any drugs in their systems.  
21 One of the interesting things that came up in the  
22 hearing is that we have been trying to find another  
23 veterinarian who worked for Doctor Russell, who was  
24 their primary veterinarian, Doctor Libby Rees. She  
25 was never able to be found. I noticed she was

1 on -- her agreement with the Commission was on the  
2 agenda today, but apparently it's been removed.  
3 That was a very curious situation.

4 But in brief, the five positives of  
5 hydrocortisone succinate should have been treated  
6 as one in my opinion. You're going to hear a  
7 different story there. And one of the contentions  
8 of staff is there was an intention to cheat. Well,  
9 anytime there's a positive result, there could be  
10 implied an intention to cheat.

11 These drugs, these medication drugs, and  
12 hydrocortisone succinate was being administered to  
13 this horse or these horses because of hives. It's  
14 hard for a veterinarian to predict withdrawal time  
15 because of the difference in metabolism of the  
16 horses. So it's very difficult for a veterinarian  
17 to treat a racehorse without running the risk of  
18 that substance being in the horse's body above the  
19 threshold level, if there is a drug threshold  
20 level.

21 In this case there was no threshold level for  
22 this drug. There was for the sixth drug. The  
23 tests came back from LGC and also from Denver were  
24 a bit different, but the drug was still over the  
25 legal threshold.

1           So, again, it's our opinion based upon a  
2 standard set by the US Supreme Court with regard to  
3 reliable scientific evidence, and that's mentioned  
4 in the brief, there was no reliable scientific  
5 evidence to support the contention that there was a  
6 race-day administration. It's all supposition and  
7 opinion.

8           Basically, Doctor Sams was basing his opinion  
9 on a study from New Zealand of four horses. We  
10 don't know the demographics of the horses. We  
11 don't know their ages, their sex, anything about  
12 the horses. It's, in my opinion, a pretty flimsy  
13 basis for imposing this kind of a sanction based on  
14 a theory of race-day administration.

15           I will now have a seat and listen to staff's  
16 remarks. And how much time do I have left?

17           MS. ELLINGWOOD: Four minutes.

18           MS. NEWELL: Good morning. Commission staff  
19 asks the Commission to affirm the findings of  
20 Administrative Law Judge Buddy Pylitt, who issued a  
21 well reasoned, appropriate decision that stemmed  
22 from a thorough review of the evidence after a  
23 two-day hearing. Both parties were given an  
24 opportunity to be heard and to offer proposed  
25 findings. Commission Staff respectfully requests

1 that the Commission enter a final order consistent  
2 with Judge Pylitt's recommendation.

3 Mr. Norris tells us the Executive Director Joe  
4 Gorajec has made a mountain out of a molehill. In  
5 fact, Norris violated a mountain of rules and now  
6 argues that his punishment should amount to a  
7 molehill. Throughout this process, he has refused  
8 to take responsibility for his actions. He has  
9 lied to Commission Staff.

10 The executive director of this agency is  
11 tasked with enforcing the Commission's  
12 administrative rules. The impermissible medication  
13 of horses on race day is one of the most  
14 fundamental rules of racing. Regulators know this.  
15 Trainers know this. Each of you Commissioners  
16 knows this. A horse cannot receive a race-day  
17 administration with the exception of furosemide.

18 Last race meet, five Norris horses tested  
19 positive for hydrocortisone succinate, five. Later  
20 in the meet, another Norris horse tested positive  
21 for triamcinolone acetonide in excess of threshold  
22 limits. Six Norris horses had drug positives in  
23 2014.

24 The Commission Staff filed an administrative  
25 complaint. Norris requested a hearing on the

1 matter. He got one. ALJ Pylitt listened to a day  
2 and a half of testimony, including complicated  
3 testimony from chemists. Judge Pylitt took the  
4 matter under advisement and determined that five of  
5 the Norris horses, the five that tested positive  
6 for hydrocortisone succinate, were injected with  
7 the substance on race day.

8 Given the troublesome aspect of this case,  
9 specifically that these were race-day  
10 administrations, Judge Pylitt concluded that the  
11 penalty recommend by Executive Director Gorajec was  
12 appropriate.

13 Accordingly, before you today is Judge  
14 Pylitt's recommended order which contemplates a  
15 three-year suspension and a \$15,000 fine, as well  
16 as the required purse redistribution. Norris  
17 objects to the recommended penalty. In his  
18 objection, he attacks Gorajec, the science, and  
19 Judge Pylitt's decisions regarding the  
20 admissibility of evidence.

21 Let's talk a little bit about Executive  
22 Director Gorajec and Doctor Sams. Gorajec has held  
23 his position with the Indiana commission since  
24 1989. He is one of the longest-standing executive  
25 directors in the industry. He is thought to be the

1 longest-standing agency head in Indiana.

2 Gorajec is a tough regulator. He is a leader  
3 in the industry. He expects participants to follow  
4 the rules. If they don't and they get caught, it  
5 is his job to prosecute them and make a fair  
6 determination of penalties. This is exactly what  
7 happened in this case.

8 Doctor Sams is the lab director of LGC  
9 Science. LGC Science was the Commission's primary  
10 testing lab in the first part of 2014. Doctor Sams  
11 is an internationally respected racing chemist.  
12 His professional qualifications are beyond  
13 reproach.

14 The expert that the Norrises paid substantial  
15 amount of money to testify on their behalf isn't  
16 quite so beyond reproach. His credibility has been  
17 questioned by prior courts that have heard his  
18 testimony. And ALJ Pylitt expressed similar valid  
19 concerns.

20 Doctor Sams reviewed the science and his  
21 findings, and he is confident that these horses  
22 received race-day administration of hydrocortisone  
23 succinate. I challenge you to find any credible  
24 racing chemist who wants to question Doctor Sams.

25 Judge Pylitt reviewed the evidence. Norris

1 suggests that much of Doctor Sams' testimony  
2 shouldn't have been considered in light of the  
3 Supreme Court case on scientific evidence. While  
4 that case does apply in administrative hearings, it  
5 is not the sole guidance for the issue of  
6 admissibility of scientific evidence.

7 Judge Pylitt was clear about the more flexible  
8 nature of administrative proceedings with respect  
9 to evidence. The judge rightfully and thoughtfully  
10 considered Doctor Sams' testimony and the research  
11 upon which Doctor Sams relied in reaching the  
12 conclusions that the Norris's hydrocortisone  
13 succinate positive were a result of race-day  
14 injection.

15 Now, let's talk about Norris. He refuses to  
16 take responsibility. Yes, there is a trainer  
17 responsibility rule that requires that he take  
18 responsibility, but he has yet to truly take  
19 responsibility. He has changed his story four  
20 times. He wants to walk away with a wrist slap,  
21 and it's simply not appropriate.

22 Commission Staff notified Norris of the  
23 positives last August. At that time he expressed  
24 shock that he had drug positives at all, claiming  
25 he had no idea how this had happened. Some time

1 passed, and he claimed that the horses had ingested  
2 the substance orally via a throat wash. This was  
3 the story suggesting he was attempting to treat  
4 hives. However, the evidence is very clear that  
5 the substance would not survive the GI tract of the  
6 horse. And it is specifically formulated to be  
7 used as an injectable.

8 Earlier this year, Norris hired an expert who  
9 suggested that maybe these horses had eaten their  
10 own urine-soaked hay and reingested the  
11 hydrocortisone succinate resulting in these  
12 positives. This is implausible for the same  
13 reason. The substance wouldn't survive the GI  
14 tract, assuming the horses would eat urine-soaked  
15 hay. Norris's own expert even backed off that  
16 opinion at trial and acknowledged the scenario  
17 wasn't likely.

18 Finally, Norris apparently told his own expert  
19 that the horses had received IV administration of  
20 the drug but outside of the 24-hour window. He  
21 even gave his expert a specific dosage, one gram.  
22 This is an awfully specific recollection of how the  
23 drug got in the horse's system from a man who eight  
24 months prior was shocked by the positives and had  
25 no idea what had happened.

1           Mr. Norris's story changes, but his refusal to  
2 accept responsibility is constant. It's time for  
3 Mr. Norris to accept responsibility and accept the  
4 penalty that has been appropriately recommended by  
5 Judge Pylitt.

6           The Norrises also want to focus on lab delays.  
7 This Commission has been well advised of the lab  
8 delays. Commission Staff was not happy with lab  
9 delays. Lab delays really are not at issue here.  
10 Lab delays aren't an issue when you have an  
11 intention to cheat. Race-day administration is an  
12 intention to cheat.

13           Mr. Shanks is correct about the rule he cited.  
14 However, that is not a mandatory rule. Positives  
15 can be considered as one, but Commission Staff is  
16 under no duty to do that, particularly in a case  
17 like this.

18           Norris has presented no facts of mitigating  
19 circumstances. This is a guy who has repeatedly  
20 lied to the Commission throughout the process. To  
21 give him relief would send a message to the  
22 regulated community they don't have to cooperate  
23 with Commission Staff, and they can lie about the  
24 circumstances of their case. And they can still  
25 expect a reduced penalty when all is said and done.

1           His horses were doped on race day. It's a  
2 serious offense, and a serious penalty is  
3 accordingly appropriate. Commission Staff  
4 respectfully requests that the Commission affirm  
5 Judge Pylitt's recommended order in all respects.  
6 Thank you.

7           CHAIRMAN WEATHERWAX: Thank you, Holly. We  
8 can ask questions of anybody.

9           MS. ELLINGWOOD: You certainly can.  
10 Mr. Shanks has asked for the opportunity to  
11 approach the Commission one more time. He has a  
12 time limit of four minutes. I don't know if you  
13 want to afford Miss Newell the same opportunity.  
14 She has three minutes left. You certainly are  
15 welcome to ask questions.

16           CHAIRMAN WEATHERWAX: I think we need to learn  
17 some things here. I think we need to get some  
18 questions on the table. You guys can answer them  
19 however you wish.

20           It's important, Holly, that you brought up the  
21 fact because at first I was very much bothered by  
22 this delay in the lab. I know that's not supposed  
23 to be the case here that we worry about. But I  
24 guess the question is you don't get this level of  
25 detection unless you administer the drugs on the

1 day of the race.

2 MS. NEWELL: Exactly.

3 CHAIRMAN WEATHERWAX: That's one point. We  
4 all know you just can't do that on race day for  
5 anything, period.

6 MS. NEWELL: Yes.

7 CHAIRMAN WEATHERWAX: The fact that you're  
8 saying the lab was 70 days late, which is  
9 horrible --

10 MS. NEWELL: It is.

11 CHAIRMAN WEATHERWAX: -- is not going to be a  
12 factor which should be weighed in the determination  
13 of this case. Is that true?

14 MS. NEWELL: Yes.

15 CHAIRMAN WEATHERWAX: You guys are going to  
16 get a chance to rebut on that. Other questions  
17 from the Commission? That was one question. I  
18 know we had problems last year a couple of times.  
19 And we've hopefully corrected that so that's not an  
20 issue anymore. I have to kind of keep focused on  
21 five positives or six positives is quite a few.

22 MS. NEWELL: Yes.

23 CHAIRMAN WEATHERWAX: Now, dumb question, has  
24 that gentleman ever been charged with any problem  
25 before?

1 MS. NEWELL: He has had a couple of issues on  
2 his RCI. I would not characterize Mr. Norris's RCI  
3 penalty report as one that would necessarily raise  
4 concern. He's not a problem child prior to last  
5 year.

6 CHAIRMAN WEATHERWAX: Was this the first time  
7 this has ever come before us with this trainer?

8 MS. NEWELL: Joe, did you want to say  
9 something?

10 JOE GORAJEC: Just going to when you're  
11 looking at this penalty and looking at delays,  
12 we've had similar such instances back in our  
13 history in the case of a Standardbred trainer named  
14 Mark P'Pool. Mark P'Pool was a gentleman who I  
15 think he got 11 positive tests over a period of  
16 time.

17 And we were doing an investigation on the  
18 illicit use of dexamethasone. And we determined  
19 that horsemen were using this particular drug on  
20 race day. And the lab was testing for this drug  
21 and reported a number of positives. And the  
22 Commission Staff, in this case meaning me, withheld  
23 notification to the trainers in order to determine  
24 which trainers were abusing this drug and cheating  
25 on race day.

1           That was an intentional act on my part to  
2 withhold the notification of the drug positive.  
3 And I did it, and I did it for a good reason. And  
4 because I did it, we were able to catch several  
5 trainers who were doing the same thing, injecting  
6 dexamethasone on race day. When it came to the  
7 penalties, okay, Mr. P'Pool suffered a six-year  
8 suspension and a \$30,000 fine, basically half of  
9 what's being proposed now in this particular case.

10           What was interesting though is that case went  
11 to an ALJ. It went to the Commission, and then it  
12 went to the court. And when the court reviewed it,  
13 they made the same argument that there was a delay  
14 in contacting the trainer notifying him of the  
15 positive. And the court was quite clear. First of  
16 all, there's no statutory regulation obligating  
17 notification within a certain time period. And for  
18 the reason we gave, the judge noted that that was a  
19 reasonable reason, okay, to withhold notification.

