

**NEW JERSEY RACING COMMISSION
WEDNESDAY, MAY 15, 2013
“LIBRARY ROOM”
MONMOUTH PARK
OCEANPORT, NEW JERSEY**

A meeting of the New Jersey Racing Commission was held on Wednesday, May 15, 2013, in the Library Room of Monmouth Park located in Oceanport, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner (by phone)
Anthony R. Caputo, Commissioner
Pamela J. Clyne, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Julie Barnes

The following were absent:

Peter J. Cofrancesco, III, Commissioner

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the “Open Public Meeting Law,” and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

WHEREAS in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, be it resolved that consistent with the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the advertisement of amendments to N.J.A.C. 13:71-17.1 (Starting Gate) as it relates to implementation of a fair start pole;
2. Legal advice concerning the distribution of the Casino Simulcast Special Fund monies generated in 2011 in the amount of \$1,120,028.77 pursuant to N.J.S.A. 5:12-205d;
3. Pursuant to N.J.A.C. 13:71-1.23, consider whether to review the matter of Ruling 13MDH38, as issued by the Racing Commission Board of Judges assigned to the Freehold Raceway on March 27, 2013, which imposed a \$1,000 fine on Racing Commission licensee Jan Henriksen, for violation of N.J.A.C. 13:71-9.2(b). Subject to the determination as to agenda item 11(a) above, pursuant to N.J.A.C. 13:71-1.23, consider whether to modify the decision or penalty of the Racing Commission Board of Judges, assigned to the Freehold Raceway, as set forth in Ruling 13MDH38; and
4. Other legal advice and/or status of pending litigation.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise her ethical duties as a lawyer and/or matters involving pending or anticipated litigation."

It was noted that Commissioner Aponte was participating by telephone.

Commissioner Keegan motioned to adopt the resolution to adjourn. Commissioner Abbatiello seconded the motion. The Commission then adjourned to Executive Session.

The Commission ended the execution session and Commissioner Caputo moved to reconvene the public session. Commissioner Keegan seconded the motion and the Commission concurring, the public session resumed.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE FEBRUARY 27 AND MARCH 20, 2103 COMMISSION MEETINGS

Commissioner Abbatiello made a motion to approve the public and executive minutes of the February 27, 2013 and March 20, 2013 public meetings. Commissioner Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE BILLS

Commissioner Abbatiello motioned to table the bills because they were not yet prepared. Commissioner Caputo seconded the motion and all Commissioners voted to table the bills.

CONSIDER RATIFICATION OF APPROVAL GRANTED TO THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION REGARDING MONMOUTH PARK'S 2013 RACE FORMAT, ADMISSION PRICES, DEPARTMENT HEADS, ETC.

The Executive Director called upon Bill Knauf, Vice President of Business Operations for Monmouth Park, to provide information on the Jersey Shore Pick-6 wager which took place on opening day. Mr. Knauf explained to the Commission that the ten-cent based wager went very well and is modeled after the Pick N rules—a major and a minor share with a carry-over provision. He indicated that the different aspect with this wager is in order to take home the whole jackpot you have to have one unique wager. The Executive Director clarified that this is a new wager and while there are no specific regulations for this wager, however, they are modeled after the Pick N rules. He stated the Commission has the authority to approve this new wager and that he exercised approval to allow Monmouth Park to offer this wager prior to the Commission's approval. Commissioner Abbatiello voiced his concern for approval being granted prior to the Commission's consideration of the wager. The Executive Director advised that this situation will not occur in the future, and he reminded the permit holder to submit future requests of this nature in a timely fashion.

The Executive Director asked Mr. Knauf to clarify Monmouth Park's request to uncouple same owner entries in all stake races, regardless of field size or purse. The Executive Director noted that the Commission previously approved the uncoupling of same owner entries with a limitation that the purse must be \$100,000 or more and the Commission gave the Director discretion in reducing this threshold, if circumstances warranted. Mr. Knauf indicated that while the original request included all stakes, the preference is for listed stakes with a minimum purse of \$75,000. He explained that listed stakes follow all the rules for Graded Stakes and the American Graded Stakes Committee considers listed stakes but not below the grade and there are stipulations the listed stakes have to follow compared to overnight stakes.

Commissioner Abbatiello made a motion to approve the modified request to uncouple same owner entries in listed stakes and to ratify prior approval of Monmouth Park's 2013 wagering format and department heads, including the new Jersey Shore Pick-6 rule. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED CONCERNING THE FOLLOWING HANDICAPPING CONTESTS:

- a) World Harness Handicapping Championship Qualifier on Saturday, April 6, 2013 at the New Meadowlands Racetrack.
 - b) 2013 Simulcast Series Challenge on Saturday, April 20, 2013 at Monmouth Park Racetrack.
 - c) Winners Simulcast Series Challenge on Thursday, May 2, 2013 at Winners Bayonne Off-track Wagering Facility.
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Commissioner Caputo motioned to ratify approval granted concerning the noted handicapping contests. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE APPROVED NEW JERSEY CASINOS TO RECEIVE THE SIMULCAST RACES FROM INDIANA DOWNS AND LEBANON RACEWAY

Commissioner Keegan made a motion to approve the casinos' receipt of races from Indiana Downs and Lebanon Raceway. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF NEW MEADOWLANDS RACING, LLC TO SIMULCAST 8 TROTting RACES ON HAMBLETONIAN DAY, AUGUST 3RD TO PMU INTERNATIONAL IN FRANCE ON A COMMON POOL WAGERING BASIS

Commissioner Abbatiello motioned to approve the request of the New Meadowlands Racetrack to commingle (8) trotting races conducted on Hambletonian Day, to PMU International in France, subject to testing certification from Sportech Racing, LLC.

