

**In the Matter Of:**

*INDIANA HORSE RACING COMMISSION MEETING*

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**IHRC Meeting**

*March 10, 2015*

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INDIANA HORSE RACING COMMISSION  
MEETING

HELD ON  
MARCH 10, 2015  
9:00 A.M.

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140 N. SENATE AVENUE  
INDIANAPOLIS, INDIANA

TAKEN BY:  
ROBIN P. MARTZ, RPR  
NOTARY PUBLIC

1 APPEARANCES

2 Thomas Weatherwax, Chairman  
Greg Schenkel

3 George Pillow  
Susie Lightle

4 Joe Gorajec, Executive Director

5 Lea Ellingwood, Esq.

6 Holly Newell, Esq.

INDIANA HORSE RACING COMMISSION

7 1302 North Meridian Street, Suite 175  
Indianapolis, IN 46202

8 AGENDA

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1           CHAIRMAN WEATHERWAX: It is now 9:00, and I'd  
2 like to start our meeting on a timely basis because  
3 we have a full agenda. On behalf of all the other  
4 fellow commissioners, I want to welcome each and  
5 every one of you here today for our hearing and  
6 welcome you.

7           At this time, Robin, would you raise your  
8 hand.

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

11          CHAIRMAN WEATHERWAX: First of all, I think  
12 the first order of business would be to recognize a  
13 true leader in our industry, a pillar in this  
14 community, and someone that a lot of us have come  
15 to know for a great long time. That's Steve  
16 Schaefer. As you well know, Steve's funeral was  
17 yesterday. Some of you were there. And I'm sorry  
18 I couldn't make it.

19          I'd just like to take a moment right now for a  
20 moment of silence to pay tribute to a beautiful  
21 individual.

22          (At this time a moment of silence was  
23 observed.)

24          CHAIRMAN WEATHERWAX: Thank you. Also, we are  
25 honored today to have a former chair of the Indiana

1 Horse Racing Commission, Sarah McNaught.

2 (Audience applause.)

3 CHAIRMAN WEATHERWAX: I offered to have her  
4 come up here and sit with us, but she didn't think  
5 it would be proper.

6 We also have -- first of all, I think we  
7 should take a moment to review the minutes of our  
8 last meeting. I would ask my fellow commissioners  
9 if you have any corrections or if there was any  
10 additions to the minutes as presented to us.

11 COMMISSIONER SCHENKEL: Having missed that  
12 meeting, but I still will go ahead and offer a  
13 motion to accept.

14 CHAIRMAN WEATHERWAX: That's blind faith.

15 COMMISSION LIGHTLE: I would second.

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

18 THE COMMISSION: "Aye."

19 CHAIRMAN WEATHERWAX: They are approved.

20 This is a time when I think, Joe, you would  
21 like to introduce some really outstanding  
22 individuals that are going to be a part of, a key  
23 part of our association. And that's the new  
24 stewards and judges.

25 JOE GORAJEC: Thank you, Mr. Chairman. It's

1 my pleasure to introduce to the Commissioners and  
2 to the public our new team of judges for 2015 and  
3 beyond. We have three new judges. Mike Hall is  
4 our presiding judge. And Mike's in the back. Wave  
5 Mike. And with Mike is Kevin Gumm and Dave Magee.

6 (Audience applause.)

7 JOE GORAJEC: And you might have read a little  
8 bit more about Dave than the others because Dave  
9 gave up a Hall of Fame driving career to join our  
10 team in the judges' stand. We are delighted to  
11 have him and the others. They're a great addition.

12 I would like to say that our former presiding  
13 judge, Tim Schmitz, who has done an outstanding job  
14 for us throughout the years, has been with the  
15 Commission as presiding judge for 19 years, is  
16 leaving us on very, very good terms. We have  
17 entered into a contractual relationship with him  
18 for this season. He is going to be helping our new  
19 team with the transition. In fact, he will be  
20 there on Saturday for the first set of qualifiers.

21 So I would just like to thank Tim for his  
22 years of service and just wanting to reiterate that  
23 he's departing from the racing commission on the  
24 absolute best of terms.

25 CHAIRMAN WEATHERWAX: We welcome and are very

1 honored to have these outstanding gentlemen be a  
2 part of our racing team. I also asked the staff if  
3 it was a typo when I was looking at David Magee's  
4 bio on his wins. There was too many zeros there.  
5 But that's an outstanding career for all of you.

6 And I think that what that tells me as a  
7 layman person that the drivers and the owners will  
8 have a lot of respect for you because you've been  
9 there and done that. I think that speaks volumes  
10 for our state. We are so happy to have you.

11 Next on our agenda we have Holly. Is this  
12 something you are going to take over right now?

13 MS. NEWELL: That's fine. Yes, sir.

14 CHAIRMAN WEATHERWAX: Why don't you go ahead  
15 and explain to us the steps because this is a  
16 little different procedure than having Lea here  
17 with you here. We will have a different approach.

18 MS. NEWELL: Right. Yes, we are today. Item  
19 number two on the agenda is the consideration of  
20 the objections filed by Respondent Tom Amoss to  
21 recommended orders issued by the Administrative Law  
22 Judge Gordon White on October 14, 2014 and  
23 January 28, 2015. Mr. Amoss objected to two  
24 orders. The first is Judge White's refusal to  
25 Mr. Amoss's Motion to Dismiss. That's the October

1 order. And the second is Judge White's  
2 recommending that Commission staff's Motion for  
3 Summary Judgment be granted. That's the January  
4 order.

5 I will leave it to the parties to address the  
6 details of the case, but the underlying  
7 disciplinary action stems from a positive equine  
8 drug test in 2011. Procedurally, the case has  
9 taken a number of turns, but as stated, at issue  
10 today are the denial of Amoss's Motion to Dismiss  
11 and the granting of staff's Motion for Summary  
12 Judgment.

13 The granting of a summary judgment means that  
14 the ALJ did not conduct an evidentiary hearing,  
15 instead concluding that staff was entitled to  
16 judgment as a matter of law, and there were no  
17 questions of fact that required an evidentiary  
18 hearing.

19 The recommended order provides for a 60-day  
20 suspension of Mr. Amoss's IHRC license, a \$5,000  
21 fine, and loss of purse related to the race at  
22 issue. The Commission has reviewed the filings of  
23 both parties and will consider today's arguments.  
24 The Commission will consider only the record before  
25 it. I do have with me the entire record if there



1 are any issues with it.

2 After today's arguments close, the Commission  
3 will deliberate and have the option to affirm,  
4 modify, dissolve, or remand for further proceedings  
5 the proposed decision of the ALJ. Today I will be  
6 acting as adviser to the Commission and not as an  
7 advocate for Commission staff. Commission staff is  
8 represented by Robin Babbitt and Lea Ellingwood.  
9 Mr. Amoss is represented by David Pippen, Karen  
10 Murphy, and Pete Sacopulos, who entered his  
11 appearance today.

12 We are now ready for oral arguments from both  
13 sides. Each party has ten minutes. I will give  
14 notice at the two-minute mark and the one-minute  
15 mark. Any Commissioner may ask a question at any  
16 time. Because Mr. Amoss is challenging the ALJ's  
17 objections, Mr. Sacopulos will go first.

18 MR. SACOPULOS: Good morning.

19 CHAIRMAN WEATHERWAX: Would you state your  
20 name.

21 MR. SACOPULOS: I will, yes. Thank you for  
22 the opportunity to be here today to address the  
23 Indiana Horse Racing Commission. My name is Pete  
24 Sacopulos. I appear before you today as counsel  
25 for Tom Amoss, who is here with me. I practice law

1 in Terre Haute, Indiana and here today on behalf of  
2 Mr. Amoss. He is pleased to have the opportunity  
3 to address you today. And at this time I would ask  
4 him to do that. Tom.

5 TOM AMOSS: Thank you for allowing me to be  
6 here today. At last April's Commission meeting,  
7 Mr. Gorajec came to you and recommended Indiana  
8 adopt thresholds for approved therapeutic medicine,  
9 including the threshold of one nanogram, which is  
10 one billionth of a gram, for methocarbamol citing  
11 the latest science in Europe to abolish the  
12 outdated and archaic system called zero tolerance  
13 for therapeutic medicine. No racing jurisdiction  
14 in the United States uses this system. As  
15 Commissioners, you unanimously approved this.

16 That is the hard science of this case which  
17 dates back to 2011. Hero Heart ran on October 21,  
18 2011 and finished second. After the primary lab  
19 findings report on November 4th and the split lab  
20 finding data was returned on February 22, 2012, we  
21 were convinced the case would be dismissed based on  
22 the rules governing split sample confirmation.

23 As Mr. Gorajec stated in that same April 2014  
24 commission meeting, only if both labs confirm the  
25 same drug is a positive test called. But

1 immediately after our motion to dismiss, Commission  
2 moved away from the statute and made a motion to  
3 test the sample a third time. Every case in  
4 Indiana history has been decided by these two  
5 tests, the split test versus the primary test as  
6 your rules clearly state. This third test was  
7 going to be something that had never occurred in  
8 Indiana racing before.

9 We fought this motion and asked the case go  
10 before the Commission. But after a prolonged legal  
11 battle, the Commission's request was granted. We  
12 take strong exception to the Commission's continual  
13 sentiment that my sample tested positive every time  
14 it was tested for if that were true, this case  
15 would have been brought before you in a timely  
16 fashion.

17 We ask you to consider a very straightforward  
18 question. If the Commission were satisfied with  
19 the primary split sample findings, why did they  
20 petition for an unprecedented third test. Why  
21 didn't my case go before the Commission in the  
22 spring 2012 for dismissal as we requested.

23 The motion was granted by the ALJ. And  
24 despite our written objection of using Doctor Sams  
25 of HFL Laboratory, he was allowed to do the

1 testing. The Commission got everything they  
2 requested; the ability to test the blood in the  
3 sample and use the laboratory they petitioned for.  
4 The ALJ specifically asked in his order for the  
5 amount of methocarbamol to be quantified. Despite  
6 all positive test results being reported with a  
7 measurement, this would be the first and only time  
8 my sample was measured for the amount of  
9 methocarbamol.

10 In the summer of 2013 the results of my blood  
11 sample returned. Doctor Sams quantified the level  
12 of methocarbamol, as he was required to do, and  
13 reported the amount to be an estimated one  
14 nanogram, one billionth of a gram. It has come to  
15 my attention the Commission is going to challenge  
16 the finding and claim that it might be higher than  
17 the one nanogram reported. I find this  
18 astonishing.

19 Doctor Sams has the ability to test the sample  
20 with the most updated and sophisticated equipment  
21 available. One nanogram methocarbamol was the hard  
22 science requested by the Commission. It was  
23 performed with Commission staff present at HFL  
24 Laboratory and reported with an extensive data  
25 packet by their scientist, Doctor Sams.

1           In the April 2014 Commission meeting,  
2 Mr. Gorajec responded to a question from Chairman  
3 Weatherwax. And I quote "Commissioner Weatherwax,  
4 you mentioned concerns about positive tests being  
5 in small minute quantities. To the extent that a  
6 drug is on this list, and methocarbamol is on the  
7 list, and there is not a threshold, then a horseman  
8 runs the risk of having a positive called on him  
9 for a drug that has been demonstrated by the  
10 research of the RMTTC and approved by the RCI not to  
11 have a pharmacological effect on the horse. The  
12 option of doing nothing here is having the horsemen  
13 run the risk of getting a positive test that need  
14 not be called a positive."

15           Mr. Gorajec's quote speaks directly to my  
16 case. How is any punishment justified if the  
17 Executive Director feels that this one nanogram of  
18 methocarbamol should not be called a positive? In  
19 another case that occurred before the adoption of  
20 the RMTTC rules, it was ruled on using the most  
21 current science, Roger Welch, a Standardbred  
22 trainer, had a horse test positive for tramadol,  
23 which carries a Class A penalty. Class A penalty  
24 drugs have the highest potential to effect the  
25 performance and have no medical use in horses. The

1 ARCI penalty is a one-year suspension. This  
2 violation occurred in 2012. The following spring  
3 in 2013, Mr. Gorajec gave Mr. Welch a penalty of 14  
4 days saying, and I quote, "The Commission staff has  
5 done their due diligence reviewing the positive  
6 test. And a determination was made that the  
7 current RCI classification on this particular drug  
8 does not reflect the current science, which shows  
9 it better considered a Class B drug."

10 Mr. Gorajec set the precedent for using the  
11 most current science with this case. I'm asking to  
12 be treated in the same way with the Commission  
13 using the current science. And the current science  
14 shows one nanogram of methocarbamol is not a  
15 violation.

16 The Commission has talked about my record and  
17 pointed to a small window of it. I have been  
18 training horses since 1987. And in 29 years, I've  
19 been cited ten times for medicine positives. All  
20 of these overages were approved therapeutic  
21 medicine and fall in the lowest category of  
22 penalty. Each was treated with a fine. Having run  
23 over 12,000 horses in my career, that averages to  
24 one violation every 1200 starts or one violation  
25 every two and a half years. I did not have any

1 violation in 2012 or 2013, but I did have an  
2 overage in August 2014. I have never been accused  
3 of any violation that involved a suspension. That  
4 is my complete record.