20           So now we have an actual judge saying that not  
21 timely notifying a trainer is not cause for the  
22 case being thrown out or reconsidered. I'm not  
23 saying the right proper legal term, Chairman  
24 McCarty, but I think it's instructive that the  
25 court has had a similar such case.

1           This is different in that we did not  
2 intentionally withhold notification. We notified  
3 the trainer as soon as we got the report from the  
4 lab, but the premise is still the same. The fact  
5 is that there was a late notification. And the  
6 courts have already ruled that that is not only  
7 permissible, but in some circumstances, it's a  
8 smart thing to do.

9           CHAIRMAN WEATHERWAX: I see why you drew that  
10 parallel to a planned delay versus a natural  
11 mistake or a delay by the lab.

12           JOE GORAJEC: Right.

13           CHAIRMAN WEATHERWAX: This, because it was  
14 delayed, cannot looked at or shouldn't be looked at  
15 as any lesser of the penalties.

16           JOE GORAJEC: The reason for the delay is  
17 different, but the fact in both cases there was a  
18 delay. That particular penalty, and we cited it  
19 during the hearing, that particular penalty for  
20 that trainer. It went all the way up to the court.  
21 I think it was to the appellate court because it  
22 went through trial court and lost. And then it  
23 went to appellate court and lost.

24           But that penalty for that particular case,  
25 like I said, six years, \$30,000 is exactly half of

1 what is being proposed by Judge Pylitt for this  
2 particular case.

3 CHAIRMAN WEATHERWAX: Commissioner McCarty.

4 COMMISSIONER MCCARTY: My question was what  
5 court level did this get resolved.

6 MS. NEWELL: It was the Court of Appeals.

7 COMMISSIONER MCCARTY: Indiana Court of  
8 Appeals?

9 MS. NEWELL: Yes.

10 COMMISSIONER PILLOW: I have a question.

11 CHAIRMAN WEATHERWAX: Commissioner Pillow.

12 COMMISSIONER PILLOW: Holly, tell me  
13 something. The only concern I have is this 70 days  
14 late. I know we kind of got in the middle of all  
15 that, and it's been dealt with before. How many  
16 different things can happen? How many hands does  
17 it go through in that 70-day period?

18 MS. NEWELL: To the extent you're concerned  
19 maybe about chain of custody, is that what you  
20 mean?

21 COMMISSIONER PILLOW: Yeah. Attorney Shanks  
22 is saying these should be considered as one in all  
23 five. Then we're talking about 70-day delay. I'm  
24 trying to make a correlation on that.

25 MS. NEWELL: Doctor Sams testified at the

1 hearing that LGC received these samples. They were  
2 in serum, blood. And they sat in their freezer  
3 storage until they did the testing they needed to  
4 do. So there was no time window during which any  
5 additional hands were on the samples.

6 Arguably, the delay helped Mr. Norris because  
7 the research indicates that the level of  
8 hydrocortisone succinate that can be detected in  
9 serum rapidly deteriorates as that blood sits. The  
10 levels that LGC found 70 days later were likely far  
11 lower than the levels they would have found had  
12 they been able to test that blood pursuant to our  
13 contract terms, which would have been within a week  
14 or so.

15 COMMISSIONER PILLOW: Were they above the  
16 level of incrimination at that point when they  
17 actually tested them?

18 MS. NEWELL: Yes. Hydrocortisone succinate is  
19 not a threshold drug. You can have none of this in  
20 the horse, period. And the levels of detection for  
21 all five horses were -- I don't have the numbers in  
22 front of me. But it was every single horse they  
23 tested, they found enough for Doctor Sams to be  
24 confident that this was the result of race-day  
25 administration.

1           COMMISSIONER PILLOW: So if we don't have  
2 thresholds, what do we base this on?

3           MS. NEWELL: The lowest limit of detection is  
4 how the labs work this out. So it's basically  
5 whatever the technology will allow them to find.

6           CHAIRMAN WEATHERWAX: There's no way he should  
7 have any of this.

8           MS. NEWELL: Correct.

9           COMMISSIONER PILLOW: That's where I was  
10 trying to get to.

11          CHAIRMAN WEATHERWAX: Can I ask one more  
12 question? Why does Attorney Shanks say all five of  
13 these should be considered one?

14          MS. NEWELL: He is pointing to the rule that  
15 does state there are circumstances where a trainer  
16 may not receive notification. If you have a  
17 trainer who is trying to do the right thing -- for  
18 instance, let's take Rojas and Murphy. They were  
19 the trainers with the settlement agreements you  
20 considered earlier. Dexamethasone positives.  
21 Therapeutic drug.

22          Neither of them had two positives, but if they  
23 had had two positives and hadn't been notified of  
24 the second one, you look at that therapeutic drug,  
25 and you say they probably would have changed their

1 training regime had they been notified of the first  
2 positive. And the second positive wouldn't have  
3 happened.

4 But you look at that in light of the fact that  
5 it's a therapeutic drug, and it doesn't appear to  
6 be an intention to cheat. The distinction here is  
7 you have an intention to cheat. You're injecting a  
8 horse on race day. It's a violation of one of the  
9 most fundamental rules of racing.

10 COMMISSIONER SCHENKEL: As I understand it,  
11 that's a may consider them as one, not a shall.

12 MS. NEWELL: Yes. Correct.

13 COMMISSIONER SCHENKEL: I know that's an  
14 important distinction. Thanks.

15 CHAIRMAN WEATHERWAX: Okay. That helps me.  
16 Any other questions, Commission, before we hear the  
17 last closing? Okay, John.

18 MS. ELLINGWOOD: Mr. Shanks, you have four  
19 minutes. I'll do the countdown three, two, one.

20 MR. SHANKS: I hope I can address all of these  
21 in four minutes. Commission alleges that  
22 Mr. Norris has not taken responsibility. I don't  
23 know what he has to do to take responsibility. He  
24 has responsibility as a licensed trainer. There's  
25 no issue there. He has no choice.

1           Doctor Sams, in his deposition, and I believe  
2 also at the hearing agreed that de Kock study that  
3 was done out of New Zealand years ago on four  
4 horses didn't meet the standards of reliable  
5 scientific evidence as established by the US  
6 Supreme Court in a case called Daubert, which has  
7 sort of been ignored.

8           In the beginning, Mr. Norris really was so  
9 frustrated. And he really didn't know how the  
10 horses got this in their system because he wasn't  
11 the one that normally took care of the barn. But  
12 he's still responsible.

13           This was a therapeutic drug. And I believe  
14 there's a mention in both the brief and the  
15 objection about this being a therapeutic drug for  
16 the treatment of hives. Now, Doctor Waterman would  
17 argue that, well, this isn't a drug that's normally  
18 used when treating hives. Well, that's one  
19 veterinarian's opinion. It was prescribed by a  
20 licensed veterinarian to treat hives.

21           Mr. Norris does not have a history of  
22 misbehavior with regard to the administration of  
23 drugs. We can look at his RCI record. He's had  
24 some very minor violations, as most trainers do.

25           The P'Pool case is completely different on its

1 facts. The fact that there is no rule with regard  
2 to when lab results must be disclosed to a trainer,  
3 I think is wrong. I think there needs to be  
4 integrity in the system so the trainers are  
5 notified when there is a positive. A 70 day delay is  
6 absolutely unreasonable. It's incompetent.

7 Had Mr. Norris been given the notice -- again,  
8 as Mr. Gorajec said, they didn't withhold those.  
9 They couldn't give him those even if they wanted to  
10 because of the incompetency of the lab. The P'Pool  
11 case is completely different. If you look at the  
12 Court of Appeals opinion, it doesn't really in my  
13 opinion deal with this kind of a situation. They  
14 were investigating other trainers based upon the  
15 conduct they were seeing out of Mr. P'Pool's  
16 horses.

17 There is a history of the Commission treating  
18 multiple violations in a completely different  
19 manner than this. That is mentioned in the brief  
20 and the objection. Much more serious drugs,  
21 hydrocortisone succinate is a level three drug,  
22 according to RCI, which is one of the drugs that is  
23 way down. There are four levels. This is down at  
24 the bottom.

25 So I believe there is no evidence of intent to

1 cheat. And the level of the drugs is irrelevant  
2 because as was pointed out, there is no threshold.  
3 There could have been a picogram of this in their  
4 system, and there wouldn't have been a violation.  
5 So the level of the drug is irrelevant.

6 Again, our basis for the argument for the  
7 Commission Staff taking the position of aggravating  
8 circumstances is all based on this unreliable  
9 scientific evidence based on a foreign study of  
10 four horses, I think, back in 2009.

11 I appreciate your attention. I hope you've  
12 read all the materials that have been provided.  
13 And am I down to 30 seconds?

14 MS. ELLINGWOOD: You're at ten.

15 MR. SHANKS: Thank you very much.

16 CHAIRMAN WEATHERWAX: Thank you, John. Okay.  
17 Commissioners, we've heard pros and cons and  
18 background to this particular case. I have one  
19 question. And that is: This is a therapeutic  
20 drug, correct?

21 JOE GORAJEC: Yes, it's as Class 4.

22 CHAIRMAN WEATHERWAX: Maybe this is a dumb  
23 question but nobody is supposed to use this, but  
24 they do?

25 JOE GORAJEC: If you use it -- first of all,

1 you can't administer any drug other than Salix  
2 within 24 hours of the race. Okay.

3 CHAIRMAN WEATHERWAX: I know that.

4 JOE GORAJEC: So the point is you can use this  
5 drug. This drug can be used, but it can't be used  
6 within 24 hours. And the findings both my charging  
7 document and the findings of Judge Pylitt are the  
8 same in that what was found was that these horses  
9 were given this particular drug on race day by  
10 injection. And when you're talking about whether  
11 it's therapeutic or not, the fact of the matter is  
12 in the P'Pool case, it was dexamethasone. That's  
13 therapeutic. That's a Class 4 same as this.  
14 Penalty was six years and \$30,000 because it was  
15 given by injection on race day. And when you give  
16 something by injection on race day, that is an  
17 intention to cheat.

18 CHAIRMAN WEATHERWAX: Commissioner Schenkel.

19 COMMISSIONER SCHENKEL: I have a couple  
20 questions, I think, Mr. Shanks and Mr. Norris.  
21 Make sure I understand here that this was --  
22 originally you said you don't know how the drugs  
23 were administered and delivered. And then at  
24 another point in the process, it was admitted or  
25 acknowledged that it was to treat hives. Is hives

1 a common ailment amongst horses, racehorses?

2 MR. SHANKS: My understanding is yes.

3 COMMISSIONER SCHENKEL: I just thought it was  
4 kind of unusual.

5 MR. SHANKS: My horses never had hives.

6 COMMISSIONER SCHENKEL: It struck me that  
7 there would have been five horses in a three week  
8 period with hives.

9 MR. SHANKS: They had other horses in the barn  
10 that were suffering from hives.

11 MRS. NORRIS: Would you permit me to speak?

12 MR. SHANKS: Just relax.

13 COMMISSIONER SCHENKEL: I find that kind of  
14 unusual, I guess. And then further in the process  
15 then -- well, he said at one point it was not clear  
16 how it got in there. Then --

17 MR. SHANKS: It was clarified.

18 COMMISSIONER SCHENKEL: It was clarified it  
19 was in an oral medication.

20 MR. SHANKS: There were several possibilities  
21 for administration; one, injection; two, oral  
22 injection; and the third was that even if there had  
23 been an injection, say, even 48 hours before, that  
24 what Doctor Barker was saying based upon another  
25 study is that the horse could have injected some

1 more, and it's in the material, through eating hay  
2 the horses urinated on. If you have horses, you  
3 know they do that. But the fact is, there's no one  
4 saw any horse being injected within 24 hours of the  
5 race. The whole issue of race-day administration  
6 is based upon unreliable scientific evidence all  
7 based on supposition.

8 Mr. Norris has been very, very upset by this.  
9 He was not represented by counsel at the time of  
10 the initial interview, as I recall. I'm second  
11 counsel on the case. I came in after the  
12 suspension hearing. It's been a very emotional  
13 thing for him. So the fact that there may have  
14 been some inconsistent testimony, I'm not surprised  
15 at that. Okay. But that doesn't change the fact  
16 that there is no scientific reliable evidence of  
17 race-day administration.

18 COMMISSIONER SCHENKEL: I guess I would say  
19 that's a point of contention right there because  
20 there were experts that testified.

21 MR. SHANKS: And they tried very hard to  
22 discredit our expert, who is very well known, and  
23 did a good job trying to discredit him. But the  
24 fact is even Doctor Sams agreed that the de Kock  
25 study did not meet the standard established by the

1 US Supreme Court.

2 If you look at some of the history of similar  
3 cases and really a completely similar case, but I  
4 found one case where there had been seven  
5 violations, seven drug violations of drugs even  
6 more significant to racing than this. And the  
7 penalty was very, very small. I think it was maybe  
8 \$1,500 and a 90-day suspension or something like  
9 that. I don't have it in front of me.