CONSIDER THE REQUEST OF NEW MEADOWLANDS RACING, LLC TO CONDUCT A "RACING UNDER SADDLE" OR "MONTE" NON-WAGERING SERIES OF RACES ON THE FOLLOWING DATES:

- Friday, July 19, 2013 Elimination
- Friday, July 26, 2013 Elimination
- Saturday, August 3, 2013 Final (Hambletonian Day)

Executive Director Zanzuccki asked NMR General Manager/CEO Jason Settlemoir to identify the source of the purse money. Mr. Settlemoir indicated that the purse money will be derived from sponsorships. Mr. Luchento, President of the SBOA stated that the horsemen's group has agreed to donate \$5,000 maximum, if needed, to fund the purse. The Executive Director reported that counsel has reviewed this matter in regard to the use of purse money to fund non-wagering races and counsel did not identify any impediments to the use of the purse money.

Commissioner Abbatiello motioned to approve the request. Commissioner Caputo seconded the motion and all Commissioners voted yes.

CONSIDER FOR ADVERTISEMENT AMENDMENTS TO N.J.A.C. 13:71-17.1 (STARTING GATE) AS IT RELATES TO IMPLEMENTATION OF A FAIR START POLE

The Executive Director stated that staff has concluded the Commission should not advertise any changes to the existing rule and not implement a fair start rule as it would negatively affect the racetracks if refunds were issued to bettors whose horse did not reach the fair start pole when the other horses have reached the starting point, and it has been determined that the totalisator company does not have the programming capability necessary to provide for payments to those patrons who wagered on a horse that recovered from a poor start and finished in a wagering payoff position.

Commissioner Abbaitello motioned to reject the petition for rulemaking and not advertise the rule amendment. Commissioner Caputo seconded the motion and all Commissioners voted yes.

CONSIDER DISTRIBUTION OF THE CASINO SIMULCAST SPECIAL FUND MONIES GENERATED IN 2011 IN THE AMOUNT OF \$1,120,028.77 PURSUANT TO N.J.S.A. 5:12-205D

Executive Director Zanzuccki read the following statement:

“In advance of this meeting today, each Commissioner has been provided with materials and correspondence from all racetracks and horsemen’s groups regarding the aforementioned distributions which were received by the commission prior to the November 14, 2012 meeting, and which encompass those materials submitted for the year in question. The oral commentary at the November 14, 2012 meeting is also being considered and a copy of a transcript of the commentary has also been provided to each Commissioner in advance of today’s meeting.

Additional facts relevant to the specific year under consideration were compiled by Commission staff members and include wagering and other data related to the casinos, transportation data regarding Atlantic City, as well as statistical information such as handles of the various racetracks, OTW parlors, New Jersey telephone and internet betting systems.

The record in this matter was closed following the oral commentary at the November 14, 2012 meeting.

Every year, the racetracks and horsemen’s groups set forth compassionate need for casino simulcasting special fund monies. However, the Commission cannot logistically fulfill the requests of each interest group for any single year due to the fact that we are working with limited funds. This fund continues to decline year after year with the 2011 amount being 8 percent less than the 2010 amount.

Furthermore, although the Commission can allocate these monies as it considers appropriate, in exercising its discretion, we must follow the statutory guidelines and priorities established by law. We must give the highest priority to any racetrack who demonstrates that its financial well being has been negatively affected by casino simulcasting, then to any racetrack who demonstrates that it is financially distressed, then to any horsemen’s organization which will use the money to fund a project which the Commission determines will be beneficial to the racing industry, and finally, if there are any monies left over, they will be distributed equally to each racetrack. The Commission has never gotten to the fourth category.

Before we get into the discussion on this matter, I would like to highlight some pertinent facts from 2011:

- Atlantic City tries to continue to expand as a destination resort with the commencement of construction of a new casino—the Revel.
- Atlantic City City Airport began an ambitious expansion program. Again, this is related to the year 2011;
- Competition for the gaming customer increases dramatically with new casinos being opened in surrounding jurisdictions; and
- Casino revenues continued to decline with 2011 results being 6.9 percent less than in 2010.
- Wagering at casino simulcasting outlets also continue to decline from \$74.1 million in 2010 to \$69.3 million in 2011, which is 6.5% drop.
- Wagering at all New Jersey horse racing facilities have declined about 8% partially due to the dramatic change in the number of live racing dates from 388 in 2010 to 279 in 2011.