5 As for the alleged five positive tests in a  
6 year which the Commission has referred to, they  
7 make no reference to the fact that three were  
8 within a month, and I was not notified of any them  
9 until all the horses had run.

10 They also don't mention that I appeared before  
11 the Kentucky racing commission in February 2012  
12 concerning the three overages, which included this  
13 Indiana-alleged overage. The Kentucky commission  
14 treated the three violations as one, and I was  
15 given a fine. Given that the ARCI penalties are  
16 the same state to state, we asked Indiana to  
17 reciprocate with Kentucky. The Commission refused.

18 What is the explanation concerning many other  
19 trainers that have had multiple positive tests in  
20 Indiana this past year who were treated differently  
21 from me? They include Wayne Minnock who had four  
22 positives in Indiana in one month for  
23 dexamethasone. Dexamethasone and methocarbamol  
24 fall under the exact same ARCI penalty guidelines.  
25 Mr. Minnock was only fined. I understand the

1 positives came close together and were counted as  
2 one offense. I don't understand why mine were  
3 counted individually when his were not.

4 The Indiana statutes have a whole section on  
5 due process. Yet, when applied to my case, I  
6 question whether the Indiana Administrative Code or  
7 the Indiana Horse Racing statutes were followed. I  
8 have never even had a disciplinary hearing with the  
9 stewards.

10 My case began with Mr. Gorajec calling me on  
11 the phone and telling me my penalty. From there,  
12 my case was assigned to an administrative law  
13 judge. And after almost three years he gave a  
14 recommended order for summary judgment. Summary  
15 judgment is a rarely used outcome that has strict  
16 guidelines. And when defined in Webster's  
17 dictionary, it says there's no disputed facts in  
18 the case. How can this case be a candidate for  
19 summary judgment? Just as importantly, how can  
20 this case be affirmed making it a dangerous path  
21 for future cases when the Commission staff sees  
22 fit.

23 At last spring's Commission meeting,  
24 Commissioner Pillow asked Mr. Gorajec about the  
25 appeals process. Mr. Gorajec pointed out that he



1 could only make a recommendation. And that the ALJ  
2 will then make a recommendation and present it to  
3 the Commission. And the Commission is the  
4 decision maker.

5 Rule 71 IAC 8.5-1-7 from the Indiana  
6 Administrative Code pertaining to drug  
7 classification and penalties says the penalties are  
8 to be set by the most current ARCI guidelines.  
9 This is the exact rule we discuss later today on  
10 the cobalt regulation in agenda item six. How does  
11 this same rule apply to the cobalt cases from last  
12 year? Does it apply now where cobalt is a one-year  
13 suspension or after the changes to the statute  
14 occur at this Commission meeting making it a  
15 two-week suspension?

16 This is another example of medication  
17 violations being regulated by the most current ARCI  
18 guidelines despite the violations occurring in the  
19 past. Again, I'm only asking to be treated in the  
20 same fashion.

21 The suspension of any license should be  
22 handled with great care and after careful  
23 consideration. It should be about fairness. For  
24 one nanogram methocarbamol Mr. Gorajec has asked to  
25 be suspended 60 days, remove the horses from my

1 barn, and require that they be given to trainers  
2 with no affiliation to me. This will put 32 of my  
3 employees out of work. I'm also to be fined  
4 \$5,000. He's asking you to severely damage my  
5 career as well as my reputation. I have spent over  
6 \$130,000 defending myself. The taxpayers of  
7 Indiana have spent at least that much money as this  
8 case is being handled by an attorney outside the  
9 Commission staff.

10 I respectfully ask each Commissioner, how much  
11 more penalty do I have to suffer for one billionth  
12 of a gram of an approved therapeutic medicine that  
13 does not constitute a violation in any racing  
14 jurisdiction in the United States? Thank you for  
15 taking the time to listen to me.

16 MR. SACOPULOS: Holly has explained the  
17 options that you have, but there are some nuances  
18 to those options. One is that you can as a  
19 commission find that the primary test was not  
20 confirmed by the split sample, which we believe to  
21 be the case. If that is, in fact, what your  
22 finding is, then pursuant to 71 IAC 8.5-3-4, there  
23 can be no penalty against Mr. Amoss.

24 If on the other hand you find that the split  
25 sample does confirm the primary test, then we look

1 to whether or not the rule that you all approved in  
2 April of 2014 should be applied retroactively.

3 Under theory of amelioration, rules that are more  
4 lenient are usually, under Indiana law, applied  
5 retroactively. Those that are more stringent apply  
6 proactively. If we apply the rule that was  
7 approved by this commission allowing one nanogram  
8 of methocarbamol in April of 2014 and apply it  
9 retroactively, the outcome would be the same. The  
10 test results would be that there was not more than  
11 one nanogram. The result would be no penalty  
12 against Mr. Amoss.

13 A third result that can happen here is that  
14 you find that --

15 MS. NEWELL: Pete, you're about out of time.  
16 Wrap it up.

17 MR. SACOPULOS: I will -- that the split is  
18 confirming, and that you will not apply the rule  
19 retroactively. If that's the case, then you will  
20 have to surrender the purse and would ask that an  
21 appropriate and fair resolution be presented with a  
22 fine that would be appropriate and a few number of  
23 days but certainly not 60 as sought by the  
24 Commission.

25 Finally, and my last point is, summary

1 judgment in this case is wholly and completely  
2 inappropriate. Under Indiana Trial Rule 56, it  
3 sets the standard. There can be no material  
4 dispute as to a material fact. The main fact in  
5 this case is disputed, whether or not the split is  
6 confirming of the original primary test. So a  
7 summary judgment motion in this case is not only  
8 inappropriate, its entirely inappropriate.

9 Those are our positions. Mr. Amoss and I  
10 would be glad to answer any questions. We are glad  
11 for the opportunity to address you today.

12 CHAIRMAN WEATHERWAX: Thank you so much.

13 MS. NEWELL: Mr. Babbitt.

14 MR. BABBITT: Mr. Chair, Vice-chair, Members  
15 of the Commission, Executive Director, counsel.  
16 I've got ten minutes. I would love to respond to  
17 everything they said. We don't have time. This  
18 thing's been going on three years. So I'm going to  
19 get to the crux of the matter.

20 As you know, Lea and I are representing the  
21 Commission staff in this matter. This race  
22 happened in late 2011. I was finishing my tenure  
23 as outside counsel to the Commission. Lea was  
24 beginning hers. So we've decided that I would  
25 continue in this case. So we're acting together.

1           Mr. Amoss, on the other hand with  
2 Mr. Sacopulos's appearance, is now being  
3 represented by four lawyers. They are very capable  
4 lawyers. They have left nothing on the table. And  
5 that probably is one of the reasons that it's taken  
6 so long to get here to you today. As the ALJ put  
7 this recommended order, it's right on the mark, and  
8 we're going to ask you to affirm it.

9           This is a fairly simple case on the facts as  
10 it comes to the Commission, but it had some complex  
11 legal issues. And so the Commission designated an  
12 administrative law judge, who is a lawyer, a very  
13 good lawyer known to the Commission, who listened  
14 to every argument that was made, thoughtfully and  
15 deliberately ruled on those arguments, and  
16 ultimately came up to exactly the right conclusion.  
17 And I submit to you, and I will talk to you a  
18 little bit about this as I get through the  
19 argument, the fairest possible result under the  
20 circumstances.

21           Why is the only real option to affirm the ALJ?  
22 Well, the facts are simple. There was a third  
23 methocarbamol positive that Mr. Amoss had in 2011.  
24 He'd had in late 2010, within 365 days of that, a  
25 naproxen positive in Louisiana, which was his

1 fourth violation in the period of 365 days.  
2 Because of that, the Association of Racing  
3 Commissioner International guidelines say that you  
4 look at multiple violations within a 365-day  
5 period. And that a minimum fine and suspension is  
6 a suspension of 30 days and a fine of \$2500.

7 Because there were four, the Executive Director  
8 recommended to the ALJ, and the ALJ confirmed that  
9 it was appropriate, that a 60-day suspension and a  
10 \$5,000 fine is appropriate.

11 Now, I'm going to talk about the summary  
12 judgment motion because we have a very different  
13 view of summary judgment. Summary judgment has  
14 been used in other cases before the Commission.  
15 The rule, Trial Rule 56C says that if you file a  
16 motion, an adverse party has 30 days after service  
17 of that motion to serve any opposing affidavits and  
18 then to designate to the court or the  
19 administrative law judge each material issue of  
20 fact which the party asserts precludes the entry of  
21 summary judgment.

22 So in this particular case we got through the  
23 testing issues, and that's a whole other  
24 discussion. They were well fought. And ultimately  
25 what Mr. Amoss didn't tell you was when we started

1 this case in very early 2012, his lawyers suggested  
2 to us that a third test be done, and that it  
3 quantify the amount of methocarbamol. We agreed  
4 with that. So it was their suggestion.

5 We both agreed that it would go to Doctor Sams  
6 at HFL. They then decided at some point  
7 unilaterally that they didn't want the test. So  
8 they didn't go to the ALJ and say can we stop the  
9 testing. They went to Doctor Sams and said stop  
10 the testing.

11 We went forward and said we are very  
12 comfortable, not only with the original test but  
13 with the split. We think that there's a violation  
14 on that. But in order to bend over backwards to be  
15 fair with you, here's what we'll do. We will do a  
16 third unprecedented test. And if it comes back  
17 negative, we'll treat it like a split sample.

18 A negative is no methocarbamol in the system.  
19 If it comes back negative for methocarbamol, we'll  
20 dismiss the case because we don't want there to be  
21 any issue. We want to get to the truth. That's  
22 what we're interested in.

23 Even though they had agreed to it and  
24 suggested it, they decided that they would fight it  
25 for months. We had many filings, many arguments,

1 etc. And the ALJ said go forward with the testing.

2 Now, why did we ask it to be quantified?

3 Because that was the original test they agreed to.

4 And we didn't want to start changing the test. We

5 didn't need it to be quantified, but we did it

6 because that was the test they asked for.

7 Let me get back to the summary judgment. So

8 you've got this process that, and it's simply a

9 put-up-or-shut-up process. When you file a summary

10 judgment, as we did February 3, 2013, we filed a

11 motion. We filed four affidavits. We filed all

12 the test results. The Executive Director filed an

13 affidavit. All the scientists filed an affidavit.

14 We said here's why there's a violation, and here's

15 why the proposed sanction is appropriate.

16 They then had an obligation for 30 days to

17 come back in and say here are all these things.

18 They asked for one continuance. I agreed to it.

19 They then came in and said we need more time, we

20 need to do discovery.

21 Here's what they said in their motions. Very,

22 very interesting. They said "In order to designate

23 each fact that will preclude the entry of summary

24 judgment, Trainer Amoss is obligated under the

25 trial rules to support relevant supporting



1 evidence." So they have to not only provide the  
2 supporting evidence, but then they to have  
3 designate it. Remember, they have three different  
4 lawyers who were acting for them during this  
5 period.

6 He asked for additional time at that point.  
7 We objected to it. The ALJ said take as much time  
8 as you need. Go forward with the process. They  
9 understood exactly what the process was. That was  
10 in their filing.

11 So what happens? What did they do? They came  
12 forward at the time their response was due, and  
13 they said dismiss the case for these other reasons.  
14 What didn't they do? They didn't say, here are the  
15 designated facts upon which our opposition is  
16 based. Here are the things that you should  
17 consider ALJ. They didn't file any of those  
18 things. They came back and said on a legal basis,  
19 the case should be dismissed. They did not meet  
20 the very standard that they asked for.

21 Now, I think it's very important because if  
22 you don't do that, the Supreme Court has said  
23 Indiana courts are limited. Before I get there,  
24 the legislature in 2011 enacted a provision of the  
25 Indiana Administrative Orders and Procedures Act

1 that made summary judgment the same as in a trial  
2 court. And that's important because it had been a  
3 little bit different. The legislature comes in and  
4 says we're going to do it the same way as courts.

5 Here's the language in the legislation,  
6 subsection B. "Except as otherwise provided  
7 in this section, an administrative law judge shall  
8 consider a motion filed under subsection A as would  
9 a court that is considering a motion for summary  
10 judgment filed under Trial Rule 56 of the Indiana  
11 Rules of Trial Procedure.

12 The legislature is very smart. And they could  
13 have said doesn't apply to the Indiana Horse Racing  
14 Commission because the rules don't apply to the  
15 Utility Regulatory Commission and a lot of other  
16 agencies. No, it applies to the horse racing  
17 commission. They said the agency has to treat it  
18 like a court.

19 Why is that important? Because the Indiana  
20 Supreme Court in the case that we've cited to the  
21 ALJ, the HomeEq Servicing versus Baker case says  
22 that if you don't submit designations and  
23 affidavits or ask for a continuance of the hearing  
24 before it goes forward to do these things, if you  
25 rest on the record, you can't come back later and

1 say, okay, but consider this. They say, the  
2 Supreme Court said the trial court lacks discretion  
3 to permit the party to thereafter file a response  
4 or submit information to contest it. They had  
5 months, months and months and months and decided  
6 not to do it.