10 MS. NEWELL: I'm going to object to this. He  
11 doesn't have it in front of him.

12 COMMISSIONER SCHENKEL: I asked a question,  
13 and you answered it. The other point that I noted  
14 in your filings in the record was that his own  
15 veterinarian testified under oath that he was  
16 probably the only trainer in Indiana that used this  
17 drug, which I just point that out. I'm not asking  
18 you to comment on that or anything. But to me,  
19 that's the salient point in this whole process.  
20 And it goes, George, to your question too about is  
21 this used and so forth.

22 Thank you. That's all the questions I have.

23 MR. SHANKS: If you do wish to hear from Miss  
24 Norris to answer that question.

25 COMMISSIONER SCHENKEL: No, thank you. The

1 final comment I have, Mr. Chairman, is that while  
2 we all are chagrined, I guess, at the 70-day delay,  
3 the fact is we had a process in place. Seventy-day  
4 delay certainly didn't exaggerate the problem. It  
5 appears that it probably helped it in some regards  
6 or lessened the findings. If it had been five  
7 days, it might have even been more significant.

8 CHAIRMAN WEATHERWAX: The fact that we heard  
9 that there cannot be any level of detection of this  
10 particular drug, I mean, that's kind of a blaring  
11 statement. We have five cases or six cases.

12 Okay. Commissioners, you've heard the  
13 testimony of the witnesses.

14 COMMISSIONER PILLOW: One more thing. Lea,  
15 what was the fine and suspension?

16 MS. ELLINGWOOD: It was \$15,000 fine and a  
17 three-year suspension.

18 CHAIRMAN WEATHERWAX: If we vote on this to  
19 accept it, that will be the penalty. We can modify  
20 it or cancel.

21 MS. ELLINGWOOD: Right. You have got  
22 essentially four choices. You can affirm the ALJ's  
23 proposed finding of facts. You can modify it. You  
24 can dissolve it, or you can remand the matter back  
25 to the ALJ for further proceedings. You are

1 essentially deciding how you want to move forward  
2 on Judge Pylitt's proposed findings and recommended  
3 order.

4 CHAIRMAN WEATHERWAX: Judge Pylitt's here,  
5 isn't he?

6 MS. ELLINGWOOD: Yes.

7 CHAIRMAN WEATHERWAX: Commissioner McCarty.

8 COMMISSIONER MCCARTY: What would have been  
9 the staff recommendation if it had been a single  
10 violation or, let's say, one or even two? How  
11 would that have impacted this \$15,000 fine and  
12 three-year suspension?

13 JOE GORAJEC: I'm trying to recall the P'Pool  
14 case because in the P'Pool case, as I mentioned,  
15 there were other trainers. There were other  
16 trainers who were involved in the illicit  
17 administration of dex that had fewer penalties,  
18 excuse me, fewer infractions. I think there were a  
19 few that had one. And I think there was one that  
20 had maybe two or three. And the penalty was less.

21 I think the minimum penalty was either a year  
22 or 18 months for one violation, but there is one  
23 significant difference. In that case, initially  
24 everyone denied using dexamethasone on race day.  
25 That's something that trainers who cheat are not

1 prone to admit readily.

2 In the settlement agreements that we got,  
3 other than P'Pool, they all admitted. They ended  
4 up telling the truth. They ended up saying that,  
5 yes, okay, we get it. We administered dex. We  
6 injected it on race day. And that certainly was  
7 factored into those penalties.

8 So they were less. I know that they were none  
9 less than a year suspension plus a fine, but in all  
10 those cases outside the P'Pool case, those trainers  
11 took responsibility. When I say taking  
12 responsibility, I mean telling the truth. I don't  
13 mean to say, well, we got a rule here that says  
14 we're responsible, so we're responsible. Taking  
15 responsibility is telling the truth. And when we  
16 cite someone for not cooperating with the  
17 Commission, that means telling the truth.

18 We put in a lot of resources in this case and  
19 other cases when people come to us with a story.  
20 Okay. They come to us with a story that's really  
21 just horse manure. And we have to prosecute that  
22 case.

23 It takes us a lot of resources to do that, but  
24 we need to protect all the horsemen. And we need  
25 to protect them from illicit administration of

1 these drugs. But that gets factored into the  
2 penalty. When you cooperate and tell the truth,  
3 that gets factored in.

4 I'm sorry, that was a lengthy response to your  
5 simple question.

6 MR. SHANKS: Mr. Chairman, may I answer that  
7 question?

8 CHAIRMAN WEATHERWAX: Okay. Go ahead, John,  
9 but I'm going to cut this off because we've got to.

10 MR. SHANKS: I understand. Under 71 IAC  
11 8.5-1-7.1(d), and Holly can look it up real quick  
12 and confirm what I say is true, the minimum penalty  
13 is \$1,000 and no suspension. When you have  
14 multiple positives and there's a delay by the lab  
15 so that the trainer does not know even about the  
16 first one until the last one is over, that's the  
17 penalty. That's the minimum penalty, \$1,000 and no  
18 suspension.

19 CHAIRMAN WEATHERWAX: Commissioners, you have  
20 heard more than a little bit of testimony on this  
21 case. To answer your question, Commissioner  
22 Pillow, we have to accept, modify, change, or send  
23 it back to the ALJ. So we have -- those are the  
24 options we have.

25 It bothers me that there was no cooperation of

1 telling the truth. That -- hey, John, I'm just  
2 telling you the fact that there was five positives,  
3 that's not a good thing. Granted, it's a level  
4 four drug. But Commissioner Pillow, did you have  
5 some thoughts you wanted to offer?

6 COMMISSIONER PILLOW: No, not really. I think  
7 one quick question as we go through this. Holly,  
8 maybe you can answer this. You stated that  
9 Mr. Norris told his expert that he had injected  
10 these horses.

11 MS. NEWELL: To be clear, Mr. Norris didn't  
12 say he had done it himself. He did say the horses  
13 had been injected outside of the 24-hour window,  
14 and he gave the specific dosage of the Solu-Cortef  
15 that was injected. So Mr. Norris, I'm guessing,  
16 would have suggested that his veterinarian did the  
17 injecting. Mr. Norris did not say that he did the  
18 injection himself.

19 JOE GORAJEC: There is absolutely no  
20 veterinarian records to substantiate any of those  
21 injections.

22 COMMISSIONER PILLOW: How did we get the  
23 expert to tell us this? Was this on the witness  
24 stand?

25 MS. NEWELL: Yes, I believe Mr. Norris's

1 expert made that statement in his deposition and,  
2 perhaps, again during the hearing.

3 COMMISSIONER SCHENKEL: But that was  
4 contradictory to the original explanation that it  
5 was done orally, right?

6 MS. NEWELL: It was.

7 COMMISSIONER SCHENKEL: There are multiple  
8 explanations here.

9 COMMISSIONER PILLOW: Okay.

10 CHAIRMAN WEATHERWAX: Okay. Commissioners,  
11 questions?

12 COMMISSIONER LIGHTLE: You've done a good job  
13 of asking most of the questions.

14 CHAIRMAN WEATHERWAX: I don't know if we can  
15 learn any more of what we have to know to make an  
16 intelligent decision. The question is do we  
17 support the ALJ's opinion and the finding of the  
18 penalty and fine? Do you want to modify? That's  
19 the case. Do I have a motion?

20 COMMISSIONER SCHENKEL: If we get it on the  
21 floor, I'll move approval.

22 CHAIRMAN WEATHERWAX: I will second.

23 Discussion? We have a motion and second.  
24 Questions? Call it to a vote. All those in favor  
25 of accepting this as recommended, please say "aye."

1 THE COMMISSION: "Aye."

2 CHAIRMAN WEATHERWAX: Passes. So it's passed.  
3 Number seven, much more complicated. This is  
4 a case where, pretty serious case because it's a  
5 precedent being put before us as far as the ALJ in  
6 the matter of Staff versus Ross Russell.

7 So, Lea, do you want to share with us the  
8 background music about this?

9 MS. ELLINGWOOD: Sure. I will give you some  
10 procedural background. On October 23rd, Commission  
11 Staff issued an administrative complaint against  
12 Doctor Ross Russell. On November 12, 2014,  
13 Chairman Weatherwax assigned Bernard Pylitt as the  
14 administrative law judge on the matter.

15 On May 13th, counsel for Russell filed a  
16 motion to disqualify the ALJ alleging that he is  
17 biased and prejudiced against Russell, and,  
18 therefore, unfit to serve as the ALJ in this  
19 particular matter. After reviewing the briefs, the  
20 ALJ issued a ruling in the form of a proposed  
21 finding of fact, conclusion of law, and recommended  
22 order that denied Russell's motion to disqualify  
23 the ALJ.

24 On June 30th, Russell e-mailed his petition  
25 for review of the ruling to the Commission, a hard

1 copy of which followed postmarked July 2nd. The  
2 Commission issued a prehearing order allowing  
3 parties to file briefs in support of their  
4 positions and to present oral arguments. Russell  
5 subsequently filed a brief in support of his  
6 position, as well as objections to the ALJ's  
7 proposed findings on July 10th, that same date  
8 Staff issued their brief in support of their  
9 position as well. Those filings have been provided  
10 to you.

11 Commission will now hear oral arguments in the  
12 matter. Again, each party will be limited to ten  
13 minutes. I will signal, three, two, and one.

14 The sole issue before the Commission at this  
15 time is whether ALJ Pylitt is able to be impartial  
16 and unbiased in his adjudication of the Russell  
17 matter. He is also here to answer questions the  
18 Commission may have.

19 At the conclusion, again, the Commission will  
20 close the record and begin its deliberations. The  
21 Commission must either affirm the ALJ's order,  
22 modify it, or dissolve it, or remand the matter  
23 back for further proceedings.

24 If there aren't any preliminary questions, we  
25 can go ahead and get started beginning with

1 Russell's counsel, Pete Sacopulos.

2 CHAIRMAN WEATHERWAX: Is this the one where  
3 you said that the time factor for filing a protest  
4 was not quite on time?

5 MS. ELLINGWOOD: There was an issue about it,  
6 but I believe each party is going to address it.

7 CHAIRMAN WEATHERWAX: That will be what we are  
8 going to hear?

9 MS. ELLINGWOOD: Likely. The issue is also  
10 covered in your briefs and the memo I sent you, but  
11 I suspect each party will address it.

12 CHAIRMAN WEATHERWAX: After that, it's our  
13 position and responsibility to say either we're  
14 going to accept this, let this go forward to hear  
15 this whole thing today or not.

16 MS. ELLINGWOOD: Yes. That's up to you. If  
17 the Commission finds that it wasn't timely  
18 submitted, you have the opportunity to not hear the  
19 petition for review of the ruling, but we're all  
20 here, and it's an important issue.

21 CHAIRMAN WEATHERWAX: That's what I say. It's  
22 my personal opinion if we're going to take the time  
23 to listen to this, we might as well say we're going  
24 to do it because why would we delay, if that's okay  
25 with the Commission. Do you understand?

1           There was a time factor when everybody is  
2 supposed to go back and forth. That's why I'm glad  
3 you're here, Commissioner McCarty, because this is  
4 the square root of law times two. This is the  
5 ultimate lawyer's dream.

6           The point is we can't even get to the issue of  
7 why the case is here. It's just a matter if we  
8 want to hear it or we don't want to hear it. We're  
9 not even talking about the merits of the case.

10          MS. ELLINGWOOD: We're not. It's not  
11 appropriate for the Commission at this point to  
12 discuss the merits of the underlying case with  
13 respect to whether Doctor Russell has violated any  
14 administrative rules. The only issue before you  
15 today is whether or not Judge Pylitt is qualified  
16 to continue on this case.

17          CHAIRMAN WEATHERWAX: With that, we'll go  
18 forward.

19          MR. SACOPULOS: Thank you. My name is Pete  
20 Sacopulos. I'm here on behalf of Doctor Russell  
21 today. I want to start by saying that this is  
22 somewhat of a prickly situation to be in. I've  
23 practiced law in dozens of courts throughout  
24 Indiana, in front of administrative agencies. This  
25 is the only time I have ever filed something like

1 this and did so because I felt I simply had to on  
2 behalf of my client. Doctor Russell's professional  
3 career is in the balance. The Commission is  
4 seeking a 20-year suspension.

5 By way of background, so you know, this all  
6 started with regard to an incident that allegedly  
7 occurred on September 19th of last year. The  
8 allegation was that Doctor Russell had entered the  
9 stall of a horse that was in to race that day and  
10 administered some foreign substance other than  
11 Lasix to that horse. That is an allegation that  
12 Doctor Russell has disputed.

13 You should also note that there were tests  
14 taken of that horse, and those were negative. You  
15 should also know that everyone else has said that  
16 could not occur the way that the one witness who  
17 made the allegation says it did.

18 With that as a background, Doctor Russell was  
19 suspended the following day, September 20th. And  
20 subsequently an administrative complaint was filed  
21 by the Indiana Horse Racing Commission staff  
22 against Doctor Russell and is pending.