At the November 14, 2012 Commission meeting, a Committee was formed to review all documentation and reasoning regarding this matter and report back to the Commissioners. The Committee members— Commissioner Aponte, Cofrancesco, and Keegan met on two occasions to discuss this allocation and will present the results of their review for consideration and discussion, among all Commissioners. But first, as a point of reference, I will note here that the Committee is recommending that 80% of these funds be allocated to the racetracks and 20% to the horsemen's groups. Nine percent would be allocated to Atlantic City Race Course and 71% to Freehold, Monmouth Park and the Meadowlands, equally. The 20% to the horsemen's groups would be shared by breed.

Commissioner Keegan will now present the Committee's findings and entertain discussion regarding various issue."

Commissioner Keegan opened the discussion by indicating that all of the facts mentioned by Executive Director Zanzuccki, in addition to the fact that casinos offer multiple games of chance and other compensation, and other incentives that racing cannot match, result in the continuing loss of revenue to the horse racing industry. The Commissioner indicated that the total amount of Casino Simulcasting Special Funds

accumulated in 2011 is \$1,120,028.77 and as the Executive Director has stated, the statute governing distribution of Casino Simulcasting Special Funds designates an order of priority by which allocation of these funds to racetracks and horsemen's groups can and should be made.

Priority Category No. 1

Commissioner Keegan stated that Priority Category No. 1 provides for a racetrack to demonstrate to the Commission that its financial well-being has been negatively affected by casino simulcasting. The Commissioner stated that clearly, by the statistics just reviewed, casino simulcasting and casino gaming negatively impact our four racetracks, and we all know how casinos market to all areas of the state, provide transportation like bus excursions, limo service and offer incentives to visit Atlantic City. He indicated there is substantial competition for the gaming dollar from casinos and other surrounding jurisdictions that impacts the revenues for New Jersey racetracks and casinos. All of the statistics clearly show a significant and continuing loss of wagering dollars at our racetracks and a full decline in casino gaming wins year after year. The Commissioner stated that all racetracks have submitted documentation of having been negatively impacted by casino simulcasting and historically, the Commission has found this to be the case when previously allocating funds.

A discussion began among the Commissioners concerning the distribution of funds under Priority Category No. 1. Commissioner Abbatiello commented that the decline in horse racing revenues due to casino gaming is not limited to New Jersey, but is found to be true throughout the country. Commissioner Caputo stated that New Jersey must try to maintain its racetracks as solvent as possible until this storm of casino impact is over. Commissioner Aponte stated that Commissioner Keegan said it best in his earlier discussion concerning the negative affects of casino simulcasting on the four racetracks. Executive Director Zanzuccki recapped that all of the Commissioners are agreeing that casino simulcasting has negatively impacted all of the racetracks. All of the Commissioners voiced their confirmation of the Executive Director's statement.

Priority Category No. 2

Commissioner Keegan explained the definition of Priority Category No. 2 as that of any racetrack in this State which the Commission finds to be financially distressed. The Commissioner stated that everyone is aware of the financial hardships facing the horse racing industry in New Jersey, and that all four racetracks have submitted documentation that they are financially distressed. He believes that they have successfully documented their financial distress and all racetracks qualify for funds under this priority. When

questioned by Commissioner Keegan, all of the Commissioners agreed that the racetracks qualify for funds under Priority Category No. 2.

A discussion among the Commissioners began concerning the allocation of funds among the affected racetracks considering the top two priorities. Commissioner Keegan stated that as each year passes the regional draw of Atlantic City casinos and the impact of casino simulcasting on our racetracks becomes less related to a particular racetrack's proximity to Atlantic City. This was documented in the Commission's 1999 distribution and was upheld by the Appellate Division when challenged in 2003. Following a careful review of all facts of the record, it is the Committee's belief that the most viable racetracks are affected the greatest and those that offer meaningful and substantial racing opportunities should receive the largest distribution of these funds.

Commissioner Keegan indicated that Atlantic City Race Course has maintained in its correspondence that they are impacted to the greatest degree due to the close proximity to Atlantic City casinos. The Committee feels that Atlantic City Race Course's six-day live meet does not represent a significant and viable racing opportunity when compared to the State's other racetracks— Monmouth Park/Meadowlands (thoroughbred) 77 days, Freehold Raceway 151 dates and Meadowlands (harness) 81 days