7 Now what are they doing? They went to the  
8 ALJ. They didn't submit it. The ALJ looks at all  
9 the evidence and says, hey, I'm looking at what was  
10 designated. Absolutely appropriate. You had all  
11 the time in the world. You had fine legal  
12 representation. You didn't comply with the rules.  
13 I can't consider all of this stuff you're throwing  
14 up against the wall. Much of it that Mr. Amoss  
15 talked about today.

16 We've got responses to all of that, by the  
17 way, but we can't get into those because they  
18 didn't designate them. They didn't put them in  
19 play as they should have.

20 Now, I do this very, very respectfully. I  
21 submit to you if a judge doesn't have the authority  
22 to do that under Trial Rule 56, then the Commission  
23 can't let a person like Mr. Amoss sandbag the ALJ,  
24 not put the information out there and say but I'm  
25 going to come and beg with the Commission my

1 version of the facts, only my version of the facts  
2 and ask you to change the result procedurally even  
3 though if a judge, if somebody did that to a judge,  
4 a judge couldn't do that. If a judge did that, it  
5 would go up to the court.

6 The court would say you can't do it. You have  
7 ground rules you didn't live by. Due process goes  
8 both ways. It goes not only for a person who is  
9 the subject of the disciplinary action, but it goes  
10 for the Commission. It protects the interest of  
11 all of the horsemen because, quite frankly, these  
12 are the rules that all of the horsemen have to play  
13 by. So we can't pick out Mr. Amoss and say he's a  
14 nice guy. He's a nationally renowned trainer so  
15 we'll treat him with a different set of rules.  
16 That's what he's asking you to do.

17 My respectful premise to you is it's not only  
18 appropriate to affirm the administrative law  
19 judge's very thoughtfully reasoned decision and  
20 very complete and the right decision, but it's  
21 something that you need to do. You don't have the  
22 discretion now to come in and reopen the record.  
23 In a way that would create chaos in the  
24 disciplinary process. And, quite frankly, it  
25 wastes our time as we go through and try to vet

1 this out --

2 MS. NEWELL: Time's up.

3 MR. BABBITT: My time's up. We also have, I  
4 would simply tell you the retroactivity argument  
5 didn't fly. And we object to that completely.  
6 There's no factual basis for it either. Thank you  
7 so much.

8 CHAIRMAN WEATHERWAX: Thank you very much. We  
9 heard the testimony from both sides. Holly, is  
10 there anything else? Do you want to give us a  
11 summary on this?

12 MS. NEWELL: Just procedurally speaking, you  
13 are at the point now where you can begin your  
14 deliberations. You still are welcome to ask  
15 anybody any questions that you may have. And  
16 you're at the point where you're going to look at  
17 these two orders, and you are going to decide if  
18 you want to affirm, modify, dissolve, or remand.

19 CHAIRMAN WEATHERWAX: Of course, there's a lot  
20 of testimony you heard, but also we've read a lot  
21 about this case. You gave me this to read over the  
22 weekend.

23 MS. NEWELL: That's just part of it, yes.

24 CHAIRMAN WEATHERWAX: Is this what Mr. Amoss  
25 provided that Robin was saying was more or less

1 after the fact and couldn't be considered?

2 MS. NEWELL: Right, there is contention  
3 between the parties about what was on the record  
4 that could be considered by the Commission. The  
5 Commission can only consider what was made part of  
6 the record at the appropriate time.

7 CHAIRMAN WEATHERWAX: What I have done for  
8 three days is I have read in detail something  
9 you're telling me I can't take and look at.

10 MS. NEWELL: I would defer to arguments from  
11 the parties on that, but, yes, I believe there are  
12 certain items within that particular filing that  
13 Commission staff is arguing was not properly put  
14 before the ALJ. Therefore, it is not proper for  
15 your consideration at this time.

16 CHAIRMAN WEATHERWAX: Have any of my fellow  
17 Commissioners read all this that came after the  
18 original paperwork was given?

19 MS. NEWELL: That was the substantial e-mail  
20 filing that you received.

21 COMMISSIONER LIGHTLE: Is that the one we just  
22 received?

23 MS. NEWELL: A week ago.

24 CHAIRMAN WEATHERWAX: I don't want to confuse  
25 the issue. It's just that we have to kind of focus

1 on what we can deliberate and what we can look at  
2 and what we can accept for this case because a lot  
3 of this is done to defend and help Mr. Amoss by  
4 throwing doubt on what we're looking for. We can't  
5 look at things that we can't already be accepted  
6 through the judicial process that got us here.

7 MS. NEWELL: To the extent that you guys are  
8 deliberating and you begin to consider anything  
9 that might be a concern because it was not  
10 presented for the record, I would welcome  
11 Mr. Babbitt or Miss Ellingwood or Mr. Sacopulos to  
12 speak to that issue. They are going to be far more  
13 familiar with the intricacies of this record than I  
14 am, but, yes, there is definitely some question as  
15 to what was provided in that filing that you may  
16 properly consider.

17 CHAIRMAN WEATHERWAX: Go ahead, Commissioner  
18 Lightle.

19 COMMISSION LIGHTLE: I have a question about  
20 that if everything wasn't presented, I have a  
21 problem with that.

22 CHAIRMAN WEATHERWAX: This was additional  
23 testimony or records that I received. You didn't  
24 get this.

25 MS. NEWELL: Yes, she did. Everybody received

1 it.

2 COMMISSIONER LIGHTLE: I received it.

3 COMMISSIONER SCHENKEL: We all got it.

4 COMMISSIONER LIGHTLE: Everything?

5 MS. NEWELL: You have everything. The filing  
6 was made March 2nd. And you guys would have  
7 received it that same day or the next day.

8 CHAIRMAN WEATHERWAX: I have a question for  
9 Mr. Amoss or his staff or his attorney, you're  
10 saying here that two drugs stamped for their own as  
11 Indiana's own medication chart shows. Could you  
12 explain why we're doing something that you don't  
13 agree with on that? I know these drugs take on a  
14 different physical nature sometimes after they are  
15 in the body of the horse. I don't know if that's  
16 what you're trying to say.

17 TOM AMOSS: Yes, sir. The two drugs you are  
18 speaking of are methocarbamol, which was what the  
19 primary laboratory said they found, and a drug  
20 called guaifenesin, which is what the split  
21 laboratory's data said was found. Each year  
22 Mr. Gorajec presents a list, and that is part of  
23 the record, of all the drugs that we are allowed to  
24 use. There is a withdrawal time associated with  
25 each of those.



1           Guaifenesin and methocarbamol are listed  
2 separately on that list. Just as importantly, they  
3 are listed with two separate withdrawal times. So  
4 our contention is if one is the same as the other,  
5 which they claim it is, why are there two different  
6 withdrawal times, why do you stop on one four days  
7 out but on another five days out if, indeed, they  
8 are the same thing.

9           CHAIRMAN WEATHERWAX: That was the question I  
10 had. Could we get an answer?

11           MS. NEWELL: Mr. Babbitt could respond  
12 appropriately. I would not be the person to ask for  
13 that.

14           MR. BABBITT: With respect to that particular  
15 issue, the rules provide very clearly that once  
16 there is a positive, the only way that a split will  
17 be dismissed is if there is a negative finding.  
18 And the split can find either the primary drug or a  
19 metabolite of the primary drug. Guaifenesin is a  
20 metabolite of methocarbamol. And so, therefore, it  
21 was split.

22           We have an affidavit in the summary judgment  
23 materials that says that's a positive. There is no  
24 evidence in the record that that is a negative  
25 test. They claim that it didn't confirm. The

1 regulations of the Commission say the confirmation  
2 of a metabolite is sufficient confirmation of the  
3 primary drug. That was a positive.

4 In fact, as you read through the ALJ's  
5 decision, he said those two are enough. That's  
6 enough. But we went ahead and did the third one,  
7 just to make sure because if there wasn't  
8 methocarbamol in there, and they had asked for the  
9 test, we wanted to make sure that we gave them an  
10 opportunity to check that. That's why the third  
11 test was done. It came back positive for  
12 methocarbamol. So they found methocarbamol, a  
13 metabolite of methocarbamol, methocarbamol, three  
14 positive tests.

15 CHAIRMAN WEATHERWAX: Thank you. Commissioner  
16 Schenkel.

17 COMMISSIONER SCHENKEL: I'm not a lawyer so  
18 I'm not sure that I understand all the legal  
19 citations. I'm not familiar with all them. To me  
20 one of the issues here is the timing of all this  
21 and the time that has elapsed since the original  
22 tests. One of your contentions, if I understand it  
23 correctly, is this should be dismissed because the  
24 rules changed since the alleged violation occurred  
25 in 2011.

1 I'm not sure how we would deal as a regulatory  
2 agency or how the legislature would deal with  
3 things if they started applying laws and  
4 regulations retroactively. The whole legal  
5 arguments aside, the whole process, the whole  
6 common sense approach to that just baffles me from  
7 that standpoint.

8 I am less than convinced that had you not  
9 drawn this out over the last three years, we  
10 wouldn't even be having that discussion. And, yet,  
11 that seems to be one of the bases that you're  
12 arguing. So I don't understand that logic. I  
13 don't understand that, and I don't like that  
14 approach to doing business in that way. If we take  
15 that action now and start applying rules  
16 retroactively, we might as well pack it in and go  
17 home and let you guys just do what you do and hope  
18 for the best.

19 CHAIRMAN WEATHERWAX: You're welcome to  
20 respond.

21 MR. SACOPULOS: First of all, we take  
22 exception with these three tests being positive.  
23 Secondly, it's important to know when the  
24 proposed --

25 COMMISSIONER SCHENKEL: Can I ask you a

1 question?

2 MR. SACOPULOS: Yes, sir.

3 COMMISSIONER SCHENKEL: If you object to those  
4 three tests being positive, I understand that I can  
5 object to what my doctor found yesterday in my  
6 tests. But if I don't have something that disputes  
7 those or shows otherwise, then what's the basis?

8 MR. SACOPULOS: There is in the materials we  
9 submitted to you a letter from the state  
10 veterinarian in Louisiana disputing that. That's  
11 in the materials given to you.

12 But timing wise, I think it's important.  
13 First of all, there is precedent for under the  
14 doctrine of amelioration for a retroactive  
15 application if the punishment is less. If the  
16 punishment is more severe, then proactively it does  
17 not apply backwards but it applies forward.

18 But in terms of time, Mr. Gorajec and  
19 Mr. Babbitt are seeking 60 days from Mr. Amoss.  
20 Coincidentally, it's almost 60 days after this  
21 event, this race was run that the proposal to  
22 change the rule to one nanogram was proposed. And  
23 in any of these tests, if you look, one nanogram,  
24 any one of these tests, if you apply the one  
25 nanogram test, there's no violation.

1           COMMISSIONER SCHENKEL: Sorry to challenge  
2 you.

3           MR. SACOPULOS: Sure. Go right ahead.

4           COMMISSIONER SCHENKEL: Sixty days, that  
5 doesn't sound right because as I understood it, the  
6 original was in 2013. The rules changed in 2014.  
7 That's not 60 days.

8           MR. SACOPULOS: But that's when the proposal  
9 was made. The new rule, you're correct, was  
10 adopted in April of 2014.

11          COMMISSIONER SCHENKEL: Right, but that's --

12          MR. SACOPULOS: But there was consideration of  
13 a change in position in advance of the change.

14          COMMISSIONER SCHENKEL: There's a lot of  
15 considerations and proposals going on across the  
16 street right now in the legislature, and we're not  
17 going to -- well, I'm sorry.

18          MR. BABBITT: May I speak to that issue? The  
19 race was run October 21, 2011. The Commission's  
20 action was almost two and a half years later, not  
21 60 days later. So that's a misstatement.

22          CHAIRMAN WEATHERWAX: Any other questions from  
23 the Commission? Comments? Thoughts? Thank you.

24          MR. SACOPULOS: Thank you.

25          TOM AMOSS: Thank you.

1           CHAIRMAN WEATHERWAX: We have, as Holly  
2 pointed out, several options. I will repeat them  
3 for you because I have them right here. We can  
4 affirm, modify, dissolve, or remand this case  
5 before us. Affirm means that this goes forward  
6 just as we heard today by our counsel.

7           I guess if you modify, change, dissolve, or  
8 send back to the ALJ is another decision that we  
9 could make. But I think you understand that the  
10 summary judgment is pretty well clearly spelled out  
11 even in the General Assembly as to what our true  
12 authority is. So this is why we're here. This is  
13 why we're a part of this. Of course, we, as  
14 Commissioners, are charged with trying to maintain,  
15 and we must maintain the highest integrity we can  
16 for the racing industry and this state and this  
17 country.

18           So we're going to have to make a decision  
19 based upon the evidence that we have. I guess  
20 that's the answer to our deliberation.

21           COMMISSIONER PILLOW: Holly, did you say we  
22 can deliberate?

23           MS. NEWELL: You may.

24           CHAIRMAN WEATHERWAX: We can deliberate.

25           MS. NEWELL: You are going to do it on the

1 record.