23 Also, you should know the horse in question is  
24 a horse named Tam Tuff. Tam Tuff was trained by a  
25 trainer named Tony Granitz. And he had an

1 assistant trainer named Richie Estvanko. The horse  
2 was owned and is owned by an investment group doing  
3 business as Captain Jack Racing Stable.

4 What has happened is that Doctor Russell has  
5 been suspended since the 20th of September last  
6 year. He remains suspended. He does not -- he has  
7 not had a hearing.

8 There was a hearing in the case of  
9 Mr. Estvanko and Mr. Granitz. And as counsel has  
10 told you, Bernard Pylitt, who is here with us  
11 today, was appointed by the Commission to serve as  
12 the administrative law judge in Doctor Russell's  
13 case. He was also appointed to serve as the  
14 administrative law judge in Mr. Estvanko's case.  
15 He was also appointed to serve as the  
16 administrative law judge in Mr. Granitz's case.  
17 And he was also determinative of the outcome in a  
18 ruling and proposed order to your panel on the  
19 Captain Jack Stable case. All four of these  
20 matters were in front of or have been in front of  
21 ALJ Pylitt.

22 So on October 31st of last year, there was a  
23 hearing by the stewards in the Granitz and Estvanko  
24 case. And in that case there was some findings of  
25 fact and conclusions of law that were then

1 appealed. Those were appealed, and Judge Pylitt  
2 assigned.

3 One of those findings was that, and let me  
4 tell you what the issue was in the hearing, the  
5 stewards' hearing. The issue was framed, I  
6 believe, incorrectly whether or not Ross Russell  
7 injected the Granitz-Estvanko trained horse on  
8 September 19th with an unknown substance prior to  
9 the time of administration for Lasix.

10 I believe the correct issue in that case with  
11 the trainer was whether the trainers, Mr. Estvanko  
12 and Mr. Granitz, violated the absolute trainer  
13 responsibility rule. Be that as it may, the  
14 stewards concluded that there had been between the  
15 hours of ten and eleven on the morning of  
16 September 19th a foreign substance injected into  
17 the horse. And that Doctor Russell had entered the  
18 stall where this horse Tam Tuff was held and  
19 administered an injected substance other than Lasix  
20 on race day. Those were the findings of the  
21 stewards.

22 That is important because those findings were  
23 relied on by Judge Pylitt in deciding a matter that  
24 is also before this Commission and argued involving  
25 the Captain Jack Racing Stable case. That's where

1 Captain Jack Racing Stable had come before this  
2 panel saying their money, their winnings had been  
3 taken, and they wanted to be heard on this.

4 The Captain Jack Stable counsel filed a motion  
5 to intervene in the Granitz and Estvanko case. And  
6 they did so because they felt their rights had been  
7 violated. They didn't have due process. They  
8 wanted to be heard about why their purse money was  
9 being taken away.

10 In preparing a proposed order denying the  
11 motion to intervene, Judge Pylitt relied on the  
12 findings of fact and conclusions of law in the  
13 Estvanko and Granitz case. In doing so, he found  
14 there were, that the trainers were found  
15 responsible for illegal race-day injections into  
16 the horse Tam Tuff. He also found that there was  
17 illegal race-day injections.

18 So I would submit to you that he has  
19 prejudged, predetermined a critical pivotal point  
20 in Doctor Russell's case. Doctor Russell has  
21 rejected from the beginning and denied from the  
22 beginning there was ever any injection of an in  
23 horse on race day. But we now are faced with  
24 findings of fact and conclusions of law upon which  
25 this exact administrative law judge has relied in

1 making a ruling that has determined in his mind  
2 that Doctor Russell has done the deed. And it is  
3 our position that based on that, he cannot being  
4 fair, unbiased of Doctor Russell.

5 With regard to the law that's applicable here,  
6 there is a code provision cited in our brief,  
7 4-21.5-3-10, that requires that a judge be  
8 disqualified for certain things. One of them is  
9 the judge shall disqualify him or herself in which  
10 a judge's impartiality might reasonably be  
11 questioned, including but not limited to, and part  
12 D says, where they've previously presided as a  
13 judge over the matter in another court.

14 That is what we believe has happened here.  
15 Judge Pylitt has presided over, in essence, the  
16 matter of whether or not there was an injection or  
17 whether there was not, whether this race-day event  
18 occurred or whether it did not in the Granitz and  
19 Estvanko hearing.

20 The court in Indiana has weighed in on  
21 impartiality. And in the case of State versus  
22 Brown, our Indiana Court of Appeals has held that a  
23 judge should recuse himself under circumstances in  
24 which a reasonable person would have a reasonable  
25 doubt of a judge's impartiality. Accordingly, even

1 if there is an appearance of partiality, the judge  
2 should recuse him or herself.

3 Judge Pylitt has adopted and verified the  
4 stewards' findings in Estvanko and Granitz, and in  
5 so deciding has determined that Ross Russell,  
6 without a hearing and without due process, has done  
7 this deed. Ross Russell has disputed that from the  
8 day he was confronted with that, which was the day  
9 following on September 20th of last year.

10 The Commission in reviewing this should look  
11 closely at the stewards' findings and the relying  
12 of Judge Pylitt on this issue.

13 I would like to address briefly the fact that  
14 in this case the Indiana Horse Racing Commission  
15 Staff is recommending a 20-year penalty. This is  
16 really unprecedented. What we have here is a  
17 professional's career on the backside as an  
18 esteemed veterinarian that has been arrested. His  
19 reputation has been irreparably damaged. His  
20 financial loss beyond significant.

21 He is entitled to a fair and impartial trial  
22 to be conducted by an unbiased administrative law  
23 judge who has not prejudged or predetermined or  
24 adjudicated a critical issue to his case, just as  
25 everyone else is in this process. He simply cannot

1 receive that if Judge Pylitt is allowed to continue  
2 to hear this case.

3 I would like to turn very quickly to the  
4 second issue, which has been brought up about the  
5 timely service of our brief. Our brief was timely  
6 filed. The rule in question is Trial Rule 5(B)(2)  
7 in the Indiana Rules of Trial Procedure. If you  
8 will look, there is a cover letter showing it was  
9 posted on the 29th of June of this year. The  
10 pleading itself was dated the 29th of June of  
11 this year. The certificate of service is the  
12 29th of June of this year. The envelope posting  
13 it is the 29th of June of this year.

14 You need to realize in Terre Haute, Indiana we  
15 really don't have postal service like you all have  
16 in Indianapolis. So if I send a letter to my  
17 neighbor in Terre Haute, it has to come to  
18 Indianapolis to be canceled to go back.

19 And so with that having been said, I have also  
20 under the rule, I believe the certificate is  
21 confirmative of Trial Rule 5(B)(2), but I have for  
22 the Commission's review an affidavit of Rosanna  
23 Royer, a member of my staff, who stated under oath  
24 this was placed in the US mail in compliance with  
25 the service requirement of Trial Rule 5(B)(2) on

1 June 29, 2015. It was subsequently sent again by  
2 e-mail the following day.

3 To add to what appears to be some confusion,  
4 although I think it's clear it was timely served,  
5 the exhibit, and I would offer that both sides of  
6 this case inadvertently omitted exhibits and had to  
7 send them later. Ours were, we believe, one of the  
8 sets did not have all of the exhibits.

9 CHAIRMAN WEATHERWAX: I've already said we are  
10 going to accept this today. You don't have to go  
11 through all of that. I understand.

12 Does that conclude what you want to talk  
13 about?

14 MR. SACOPULOS: Other than on behalf of Doctor  
15 Russell, we would ask that you reject the ALJ's  
16 recommendation.

17 MS. ELLINGWOOD: Right on time.

18 MR. BABBITT: Chair, Commission members,  
19 counsel, it is my pleasure to speak to you on  
20 behalf of the Commission Staff today. Holly  
21 Newell, deputy general of the Commission, is  
22 co-counsel on this matter, but in the interest of  
23 time, I'm going to speak to it myself.

24 Let me say at first, the particular sanctions  
25 against Doctor Russell are at issue. They are not

1 to be decided here today. The only issue is  
2 whether Judge Pylitt is biased or prejudiced and  
3 whether he can and should move forward as the  
4 administrative law judge.

5 Disciplinary cases, no matter what the charge,  
6 are important to the person who is being charged.  
7 As Commission Staff, we understand that. The fact  
8 that we're talking about what those specific  
9 charges is really has nothing to do with the issue,  
10 which is was Judge Pylitt biased or prejudiced.

11 We believe it is a lawyer's dream because  
12 there's a case that Mr. Sacopulos has completely  
13 ignored that the Court of Appeals has spoken to an  
14 issue that is not a hundred percent on the mark but  
15 is so close that I want to speak with you about it  
16 in some detail.

17 Before I get there, let me first talk about  
18 the time issue. There are rules that are set for  
19 filings that are mandatory. There was a ten-day  
20 requirement that this matter be filed on  
21 June 29th.

22 Now, there was a representation made, two  
23 things, one, that the filings were made by  
24 electronic mail. If you look at Mr. Sacopulos' own  
25 filing, his e-mail was dated June 30th at 8:44.

1 Yet, his representation to you is that he filed it  
2 by electronic mail on the 29th.

3 I don't know how you reconcile that. I sent  
4 it on the 29th, but it's dated on the 30th at  
5 8:44. But that's the context of the  
6 representations that are being made to you. It was  
7 not e-mailed on the 29th, the day it was due.  
8 And we have set forth in our brief the reasons that  
9 compliance was not met.

10 We can get into all of those things. And it  
11 gets very, very nuanced and detailed, but the fact  
12 of the matter is, he's talking about on a letter  
13 the franking mark. We're not suggesting they  
14 didn't put it in the postage meter on the 29th.  
15 That's not what the rule is.

16 The rule is it's the date of electronic  
17 mailing, which was the 30th or if you put it in  
18 first class mail, it's the date of the postmark on  
19 the envelope. It's not the franking mark. It's  
20 not whatever Pitney Bowes or Neopost or somebody  
21 else says because you could sit there with it, and  
22 you could have it sitting there for a number of  
23 days, and you've missed the requirement.

24 It either has to be sent registered or  
25 certified. It wasn't. Or it has to be sent by

1 third-party commercial carrier like UPS or FedEx  
2 with a three-day delivery. Neither of those things  
3 happened. It was untimely.

4 Our position is that Doctor Russell should  
5 lose this argument because it's untimely. Having  
6 said that, we want to talk about the merits because  
7 we believe the Commission should deny the request  
8 that Doctor Russell is making on both the  
9 timeliness and on the substance of the materials.

10 Now, when I got to law school, they told me if  
11 the law is on your side, argue the laws. If the  
12 facts are on your side, argue the facts. If  
13 neither are on your side, pound the table. We've  
14 all heard that. All lawyers have heard that.  
15 There's a lot of pounding of the table in this  
16 particular brief.

17 I want to go through in a very limited amount  
18 of time and touch on a couple. In the conclusions  
19 to the objections, there is a statement that says  
20 "ALJ Pylitt has been appointed assigned the vast  
21 majority, if not all, disputes over the past 24 to  
22 36 months by the Indiana Horse Racing Commission."  
23 First of all, Mr. Sacopulos knows that's not a true  
24 statement because on November 19, 2012, which was  
25 within three years which was within 36 months, Gary

1 Patrick's case was assigned to Administrative Law  
2 Judge Gordon White, and Mr. Sacopulos represented  
3 Mr. Patrick.

4 So we're getting fast and loose with the  
5 facts. There's a lot of rhetoric in here. That's  
6 just the start of it.

7 Now, the vast majority of the cases have gone  
8 to Judge Pylitt. We went back and counted just to  
9 know what we were dealing with. There were 25  
10 cases in this time frame. Eleven of those went to  
11 ALJ Lauck. Eleven went to Judge Pylitt. Two went  
12 to Gordon White, one of them you decided here this  
13 morning, the Amoss case, which was a substantial,  
14 substantial matter that took a lot of his time.  
15 And one went to Judge Hostetter. Four ALJs, three  
16 are currently active with the Commission. And a  
17 vast majority to me is something well over  
18 50 percent, not even close to 50 percent.

19 So that's what these objections are. These  
20 objections make lots of references that cannot be  
21 supported.

22 Now, in that same conclusion, Mr. Sacopulos  
23 says "ALJ Pylitt, unlike most jurists that are  
24 questioned as to prejudice or bias, has summarily  
25 refused to disqualify himself." Mr. Sacopulos just

1 sat here and told you today this was the first  
2 motion that he had ever filed like this. Now, yet,  
3 he says to you in this filing most jurists that are  
4 questioned as to prejudice or bias. Where in the  
5 world does that come from?

6 The fact is it's pulled out of the air like  
7 everything else in this filing. And it's given to  
8 you. And it's asking you to do something they want  
9 without absolutely any basis to do it.