Commissioner Keegan noted that Atlantic City Race Course continues to request the bulk of the funds. Commissioner Keegan indicated that the Committee all disagreed that Atlantic City Race Course's assertion that it deserves the bulk of this funding and asked the opinion of the other Commissioners. The Commissioners were of the opinion that those racetracks that offered substantial race meets are the most negatively affected, and felt that Atlantic City Race Course utilizes the money they receive from the Casino Simulcast Special Fund to run the limited six-day meet. The Executive Director noted that Atlantic City Race Course was told by the Commission when they decided to dramatically reduce their race schedule to four days that the Commission would consider that reduction in the distribution of the Casino Simulcasting Special Fund and Atlantic City representatives understood that at that time, and from that point forward, the Commission has always distributed less money to Atlantic City Race Course than the other racetracks because of that factor. Prior to that, however, the Executive Director stated that Atlantic City Race Course did receive the bulk of the money, in addition to several million dollars a year pursuant to law due to cease simulcasting in order to give the casinos an opportunity to develop clientele. Subsequently, when Atlantic City Race Course reopened their simulcasting facility, they received the bulk of the Casino Simulcasting Special Fund because it was determined that they were negatively affected by casino simulcasting and because they were running a viable race meeting. Once the meet was reduced, the race course was notified that they would no longer receive the bulk of the funds. The Executive Director pointed out that

the Commission's actions have been consistent with that determination. Commissioner Aponte stated that his opinion has been the same for a while which is that Atlantic City Race Course should not get 90% of the funds, and that all of the racetracks should get the bulk of the money because if not for the racetracks, there is no horse racing. The Commissioner further stated that there should be financial offsets benefitting Atlantic City Race Course and Freehold Raceway due to their proximity to the casinos. Commissioner Aponte understands that this is not in agreement with the Commission's recent findings (i.e., proximity), and according to Executive Director Zanzuccki this finding was upheld in the Courts. Nevertheless, he respectfully disagrees with his fellow Commissioners on the proximity issued under Priority Category No. 2.

There was no further discussion concerning Priority Categories 1 and 2. Commissioner Keegan stated that with the foregoing facts in mind and giving due consideration to the reduced funds available in 2011, the Commissioner proposed that under Priority Categories 1 and 2, the four racetracks receive 80% of the available funds to be distributed as follows:

Monmouth Park, the Meadowlands, NJSEA and Freehold receive 71% of the funds in equal amounts of \$265,073.48. The Commissioner also proposed that Atlantic City Race Course, although entitled to some of these funds, should receive less due to its limited racing schedule, but also recognizing that it is a popular, well-attended six-day meet, recommended they receive 9% of the funds which equates to \$100,802.58.

Priority Category No. 3

Commissioner Keegan explained that Priority Category No. 3 provides for distribution to any horsemen's organization that will use the money to fund a project which the Commission determines will be beneficial to the racing industry. Based on a review of these submissions, Commissioner Keegan believes the three groups have submitted requests for funds that qualify, for the most part, since they intend to use the funds allocated to the benefit of the industry by helping fund health and welfare programs for horsemen, and to help sustain and/or increase the New Jersey breeders' award program. The SBOA submitted a request to also fund standardbred horse retirement programs, additional health screenings, and open space program events. Although these are obviously worthwhile programs, the Commissioner opined given the limited amount of funding available, the Casino Simulcast Special Fund monies would best be used to fund the health and welfare program and other funding sources should be found for the other uses.

A discussion occurred concerning the submissions of the horsemen's groups. All of

the Commissioners agreed with the Committee that the money should be utilized on health and welfare programs.

Commissioner Keegan explained that the THA submitted a request for funds for use in its backstretch health and welfare program and its pension plan. He suggested that the Commission grant these funds for this use to assist in maintaining the current levels of coverage. All of the Commissioners were of the opinion that it is important that the use of the money be for the health and welfare programs.

Commissioner Keegan explained that the TBA requested funds to provide coverage its breeders' awards program in 2012, and the Commission has always found this to be a viable use of these funds and suggested that funds be awarded to support this breeders' award program. All of the Commissioners were in agreement that the money should be awarded for this purpose.

Commissioner Keegan indicated that after allocating funds under Priority Categories 1 and 2, there remains a balance of \$224,005.75 for distribution under Priority Category No. 3. Commissioner Keegan believes these funds should be divided equally by breed. Each breed provides significant racing opportunities, each provides opportunities for employment, each provides substantial open space by virtue of the land devoted to horse breeding and training, and each provides recreational opportunities for New Jersey residents.

Commissioner Keegan stated that the standardbreds are represented by one organization, the SBOA, the thoroughbreds are represented by two groups— the THA and the TBA. The Commissioner then proposed the following distribution: Half of the remaining funds to the SBOA, which is \$112,002.87, and the remaining funds to be split evenly between the two thoroughbred horsemen's groups, which is \$56,001.44 to the THA and \$56,001.44 to the TBA.

Priority Category No. 4

Commissioner Keegan indicated there are no funds remaining for distribution under Priority Category No. 4, which provides for distribution to all racetracks in the state under an equal basis.

Commissioner Keegan indicated that this concludes the discussion on the allocation of the 2011 Casino Simulcasting Special Funds and thanked the Committee members that met several times with staff and thanked staff member Ray Molski. He indicated that following these meetings, the Committee requested that staff prepare a motion that reflects its recommendations for distribution of the 2011 Casino Simulcasting Special Funds and he

asked Executive Director Zanzuccki to read the proposed motion.