2 CHAIRMAN WEATHERWAX: We can ask questions of  
3 ourselves, but we are going to be a part of this.

4 COMMISSIONER PILLOW: Okay.

5 MS. NEWELL: Robin will be recording it so  
6 please speak up so she can hear you.

7 COMMISSIONER SCHENKEL: For the sake of just,  
8 I mean, I think we need a motion on the floor.

9 MS. NEWELL: If you are prepared to do so,  
10 absolutely.

11 COMMISSIONER SCHENKEL: Well, I think we ought  
12 to have a motion so it generates the discussion so  
13 we know what we're discussing. Otherwise, we would  
14 be discussing a variety of hypotheticals. So let's  
15 narrow it down.

16 I would move that we uphold the ALJ's  
17 recommendations.

18 MS. NEWELL: Both of them. You have the  
19 Motion to Dismiss and the Motion for Summary  
20 Judgment. The dismissal was denied.

21 COMMISSIONER SCHENKEL: Then we can begin the  
22 discussion.

23 CHAIRMAN WEATHERWAX: And then we need a  
24 second.

25 COMMISSIONER SCHENKEL: And then that motion

1 may or may not prevail, but at least we have a  
2 formal motion on the floor.

3 MS. NEWELL: We have a motion from  
4 Mr. Schenkel.

5 COMMISSIONER PILLOW: I have a question. For  
6 both attorneys, and Tom just mentioned, why is  
7 there so much difference in your thought process on  
8 summary judgment? Neither one of you were on the  
9 same page about the same term. You can both make  
10 it brief.

11 MR. BABBITT: Unfortunately, oftentimes  
12 attorneys are not on the same page on legal issues.  
13 This would not be the first time. And instead of  
14 making the argument to you again, I would simply  
15 say that we are not on that page for the very  
16 reasons that the administrative law judge, who was  
17 an independent decider. He sat as a judge on this  
18 matter.

19 He said at page five "After obtaining those  
20 materials for summary judgment, Amoss made no  
21 substantive challenge to the evidence designated by  
22 staff. Neither did he claim that additional  
23 discovery was necessary nor did he ask for a  
24 continuance of the summary judgment hearing, which  
25 took place on October 30, 2014, over three months



1 after he received the materials." He goes on at  
2 page six and says "But as far as designating any  
3 evidence in response to the Motion for Summary  
4 judgment is concerned, he has done nothing."  
5 Inactivity is not an adequate response to staff's  
6 designation about evidence.

7 Our position is consistent with the ALJ's.  
8 You've got to follow the rules. You have to do it  
9 appropriately. You can't sandbag the ALJ and come  
10 up with something from Louisiana that was never  
11 presented to the ALJ and say, here, this makes a  
12 genuine issue on the science and come to the  
13 Commission and say, by the way, we're going to try  
14 to throw all this stuff up against the wall so we  
15 can now have you decide on information we never  
16 decided to make available to him after months and  
17 months of having the opportunity to do so.

18 CHAIRMAN WEATHERWAX: Mr. Sacopulos.

19 MR. SACOPULOS: Thank you. Summary judgment  
20 is the ultimate end of the case. You're putting  
21 somebody out without allowing them to try the case.  
22 In this case these tests themselves create a  
23 material issue of fact, which is whether or not  
24 there is methocarbamol or not. We have one test  
25 that says there is. There's one test that

1 estimates it, the third lab, that Doctor Sam's test  
2 is an estimation. And the third is one that shows  
3 a metabolite but not methocarbamol.

4 The tests were done by different techniques;  
5 one using a liquid technique, one using a gas  
6 technique. And so I think the exact outcome of  
7 these tests is at dispute. And that is the heart  
8 of the issue is whether or not you have a primary  
9 and a split that are confirming.

10 CHAIRMAN WEATHERWAX: Thank you.

11 MS. NEWELL: Just as a point of clarification  
12 because the Commission did raise the issue, the  
13 letter from Louisiana Doctor Garber, when was that?  
14 Is that under proper consideration? I can't tell  
15 the timing on that. Was that presented to the ALJ  
16 for consideration?

17 MR. BABBITT: It was not presented to the ALJ  
18 for consideration. That's clear by the order.  
19 There were materials that were referenced in the  
20 objections which were never presented to the ALJ.  
21 Certainly nothing was designated. Then there was  
22 information in Mr. Amoss's response. For the  
23 record, we are objecting to the consideration of  
24 any of those things.

25 Having said that, we understand that you, like

1 judges, have the right to see anything that anybody  
2 files, but it's assumed that you will only rely on  
3 the things that you are supposed to rely on.

4 That's the way that both the judges and an  
5 administrative agency would consider materials.

6 But the answer is no. As is clear from his order,  
7 that was not designated. And if it came in, it may  
8 have come in with the materials from Mr. Amoss. I  
9 don't remember.

10 MS. NEWELL: The Parker affidavit is included  
11 in the March 2nd filing.

12 MR. BABBITT: In the March 2nd filing. That  
13 was not a designation.

14 MS. NEWELL: I just wanted to clarify that.

15 TOM AMOSS: May I respond to that, please.

16 CHAIRMAN WEATHERWAX: Yes, please.

17 TOM AMOSS: In the materials you have the  
18 motion to dismiss way back in 2012 when we said the  
19 primary sample did not match the split finding  
20 samples. Those materials were submitted to the  
21 ALJ. One of the things presented to him at that  
22 time was the affidavit from Doctor Garber that he's  
23 referring to. So that actually was part of the  
24 record with the ALJ back in 2012.

25 CHAIRMAN WEATHERWAX: Is that true?

1 MR. BABBITT: That was a part of an underlying  
2 submission we made that was never designated as a  
3 material issue. You have to do two things. You  
4 have to submit an affidavit, and then you have to  
5 come forward. That affidavit does not address the  
6 issue nor did they argue it. You won't find it in  
7 the filings or the argument that they made to the  
8 ALJ.

9 CHAIRMAN WEATHERWAX: Thank you.

10 COMMISSION LIGHTLE: I understand that, this  
11 whole situation. I understand all this. My  
12 problem with it, I think, is the penalty phase and  
13 exactly what the penalty is. That's what my  
14 question is.

15 CHAIRMAN WEATHERWAX: You're saying that you  
16 would rather -- of course, we have a motion to  
17 accept everything as we have it presented. We  
18 don't have a second. But you're saying you're  
19 leaning more towards a modification?

20 COMMISSION LIGHTLE: Yeah, of the penalty. I  
21 think that's my -- that's the only thing I'm  
22 concerned about. I think everything else is pretty  
23 much stated, you know. It happened. That's what  
24 it was. It's all lined out. I don't see any  
25 argument to it, but the penalty part is what I

1 question. That's my only question.

2 CHAIRMAN WEATHERWAX: We better finish what we  
3 started here first.

4 COMMISSION LIGHTLE: I just think that I would  
5 like for us to think more about -- he needs to  
6 be -- there has to be a penalty obviously but how  
7 much of a penalty. Can we think about that?  
8 That's the only thing I'm saying.

9 CHAIRMAN WEATHERWAX: That's obviously  
10 something we can do. We have the ability to change  
11 this, modify the ruling or the ALJ's opinion. But  
12 do I have a second to Commissioner Schenkel's  
13 motion to accept everything as submitted?

14 COMMISSIONER SCHENKEL: Or you can make  
15 another motion.

16 CHAIRMAN WEATHERWAX: It could die for a lack  
17 of a second. All right. Commissioner Lightle.

18 COMMISSION LIGHTLE: I won't second that  
19 motion because I think that we should discuss the  
20 penalty part of this.

21 CHAIRMAN WEATHERWAX: So you withdraw your  
22 motion?

23 COMMISSIONER SCHENKEL: Yes, sir.

24 CHAIRMAN WEATHERWAX: So now let's have a  
25 discussion on what we can agree upon.

1           COMMISSION LIGHTLE: I'm just one up here.  
2 You all do your thing, but I think we don't have to  
3 throw this strong of a penalty at him. I think the  
4 situation is that it's pretty well been proven what  
5 the situation is. But I think the penalty phase  
6 is, it's more than what it should be by what we've  
7 seen before.

8           MS. NEWELL: You can have the parties speak to  
9 this. Executive Director Gorajec is the one that  
10 recommended the 60 days penalty. He can speak to  
11 it or you can consider it amongst yourselves,  
12 however you want to approach this. But with  
13 respect to the calculation of the penalty, that  
14 started with Commission staff, and you're welcome  
15 to ask them about that.

16           COMMISSION LIGHTLE: I know you talked about a  
17 30 day and then it went into a 60 day. I would  
18 like that clarified as to why the 60 day and 5,000  
19 and taking horses. I'm just looking at the whole  
20 penalty phase. And I think it's pretty severe. So  
21 I would like to ask the question. Maybe we could  
22 talk about that.

23           JOE GORAJEC: One of the things we do as  
24 Commission staff, and this usually starts with the  
25 stewards at the Thoroughbred meet, is when we get a

1 positive test, we run the fines and the suspensions  
2 list from the ARCI, Association of Racing  
3 Commissioners International, that has a history on  
4 all the licensees and all of the rulings against  
5 them so we can look at what the prior violations of  
6 an individual is.

7 And the model rule that we consider in  
8 assessing penalties is the ARCI model rule, and  
9 it's referenced in our own rules for Commission  
10 staff to consider and the Commission to consider.  
11 And it's a graduated, it's a graduated penalty  
12 scheme in that there's a penalty for a first  
13 offense, then a second offense, and then a third  
14 offense within a 365-day period. And that's what  
15 we looked at.

16 And we also look at, there's different  
17 categories of drugs. And the penalties that are  
18 recommended take into account the categories. So  
19 there are, a Category A would call for a very  
20 severe penalty, a Category B less, and a Category C  
21 even less than that, but you have to pay the price  
22 for multiple violations.

23 Well, when you looked at Mr. Amoss' record --  
24 I don't have it in front of me so I'm giving you, I  
25 think, a very good estimate of what his record was

1 when we looked at it. He had a naproxen positive.  
2 And I think it was November or December of 2010.  
3 It's a Class C. In a Class C first offense there  
4 is no, there is no suspension. There's a fine, no  
5 suspension.

6 Then he gets a positive test at Churchill  
7 Downs in May for, guess what drug? Methocarbamol,  
8 the same drug that we are talking about for this  
9 positive. So now he's got a second positive test,  
10 methocarbamol, in May.

11 Early October he gets another positive,  
12 methocarbamol at Keeneland. Late in October he  
13 gets another positive, methocarbamol in Indiana.  
14 Then, like, the day after, he gets another  
15 methocarbamol positive. So in that window he's got  
16 one, two, three, four, five positive tests. We  
17 don't count the one that came after ours.

18 Now, in this grid that you consider from the  
19 RCI; first positive test, no suspension; second  
20 positive test, 15 days; third positive test, 30  
21 days. Now, they don't even have, they don't even  
22 have a recommended penalty for a fourth event.  
23 They're not even thinking that someone is going to  
24 get four violations in the same year. Mr. Amoss  
25 got four violations. But the grid doesn't even



1 take that into account.

2 Mr. Amoss said something about Kentucky. I'm  
3 going to say something about Kentucky. Kentucky  
4 failed Mr. Amoss. Okay. If Kentucky, if Kentucky  
5 went by the ARCI drug classification guidelines, if  
6 they went by their model rules, when Mr. Amoss got  
7 a positive test in May at Churchill Downs, okay,  
8 they should have called him in and said, you know  
9 what, Tom, this is your second violation. You got  
10 a naproxen. You got a naproxen in Louisiana. This  
11 is your second one. So you're going to get a  
12 15-day suspension. And, oh, by the way, you better  
13 find out the source of this problem and clean it up  
14 because the next one is going to cost you 30 days.

15 Did Kentucky do that? They did not do that.  
16 That's Tom Amoss. We're going to let it slide.  
17 Okay. We're not going to, we're not going to  
18 impose the ARCI model rules on Mr. Amoss. Okay.  
19 We're just going to give him a fine. It's a  
20 parking ticket. Just give him a fine. Okay.

21 So he gets another one. He gets another one  
22 in October at Keeneland. And he gets one later at  
23 Keeneland. So when Kentucky gives him a fine for  
24 his third offense, and let's, let's, let's take,  
25 let's take the situation where he wasn't notified

1 of the early October and the late October  
2 methocarbamol positives in Kentucky until, let's  
3 say, sometime after the fact. So let's consider  
4 those as one, just for the sake of discussion.

5 Kentucky should have given him 30 days. It's  
6 a third offense; a naproxen, then methocarbamol in  
7 May, and then two methocarbamols in October.  
8 That's just in Kentucky, not even counting the  
9 methocarbamol he had here in Indiana. Okay. So  
10 not only did Kentucky not follow their own model  
11 rules, they didn't follow their own rules. Okay.

12 In Kentucky you don't have to consider a  
13 violation, a penalty that occurs in another state.  
14 So they didn't have to consider what happened in  
15 Louisiana, but they should have considered their  
16 own. They should have considered their own. They  
17 should have considered what happened in May when  
18 they gave in October. No, they didn't do it.