10 Now, let's talk about the substance of the  
11 objections. The first is he is claiming, and this  
12 is a very, very tortured interpretation, that Judge  
13 Pylitt adopted and verified the stewards' ruling in  
14 Estvanko and Granitz, January 19, 2015. Now, that  
15 is a separate proceeding. And he did indicate this  
16 was the intervention motion.

17 And what Judge Pylitt said was the pleadings  
18 support that this is the claim, and that's how I'm  
19 going to decide the intervention issue, which came  
20 to you and which you affirmed. He did not say I  
21 made a finding on the merits as to either Estvanko,  
22 Granitz, or Doctor Russell. I know he didn't do  
23 that. And Mr. Sacopulos knows he didn't do that  
24 because we had a hearing on the merits of that  
25 matter on the 23rd and the 24th.

1           Now, if he had really done what Mr. Sacopulos  
2 told you he had done, we just wasted our time for  
3 over a day putting on multiple witnesses,  
4 cross-examining, putting on numerous exhibits to do  
5 a matter that Judge Pylitt had already decided.  
6 Why? Because he hadn't decided it then, and he  
7 still hasn't decided it. There is a  
8 misrepresentation that is being made that is the  
9 basis of this disqualification motion.

10           And then there is in objection number seven,  
11 there's a discussion about the stewards having a  
12 footnote, which is not only inaccurate, it's a  
13 misstatement. That statement about the stewards  
14 is, in fact, a misstatement. Stewards made a very  
15 short footnote, which Mr. Sacopulos took three  
16 important words out, by the way, in his filing.

17           And it said, Doctor Russell appeared as a  
18 witness for the respondents at the October 31, 2014  
19 hearing, presumably, but the decision in this  
20 matter does not apply to any allegations that are  
21 currently pending against Doctor Russell. Okay.  
22 Now, what he took out is "but the decision." The  
23 fact of the matter is he says that's inaccurate and  
24 it's a misstatement. That's not what the Indiana  
25 Supreme Court says.

1           With respect to issue preclusion, and this is  
2 a nuanced legal argument with respect to issue  
3 preclusion, there has got to be a number of things  
4 before you can preclude a person from a particular  
5 issue that's tried in another case. Number three,  
6 and importantly, is the party to be estopped was a  
7 party or a privy of a party in prior action. This  
8 is National Wine and Spirits versus Ernst and  
9 Young, 976 N.E. 2d 699 Indiana 212. Prehearing was  
10 denied. The fact of the matter is the stewards  
11 were on right on the mark.

12           I told you I was going to get to the case. I  
13 have to do it quickly because I'm running out of  
14 time. The Jones case is a very important case.  
15 And this is a case that was decided by the Indiana  
16 Court of Appeals. And, interestingly, it involved  
17 two co-defendants who were jointly charged with  
18 three counts of possession of narcotics.

19           The judge who sat on that matter convicted one  
20 of the defendants while the other one was in  
21 Florida. So the other defendant comes back, and  
22 this judge is sitting on the case. The  
23 co-defendant says same facts, jointly charged, you  
24 shouldn't decide the case.

25           Guess what, the Indiana Court of Appeals

1 decided it. And they decided it on virtually the  
2 same canon that is at issue here. It's just been  
3 updated.

4 What they said was after reviewing all sorts  
5 of decisions, including Supreme Court decisions,  
6 "Rather, his argument is that the mere fact that  
7 Judge Jasper's participation in the prior bench  
8 trial of the co-defendant Edelen precluded the same  
9 judge from participating in Jones' trial. Such  
10 clearly is not the law." It doesn't preclude him  
11 at all.

12 What he's talking about in other situations is  
13 if a judge goes from the trial court to the Court  
14 of Appeals, that judge can't sit on the case he sat  
15 in before. He doesn't say you can't sit on the  
16 case that has any common facts.

17 This was your determination that Judge Pylitt  
18 be assigned to this, the right determination.  
19 There has been no showing of actual bias and  
20 prejudice. There's nothing in the record to  
21 support this.

22 I want to tell a cautionary tale here because  
23 the same rules that apply to ALJs apply to this  
24 Commission. You have to be careful because if you  
25 determine, oh, heck, let's just make it easy and go

1 ahead and disqualify this judge, then you're giving  
2 a basis for the Commission to say any common facts  
3 that you deal with, you should be disqualified for.  
4 And then the argument is that the Commission can't  
5 deal with different disciplinary matters that arise  
6 under the same common facts.

7 That is not true. It's not true with Judge  
8 Pylitt. He's a well-respected jurist. He sat as a  
9 judge in Hamilton County. He knows the rules. He  
10 was not biased and prejudiced. There is nothing in  
11 this record to suggest that he was.

12 We would ask you to affirm his decision on the  
13 merits and decide that it was untimely as well.

14 CHAIRMAN WEATHERWAX: Thank you, Robin.  
15 Counsel.

16 MS. ELLINGWOOD: That concludes the oral  
17 arguments from counsel. As I mentioned, Judge  
18 Pylitt is here to answer any questions you may  
19 have.

20 Again, the sole issue before you today is  
21 whether or not Judge Pylitt is biased or prejudiced  
22 which makes him unfit to hear the Russell matter.

23 CHAIRMAN WEATHERWAX: Judge Pylitt, do you  
24 want to offer anything?

25 MR. PYLITT: I think counsel, in briefs,

1 pretty well set forth the issues. I think it would  
2 probably be inappropriate for me to comment one way  
3 or another.

4 CHAIRMAN WEATHERWAX: Thank you. I can't tell  
5 you another case that I've heard more about that  
6 I'm not supposed to talk about. There's almost  
7 nothing in this case that we haven't heard. Yet,  
8 we're supposed to pretend we didn't hear it, I  
9 think.

10 Commissioner Schenkel, did you have a  
11 question?

12 COMMISSIONER SCHENKEL: I just want to make  
13 sure I understand the process and procedure here.  
14 It's a dumb question, but I want to reiterate it.  
15 You're saying we're just discussing today the  
16 aspect of whether or not this moves forward with  
17 Judge Pylitt as the ALJ. We are not -- we will  
18 then at a later time have an actual recommended  
19 order to consider in this matter; is that correct?

20 MS. ELLINGWOOD: You will. Like you, I'm in  
21 the dark about many of the facts about the case on  
22 purpose. My understanding though is that hearing  
23 the matter, a trial in the matter, rather, is  
24 scheduled for late this year. I want to say  
25 December. So there will be a time when a proposed

1 order comes before you that gets to the underlying  
2 allegations against Doctor Russell, but that's not  
3 today.

4 COMMISSIONER SCHENKEL: The second part of my  
5 question is what is the status of Doctor Russell in  
6 the meantime? In other words, from today going  
7 forward, he will have an opportunity to have a  
8 hearing, and there will be a process. But what is  
9 his status in that time frame?

10 MS. ELLINGWOOD: Doctor Russell was initially  
11 summarily suspended. He didn't ask for a hearing  
12 on the suspension. The suspension was dropped, and  
13 then he was excluded, which has the same effect in  
14 that he can't go into the regulated area, the  
15 backside. He didn't ask for a hearing on the  
16 exclusion either. So right now he continues to be  
17 excluded. He's not performing his services on the  
18 racetrack or any other area regulated by the  
19 Commission.

20 MR. PYLITT: Commissioner Schenkel, for your  
21 benefit, the hearing on the merits has been  
22 continued by agreement of counsel. It's currently  
23 set for December 1st for four days in Indianapolis.  
24 There are some deadlines for discovery and  
25 depositions, which necessitated moving the hearing

1 out to December 1st.

2 COMMISSIONER SCHENKEL: Not to be  
3 oversimplified here, our decision is whether or not  
4 that December 1st process is going to be overseen  
5 by this administrative law judge or not.

6 MS. ELLINGWOOD: Yeah. Practically speaking,  
7 if another administrative law judge is assigned, it  
8 likely would be continued so that the judge would  
9 have the opportunity to get up to speed.

10 COMMISSIONER SCHENKEL: I understand.

11 MS. ELLINGWOOD: That's not a certainty, but  
12 it's very, very, very likely.

13 COMMISSIONER PILLOW: Who selects the ALJs?

14 MS. ELLINGWOOD: Your chairman.

15 CHAIRMAN WEATHERWAX: I get this opportunity  
16 about four times a month. Do you want it?

17 COMMISSIONER PILLOW: No. Thank you.

18 CHAIRMAN WEATHERWAX: The reason I thought we  
19 should hear this today and not just rule on the  
20 fact the time factor could be a question, we could  
21 literally, you could argue, not hear, not make a  
22 decision, not allow this thing to go forward based  
23 on this time sequence of proper filing. Or we can  
24 say we want this to go forward where you'd have to  
25 find yourself trying to disqualify Judge Pylitt for

1 some bias or some other reason. That's the issue  
2 before us.

3 That's what the argument is by counsel. This  
4 is an argument that they are using to disqualify  
5 this judge before we ever get to hear the case. I  
6 mean, we've already heard more about this case than  
7 I think we're supposed to. But, nevertheless, we  
8 had to get to this to understand the ruling to  
9 supply the yes or no for Judge Pylitt.

10 It's my recommendation, and I will make this  
11 in a motion, we allow this to go forward accepting  
12 Judge Pylitt as the attorney or the judge that I've  
13 appointed, and we've already been involved with and  
14 all this background music on this particular case.

15 COMMISSIONER LIGHTLE: I second the motion.

16 CHAIRMAN WEATHERWAX: We have a motion and a  
17 second. Questions?

18 MS. ELLINGWOOD: Chairman, just to be very  
19 specific, it sounds to me as if the motion is to  
20 approve the ALJ's proposed findings but deny the  
21 motion to disqualify.

22 CHAIRMAN WEATHERWAX: That's right. Can we  
23 take a vote on that? All those in favor say "aye."

24 THE COMMISSION: "Aye."

25 CHAIRMAN WEATHERWAX: It's passed.

1           Number eight, Joe, I guess that's your time.

2           JOE GORAJEC: Yes. When the Commission met in  
3 April, at that time the Commission was fully  
4 apprised of the selection of Truesdail as our  
5 primary lab, and the fact that we had put under  
6 contract an audit lab.

7           Since that time a lot has happened. You know  
8 by my communications in May that the preliminary  
9 findings of the audit lab of Truesdail's work led  
10 to us terminating Truesdail's contract for default  
11 because at that time they had missed three positive  
12 tests that were found by Industrial Lab and  
13 confirmed by a third-party lab. So that's where we  
14 left off in May.

15           So in the middle of May Truesdail's out.  
16 Industrial is our primary lab, but at that time we  
17 still had several weeks of testing in the pipeline  
18 that Truesdail had done the work on or were doing  
19 the work on. So it wasn't until we were able to  
20 review all those samples that we know enough to put  
21 forth a staff report concluding the findings of all  
22 of the 26 days of racing in which Industrial  
23 Laboratories served as our audit laboratory.

24           The findings, as you saw in the report -- I  
25 won't go into the report in detail, but I will be

1 glad to answer any questions. That from mid May  
2 until just a few weeks ago, the audit laboratory  
3 and an independent third-party laboratory found  
4 four more positive tests. So during the 26 days of  
5 auditing, there were seven positive tests that were  
6 missed.

7 And to me, two things that are most disturbing  
8 about this is that it wasn't seven out of 50. It's  
9 not like Truesdail found 50 and missed seven. They  
10 found none and missed seven. So their batting  
11 average would have been .000. So that was one of  
12 the most disturbing things. The other was that  
13 although six of the seven were positives for  
14 therapeutic medication, one of them was a Class 1  
15 drug.

16 And the way the statute and our rules read, in  
17 order to prosecute a drug positive, it has to be  
18 found by the primary lab. Even though Industrial  
19 found it, and even though it was confirmed by LGC,  
20 we cannot and could not prosecute that case.

21 So that's the good and the bad. I mean, the  
22 bad is that that happened. The good is that we had  
23 a program in place to detect it and move on. And  
24 we have moved on.

25 Our laboratory, Industrial, we believe is

1 doing a fine job. Since that time, I believe  
2 they've called 11 positive tests. Some of those  
3 have been fully adjudicated. Some of those are in  
4 the pipeline to be adjudicated. They are doing  
5 their job. And they're finding positive tests as  
6 they should.

7 I want to conclude my remarks to discuss  
8 briefly the way we are moving forward because even  
9 though this program with the audit has worked well,  
10 worked very well, there really is a better, more  
11 efficient way of doing it. That is to develop what  
12 I refer to briefly in the report as a double-blind  
13 sample program. That's a program where we cause,  
14 we choose a drug that could be abused on the  
15 racetrack.

16 CHAIRMAN WEATHERWAX: Is that point nine on  
17 the agenda?

18 COMMISSIONER SCHENKEL: It's eight.

19 JOE GORAJEC: It's the last section of the  
20 staff report under number eight.

21 CHAIRMAN WEATHERWAX: I have just a question  
22 for you because Truesdail was the one that got the  
23 contract for the whole year.

24 JOE GORAJEC: Yes.

25 CHAIRMAN WEATHERWAX: After even being pointed

1 out that they didn't find it, you gave them a  
2 chance to test again, and they still didn't find  
3 it?