Executive Director Zanzuccki read the following proposed motion of the Committee for distribution of 2011 accumulated Casino Simulcasting Special Funds pursuant to N.J.S.A. 5:12-205d:

“Regarding the 2011 accumulated fund monies, which totals \$1,120,028.77, I would note that this represents an 8 percent decrease in the funds available for distribution compared to the prior year. For comparison purposes, in 1999 this fund had over \$2.2 million available for distribution. We have received applications from each racetrack, and from each horsemen’s group. The Commission has also heard and considered verbal comments made at our November 14, 2012, meeting.

In these applications, all of the racetracks have requested that funds be distributed to them pursuant to N.J.S.A. 5:12-205d(1) (the racetrack can demonstrate that its financial well being has been negatively affected by casino simulcasting) and 205d(2) (the Commission finds the racetrack to be financially distressed).

Specifically, the New Jersey Sports and Exposition Authority (“NJSEA”) requested that \$549,000 be distributed to the Meadowlands Racetrack and \$549,000 be distributed to Monmouth Park. Freehold Raceway requested \$500,000 and the Atlantic City Racecourse asked for \$1,008,025.

In the applications filed by the horsemen’s organizations, the Standardbred Breeders and Owner’s Association (“SBOA”) asked for \$305,000. Of this total \$250,000 would be used to supplement its self-funded health insurance program, \$15,000 for the retirement program which seeks to find safe, healthy and caring homes for retired standardbred racehorses, \$25,000 to provide more health screenings and \$15,000 to support an Open Space Program.

The New Jersey Thoroughbred Horsemen’s Association (“THA”) requested the entire balance of funds that remained after distribution to racetracks to be used to help fund the Backstretch Health & Welfare Program. Finally, the Thoroughbred Breeders’ Association of New Jersey (“TBA”) requested \$400,000 to help fund its 2012 Breeders Awards program.

At its November 14, 2012 meeting, the Commission gave all of the interested parties the opportunity to provide additional, verbal comments regarding the distribution of the Casino Simulcasting Special Funds. After receiving these comments, the Commission closed the record and informed the interested parties that any additional comments will not

be circulated to, or considered by, the Commissioners.

The only oral comment presented this year was by ACRC. They noted that when casinos were closed due to Sandy, their facility was the only one to show an increase in handle which might be a good indicator of how the casino simulcasting handle would transfer if all casino simulcasting were halted. It is emphasized that this statement is not to be considered in allocating 2011 accumulated funds since the event occurred in 2012.

I would like to note at this time that the continued decline in the amount of money available in the fund is a concern when considering the relative positive financial impact of each allocation on the respective parties based on recent Commission distributions.

The Commission has reviewed the written documents and a transcript of the oral presentations and have determined that:

- All racetracks presented documentation that they have suffered a negative financial impact from Atlantic City Casino simulcasting and as in the past the Commission agrees that all racetracks qualify under 5:12-205d(1), the highest priority;
- All racetracks have documented again that they are financially distressed. The Commission agrees and all racetracks qualify under 5:12-205d(2), the second highest priority; and
- The horsemen's groups have again properly applied for funds under 5:12-205d(3) the third highest priority, and, for the most part, suggested uses of the funds that could be considered appropriate.

In determining specific allocations, I find that the highest priority category is the negative impact of casino simulcasting and I find each racetrack's financial well-being has been negatively affected by casino simulcasting in 2011, directly, and by casino simulcasting in a derivative manner, due to the attraction of horse players to casino simulcast parlors, and from there, to other casino games of no benefit to our industry.

The racetracks highlighted many of the same relevant issues and rationales it set forth concerning the accumulated 2010 special fund requests. Freehold states that casino simulcasting continues to negatively impact its financial well-being. Meadowlands and Monmouth Park again noted that a negative financial impact may be implied as it continues to have the two most popular signals at casino simulcast facilities, and that the overall impact of casino gaming draws customers from its facility to Atlantic City casinos. ACRC continues to claim that no other entity is as negatively impacted by casino simulcasting as

it is and that its reduced racing schedule is directly related to the negative impacts of casino simulcasting. ACRC states that the award of special fund monies to tracks farther away from Atlantic City, and because they may be more viable, is not supported in law. ACRC argues that it is entitled to the majority of the 2011 special fund monies under the law.

I disagree with ACRC's claim that it is entitled to most of the special funds monies available this year. Since 1998, we have awarded monies under paragraph d(1) to other racetracks less proximate to Atlantic City, and the negative impact of casino simulcasting to our racetracks, as each year passes, becomes less related to distance from Atlantic City. Further, when racetracks claim a negative impact to their financial well-being has resulted from casino simulcasting, the viability of that racetrack comes into play and, as in the past, ACRC's reduced race schedule offering is one consideration. Racetracks whose management strive to offer meaningful and necessary live racing are harmed more by the negative impacts of casino simulcasting, than those who do not. Even though other racetracks have reduced their live race dates, they still offer a significant race meet as compared to Atlantic City Racecourse's 6 days.