19 That's one of the problems with this industry.  
20 One of the problems with this industry, and if you  
21 read the trade journals and you listen to what the  
22 fans are saying, they are sick and tired of having  
23 people get drug infraction after drug infraction,  
24 after drug infraction, after drug infraction and  
25 getting slapped on the hand. These aren't parking

1 tickets where you pay a few dollars, and then you  
2 go about your business.

3         These aren't, these aren't significant drugs.  
4 Okay. I agree a hundred percent with Mr. Amoss.  
5 These are therapeutic medications. Okay. And if  
6 he got a therapeutic medication violation at  
7 Indiana Grand, and it was his first one, and it was  
8 a Class C, he would have paid a fine, no  
9 suspension. And that's what it would be. But it  
10 wasn't his first one. It was his first one here,  
11 but it wasn't his first one in 365 days, which  
12 you're supposed to consider.

13         COMMISSION LIGHTLE: So Indiana does consider  
14 all of them?

15         JOE GORAJEC: Yes. And, quite frankly, the  
16 model rules suggest that you consider all of them  
17 because if you didn't, a trainer can go from one  
18 state to another state, to another state, to  
19 another state and get one positive after another  
20 positive, after another positive, after another  
21 positive, and they would all be first offenses.  
22 That's not the way it's supposed to work.

23         You're supposed to, you're supposed to get  
24 penalized more significantly for a second and third  
25 and fourth violation. And one of the things that

1 Mr. Amoss says is that, you know, these are, these  
2 are therapeutic medications. And he's absolutely  
3 right, but that's taken into account by the penalty  
4 scheme.

5 We're citing him for the lowest caliber of,  
6 one of the lowest calibers of the penalty scheme.  
7 We're not, we're not, we're not saying he's got a B  
8 violation or an A violation. We're talking about a  
9 C violation, which are really pretty modest. But  
10 if you get, you know, a second and a third and a  
11 fourth, then you should have it increased.

12 So, again, I don't think -- he cites Kentucky.  
13 Kentucky didn't do what they were supposed to do,  
14 and we're living with it because if Kentucky called  
15 him in, if Kentucky called him in and said, Tom,  
16 you're getting 15 days; your next one, okay, you're  
17 going to get 30 days, you better find out the  
18 problem, we would have never even had this problem  
19 probably because he knew he'd be facing a penalty.  
20 He knew he'd be facing a fine. Okay.

21 In my mind we're not here because -- he's got  
22 a methocarbamol in October. He's got another one  
23 the day after in Keeneland. Okay. We're here  
24 because he doesn't want to serve a suspension. The  
25 other ones he took. I mean, he didn't appeal

1 those. He just wrote a check.

2 COMMISSION LIGHTLE: Okay. Thank you.

3 MR. SACOPULOS: May I respond to this.

4 CHAIRMAN WEATHERWAX: Yes because we raised  
5 these questions.

6 MR. SACOPULOS: The Indiana Horse Racing  
7 Commission has historically adopted the theory of  
8 consolidation without notice. And that is where  
9 someone has a positive, presumably a positive. And  
10 then another race is run without the person having  
11 gotten the result, and then another race. You see  
12 that in Standardbred. That is the, that is at its  
13 heart part of the tripeleannamine problem this  
14 Commission is facing where Standardbred people run  
15 far more frequently.

16 MS. NEWELL: Pete, we're not going there  
17 today.

18 MR. SACOPULOS: What I'm saying is there are  
19 plenty of examples before this commission that  
20 would allow these positives, alleged positives to  
21 be consolidated to one, to be considered or  
22 condensed to one.

23 With regard to Mr. Gorajec's comments about  
24 Kentucky, I don't think there's anything before  
25 this commission indicating preference for

1 Mr. Amoss. What is clear and before the Commission  
2 is he's been punished for those in the state of  
3 Kentucky. The other thing is if you want to have  
4 somebody appear before you that's a trainer  
5 licensed in this state, you will find nobody,  
6 nobody that has tested more than Mr. Amoss. He's  
7 been the leading trainer. The way you get that is  
8 you get a lot of wins. And when you get a lot of  
9 wins, you get a lot of tests. He's as tested as  
10 anybody is.

11 COMMISSIONER PILLOW: Pete, you said something  
12 about alleged?

13 MR. SACOPULOS: We do not believe these are  
14 positives. We do not believe these three tests are  
15 positive.

16 COMMISSIONER SCHENKEL: Thank you.

17 MR. SACOPULOS: Also, Mr. Amoss has reminded  
18 me that part of the consideration here is that we  
19 would ask the Commission, as it normally does, to  
20 consider all mitigating factors, many of which  
21 Mr. Amoss addressed in his presentation.

22 COMMISSIONER SCHENKEL: Where is your evidence  
23 that disputes the findings of whether or not  
24 they're positive?

25 MR. SACOPULOS: The affidavit supplied from

1 the veterinarian, state of Louisiana.

2 COMMISSIONER SCHENKEL: One letter. Okay.

3 TOM AMOSS: Besides that one letter from that  
4 chemist who is someone we hired to examine that, we  
5 also have a document from your own veterinarian,  
6 Doctor Sams, where he is asked the question about  
7 this conversion from methocarbamol to guaifenesin,  
8 which the split sample says they did. And the  
9 letter is in there. And it specifically says that  
10 Doctor Sams knows of no test, this is a quote,  
11 where methocarbamol could be converted completely  
12 into guaifenesin, which is what the lab at UC Davis  
13 said they did.

14 On top of that, Mr. Gorajec is right about the  
15 penalties, but he's leaving out a very important  
16 part of the ARCI rules, which says those penalties  
17 that he has described are minus mitigating  
18 circumstances. So, yes, I guess you can say that's  
19 true, but he's not telling you the mitigating  
20 circumstances are part of the penalty that the ARCI  
21 says. He mentions a number of positives.

22 I just want to remind for the record that I  
23 gave an example of someone that had four positives  
24 in Indiana this year within a month and was only  
25 fined. Again, as I said in my statement, I just

1 want to be treated like everyone else.

2 MR. SACOPULOS: Thank you.

3 CHAIRMAN WEATHERWAX: Thank you. Okay. We  
4 now have a better understanding, Commissioner  
5 Lightle, of the penalties. I think that speaks to  
6 how we got here and maybe what the recommendation  
7 was for this severe action.

8 Now we have to go back to the original  
9 subject, I guess, of the original discussion before  
10 us. We can affirm, modify, I guess, dissolve, or  
11 remand. And I would like to have a motion.

12 I will make the motion that we affirm both  
13 charges after hearing this full testimony.

14 COMMISSIONER SCHENKEL: I will second that.

15 CHAIRMAN WEATHERWAX: We have a second. Now,  
16 any discussion? Now we're going to vote. Call for  
17 the question. Those in favor of this motion,  
18 please raise your right hand.

19 COMMISSIONER SCHENKEL: (Raises right hand.)

20 COMMISSIONER PILLOW: (Raises right hand.)

21 CHAIRMAN WEATHERWAX: (Raises right hand.)

22 Three to one. I believe that's a majority.

23 MS. NEWELL: It is.

24 CHAIRMAN WEATHERWAX: Because Commissioner  
25 McCarty is not here.



1 MS. NEWELL: Right.

2 CHAIRMAN WEATHERWAX: It passed three to one  
3 to affirm. Thank you. Go ahead.

4 MR. BABBITT: Given that the Commission has  
5 affirmed the ALJ's determination, I simply wanted  
6 the Commission to be aware that the practice is  
7 then to start the suspension on the first day of  
8 the race meet in Indiana, which I believe is  
9 April 21st of 2015. So that would be the  
10 intention of the staff. I'm only telling the  
11 Commission that so they know that that is when the  
12 60 days would begin.

13 MS. NEWELL: Is that the wish of the  
14 Commission?

15 CHAIRMAN WEATHERWAX: Yes.

16 MS. NEWELL: I want to make sure the order.

17 CHAIRMAN WEATHERWAX: Counsel, is there any  
18 other steps that these people take now or is this  
19 final?

20 MS. NEWELL: This is not final. I wanted to  
21 speak to that a little bit right here now. What is  
22 taking place is a really important step, but it's  
23 not over. I will write up an order reflecting what  
24 your wishes were. However, Mr. Amoss has the right  
25 to further appeal. He may take this case to the

1 trial court. If it goes that far, the court may or  
2 may not rule with the Commission.

3 The bottom line and the important part is  
4 though, I would admonish you not to speak to  
5 Mr. Amoss or Mr. Babbitt or Mr. Gorajec about this  
6 particular case. If there are questions, they can  
7 come to me, and the parties can come to me as well.  
8 We need to continue to have this separation because  
9 this continues to be a live case.

10 CHAIRMAN WEATHERWAX: I hear you. Okay. We  
11 thank you.

12 Well, now the next item on our agenda is Lea.  
13 Well, maybe before we do that, if you have to feed  
14 your meter or do something, let's take a 15-minute  
15 break.

16 (A brief recess was taken.)

17 CHAIRMAN WEATHERWAX: If I could have your  
18 attention, please. Legal staff has asked that I  
19 make a point of clarification for the vote on the  
20 record. Holly.

21 MS. NEWELL: Yes, I believe that the record  
22 will reflect a three-to-one vote on the Amoss  
23 matter.

24 Commissioner Lightle, was your vote a nay vote  
25 or was it an abstention?

1 COMMISSION LIGHTLE: Abstention.

2 MS. NEWELL: If the record could reflect a  
3 three-zero vote with Commissioner Lightle  
4 abstaining, please.

5 CHAIRMAN WEATHERWAX: Thank you. Now, back to  
6 our agenda. Lea, you're going to give us an update  
7 on the litigation.

8 MS. ELLINGWOOD: I am, Chairman. For those of  
9 you who are new to the Commission since the last  
10 time we had a litigation update, just let me know.  
11 We like to keep the Commission updated with respect  
12 to litigation that's been initiated against the  
13 Commission itself or against staff members who are  
14 acting in their professional capacity.

15 In 2010 Commission staff --

16 CHAIRMAN WEATHERWAX: If I could have the  
17 discussion in the back please stop. Go ahead.

18 MS. ELLINGWOOD: In 2010, the Commission staff  
19 received a complaint that included some fairly  
20 disturbing allegations of animal abuse and neglect.  
21 That complaint prompted an investigation by the  
22 Commission staff into Mr. Eddie Martin, which  
23 included a consensual entry on his farm in Florida.

24 Mr. Martin, who is a former IHRC commissioner  
25 and a former executive director of ITOBA, initiated

1 a lawsuit against the IHRC in the Marion County  
2 Superior Court claiming that he had suffered, and  
3 I'm quoting, a near complete loss of his business  
4 and enormous injury to his person as a result of  
5 staff's investigation to the tune of approximately  
6 \$13 million.

7 On January 22nd of this year as a result of  
8 Mr. Martin's agreement to drop this case, the court  
9 dismissed Mr. Martin's state claim against the  
10 Commission. Mr. Martin also filed a federal  
11 lawsuit against the Commission for \$13 million as a  
12 result of our investigation. That suit was also  
13 dismissed by the court upon party agreement.

14 Mr. Martin received no award of funds as a  
15 result of this lawsuit and is permanently barred  
16 from initiating future litigation on these claims.  
17 This is the final three lawsuits Mr. Martin had  
18 filed against the Commission. In addition to the  
19 state and federal lawsuit regarding staff's  
20 investigation, Mr. Martin had previously filed an  
21 appeal of his exclusion, which was ultimately  
22 determined by the Court of Appeals who found in  
23 favor of the Commission.

24 If there are any questions, I am happy to  
25 answer them.

1 CHAIRMAN WEATHERWAX: So in a nutshell, is  
2 this a final chapter of this total situation?

3 MS. ELLINGWOOD: It is. The litigation, I  
4 can't remember when the Court of Appeals case  
5 regarding the exclusion began, but as you can tell,  
6 it's been a number of years. So the staff is very  
7 happy with the resolution.

8 Mr. Martin had named the Chairman personally  
9 in his lawsuit, the Executive Director Joe Gorajec.  
10 And he also named the Director of Security Terry  
11 Richwine in his lawsuit. While I can't speak for  
12 them, I suppose they are probably pretty happy this  
13 has come to an end.

14 CHAIRMAN WEATHERWAX: Thank you. Very good.  
15 Any other discussions from the Commission?

16 The next, Joe, do you want to give us an  
17 update on this cobalt testing that we implemented  
18 last year?

19 JOE GORAJEC: Yes, Mr. Chairman. Items four,  
20 five, and six on the agenda are all cobalt related,  
21 and they are all intertwined. I just want to  
22 remind the Commission that back in September when  
23 the Commission passed the rule regarding the  
24 regulation of cobalt, one of the things that they  
25 asked Commission staff to do is come back prior to

1 the commencement of the 2015 race meets with any  
2 proposed changes, and also come back and report on  
3 any activity with regard to new science or any  
4 activity with regard to movement within the  
5 industry nationally or internationally regarding  
6 the subject of cobalt regulation.

7 And that is a way of bringing item number five  
8 to the Commission. That's the introduction of  
9 Doctor Dionne Benson. Doctor Benson is the  
10 executive director of the RMTC, the Racing  
11 Medication and Testing Consortium. And she's  
12 appeared before us before. And even though the  
13 regulation of cobalt nationally is moving forward,  
14 it's moving forward at a pace slower than I and a  
15 lot of like-minded people would like.