4 JOE GORAJEC: Correct on four of the samples.

5 CHAIRMAN WEATHERWAX: That means their system  
6 or standards must not even be adequate to do  
7 anything.

8 JOE GORAJEC: One could imply that.

9 CHAIRMAN WEATHERWAX: Now it's Industrial.

10 JOE GORAJEC: Now it's Industrial.

11 CHAIRMAN WEATHERWAX: When did we start  
12 sending everything to Industrial?

13 JOE GORAJEC: I don't know the exact date.  
14 Was it May? I believe it might say here. May 6th.

15 CHAIRMAN WEATHERWAX: So really this year is  
16 Industrial Lab.

17 JOE GORAJEC: This year is Industrial Lab.

18 CHAIRMAN WEATHERWAX: Go ahead with your  
19 double blind.

20 JOE GORAJEC: The double-blind program is a  
21 more cost effective way of doing business. What  
22 we've done is we've reached out to Purdue. And  
23 they have agreed to work jointly with us on this  
24 double-blind program.

25 And the way the program works is that we

1 select a number of drugs that we want the lab to  
2 receive without knowing that these are special  
3 samples. So what will be done is that Purdue,  
4 using their research and teaching herd of horses,  
5 okay, will inject horses, one horse each, with the  
6 drugs that we choose. And blood and urine on those  
7 horses will be drawn at specific points in time.

8 Those samples will be sent to the track, and  
9 we will disguise those samples. We will camouflage  
10 those samples in such a way as when we send our  
11 weekly shipment to Industrial, it will look like a  
12 normal post-race sample.

13 So they will process it, okay, as they do  
14 every other sample. That's very important because  
15 the way -- a lot of times the industry will have  
16 proficiency tests. When they send out a  
17 proficiency test to a lab, they say, hey, here's a  
18 sample that's a proficiency test, and we want you  
19 to tell us if you find anything in there.

20 But when that's done, the lab is clued in that  
21 this is a special sample. So they're going to give  
22 it the full monty. They will run everything they  
23 can. If it comes back negative, they're going to  
24 run it again. And they're going to run it again.  
25 And they're going to run it again. And they are

1 going to make a special super-duper effort to find  
2 what's in that sample because they know it's a  
3 testing proficiency sample. And there is likely  
4 something in there.

5 We don't want the lab to know. We want the  
6 lab to treat this as a routine sample. So we are  
7 going to disguise them.

8 And then once the results are in, I will issue  
9 a report. It will be a very public process. The  
10 results, good, bad, you'll know what they are.

11 And one thing that has happened since I sent  
12 out this report is Purdue has a committee called  
13 the ACUC, which is the Animal Care Use Committee.  
14 This is a committee that anything that they are  
15 going to do with this research herd, someone has to  
16 sign off on to make sure that the university is  
17 comfortable with the experiment, comfortable with  
18 the project, and it's not going to harm the horses.

19 That committee has already signed off since  
20 this report was issued. That committee approved  
21 the project. So we're basically good to go and  
22 good to move forward, other than actually getting a  
23 contract with Purdue, but all the other wheels are  
24 greased to move ahead.

25 CHAIRMAN WEATHERWAX: Very good. So this

1 sounds like a pretty thorough double testing.

2 JOE GORAJEC: It is. It is.

3 CHAIRMAN MCNAUGHT: Are you sharing this with  
4 Industrial Labs?

5 JOE GORAJEC: They got the report. They know  
6 we're going to be doing double blinds.

7 CHAIRMAN WEATHERWAX: They already know what  
8 we're doing.

9 JOE GORAJEC: They know we're going to have a  
10 double-blind program. But as far as they won't  
11 know of all the sample they get each week, and  
12 we're racing nine races, well, we're racing nine  
13 days a week. And we are sending 15 to 20 samples a  
14 day. So they're getting well over a hundred  
15 samples a week. So buried within those samples  
16 will be our proficiency samples.

17 CHAIRMAN WEATHERWAX: None of the things we do  
18 on the track with Purdue is being tested against  
19 Industrial Labs.

20 JOE GORAJEC: Say that again.

21 CHAIRMAN WEATHERWAX: We are not doing  
22 anything to verify the audit on Industrial Labs.  
23 Who do we verify against Industrial Labs?

24 JOE GORAJEC: The double-blind program  
25 replaces the audit. We operated this under a

1 quality assurance program.

2 CHAIRMAN WEATHERWAX: So Purdue is becoming  
3 the audit program.

4 JOE GORAJEC: No. We're changing the nature  
5 of our quality assurance program, and we're moving  
6 from an audit-based program to a double-blind  
7 sample program. But you do mention a good point in  
8 that, for example, let's say that we give a horse a  
9 drug that is drug A. We disguise it. We send it  
10 to Industrial, assuming that they're going to find  
11 it. If they can't find it --

12 CHAIRMAN WEATHERWAX: That's a problem.

13 JOE GORAJEC: That's an issue. We'll let them  
14 know that they need to retest that. But what we'll  
15 also do is we'll have an extra sample, a split that  
16 will go to an independent lab. You know, there  
17 might be something with the time delay, the dosage.  
18 And we want to make sure that if Industrial can't  
19 find it, that another lab can find it before we  
20 call them on it.

21 CHAIRMAN WEATHERWAX: Commissioner Schenkel.

22 COMMISSIONER SCHENKEL: I want to make sure  
23 it's on the record that we expressed, all of us  
24 expressed concern about the 70-day delay that  
25 occurred in earlier conversation, earlier

1 proceeding. And I think it's fair to note, Joe, am  
2 I correct in saying we're not experiencing delays  
3 like that. This whole process has helped address  
4 that issue as well; is that correct?

5 JOE GORAJEC: Absolutely. Industrial has been  
6 right on the, pretty much right on the money. We  
7 send our samples to them once a week on a  
8 Wednesday. They get them on a Thursday. The  
9 following Thursday we know if they have any  
10 suspicious samples.

11 COMMISSIONER SCHENKEL: I just want to make  
12 sure the public is assured that we saw that as an  
13 issue.

14 JOE GORAJEC: It is a concern. That concern  
15 has been addressed. Industrial has been on time.

16 CHAIRMAN WEATHERWAX: Commissioner McCarty.

17 COMMISSIONER MCCARTY: Who did the testing in  
18 2014?

19 JOE GORAJEC: 2014 started with LGC, which is  
20 a very prominent laboratory out of Lexington. They  
21 did a super fine job quality wise, but they were  
22 slow as molasses, and that's what caused the  
23 backup.

24 COMMISSIONER MCCARTY: Then we went to  
25 Truesdail.

1           JOE GORAJEC: No, then we went to Industrial  
2 for the rest of 2014. What happened is we issued  
3 an RFP for a laboratory for 2015. And the State  
4 Department of, DOA awarded it to Truesdail.

5           COMMISSIONER MCCARTY: The State Department of  
6 Administration because is it based on a low cost  
7 basis or is it best and low cost?

8           JOE GORAJEC: We would argue that, we would  
9 vigorously argue the best, but it was the low  
10 bidder.

11           COMMISSIONER SCHENKEL: Which this is a  
12 personal comment, Commissioner McCarty, that  
13 troubles me from the standpoint of this, in my  
14 mind, should not be a decision made on best or  
15 lowest cost. Quality is so important here. And  
16 there is not taxpayer money involved in this.  
17 These costs are borne by the participants, by the  
18 users. So I hope that the Department of  
19 Administration, in all due respect, learns  
20 something of this process.

21           CHAIRMAN WEATHERWAX: They won't.

22           COMMISSIONER MCCARTY: Have there been any  
23 discussions with the Department of Administration?

24           JOE GORAJEC: The Department of  
25 Administration, even though they awarded the

1 contract to Truesdail after we expressed concerns,  
2 they've been very good to deal with on the tail end  
3 because we had to seek their approval to terminate  
4 this contract. And I think they got it. I think  
5 they got it. They were very helpful in the  
6 termination.

7 CHAIRMAN WEATHERWAX: Next year you'll be on  
8 the committee to help select the lab. This will be  
9 an experience you will never ask again.

10 COMMISSIONER SCHENKEL: As you recall,  
11 Chairman Weatherwax --

12 CHAIRMAN WEATHERWAX: I didn't want it.

13 COMMISSIONER SCHENKEL: -- when volunteers  
14 were sought --

15 CHAIRMAN WEATHERWAX: I pointed to you.

16 COMMISSIONER SCHENKEL: -- the Department of  
17 Administration said we don't want any outside  
18 opinions.

19 CHAIRMAN WEATHERWAX: Yeah, that's true.

20 All right, Joe, thank you. It looks like that  
21 is very timely to have that audit lab going on.  
22 Otherwise, we would have had a disaster. The case  
23 with the one positive, that's a lost case for us.

24 JOE GORAJEC: How we refer to them in the  
25 office is we have to eat that.

1           CHAIRMAN WEATHERWAX: Number ten. Is that  
2 also you, Joe?

3           JOE GORAJEC: I believe we are at nine.

4           CHAIRMAN WEATHERWAX: Nine is the Texas  
5 Veterinary Medical Diagnostic lab as a split.

6           JOE GORAJEC: The Commission will remember  
7 that earlier in the year they approved three  
8 laboratories to serve as split laboratories for the  
9 Commission. That's the lab that gets the  
10 horsemen's sample, the split sample if a trainer  
11 gets a positive, and he wants to have the sample,  
12 the split sample independently analyzed.

13           The Commission approved three labs. They  
14 approved LGC. They each approved UC Davis. And  
15 they approved the laboratory at the University of  
16 Pennsylvania.

17           What's happened since that time is, at least  
18 temporarily, UC Davis and Pennsylvania are not  
19 taking split samples. So we only have one lab  
20 that's willingly taking split samples. And that's  
21 LGC.

22           And we like the horsemen to have a choice in  
23 labs. And I know that the horsemen appreciate  
24 having a choice in labs. So we would like to add  
25 the Texas Veterinary Medical Diagnostic Laboratory

1 as a split sample lab for now into the future.

2 COMMISSIONER SCHENKEL: So moved.

3 COMMISSIONER PILLOW: Second.

4 CHAIRMAN WEATHERWAX: Motion and second. All  
5 those in favor say "aye."

6 THE COMMISSION: "Aye."

7 CHAIRMAN WEATHERWAX: Number ten is Joe.

8 JOE GORAJEC: One thing we spoke of earlier  
9 when we were talking about drug testing is that  
10 most of the racing laboratories do not have testing  
11 equipment for cobalt. Cobalt is not a drug. It's  
12 a heavy metal. And because of that, they don't  
13 have the equipment to test heavy metal because they  
14 are not in the business of doing that. But these  
15 laboratories also often have a sister laboratory on  
16 the premises. UC Davis has one. The University of  
17 Pennsylvania has one. Texas has one.

18 Although we require ISO accreditation for our  
19 laboratories, and all of our split laboratories are  
20 accredited, the cobalt laboratories are not  
21 necessarily accredited by ISO. They may have other  
22 certification, but they are not accredited by ISO.

23 I want to get this on the table and to get a  
24 blanket approval that these cobalt laboratories  
25 that are affiliated with the split laboratories

1 need not be ISO accredited. That would be a waiver  
2 on those.

3 CHAIRMAN WEATHERWAX: Because there's not  
4 enough of them to be able to find, you want to  
5 waive the ISO rule because some of these cobalt  
6 labs may not be a certified ISO?

7 JOE GORAJEC: I would like the Commission to  
8 have a blanket waiver for the testing of cobalt as  
9 it relates to that laboratory being ISO accredited.

10 CHAIRMAN WEATHERWAX: Or not, you're saying  
11 you want them to be.

12 JOE GORAJEC: No, I'm saying that they need  
13 not be accredited.

14 CHAIRMAN WEATHERWAX: Only on cobalt.

15 JOE GORAJEC: Only on cobalt.

16 CHAIRMAN WEATHERWAX: Do I hear a motion?

17 COMMISSIONER LIGHTLE: I so move.

18 COMMISSIONER SCHENKEL: Second.

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

21 THE COMMISSION: "Aye."

22 CHAIRMAN WEATHERWAX: Okay. Now, number 11.

23 MS. ELLINGWOOD: Thank you, Chairman.

24 During this legislative session, there were  
25 three bills that had or may have a direct impact on

1 horse racing. Those bills are Senate Bill 252,  
2 House Bill 1270, and House Bill 1540. House Bill  
3 1540 was a gaming bill that provided the racinos  
4 may have table games in 2021, with the permission  
5 of the Gaming Commission. That bill potentially  
6 impacts horse racing insofar as the future table  
7 game revenue will impact Centaur's AGR, which in  
8 turn could impact the amount of money to breed  
9 development and the horsemen's associations under  
10 IC 4-35-7-12.

11 While House Bill 1270 survived the house and  
12 the senate, it was vetoed by the Governor. A  
13 number of statutory changes that were originally  
14 included in that bill, however, ended up in Senate  
15 Bill 252, which became effective July 1st of this  
16 year.