Monmouth Park and Freehold Raceway also argued that proximity to Atlantic City Casinos should be considered when determining negative affect of Casino Simulcasting. Again, we disagree that proximity is an over riding factor as compared to racetrack trade area demographics, a meaningful live race meet and relative amount wagered at Casino simulcast facilities on racetrack signals and from racetrack trade area residents.

Clearly, the financial well-being of each of our racetracks has continued to be negatively affected by casino simulcasting in 2011 as well as other economic factors. While the exact negative impact of casino simulcasting to our racetracks, as in prior years, can not be quantified in terms of dollars and cents, casino simulcasting does negatively impact our racetracks' financial condition, and casino simulcasting serves as one ingredient to their current financial plight. Again, each New Jersey racetrack qualifies under the highest priority category, and the greatest share of the available special fund monies should legally and factually be devoted to our most viable racetracks offering meaningful live racing.

Each racetrack property has also submitted documentation that they are financially distressed, and each argues that it also qualifies for consideration under the second priority category to the statute for 2011.

The New Jersey Sports and Exposition Authority stated that Meadowlands and Monmouth Park are suffering financially and are in need of financial assistance in order to maintain and/or improve racetrack operations having realized a combined net operating loss of \$13.1 million in 2011.

ACRC states that it realized an operating loss of over \$1.1 in 2011. Freehold noted it realized a \$3.9 million loss for 2011.

In considering each application, I believe that the Meadowlands, Monmouth Park, Freehold and ACRC racetracks have each demonstrated that they are financially distressed.

With due consideration to the reduced funds available this year, I propose, under the first two priorities, the following allocations:

- Monmouth Park, Meadowlands and Freehold each receive \$265,073.48, pursuant to paragraphs d(1) and d(2) to the statute; and

- ACRC receive \$100,802.58, pursuant to paragraph d(1) and d(2) to the statute.

Next is the third priority category, and \$224,005.75 remains available after the above proposed distributions under the higher priority provisions. The third priority category authorizes the Commission to allocate funds, in the amount it deems appropriate, to any horsemen's group which will use the money to fund a project beneficial to racing. I believe that the remaining funds be shared by breed with the SBOA receiving 50 percent and the THA and TBA 25 percent each.

Accordingly, the funds I propose for distribution to the SBOA and THA may only be used for their health and welfare programs to cover ever increasing health insurance costs. As concerns the TBA, it is expected that the TBA will use any allocated monies to enhance the breeders award programs.

I propose the following for distribution to the horsemen's groups:

- \$112,002.87 to the SBOA, as the horsemen's organization representing the standardbred horsemen; and

- \$56,001.44 each to the THA and TBA, as the horsemen's organizations representing the thoroughbred horsemen."

Commissioner Caputo motioned to accept the motion as read by Executive Director Zanzucki. Commissioner Keegan seconded the motion and all Commissioners voted yes.

PURSUANT TO N.J.A.C. 13:71-1.23, CONSIDER WHETHER TO REVIEW THE MATTER OF RULING 13MDH38, AS ISSUED BY THE RACING COMMISSION BOARD OF JUDGES ASSIGNED TO THE MEADOWLANDS RACETRACK ON MARCH 27, 2013, WHICH IMPOSED A \$1,000 FINE ON RACING COMMISSION LICENSEE JAN HENRIKSEN, FOR VIOLATION OF N.J.A.C. 13:71-9.2(B)

SUBJECT TO THE DETERMINATION AS TO AGENDA ITEM 11(A) ABOVE, PURSUANT TO N.J.A.C. 13:71-1.23, CONSIDER WHETHER TO MODIFY THE DECISION OR PENALTY OF THE RACING COMMISSION BOARD OF JUDGES, ASSIGNED TO THE MEADOWLANDS RACETRACK AS SET FORTH IN RULING 13MDH38

The Executive Director stated that pursuant to the Commission's regulations, whenever the Executive Director believes that a penalty issued by the Board of Judges assigned to a racetrack is in his opinion unfair, either too heavy or too lenient, the process is to bring the matter back to the Racing Commission for reconsideration of the penalty.

Executive Director Zanzuccki explained that staff forwarded an investigative report to the Board of Judges at the Meadowlands Racetrack involving activity of Dr. Henriksen. Dr. Henriksen was asked to provide veterinary records for the period March 11, 2011 through March 12, 2012, and a review of those records revealed Dr. Henriksen performed shock wave therapy a total of 19 times for the one-year period. Dr. Henriksen was interviewed regarding his treatment sheets and stated that he was using the term shock wave as a generic term when he was in fact performing ultrasound therapy. Dr. Henriksen advised the Commission investigators that the treatment records should have read therapeutic ultrasound for the 19 entries. Dr. Henriksen further stated that he was unaware of the rules of the Commission regarding the owning and using of shock wave machines. The Executive Director continued that Dr. Henriksen also stated that in his opinion, ultrasound therapy in the opinion of owners and trainers is a suspect treatment and one which he advises raises a red flag and leads the owners and trainers that something is seriously wrong with the horse. Therefore, in his billing, Dr. Henriksen uses the term shock wave therapy to differentiate therapeutic ultrasound from diagnostic ultrasound. The Commissioners were advised of another matter involving Dr. Henriksen and the death of the horse "Giddy Up Lucky," in which an Initial Decision was issued by the Office of Administrative Law. This matter has not yet been considered by the Commission.