16 Having said that, it's through Doctor Benson  
17 and the good work of the RMTC that this item is on  
18 the agenda of racing regulators. And Doctor Benson  
19 and the RMTC are the primary movers in protecting  
20 the integrity of the sport in the animal safety and  
21 welfare regarding cobalt. So she is probably the  
22 best person in the country to give the Commission  
23 an update on where we stand nationally with regard  
24 to potential cobalt regulation.

25 I would like to introduce Dionne, and I also

1 would thank her from coming up from Lexington to  
2 visit with us. She came early just so the  
3 Commission knows on late notice. Doctor Benson  
4 arrived in Lexington yesterday afternoon to sit  
5 down and meet with the practicing Standardbred  
6 veterinarians. And it was a great meeting to have  
7 the veterinarians all in one place where they could  
8 ask good questions and get intelligent answers. I  
9 thank Doctor Benson for that.

10 CHAIRMAN WEATHERWAX: Welcome, Doctor.

11 DOCTOR BENSON: Thank you. I appreciate the  
12 opportunity to speak with you.

13 Just to give you a little update on cobalt,  
14 we've since last September, there's been a little  
15 bit more research in the area. We have a group in  
16 Kentucky that has done some research and done some  
17 administration studies of cobalt. And they have  
18 done administrations of cobalt at what were  
19 reported levels from practitioners. I think the  
20 total level was 1.5 milligrams per pound.

21 And to be honest with you, I've seen the  
22 videos that are associated with these  
23 administrations, and they're a little bit  
24 disturbing for me as a vet and someone who has  
25 horses. The horses are sweaty. They're colicky.

1 They are uncomfortable. None of the horses had  
2 permanent symptoms.

3 They all recovered, but it was certainly  
4 repeated every time these horses -- these horses  
5 received multiple administrations. The purpose was  
6 to see if there would be an effect on the red blood  
7 cell production or erythropoietin production, which  
8 is why we understood cobalt was being used. I can  
9 tell you from the tests they did, there was no  
10 change in the erythropoietin. So even though it's  
11 being administered for this purpose, we can't  
12 determine it's actually working for that purpose.  
13 But what it is is it's a little bit disturbing to  
14 see the horses and how uncomfortable they are and  
15 how unfortunate for them to have to go through this  
16 for something that isn't producing an effect.

17 But we are looking at it from a horse welfare  
18 and safety aspect, which is why we are continuing  
19 to set a threshold. The issue with cobalt, and  
20 we've gone through this before, so I won't belabor  
21 the point, but it's an endogenous substance. It's  
22 there normally. We can't say the presence of  
23 cobalt in and of itself is a violation of any rule  
24 because it is in the environment. It's in the  
25 feed. There's a minimum daily requirement for



1 horses.

2       What we can say is we don't know of any  
3 reported case where a horse has been cobalt  
4 deficient. So horses get enough from the  
5 surroundings. Even in racing we have things like  
6 vitamin jugs, which have cobalt in them in small  
7 amounts. There are some supplements that have  
8 small amounts of cobalt. There are some  
9 supplements that have very large amounts of cobalt.

10       So I think the goal going forward for us has  
11 been to separate what constitutes normal treatment  
12 for a racehorse versus these high dose cobalt  
13 chloride salts. And, ultimately, where it's going  
14 is we're coming into what we are considering a  
15 tiered approach to this issue where we look at --  
16 the Scientific Advisory Committee has met and  
17 discussed this. It has not gone before the RMTC  
18 board yet so it's not a recommendation. But  
19 essentially what they recommended looking at is a  
20 tiered approach with a low threshold of about  
21 approximately 25 parts per billion, which would  
22 equate with a low overage. So almost like the Bute  
23 rule had been tiered at two milligrams and  
24 five milligrams, this one would have, the  
25 thresholds that have been proposed so far have been

1 25 and 50, but it's a multi-tiered approach to  
2 recognize there is a potential to get an overage  
3 between 25 and 50 with supplementation. Now, it's  
4 excessive supplementation of a horse, but you can  
5 get there without the use of strict cobalt salts.  
6 So we are recognizing that that's not appropriate  
7 treatment necessarily of a horse, but certainly if  
8 you're over 50, you're at the point where you have  
9 to use cobalt salts to get it there from all of the  
10 products that we have seen.

11 CHAIRMAN WEATHERWAX: Question. We  
12 implemented the .25 as a threshold.

13 DOCTOR BENSON: Yes.

14 CHAIRMAN WEATHERWAX: How does that fit with  
15 what you're seeing and studying and the science?

16 DOCTOR BENSON: Sure. So what we've seen is  
17 if we have populations of horses that are research  
18 horses that we can control what they get, we feed  
19 them normally. We don't give them vitamin jugs.  
20 The natural baseline in a horse, there isn't a  
21 horse that's been in that natural baseline  
22 population to my knowledge that is over two parts  
23 per billion, I believe. And so we know that that  
24 normal level is very low.

25 Now, we've also looked at a group of

1 racehorses. I want to say it's about 1400  
2 racehorses that we've looked at, a combination of  
3 Standardbred, Thoroughbred, and Quarter Horses,  
4 including the ones that came out of the study here  
5 in Indiana or the results of testing here in  
6 Indiana. These are post-race racehorses.

7       And largely what you see is you see a large  
8 group of horses under ten parts per billion.  
9 Sixty percent of the horses are under ten parts per  
10 billion. Then you see another percentage that are  
11 above 10 but below 20. And you get very small  
12 until you see these huge outliers where you've got  
13 numbers like 4800 and 1100, just these really large  
14 numbers.

15       One of the things we are trying to do because  
16 though are post-race samples, and we don't know how  
17 these horses have been treated or what they've been  
18 administered. We're working with a biostatistician  
19 and an epidemiologist to be able to say above this  
20 number, these horses should be excluded from any  
21 determination because they have clearly been  
22 treated with cobalt salts.

23       That's kind of where we are now. We have our  
24 base recommendation and the Scientific Advisory  
25 Committee, they asked for this extra step to be

1 done. Hopefully, we will see a change or we will  
2 see confirmation of the numbers that we've looked  
3 at. I think the other thing we have noticed across  
4 the country is where commissions have started to  
5 regulate this substance, the numbers have decreased  
6 significantly.

7 CHAIRMAN WEATHERWAX: That's what we're seeing  
8 here. That's what we are going to hear and talk  
9 about. How many states have implemented a program  
10 like we did?

11 DOCTOR BENSON: There is no state that has  
12 implemented a bright line test that is tied to a  
13 policy. Minnesota has had a test where if you're  
14 above a hundred parts per billion, you get put on  
15 the vet's list until you're off. The trainer is  
16 required or the owner or trainer is required to pay  
17 for the testing.

18 California has implemented a similar practice,  
19 but they, I believe, go down to 25 parts per  
20 billion. New York has implemented a testing  
21 program where they say they are testing for cobalt,  
22 but they haven't actually identified a threshold  
23 that will trigger any activity. But I can tell  
24 you, and Kentucky hasn't implemented a specific  
25 threshold, but they have begun telling trainers and

1 owners when they do out of competition testing,  
2 that one of the substances they are looking for is  
3 cobalt. In each of those instances, even without a  
4 specific regulation, they have seen their numbers  
5 drop precipitously.

6 I think it's something that's definitely  
7 amenable to regulation, as you have seen. But I'm  
8 hopeful that by the RCI convention in April, we  
9 will have a suggestion for them, a recommendation.  
10 It is then ultimately up to them to determine how  
11 they want to treat it.

12 CHAIRMAN WEATHERWAX: So this will be a topic  
13 of discussion at the national convention.

14 DOCTOR BENSON: Yes. Our intention is to file  
15 it as a -- provided it gets through the RMTC board,  
16 we intend to bring it for the RCI. Of course,  
17 their prerogative and whether they want to hear it.

18 CHAIRMAN WEATHERWAX: Thank you. Any other  
19 questions from our Commission?

20 JOE GORAJEC: I have one question. You gave  
21 us a status report on where we're at nationally.  
22 Can you comment on where internationally the racing  
23 industry is on cobalt?

24 DOCTOR BENSON: Sure. The Australians have a  
25 200 nanogram rule currently in urine or 200 parts

1 per billion. There's been a large body of data  
2 collected. And there's been an international study  
3 done, of which the RMTC is a part. The  
4 recommendation that is coming from that group will  
5 likely cut the urine threshold to a hundred, and  
6 the blood recommendation will probably, from that  
7 group for an international level, will probably be  
8 two tiered, one for race day and one for out of  
9 competition testing. And the race day will be, I  
10 believe it will end up in the single digits. I'm  
11 not sure exactly where. And the out of  
12 competition, the last number I've heard was 12 to  
13 15.

14 CHAIRMAN WEATHERWAX: Go ahead.

15 COMMISSIONER PILLOW: Doctor Benson, you said  
16 that Indiana is the only state that has this  
17 threshold?

18 DOCTOR BENSON: Yes.

19 COMMISSIONER PILLOW: Why do you think the  
20 reason the rest of the country hasn't followed  
21 suit? I know that's a difficult question because  
22 you're not in there.

23 DOCTOR BENSON: There have been discussions in  
24 a number of states. A lot of states try to wait  
25 for RCI to pass something. We originally brought

1 this before RCI in July of 2014 as a threshold,  
2 which is before you had enacted your threshold.  
3 Essentially, there was a separate study that had  
4 come out of the USTA that a press release had gone  
5 out for suggesting that the threshold had been set,  
6 and it should be 70.

7 We worked with the investigator in that case  
8 to try to get the data and were told we would have  
9 it the first of the year. So we held off making  
10 any recommendations. We still haven't seen the  
11 data. In our perception we are not going to  
12 receive that data. So we determined that in order  
13 to move forward on this because it is so important,  
14 it is a health issue for horses, we just have to go  
15 forward with what we have. And I think what we  
16 have is fairly significant with over 1400 horses.

17 COMMISSIONER PILLOW: Second part of that, do  
18 you see any other states following suit any time,  
19 say, in 2015?

20 DOCTOR BENSON: Well, California is  
21 implementing a 25 and 50 tiered threshold system.  
22 I get calls on a weekly basis from states asking  
23 when we are going to have something. It's not as  
24 if the states don't want to act. They just want  
25 to --

1 COMMISSIONER PILLOW: Have some guidelines.

2 DOCTOR BENSON: Yes.

3 COMMISSIONER PILLOW: Thank you.

4 CHAIRMAN WEATHERWAX: Any other questions?

5 Thank you, Doctor.

6 Joe, do you want to go through the progress or  
7 the success or what's happened since we have done  
8 this. But also please make sure you tell them the  
9 .25, what that means for continuity, determination,  
10 clarity.

11 JOE GORAJEC: The 25 parts per billion is  
12 where we were at at September. That's where the  
13 RMTTC was at at that time with the best available  
14 science. That's where they continue to be with the  
15 best available science. And my recommendation is  
16 to stay at that threshold level of 25 because at  
17 this time, it is the best available science.

18 And I just want to piggyback on something that  
19 Doctor Benson said is that there's always talk that  
20 a horse is a horse, and whether it's a Standardbred  
21 or a Thoroughbred, whether it races here or whether  
22 it races in Europe. In Europe what they are  
23 considering is significantly less than ours. So I  
24 think that the racing industry can find some solace  
25 in the fact that this 25 is not a burdensome or low



1 threshold that can easily be reached by just  
2 showing good horsemanship and feeding of your  
3 horses. Twenty-five is really a good solid number.  
4 I mean, if Europe is going in single digits and  
5 have 12.5 or thereabouts as their high end for out  
6 of competition testing, that should give us a  
7 comfort level at 25.

8 I'm proposing just a few minor changes to our  
9 cobalt regulations. As I said I would back in  
10 September, and just so you know that the changes  
11 I'm proposing have been vetted with the horsemen.  
12 I had a meeting with the horsemen last week or the  
13 week before where I had the leaders of each of the  
14 three horsemen's associations. And we reviewed the  
15 regulations. To the extent that they may disagree,  
16 they can comment at this time, but I think they  
17 were comfortable with it, but I won't speak for  
18 them.

19 The main change that I'm proposing is the  
20 penalty of a cobalt positive or cobalt overage  
21 going from an A penalty to a B penalty. We talked  
22 about the RCI classifications. RCI hasn't acted so  
23 they don't have classifications. In the absence of  
24 that, we have to do our own.

25 One of the things about cobalt is I think it's

1 one of the few substances that really lends itself  
2 well to a tiered approach in penalties. Most drugs  
3 don't. Most drugs if it's there, it's there, and  
4 that's it. Cobalt is a little bit different,  
5 especially being an endogenous substance.

6 What I'm proposing is it be changed from an A  
7 penalty to a B penalty. And a B penalty for a  
8 first offense is a 15-day suspension, and I think  
9 it's a thousand dollar fine, but it's a 15-day  
10 suspension.

11 Now, what I've written into the rules is to  
12 have a tiered approach where if it's between 50 and  
13 a hundred, it's a straight B penalty. But if it's  
14 between 25 and 50, that the judges and the stewards  
15 can consider that a mitigating factor. But if it's  
16 over a hundred, then they consider it an aggravated  
17 factor.