17 In 252, the legislature requires the  
18 Commission to promote the horse racing industry and  
19 to make certain reports on promotions in its annual  
20 report; increase the Commissioner's minimum per  
21 diem salary to the maximum daily amount allowed for  
22 federal government employees while in travel  
23 status; clarified race date language; altered the  
24 way breed development committee members are  
25 appointed; increased the percentage of funds used

1 by the Commission for administrative costs from  
2 two percent to four percent and allows those funds  
3 to be used for promotions; and slightly alters the  
4 distribution of the slot funds for Thoroughbred  
5 purposes.

6 I believe we will next hear from Jessica  
7 Barnes regarding promotions in light of the new  
8 statute. But if you have any questions of me with  
9 respect to the legislation at this point, I'm happy  
10 to answer those.

11 COMMISSIONER PILLOW: Should we quit our day  
12 jobs because of the per diem increase?

13 CHAIRMAN WEATHERWAX: I don't think you better  
14 do that.

15 A question for you or John because I don't  
16 remember. This was a bouncing ball, no pun  
17 intended. But 1540 just simply said they'll look  
18 at it but not before 2021.

19 MS. ELLINGWOOD: Mr. Keeler would certainly be  
20 able to give you more of the specifics than I can.  
21 What I can tell you is it allows them -- I mean,  
22 they have the option to do that, but they have to  
23 get prior approval from the Gaming Commission.

24 John, are there any other restrictions on  
25 that?

1 MR. KEELER: No, it's discretionary with the  
2 Gaming Commission.

3 COMMISSIONER PILLOW: Will this come back up  
4 next year?

5 MR. KEELER: Commissioner Pillow, you never  
6 know what happens in the legislature.

7 COMMISSIONER LIGHTLE: Good answer.

8 CHAIRMAN WEATHERWAX: Commissioner McCarty.

9 COMMISSIONER MCCARTY: I've been on the road a  
10 lot. Let me understand this. So the table games  
11 issue can be brought to the Gaming Commission for  
12 approval, disapproval beginning in the year,  
13 somewhere out in the distant future?

14 MR. KEELER: That's correct, Commissioner  
15 McCarty. The statute was amended so that the  
16 racetrack casinos may have gambling games if  
17 authorized by the Gaming Commission, but we can't  
18 apply for that until 2021.

19 COMMISSIONER MCCARTY: But even the  
20 establishment of, establishing that they would  
21 begin in 2021 was vetoed; is that right?

22 MS. ELLINGWOOD: That wasn't. The vetoed bill  
23 was House Bill 1270.

24 COMMISSIONER MCCARTY: And did not contain  
25 that.

1 MS. ELLINGWOOD: Correct.

2 COMMISSIONER MCCARTY: So it can be discussed  
3 in 2021.

4 MR. KEELER: That's right. It's on the books.  
5 And, certainly, Gaming Commission will have  
6 discretion. And there are four or five factors  
7 they are required to consider, like the economic  
8 development that would come from that, number of  
9 jobs, tax revenue.

10 COMMISSIONER MCCARTY: Thank you.

11 CHAIRMAN WEATHERWAX: It's a delay. All  
12 right. Lea, thank you so much for that update. It  
13 was important because Senate Bill 252 gives us a  
14 serious responsibility to help promote the  
15 business. Jessica is going to share with us what  
16 some of those are and what you're doing.

17 JESSICA BARNES: Thank you. I wanted to start  
18 by giving a little bit of history of what we've  
19 done promotion wise with the breed development  
20 fund. When the slots were approved back in 2007  
21 and implemented in 2008, all three of the breed  
22 development committees by 2009 had really ramped up  
23 what they were doing with marketing and promotions.

24 We felt that our programs were something of  
25 value. That people, if they knew about it, would

1 want to participate and would want to come to  
2 Indiana. We were really hitting promotions hard  
3 and trying to attract new people to Indiana.

4 Unfortunately in 2012, the legislature enacted  
5 a change to the statute that capped how certain  
6 monies could be spent from the breed development  
7 funds. That change said that not more than  
8 two percent of the monies deposited into the funds  
9 during the previous fiscal year could be used for  
10 administrative expenses, including marketing.

11 When you factored in the existing  
12 administrative expenses the Commission already had  
13 for the administration of those breed development  
14 programs, it left very little monies left over for  
15 marketing. And it severely limited the amount of  
16 money available for us to do any type of marketing.

17 So we fast forward to 2015. The 252 increases  
18 the funds available changing from two percent to  
19 four percent. The net effect of this is that it  
20 will be approximately 430,000 combined from the  
21 three breed development programs to be utilized for  
22 marketing.

23 I'm extremely excited about this. I truly  
24 believe that our three breed development programs  
25 are one of the best kept secrets in racing. Each

1 program has great benefits. And they are already  
2 producing amazing results. I'm excited to see what  
3 we can do if we get awareness out and can really  
4 promote the program and continue to build our  
5 quality.

6 I think with these funds, we can do even  
7 better than what we have been doing. We must  
8 continually strive to grow and to improve the  
9 programs. Over the past few months, I've been  
10 working with different organizations to get a  
11 marketing strategy in place. I've met with  
12 industry stakeholders, such as the horsemen's  
13 groups and racetracks to assess their thoughts on  
14 what they see our target should be.

15 Coming from these meetings and discussions, I  
16 have determined there are three primary areas we  
17 need to focus. Marketing should be aimed at,  
18 obviously, increasing the economic impact of the  
19 breed development programs to the state of Indiana.  
20 And we do this by increasing visibility and  
21 awareness of our program, attracting quality  
22 training and racing operations.

23 In doing this, we have to account for the  
24 various factions of our industry, which gets quite  
25 complicated when you look at our overall program as

1 a whole. You have the horsemen, which consist of  
2 owners, trainers, breeders, stallion owners. And  
3 then you have the racetracks which consist of the  
4 product we're putting out there for the bettors and  
5 the participants.

6 So we have been carefully considering how to  
7 do that. Our approach will include partnerships  
8 with the racetracks and horsemen's groups, as well  
9 as partnership with other state agencies, such as  
10 the Department of Agriculture or Indiana Economic  
11 Development Corporation.

12 I feel that we must move our program into the  
13 digital era. We have to come into this century.  
14 Everybody is digital. We have to have a digital  
15 presence, which includes social media sites and  
16 digital marketing. I think all of these efforts  
17 combined will help us tell the story of our breed  
18 development programs and help attract people to  
19 Indiana.

20 It's already happening without the marketing  
21 out there. I know of two instances this past year  
22 where Standardbred racing operations have picked up  
23 and moved from Illinois, sold their farms and  
24 decided to have Indiana as their home base. These  
25 are just racing operations. I think we can move

1 that into breeding farms and get other people here  
2 in Indiana.

3 As I said, I'm still working on the entire  
4 marketing strategy. That's just a glimpse of where  
5 we're going.

6 CHAIRMAN WEATHERWAX: Can you share with us  
7 things we are working on, specifically on the  
8 television side?

9 JESSICA BARNES: Yes. We're looking at a  
10 partnership with the racetracks with a program with  
11 Wish TV. I'm super excited about that. Brian may  
12 want to talk a little about it. I know they have  
13 already entered into the agreement with that. I  
14 want us to be a part of it so we can get the  
15 message out about what else racing is for Indiana.

16 The tracks have very specific -- you know,  
17 racing is there on the tracks and going on. I  
18 think there's a lot of people that don't understand  
19 that it doesn't stop there. That there is a  
20 trickle-down effect to breeders, stallion owners,  
21 hay producers, veterinarians, truck dealerships,  
22 trailer dealerships, all of those things.

23 I think when breed development partners with  
24 the tracks on this, we from breed development can  
25 send that information also and get that information

1 out there.

2 I know that Wish TV is going to be doing a  
3 live broadcast from the Indiana Derby this weekend.  
4 And there's also more broadcasts scheduled  
5 throughout the year. It also includes appearances  
6 on Indy Live, Indy Style, the television show here  
7 in Indianapolis, and then also have some digital  
8 things for us to do.

9 CHAIRMAN WEATHERWAX: Commissioner Pillow.

10 COMMISSIONER PILLOW: I know that we are  
11 concentrating on the Wish TV, but are we in the  
12 future thinking of maybe buying air time in  
13 Illinois, Ohio, Kentucky?

14 JESSICA BARNES: I think that could more than  
15 be considered. I think we have to target those  
16 states, especially the ones that are having  
17 trouble. Indiana's racing industry is facing  
18 problems right now. I think they are a great  
19 market to look at and to attract people to come  
20 here and spend dollars.

21 CHAIRMAN WEATHERWAX: For Commissioner  
22 McCarty's benefit, he maybe doesn't know some of  
23 this background of what became a part of 252. The  
24 General Assembly is watching what we're doing.  
25 They're putting some money on the table, and they

1 expect results because this is a real big  
2 permission, latitude for us to do everything we  
3 can. We have to make the most of what we can with  
4 this, I call it money that we can use that's kind  
5 of like new money. It's 433,000. But she's got to  
6 divide that up between all three breeds.

7 We, the Commission and Jessica, will work  
8 together to come up with what's the best use of  
9 that money.

10 JESSICA BARNES: I'm trying to look at ways of  
11 how can we most maximize those dollars. How can we  
12 maximize that and get the most bang for our buck.

13 CHAIRMAN WEATHERWAX: We've already worked,  
14 Commissioner Pillow, all of us in trying to  
15 cooperate. Maybe do a partnership with the  
16 Department of Agriculture, Lieutenant Governor,  
17 tourism. Jessica is already working with Centaur  
18 to capitalize on their television exposure. They  
19 have a huge advertising budget. Ours is peanuts  
20 compared to theirs, but we have to make the most of  
21 what we have. That's what she's trying to do.  
22 Thank you, Jessica.

23 Okay. Number 13, Holly, this is review of the  
24 Commission's rulings.

25 MS. NEWELL: Yes, sir. You have the rulings

1 from April through June in front of you. I think  
2 the primary thing to note is that this includes ten  
3 medication rulings, all of which were generated  
4 from Industrial after they took over our drug  
5 testing contract. I think it really shows that  
6 transition and how effective and successful it has  
7 been for us. I'm happy to answer any question you  
8 might have about any of the rulings.

9 CHAIRMAN WEATHERWAX: So really --

10 COMMISSIONER PILLOW: One quick question. I'm  
11 sorry. Go ahead.

12 CHAIRMAN WEATHERWAX: I was just saying, a lot  
13 of these don't deal with drugs, but they deal with  
14 whipping, and all kinds of different reasons they  
15 can get cited, driving infraction, jockeys  
16 requirements. I don't know what that is. What's  
17 the word jockey requirements mean?

18 MS. NEWELL: Joe.

19 JOE GORAJEC: Which one are we on?

20 COMMISSIONER SCHENKEL: There's a number of  
21 them.

22 MS. NEWELL: They do failure to honor ride.

23 JOE GORAJEC: That could be, what often  
24 happens is they'll accept a mount, then they'll  
25 call in and not fulfill their obligation. I'm not

1 sure that's what it is, but that's what it could be  
2 because that happens often.

3 CHAIRMAN WEATHERWAX: So how many of these --  
4 I don't see that many that are drug related.

5 MS. NEWELL: You have five pages of rulings,  
6 and there are ten that are drug related. It's  
7 certainly not the majority, but I do think it's  
8 telling.

9 CHAIRMAN WEATHERWAX: Is that more than you  
10 would see by this point in time?

11 JOE GORAJEC: This is pretty much average. We  
12 often, we talk so often when we get together about  
13 drugs and drug testing, but our rule book is over  
14 200 pages. And it reads like the fine type on an  
15 insurance policy. And there's a lot of stuff in  
16 there.

17 And there are a lot of rules that deal with  
18 the running of the race, licensing requirements.  
19 And we have three individuals, we've got three  
20 judges at the Standardbred track. We have three  
21 stewards at the Thoroughbred track. And they're  
22 responsible for regulating the race meet on a  
23 day-to-day basis. Most of these are relatively  
24 small potatoes. When you see a fine, and you see a  
25 fine of \$500 or less and no suspension, it's a

1 minor infraction.

2 COMMISSIONER SCHENKEL: The point is,  
3 Mr. Chairman, that we might not have seen as many  
4 drug violations had we not had the quality  
5 assurance program.

6 CHAIRMAN WEATHERWAX: Very good.

7 COMMISSIONER MCCARTY: There are two in here  
8 of some duration of suspension, one about five  
9 months and one for basically a year. Do you  
10 remember the fact situation for those?

11 MS. NEWELL: The first one you are referring  
12 to was the Ronald Raper. That was a settlement  
13 agreement that the Commission approved last  
14 meeting, I believe. You were absent.

15 COMMISSIONER MCCARTY: The other one is Julio  
16 Almanza.

17 JOE GORAJEC: You might remember that one  
18 better than I do.

19 MS. NEWELL: Yes. Mr. Almanza is a Quarter  
20 Horse trainer. And he violated our rule regarding  
21 program training. So what that means is that he  
22 was setting himself out as the trainer of horses  
23 when he was not, in fact, the trainer of these  
24 horses. It's a pretty serious charge.