The Commission then considered whether to review the matter. Commissioner Abbatiello motioned to consider the matter. Commissioner Keegan seconded the motion and all Commissioners voted yes, with the exception of Commissioner Clyne who voted no.

The motion carried and the Commission then considered whether to modify the penalty issued Dr. Henriksen by the Meadowlands' Board of Judges.

At this time, Howard Taylor, Esq., counsel for Mr. Henriksen, asked to address the Commission. The Executive Director asked Mr. Taylor if he had any input with the wording of the ruling issued by the Board of Judges. He replied that he did not, but he did have a discussion with Presiding Judge Tomasello, but did not have anything to do with the actual ruling. The Executive Director questioned Mr. Taylor if he asked to see the ruling before it was issued and Mr. Taylor replied that he did. The Executive Director asked Mr. Taylor if at that time he felt the ruling was adequate and he did not suggest any changes as presented by the Board of Judges. Mr. Taylor replied that was correct.

Mr. Taylor stated that there were inaccuracies that were presented to the Commissioners. He indicated that Dr. Henriksen does not own or possess a shock wave therapy machine. The Executive Director stated that he did not state that Dr. Henriksen owned a shock wave therapy machine. Mr. Taylor stated that Dr. Henriksen did not say that therapeutic ultrasound was ineffective, he said that diagnostic ultrasounds close to racing is a waste of time and money and that therapeutic ultrasounds are what he does charge for. Mr. Taylor further stated Dr. Henriksen was not charging for a service he was not performing. Mr. Taylor also stated that Dr. Henriksen cooperated fully in every stage of the investigation and provided voluminous records, and the judges made an independent decision which was in the form of an offer to avoid the expense and time of a hearing. Therefore, Mr. Taylor stated that Dr. Henriksen was never afforded a formal opportunity to be heard by anyone. He believes that it is unfair for the Commission to consider giving any penalty because an offer was made by the judges which was accepted in lieu of a hearing. Mr. Taylor thought the offer was high, but it was a cost benefit analysis where he had believed that any penalty should be given without proceeding further with a hearing and eventually going to an appeal. Mr. Taylor also stated that he felt it was prejudicial and unfair for the Commission to raise the matter in which an OAL Initial Decision was issued.

Executive Director Zanzuccki requested that based on the information before the Commission, he believes that the conduct exhibited by Dr. Henriksen is atrocious and the penalty imposed by the Board of Judges is willfully inadequate and believes that the Commission should consider increasing the penalty consistent with its regulations to a significant penalty. After some discussion among the Commission, counsel for the Commission suggested the Commission reconvene to executive session to discuss a legal issue that needs to be discussed before the Commission makes a determination on this matter. Commissioner Aponte motioned to reconvene to executive session. Commissioner Abbatiello seconded the motion and the Commission moved into executive session.

The Commission ended the execution session and Commissioner Aponte moved to reconvene the public session. Commissioner Abbatiello seconded the motion and the Commission concurring, the public session resumed.

Executive Director Zanzuccki proposed the following motion:

“This matter was referred to the Board of Judges for the purpose of determining if reason exists to schedule a hearing on the matter. Instead, the Board of Judges did not follow that instruction, and entered into a settlement agreement. As is obvious here today, from the presentation of Mr. Henriksen’s legal counsel, the facts are in dispute. I, therefore, propose that the Commission rescind Ruling 13MDH38, and as originally intended, refer this matter for hearing. In view of the facts and circumstances, I as part of this motion propose that the hearing be held before the Board of Judges, or OAL, to be determined by Racing Commission staff in consultation with Racing Commission legal counsel.”

Commissioner Keegan motioned to accept the proposed motion as read by Executive Director Zanzuccki. Commissioner Caputo seconded the motion and all Commissioners voted yes.

STATUS OF RESTORING THE USE OF ACCOUNT WAGERING ACCESS CARDS TO ACCOUNT HOLDERS AT RACETRACKS & OFF-TRACK WAGERING FACILITIES

Executive Director Zanzuccki explained that at the time the Commission granted a license to TVG to operate the account wagering system there was an issue of whether the access cards would be functional on March 1 and the Commission was advised that that would not be possible at that time, but that the matter was being handled and that TVG will be restoring that service to customers as soon as possible. The Executive Director stated that he has communicated with TVG and Sportech to provide updates as to their progress in restoring this function. He has received responses that indicate there have been some discussions regarding this issue, however, there has been no firm conclusion or estimated time frame when the service will be restored.