18 So what we don't want to have happen is have a  
19 cookie cutter approach where everything is  
20 identical, and someone gets a 27. Maybe they got  
21 super duper overly aggressive with the supplement.  
22 And someone gets 600. And that one was giving the  
23 horse cobalt salts for the intent of enhancing  
24 performance. I think we should go out of our way  
25 not to treat those the same in the penalty phase.

1 I think that the new rule is, I think, a nice  
2 reasonable approach. And I think it takes into  
3 account the levels. And it takes into account the  
4 severity of the offense.

5 CHAIRMAN WEATHERWAX: This is something you  
6 are going to propose or do they know this?

7 JOE GORAJEC: The horsemen are aware of it.  
8 It's part of the three emergency rules that you  
9 have in item number six.

10 CHAIRMAN WEATHERWAX: I'm sorry. I don't want  
11 to get ahead of your presentation. I think the  
12 thing we want to clarify the .25 parts per billion  
13 is a number we are not going to change.

14 JOE GORAJEC: Twenty-five.

15 CHAIRMAN WEATHERWAX: This is not going to be  
16 a moving target down the season.

17 JOE GORAJEC: No, I would suggest to the  
18 Commission that whatever they determine at this  
19 meeting would be the rules with regard to cobalt  
20 for the entire season. I think it would be  
21 appropriate to reconvene and reconsider and review  
22 these this time next year to see what's happened in  
23 the meantime. But I think the horsemen really  
24 want -- the horsemen are of two minds. They only  
25 want a rule changed midstream if they think it

1 benefits them. But having said that, I think that  
2 we would be well served to keep these rules,  
3 whatever the Commission passes, for the entire race  
4 meet so there is no moving target, and all the  
5 horsemen know exactly what they are dealing with.

6 CHAIRMAN WEATHERWAX: I think that's very  
7 important marching orders for all of us because we  
8 saw it's tough when you guys are trying to get your  
9 act together and understand what you are supposed  
10 to do, the last thing you want is for us to change  
11 the rules halfway through the year.

12 Do you want to go to item six, Joe? Are you  
13 finished with your cobalt?

14 JOE GORAJEC: I want to go to item six. And I  
15 would like the Commission to approve the three  
16 rules. They are listed as six, and the reason it  
17 is is that there are three rules for Thoroughbreds,  
18 and there are three rules for Standardbreds. The  
19 rules are identical, but we have different numbers  
20 for the two different breeds. I say Thoroughbreds,  
21 and I'll get corrected after the meeting. Flat  
22 racing, Thoroughbreds and Quarter Horses.

23 CHAIRMAN WEATHERWAX: Is this sort of like  
24 saying what you just told us about the thresholds  
25 for the penalty?

1           JOE GORAJEC: Yes. The other two rules have  
2 to do with the vet's list. It makes it clear that  
3 the Commission is doing what they said they would  
4 do in September. And that is starting the out of  
5 competition testing for cobalt this year. And that  
6 we have taken kind of a tiered approach to putting  
7 horses on the vet's list with the cobalt overage.

8           We want to make sure that if the horse tests  
9 positive, that the horse is not reentered until its  
10 cobalt level is below the 25 threshold. But horses  
11 that have an extremely high threshold level of a  
12 hundred or more, I'm suggesting that they sit on  
13 the vet's list for a minimum of 30 days before they  
14 are even retested.

15          CHAIRMAN WEATHERWAX: Commissioner Schenkel.

16          COMMISSIONER SCHENKEL: For the sake of  
17 discussion so can we hear from interested parties  
18 and begin the deliberation, I would move that we  
19 approve the adoption of these emergency rules.

20          CHAIRMAN WEATHERWAX: All three of them?

21          COMMISSIONER SCHENKEL: Yes.

22          CHAIRMAN WEATHERWAX: Do I hear a second?

23          COMMISSIONER LIGHTLE: Second.

24          CHAIRMAN WEATHERWAX: We take that by consent.

25          COMMISSIONER SCHENKEL: We need discussion.

1           COMMISSIONER PILLOW: I want to hear some  
2 discussion from the horsemen.

3           CHAIRMAN WEATHERWAX: Anyone want to testify  
4 in regards to these three emergency rules? Jack.

5           JACK KIENINGER: Jack Kieninger, Indiana  
6 Standardbred Association, president. We had a  
7 meeting with Joe. Went over the rule changes and  
8 everything, and it was the consensus of the group,  
9 I think, that we are in support of these three rule  
10 changes.

11          COMMISSIONER PILLOW: That's what I wanted to  
12 hear.

13          CHAIRMAN WEATHERWAX: Yes. Thoroughbred.

14          MIKE BROWN: Mike Brown, I'm the executive  
15 director of the Indiana HBPA. We were at the  
16 meeting. And we think that this is definitely a  
17 step in the right direction. These are workable  
18 rules. We can live with them. We like the  
19 flexibility proposed in them.

20                 We do note for the record that in terms of the  
21 science behind all this, the level of which cobalt  
22 is supposedly performance enhancing has not been  
23 established. And we hope that the level at which  
24 this is harmful has not been established.

25                 All that said, we can live with this. We

1 think it's a good approach. And we appreciate the  
2 fact that we are all able to talk about it  
3 beforehand.

4 CHAIRMAN WEATHERWAX: Thank you, Mike. For  
5 the Quarter Horse.

6 RANDY HAFFNER: I'm Randy Haffner, president  
7 of the Quarter Horse Association. And we met with  
8 Joe on the 24th. We are in full support of the  
9 Commission's position on this.

10 CHAIRMAN WEATHERWAX: Thank you, Randy. That  
11 gives us a lot of understanding that we're on the  
12 same page.

13 So now we have a motion and a second. Any  
14 other discussion by Commission members?

15 MS. ELLINGWOOD: Chairman, just as a point of  
16 clarification, there are two ways in which the rule  
17 can be adopted, by emergency rule or the regular  
18 rule adoption process. For it to be promulgated  
19 through the emergency process under our own policy,  
20 we have to clarify which of those two processes we  
21 are going to use and why. I think the Executive  
22 Director wanted to speak to that point before you  
23 vote.

24 JOE GORAJEC: Yes, I want to, and I forgot to.  
25 I appreciate the reminder.

1           One of the reasons, the criteria we have in  
2 the policy is a timeliness issue. And because the  
3 race meet is just around the corner, in fact, they  
4 are having qualifiers on Saturday at Hoosier Park,  
5 I would say we certainly have a legitimate reason  
6 for the timeliness to pass these as emergency  
7 rules. That's what I am recommending.

8           CHAIRMAN WEATHERWAX: We are voting.

9           COMMISSIONER SCHENKEL: It was listed on the  
10 agenda that way so that was my motion.

11          CHAIRMAN WEATHERWAX: Thank you for that  
12 clarification. Any other discussion? Can we vote  
13 on this matter now?

14          All those in favor of the emergency three  
15 rules say "aye."

16          THE COMMISSION: "Aye."

17          CHAIRMAN WEATHERWAX: Unanimous.

18          Now, update on the equine drug testing. Joe,  
19 that's something that I think we have all been  
20 waiting to here. There's a story here. Do you  
21 want to share it with us?

22          JOE GORAJEC: I would be glad to.

23          CHAIRMAN WEATHERWAX: I use the word story  
24 loosely.

25          JOE GORAJEC: I won't elaborate on the issues



1 that we had with our laboratory last season because  
2 we've talked about them quite a bit. And they have  
3 been very well publicized with regard to the  
4 untimeliness of the analysis from our primary lab  
5 at the time.

6 Because of that, as you know, we switched labs  
7 in midstream last year in order to get the job done  
8 and to do it in the quickest possible way. And for  
9 those reasons, we opened up the process starting,  
10 in fact, last fall to accept bids for our work,  
11 laboratory work for this year.

12 We issued an RFP. When I say "we," we work  
13 with the Indiana Department of Administration,  
14 IDOA, with regard to their request for proposal. A  
15 state agency like ours does not have the authority  
16 to issue contracts of this size on our own accord  
17 without going through the state process. So the  
18 state process was followed.

19 We were -- we had two labs that bid on our  
20 work. We went through an analysis of the lab. And  
21 we have, when I say "we", commission staff, have  
22 the responsibility of reviewing the proposals and  
23 looking and commenting and scoring on the proposals  
24 from what I would call a technical standpoint, more  
25 of a quality of work standpoint. IDOA looks at

1 other things, including price.

2 And after considering our submission and  
3 reviewing all the other relevant factors, the  
4 Indiana Department of Administration awarded the  
5 contract to Truesdail Laboratory. Truesdail  
6 Laboratory is an accredited laboratory. They are  
7 accredited by our regulations. They are also  
8 accredited by the RMTC.

9 It's a lab we are familiar with. Truesdail  
10 has done our work in the past from 1994 up through  
11 2013. They were the only laboratory we ever  
12 utilized before last year. So that's the  
13 laboratory that the contract has been awarded to.

14 There are a few other items that I want to  
15 report on in this particular section because I  
16 don't want to report just on the new laboratory. I  
17 want to report on our drug testing program. One of  
18 the things that I'm adding to the drug testing  
19 program is what I am referring to as a quality  
20 assurance program or an audit lab.

21 The Jockey Club funded a reported study that  
22 was published last year by, I refer to them as the  
23 McKenzie group. And they did a survey of racing  
24 commissions across the country, including Indiana.  
25 And they made a lot of comments and recommendations

1 about how the US was deficient in a lot of areas  
2 regarding drug testing. Many of them really don't  
3 apply to us because we weren't deficient in the  
4 areas they cited.

5 But one of the things that they mentioned was  
6 the lack of significant audit process. They called  
7 it a double blind sample program, basically, a  
8 means of determining whether your primary  
9 laboratory is doing the job it should be doing.  
10 And the job it should be doing is detecting drugs  
11 or foreign substances in the samples that we sent  
12 them that are in violation of our rules.

13 We've set aside \$100,000 from our budget from  
14 our Integrity Fund budget to utilize an audit lab.  
15 And it's my expectation -- and the ink hasn't dried  
16 on the contract yet. Holly is currently working on  
17 one. But it's my intention to utilize Industrial  
18 as our audit lab. Industrial, that's the lab we  
19 went to the second half of the year. They did a  
20 fine job for us. I think they will do good work  
21 for us as an audit lab.

22 CHAIRMAN WEATHERWAX: Do these people know  
23 this, both labs know this is going to happen?

24 JOE GORAJEC: Truesdail doesn't know it yet.  
25 It's not something we are keeping secret. It's

1 just something we were just starting to work on.

2 There will be no secrets.

3 I think that is a very sound approach. To my  
4 knowledge, it's something that no other racing  
5 commission has done, at least on this scale. I  
6 spoke with Doctor Benson, who has a good plug-in,  
7 good tie-in with the laboratories and kind of knows  
8 what all the labs are doing. And when I ran this  
9 by her yesterday, she said she thinks we were the  
10 first, if not the only one, that's doing the audit  
11 function on this scale. So I think that's a good  
12 step for us.

13 The two other things that I would like to  
14 report about on regarding the drug testing is one  
15 of the other criticisms that came out of the  
16 McKenzie report for the Jockey Club was the lack of  
17 out of competition testing. There are not a lot of  
18 states that had an out of competition testing  
19 program. And most of them that do, they do not  
20 have a vigorous program. We were one of the first  
21 states in the country. We were certainly the first  
22 in our neighborhood to have out of competition  
23 testing.

24 Out of competition testing is very important  
25 because there are some drugs, a good example is EPO

1 and blood doping agents, that can be given to a  
2 horse and affect the performance of the horse but  
3 can't be found in the horse on a day of the race.  
4 And the only way to find those drugs in these  
5 animals is to test them out of competition when  
6 they're in training.

7 We have been doing that since 2007. Our  
8 program is more expansive than most. In 2007,  
9 we've done over 2,000 out of competition tests. We  
10 do them at the racetrack. We do them at the  
11 training centers, some county fairs. We actually  
12 do them on private farms. On occasion, we will  
13 actually call someone out of state in the Chicago  
14 area and tell them to bring their horse in the next  
15 day so it could be tested out of competition.

16 And we haven't found a lot, but I think it's a  
17 very, very effective deterrent because if someone  
18 knows that they are subject to out of competition  
19 testing, especially for blood doping agents, in our  
20 rules we have a recommended minimum penalty of a  
21 ten-year suspension. It's a big deal. Okay. So  
22 in other states that don't have an out of  
23 competition testing program, quite frankly,  
24 horsemen, the few unethical horsemen, I don't want  
25 to say horsemen in general because most horsemen

1 wouldn't do this, but a state that doesn't have an  
2 out of competition testing program, horses can be  
3 blood doped on a routine basis. And unless someone  
4 is really, really, really foolish and puts an  
5 EPO-type substance in a horse a couple days before  
6 a race, it will go undetected. So it's a problem  
7 that the industry has. And, quite frankly, a lot  
8 of states aren't addressing it appropriately.