25 CHAIRMAN WEATHERWAX: Well, do we have to do

1 anything, Lea, as far as this?

2 MS. ELLINGWOOD: No, it's just a review.

3 CHAIRMAN WEATHERWAX: Thank you, Holly.

4 Number 14, is that Jessica again?

5 JOE GORAJEC: I'll start 14 off, but I would  
6 like to have presiding judge Mike Hall appear  
7 because 14 is --

8 CHAIRMAN WEATHERWAX: That's the emergency  
9 rule regarding fair start pole, which I had to  
10 learn what that was because that's an important  
11 part of the race, I guess.

12 JOE GORAJEC: I've been very reluctant over  
13 the last few years to bring a rule amendment to the  
14 Commission mid race meet. Our routine is to try to  
15 get those knocked off during the off-season so we  
16 start fresh, and everyone knows what the rules are  
17 before the meet begins.

18 I made an exception of putting this one on the  
19 agenda based upon input I received from our judges  
20 and the horsemen and the track. This particular  
21 rule is the brain child of this gentleman here,  
22 presiding judge Mike Hall. He came to me and said  
23 we really need this. It's a good thing.

24 And after he said that, I said, well, how does  
25 the rest of the industry feel about it? And it

1 turns out that the horsemen are for it. The track  
2 is for it.

3 I thought I would make this one an exception  
4 to our policy about putting things on mid racing  
5 season for a rule just because it's one that I  
6 think helps the betting public. And there's going  
7 to be, as far as I know, no objections from the  
8 industry, in fact, nothing but support. So that's  
9 why you are looking at something that's a rule  
10 amendment in July.

11 CHAIRMAN WEATHERWAX: Judge, can you please  
12 tell us what this means as far as fair start.

13 MIKE HALL: I'll try to. First of all, I just  
14 wanted to ramble on a second before I got started  
15 on that. Anyone that knows me knows I like to  
16 ramble.

17 Regardless, I was last here in March and met  
18 all of you before we started our meet. We are  
19 halfway through the meet. I can say I have worked  
20 in many other jurisdictions; New York,  
21 Pennsylvania, Ohio, Canada, Florida, Maryland. And  
22 so far, this is the most progressive and  
23 forward-looking racing commission and executive  
24 director and staff that I have ever worked with.

25 I've been told a few times that something I

1 say is from the east coast bias. I'm trying to get  
2 less of beeping the horn at people and maybe  
3 yelling out the window. Anyway, I'm acclimating  
4 very well to Indiana.

5 And for myself and the other two judges, we  
6 are very, very happy that we are here. And we feel  
7 very fortunate to be here and working with the  
8 racing commission and staff that's as good as it  
9 is.

10 So that being said, the fair start pole, it's  
11 a policy that I first learned about when I was  
12 working in Canada. And just to give a quick  
13 history review of how racing goes with breaking  
14 horses, Standardbreds, you know they have to stay  
15 on their particular stride, either pacing or  
16 trotting.

17 Years ago there used to be a rule that said if  
18 a horse goes off its stride when they're behind the  
19 gate before they reached a certain pole, which is  
20 called the recall pole, they would basically start  
21 over. So what they would do is they get all the  
22 horses behind the gate, and they would be heading  
23 towards the start. And before they got to the  
24 recall pole, number two goes off stride. So the  
25 starter turns the lights on on the gate. They all

1 have to turn around and go back.

2       So it might not seem like much of a deal, but  
3 first of all, the horse that ran made the break in  
4 the first place gets another chance to go. But it  
5 upsets three or four of the other horses because  
6 they're ready to go at that time. So what you have  
7 then is in the old days, it might be two or three  
8 or four recalls all started by the first horse.

9       So years ago they decided to take that rule  
10 out. There would be no more recalls for breaking  
11 horses. Well, that was all right except for some  
12 of the people that bet on the horses said, well,  
13 why should you take that away from us. We are  
14 getting a bad deal.

15       So Canada came up with the fair start pole in  
16 Ontario. And I think it originated from they had a  
17 big stake race. And a horse caused a recall  
18 because it was running and acting crazy. Then they  
19 turned the field. And by the time they got it  
20 started, two or three of horses and one of the  
21 favorites was so wound up that they were crazy, and  
22 they couldn't race.

23       So they devised a plan of we'll put a pole a  
24 certain distance before the starting line. And if  
25 any horse is off stride and doesn't reach that

1 particular pole before the horses are released at  
2 the start, then it wouldn't be a recall in turning  
3 the whole field. That horse would just be refunded  
4 and declared a non-starter for wagering purposes.

5 I hope you all can understand what I'm saying.  
6 When they get to this proposed fair start pole, if  
7 the horse hasn't reached that before the starting  
8 gate gets to the start pole, which in the case of  
9 this will be 330 feet back, then that horse would  
10 be refunded. And everyone that wagered on them  
11 gets their money back. And the rest of the horses  
12 aren't affected by it.

13 There's two big concerns. One is that the  
14 bettors think they are getting a fair deal, which  
15 they are. It's a fair deal. To be 330 feet back,  
16 the horse really has to do something stupid.  
17 Sometimes you'll see a horse coming to the gate,  
18 it'll just be hopping like a rabbit. And in that  
19 case, now we can just go. Before this, the starter  
20 would say we've got to turn them. We have a bad  
21 acting horse. Now that horse is out and the rest  
22 of the horses aren't affected so that everyone gets  
23 their money back.

24 The only push back that you would ever see, I  
25 think, is maybe from management, but the management

1 at Hoosier Park -- and I'm speaking for them now --  
2 they love racing. And Rick Moore, he's up there  
3 every night. And he loves racing. And he wants to  
4 give the bettor a fair chance.

5 So when I spoke to him about it, I said, you  
6 know, there's going to be some refunds. Yeah. I  
7 said but in my mind whenever you refund somebody  
8 \$10, they bet 20 back because, wow, we got a good  
9 deal on that. Rick had the same thoughts and so  
10 did the horsemen's organization with Jack. They  
11 all thought that it's a good idea because it  
12 doesn't disrupt the rest of the race, and it gives  
13 the betting public a fair shake.

14 And I believe that the publicity from it will  
15 be tremendous for Indiana racing. We can put up a  
16 big story in the trade magazine, the fairest state  
17 of all Indiana, something like that.

18 I don't see any problems with it. And I think  
19 it's a really good thing for racing. I don't think  
20 there is anyone that will have an objection.

21 CHAIRMAN WEATHERWAX: That's why it's an  
22 emergency rule because you want to do this as soon  
23 as possible.

24 COMMISSIONER SCHENKEL: So would this start  
25 tonight?

1           JOE GORAJEC: No, it starts -- Lea can speak  
2 to when it starts.

3           MS. ELLINGWOOD: It starts as soon as it's  
4 filed with Legislative Service Agency so usually  
5 the next day.

6           CHAIRMAN WEATHERWAX: You're trying to do it  
7 before this big weekend?

8           MIKE HALL: I don't know about that.

9           JOE GORAJEC: We have to get the pole in.

10          MIKE HALL: The pole's there, but we need to  
11 paint it and put fair start pole.

12          COMMISSIONER SCHENKEL: It will be within  
13 days.

14          MIKE HALL: Yeah, it will be within days. And  
15 what we don't want is we had a case earlier this  
16 year where a horse wouldn't trot so they had a  
17 recall for him. They turned him around. You can  
18 see a couple of the other ones are getting pretty  
19 hot. They went to the gate again, and he wouldn't  
20 trot again. So there's two times.

21          He scratched. He's gone off the track. Then  
22 they line them up again. First two favorites went  
23 off stride at the start because they were disrupted  
24 by the two recalls. That's what we don't want to  
25 happen.

1           CHAIRMAN WEATHERWAX: So I understand this,  
2 this will be before the starting gate point, but  
3 those horses have to be on gait before they get to  
4 the starting gate pole?

5           MIKE HALL: Not on gait, they just have to  
6 reach it. Before the starter says go, they have to  
7 be within 330 feet of the start line or else they  
8 are not going to be refunded.

9           CHAIRMAN WEATHERWAX: All these people know  
10 this. They know the rules of the fair start pole,  
11 all the horsemen, all the drivers.

12          MIKE HALL: We'll give them a lesson on it.

13          CHAIRMAN WEATHERWAX: They maybe don't know  
14 about all about it yet?

15          MIKE HALL: No, I don't think they do. Some  
16 of them that have raced in Canada would know it,  
17 but it's fairly simple.

18          JOE GORAJEC: Mike, do you know of any other  
19 state in the country that has a rule that applies  
20 to fair start?

21          MIKE HALL: No. I proposed this five years  
22 ago in Pennsylvania. It just sat there. I  
23 actually wrote an article about it. I got a lot of  
24 responses back that that's a great idea, when are  
25 you going to put it in.

1           JOE GORAJEC: You can sit down and work with  
2 Jessica on the press release this afternoon.

3           MIKE HALL: Yes.

4           JOE GORAJEC: Put the fairest of all in there.

5           CHAIRMAN WEATHERWAX: This will be a pole big  
6 enough that spectators will see it?

7           MIKE HALL: Yeah, I mean, if we have any extra  
8 yellow paint, something bright that everyone can  
9 see it. Immediately if a horse doesn't make it to  
10 that pole, we'll put up the inquiry sign on the  
11 board so people aren't throwing their tickets on  
12 the ground. The people, the bettors are going to  
13 learn that, oh, that horse might not have made the  
14 pole. Sometimes they're going to be happy, and  
15 sometimes they're not when he's five feet past it,  
16 but you have to have a point somewhere.

17          CHAIRMAN WEATHERWAX: It sounds like a unique  
18 idea.

19          COMMISSIONER SCHENKEL: I move approval.

20          COMMISSIONER LIGHTLE: I love it as a former  
21 owner of Standardbreds.

22          CHAIRMAN WEATHERWAX: Do you want to make a  
23 second?

24          COMMISSIONER LIGHTLE: Yes, I will make a  
25 second. I think it's a great idea.

1 CHAIRMAN WEATHERWAX: Questions? All those in  
2 favor say "aye."

3 THE COMMISSION: "Aye."

4 CHAIRMAN WEATHERWAX: Thank you, Mike.

5 Last but not least, consideration of  
6 readopting administrative rules scheduled to  
7 expire. I thought we had reviewed every rule  
8 possible.

9 MS. ELLINGWOOD: It seems like that. There  
10 were 900 some but magically, no. Administrative  
11 rules automatically expire on the first day of the  
12 seventh year after they're adopted. In Indiana  
13 Code 422 established a process that allows an  
14 agency to readopt rules, those rules that are  
15 expiring without changes. That's the process we  
16 followed for these two rules.

17 This year the following rules are scheduled to  
18 expire: 71 IAC 6-1-2 regarding prohibitions on  
19 claims, and 71 IAC 14-1-2 regarding the definition  
20 of Indiana sired. There is one other rule that's  
21 scheduled to expire, but staff anticipates there  
22 will be a change made to the rule before it expires  
23 so we're holding off on readopting that rule at  
24 this point.

25 Accordingly, we respectfully request that the

1 Commission adopt without changes 71 IAC 6-1-2 and  
2 71 IAC 14-1-2. As always, I'm happy to answer any  
3 questions you may have.

4 CHAIRMAN WEATHERWAX: Thank you. There will  
5 be no public policy changes to those rules.

6 MS. ELLINGWOOD: No, the rules will stay  
7 exactly the same.

8 CHAIRMAN WEATHERWAX: Without further  
9 discussion, do I hear a motion?

10 COMMISSIONER MCCARTY: I move for said rules  
11 71 IAC 6-1-2 and 71 IAC 14-1-2 readoption without  
12 changes.

13 COMMISSIONER LIGHTLE: Second.

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

16 THE COMMISSION: "Aye."

17 CHAIRMAN WEATHERWAX: They passed. I don't  
18 know of any old business. New business, I don't  
19 think there is anything else left to talk about.

20 MS. ELLINGWOOD: There is one thing I forgot  
21 to mention. The Commission has been lucky enough  
22 to have two really good interns this summer. One  
23 of them is here today. I wanted to recognize both  
24 of them. The first is Tim Mills, who is a  
25 first-year student at Indiana law school in

1 Indianapolis. And the second, who is with us  
2 today, is Dale Pennycuff, who is a second-year  
3 student. Both have been exceptionally helpful.  
4 Most of the research you see before you that  
5 originated from me has actually originated from  
6 them.

7 CHAIRMAN WEATHERWAX: Thank you for your help.  
8 Okay. If there is no other further business to  
9 come before the Commission, we are adjourned.

10 (The Indiana Horse Racing Commission meeting  
11 was adjourned at 11:32 a.m.)

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1 STATE OF INDIANA  
2 COUNTY OF JOHNSON  
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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 30th day of  
16 July 2015.

17 *Robin P. Martz*



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