John Hindman, representative of TVG, was called upon to provide additional information to the Commission and answer questions. Mr. Hindman updated the Commission by stating that TVG has worked with Sportech in dealing with two items that need to be done. The first item concerns commercial arrangements which Sportech provides and the technical integration of TVG with Sportech to allow this capability to function properly. Mr. Hindman indicated that while TVG is confident that the technology can work, the question is logistically how this function will work in regard to the system’s ability to distinguish wagers that are placed at a racetrack using the access card versus wagers placed

through the account wagering system by phone or computer. Mr. Hindman indicated that TVG has discussed this issue with Sportech management, however, they have not provided these services previously and were not able to offer any background. Mr. Hindman indicated that TVG has brought up this issue to Darby and when they got to the point of putting the technology in place, there were concerns as to how all of the money will get settled, TVG decided prudence would be the best option and in order to ensure that the stakeholders were satisfied with the all the technology, TVG has decided to hold a meeting next week so that all of the stakeholders can make a decision which TVG and Sportech can support.

The Executive Director asked Mr. Hindman how long he believes the process will take to restore service to its customers. Mr. Hindman responded that a meeting will take place next week between all of the parties and expect to have an agreement shortly thereafter, and it will take between thirty to sixty days to acquire the software. Commissioner Caputo voiced his concern that this service has not yet resumed to the customers and believes that the thirty to sixty-day time frame for acquiring software is not acceptable in today's technology. The Commissioner opined that TVG has three months to resume the service and if not, the contract should be suspended. Mr. Hindman responded to the Commissioner by stating that TVG and Sportech were competing for this business up to the day it was awarded, and the two parties were not working together. He further added that TVG had put deposit and withdrawal windows in every track and off-track wagering facility that requested a window and some of the facilities did turn the windows down for whatever reason.

The Executive Director asked Mr. Hindman if TVG is receiving a benefit from delaying the card access service because TVG does not derive any benefit when wagers are placed with the access card at racetracks because pursuant to statute, wagers placed with access cards at the racetracks are considered on-track wagers and not shared through the account wagering system. Mr. Hindman responded that is not true and TVG is in the business of providing a service and making the stakeholders happy. He emphasized that TVG is working with Sportech and believes that they have made good progress and apologized that this has been an issue of contention and is overshadowing a good product for customers.

The Executive Director stated that once an agreement has been reached and at least thirty to sixty days is needed to order equipment, he asked the representative of Sportech Racing, Frank Chesky, how long will it take for them to be ready. Mr. Chesky responded that Sportech is ready to move forward and provide full cooperation and assistance with TVG. The Executive Director advised TVG and Sportech that this -matter will be placed on the June 19 public meeting agenda and may request that they be present at that meeting to provide a status report.

ACKNOWLEDGE RECEIPT OF OFF-TRACK WAGERING PROGRESS REPORTS.

The Executive Director indicated that the Commissioners have been provided copies of off-track wagering progress reports that were filed with the Commission.

ACKNOWLEDGE RECEIPT OF THE NEW JERSEY JOCKEY'S HEALTH AND WELFARE TRUST 2012 AUDITED FINANCIAL STATEMENTS

The Commission acknowledged the receipt of the New Jersey Jockey's Health and Welfare Trust 2012 financial statements.

REVIEW OF EXPERIMENTAL POLICY REGARDING USE OF THE WHIP

The Executive Director indicated that in early 2012, the New Meadowlands Racetrack approached the Commission with concern of the public's perception that drivers using the whip may be abusive, and asked the Commission to implement rule changes which would be consistent with Canada's rule in regard to the use of the whip. However, given the one-year time frame involved to amend the rule, the Executive Director issued a directive which clarified the Commission's existing rule and identified what type of activity would be excessive and/or abusive of the whip. The directive also required the Judges to maintain records of any violations that occurred during the meet and at the conclusion of the year, the Judges were instructed to prepare a report identifying areas and recommendations to improve the policy and whether or not the directive should be continued. The Executive Director indicated that each Commissioner was provided with a copy of the Judges' report in which they recommend that the directive be continued and that the policy clarifications in the directive be incorporated into the Commission's rules and a penalty structure be built into the rule for violations. The Executive Director advised that the policy has been continued in 2013 and is asking whether or not the Commission wishes staff to prepare amendments to existing regulations consistent with the experimental policy.

The Commission heard from Darin Zoccali, of the New Meadowlands Racetrack, in which he indicated this was an evolving issue in that drivers are being asked to change their practice of the use of the whip, however, he does believe that the policy is working on reducing the violations. He advised that the racetrack has received positive correspondence from PETA congratulating the industry on its efforts in this area.

It was the consensus of the Commissioners to continue with the policy contained in the directive and ensure that the Judges' enforce the policy and the existing regulations.

There being no further discussion or comments from the public, Commissioner Keegan moved that the meeting be adjourned subject to the provisions of the “Open Public Meeting Act.” Commissioner Clyne seconded the motion and it was approved unanimously.

ATTEST:

A handwritten signature in cursive script, appearing to read "Frank Zanzuccki", written in dark ink.

Executive Director Frank Zanzuccki