9       What I'm proposing to do for this season is to  
10 nearly double the amount of out of competition  
11 tests we do. We average about 250 a year. I set a  
12 benchmark for our staff to do 500 this year. And  
13 that 500 would put us about 10 percent of all the  
14 horses that we test will be out of competition.  
15 That will be, if not the highest in the industry,  
16 it will be the top two or three as far as the  
17 percentage of horses being tested out of  
18 competition.

19       The other item I want to mention with regard  
20 to our drug testing program, and we'll be informing  
21 the horsemen of this, I think most of them know  
22 already, is that based on the rules that the  
23 Commission passed in September, we are starting to  
24 do cobalt testing out of competition this year. So  
25 those samples that we take from those horses are

1 subject to cobalt testing.

2 I do want to make it clear though that when we  
3 said we are doing cobalt testing, we are not doing  
4 cobalt testing on every sample we send to the lab.  
5 We are not doing it because simply we can't afford  
6 it. Our laboratory is going to be charging us \$50  
7 for a test for cobalt. We pay a little over \$100  
8 to get 1800 drugs in the library tested. And we  
9 spend 50 for just cobalt itself. So, obviously, we  
10 can't send all of our samples to the lab for cobalt  
11 testing.

12 We've set aside \$50,000 for cobalt testing.  
13 So some of the out of competition tests will be  
14 conducted for cobalt and some of the post-race  
15 samples but certainly not all. Approximately  
16 20 percent of the samples we send will be tested  
17 for cobalt. That's my report. I would be glad to  
18 entertain any questions.

19 CHAIRMAN WEATHERWAX: Any comments, questions?  
20 Thank you, Joe. I think we understand.

21 Next on our agenda, number eight, is that  
22 something you want to followup on the split  
23 samples?

24 JOE GORAJEC: Yes. With the changing of the  
25 laboratory, I thought it would be a good idea to

1 put in front of the Commission who has agreed to be  
2 a split laboratory for us. And that's really kind  
3 of a horsemen's laboratory. The way our rule is  
4 written that the primary laboratory has to agree  
5 with the Commission as to who the split  
6 laboratories can be.

7 And I will just let you know that the list of  
8 the three labs that I will run by you right now, we  
9 have talked to Truesdail about them. They are  
10 comfortable with all three laboratories. One of  
11 them is UC Davis, University of California at  
12 Davis, Doctor Scott Stanley. He's been doing split  
13 lab for us I think forever. Great lab. Great  
14 reputation. The University of Pennsylvania has  
15 agreed to be a split lab and also LGC. That was  
16 our primary lab last year. And even though they  
17 had some trouble, I don't think any reasonable  
18 person would quibble with them on the quality of  
19 their work. So those three have agreed to be our  
20 split sample labs this year.

21 I would ask the Commission to approve that  
22 list of three.

23 COMMISSIONER SCHENKEL: One question. How do  
24 you determine, Joe, which three labs you use, is  
25 there a rotation?



1           JOE GORAJEC: No. The three laboratories are  
2 the laboratories we put in front of the horsemen.  
3 So what happens if we get a positive, we show them  
4 the list.

5           COMMISSIONER SCHENKEL: They designate it. I  
6 just wanted to make sure I understand the process.

7           JOE GORAJEC: They designate. And one of the  
8 things we show them is not only the laboratory, but  
9 we also show them the price because there is a  
10 price differential between the labs. They often  
11 pick the least expensive, which is a reasonable  
12 approach. They choose. The Commission has given  
13 me the authority to limit the laboratories for  
14 certain substances depending on what comes up.

15           Oh, and I would want to put on the record that  
16 these three laboratories have affiliate  
17 laboratories that do cobalt testing. So the UC  
18 Davis lab, the Ken Maddy lab, they will send the  
19 sample to their sister lab at the university. LGC,  
20 if they get a cobalt split, they will send it to  
21 the University of Kentucky, which did our work last  
22 year. The University Pennsylvania, I think they  
23 have a lab on site. But it's not necessarily the  
24 racing laboratory that will do the cobalt testing,  
25 but it will be a lab affiliated with the three you

1 approve.

2 CHAIRMAN WEATHERWAX: Very good. Do we need  
3 to make a vote on this?

4 MS. ELLINGWOOD: No.

5 JOE GORAJEC: I would suggest approval.

6 CHAIRMAN WEATHERWAX: Then we will have to  
7 have a motion to accept the split sample with the  
8 listing of the three labs that Joe's mentioned. Do  
9 I hear a motion?

10 COMMISSIONER LIGHTLE: Yes.

11 CHAIRMAN WEATHERWAX: Do I hear a second?

12 COMMISSIONER SCHENKEL: I will second.

13 CHAIRMAN WEATHERWAX: We have a second. All  
14 those in favor say "aye."

15 THE COMMISSION: "Aye."

16 CHAIRMAN WEATHERWAX: Passes unanimously.

17 Next is emergency rule regarding the trainers'  
18 eligibility.

19 JOE GORAJEC: Yes. This rule is the repeal of  
20 a rule regarding continuing ed that I put before  
21 the Commission several years ago when Sarah  
22 McNaught was the chair. And this is a model rule  
23 from the RCI. It is an excellent rule. It's a  
24 rule that we tried to implement, and we were  
25 successful to a point.

1           What happened is that as happens in this  
2 industry, we ran with the rule that's a model rule,  
3 and no one else ran with us. So we're isolated  
4 with regard to continuing ed. And it's very  
5 difficult when you have horsemen in surrounding  
6 states that don't have this requirement.

7           Now, four or five years ago when we passed it,  
8 that really didn't disturb me. Having said that,  
9 in deference to the racetrack who's trying to put  
10 on a high quality program with the fullest field as  
11 possible, I don't want to have this rule as an  
12 impediment for the tracks to have full fields of  
13 quality horses.

14           Now, five years ago when it wasn't that  
15 difficult then, you know, it was a different  
16 circumstance. But the pool of available horses  
17 continues to shrink. And I just can't in good  
18 conscience recommend implementing this rule when it  
19 can negatively impact the track.

20           And I oftentimes don't take that approach in  
21 my recommendations. If it's an integrity issue or  
22 a safety issue whether it affects the track or not,  
23 I'm going to make a recommendation for the  
24 Commission for an approval of the rule. Cobalt is  
25 a good example. Cobalt is a health and welfare

1 issue with the horse. It is an integrity issue  
2 with trainers trying to manipulate the horse's  
3 performance, whether it works or not.

4 So that's something I'm comfortable coming to  
5 the Commission saying we're an outlier, but it's a  
6 good thing. Here we're an outlier, and it's just  
7 not working. So I'm asking the Commission that  
8 they allow me to eat this rule and repeal it.

9 CHAIRMAN WEATHERWAX: Sometimes it's humble  
10 pie. Yes, Commissioner Schenkel.

11 COMMISSIONER SCHENKEL: It's a model rule that  
12 nobody thought was a very good model.

13 JOE GORAJEC: I did.

14 COMMISSIONER SCHENKEL: Has it been somewhat  
15 scrapped nationally or are they looking at this or  
16 no? I mean, I understand the written examination  
17 on most things. The world has changed. Is anybody  
18 developing an online component or to make it easier  
19 or have they just decided it's just not worth it?

20 JOE GORAJEC: The Jockey Club, which has been  
21 very progressive in the last half decade or so as  
22 far as moving issues forward, is trying to push  
23 this regulation. But one of the things about the  
24 RCI, and I know from a lot of experience, is that  
25 what often happens and they get a good idea, they

1 get a good idea, and they vet it at their  
2 convention. They vote on it. And everyone goes  
3 back to their home state, and they don't implement  
4 it. It's still a model rule.

5 COMMISSIONER SCHENKEL: It's still a solution  
6 searching for the problem.

7 CHAIRMAN WEATHERWAX: I think you told me  
8 there were no online training facilities.

9 JOE GORAJEC: That's really a key component  
10 because we've had a very good response from the  
11 local horsemen who showed up for some seminars.  
12 The HBPA did a great job putting on two seminars  
13 the first year. Commission staff held a couple of  
14 seminars that were very well received. We get some  
15 ship-ins.

16 For Standardbred, we get a lot of ship-ins  
17 from Ohio. From Thoroughbreds, we get a lot of  
18 ship-ins from Kentucky. Neither has this rule.  
19 What would happen is the racing secretary would  
20 call them and say I need a horse. And they said,  
21 well, I may not be able to race it because I  
22 haven't gotten the certification.

23 CHAIRMAN WEATHERWAX: The point is well taken.  
24 That is why this is an emergency rule also?

25 JOE GORAJEC: Yes.

1           CHAIRMAN WEATHERWAX: It's striking language  
2 rather than adding language. And that's how we  
3 view to eliminate this rule. So any other  
4 discussion? Commission members, do you have any  
5 more questions?

6           COMMISSIONER SCHENKEL: Move approval.

7           CHAIRMAN WEATHERWAX: Motion.

8           COMMISSIONER LIGHTLE: Second.

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

11          THE COMMISSION: "Aye."

12          CHAIRMAN WEATHERWAX: Number 10. Holly.

13          MS. NEWELL: The Commission has before it for  
14 its consideration a settlement agreement between  
15 Commission staff and trainer Ron Raper. Mr. Raper  
16 admitted violations of certain IHRC rules and has  
17 been cooperative with an ongoing IHRC staff  
18 investigation. In exchange for his cooperation and  
19 truthful testimony, IHRC staff proposed reducing  
20 Mr. Raper's penalty. Absent his cooperation and  
21 truthful testimony, Mr. Raper was facing a  
22 four-year suspension and a \$20,000 fine.

23          However, Mr. Raper has agreed to a one-year  
24 suspension stemming from disciplinary matters that  
25 came to light pursuant to his cooperation in a

1 separate investigation. Five Raper-trained horses  
2 will be disqualified from six 2014 races, and  
3 purses will be redistributed accordingly.

4 Mr. Raper is expected to continue to cooperate and  
5 offer his truthful testimony in other ongoing  
6 matters.

7 Please be advised that there will be one  
8 modification of the settlement agreement before  
9 you. Due to a scrivener's error, the incorrect  
10 race was identified in paragraph 17F. The horse  
11 RD's Ride participated in the first race, not the  
12 third race. Commission staff will make the changes  
13 and have Mr. Raper sign off so that the purse  
14 redistribution is handled appropriately for that  
15 particular horse.

16 Commission staff respectfully requests that  
17 the Commission approve the settlement agreement  
18 with the one modification noted.

19 CHAIRMAN WEATHERWAX: So that's supposed to be  
20 the first race and not the third.

21 MS. NEWELL: Right.

22 COMMISSIONER SCHENKEL: You mentioned the  
23 suspension is reduced and the fine also.

24 MS. NEWELL: Yes.

25 CHAIRMAN WEATHERWAX: So this is going to be

1 ongoing testimony on his part?

2 MS. NEWELL: It will be. It relates to  
3 matters that may be coming before the Commission at  
4 a later date. That's why we are not going into too  
5 many details.

6 CHAIRMAN WEATHERWAX: We don't know what these  
7 are yet, but will we be referred back to this  
8 gentleman's testimony at a later date?

9 MS. NEWELL: You will.

10 CHAIRMAN WEATHERWAX: Questions from the  
11 Commission members to accept this recommendation  
12 for legal settlement?

13 COMMISSIONER SCHENKEL: Move acceptance.

14 COMMISSIONER PILLOW: Second.

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

17 All those in favor say "aye."

18 THE COMMISSION: "Aye."

19 CHAIRMAN WEATHERWAX: It's passed.

20 Now, for the Standardbred racing official list  
21 approval, Hoosier Park, is that you?

22 JOE GORAJEC: Yes, I recommend approval.

23 CHAIRMAN WEATHERWAX: Did this happen after we  
24 had our last meeting?

25 JOE GORAJEC: Yes. Sixty days prior to the



1 commencement of the race meet by our regulation,  
2 the track is required to submit their list of  
3 officials for Commission approval. These are the  
4 Standardbred racing officials. And I would  
5 recommend approval.

6 At the next Commission meeting, you will in  
7 all likelihood be taking up the Thoroughbred and  
8 Quarter Horse officials.

9 CHAIRMAN WEATHERWAX: Are these individuals  
10 that are now serving more or less or are they new  
11 people?

12 JOE GORAJEC: I think every one is back from  
13 last year.

14 CHAIRMAN WEATHERWAX: Great. So we need to  
15 vote on that too?

16 JOE GORAJEC: Yes.

17 COMMISSIONER PILLOW: I will make a motion.

18 COMMISSION LIGHTLE: Second.

19 CHAIRMAN WEATHERWAX: We have a motion and a  
20 second to approve these fine individuals.

21 All those in favor say "aye."

22 THE COMMISSION: "Aye."

23 CHAIRMAN WEATHERWAX: Passed.

24 Old business? Hearing none. New business?  
25 Hearing none, we are adjourned.

1 STATE OF INDIANA  
2 COUNTY OF JOHNSON  
3

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

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

14 IN WITNESS WHEREOF, I have hereunto set my  
15 hand and affixed my notarial seal this 19th day of  
16 March 2015.

17 Robin P. Martz



18  
19  
20  
21  
22 My Commission expires:  
23 March 2, 2016

24 Job No. 93924  
25

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