

**BEFORE THE WEST VIRGINIA RACING COMMISSION**

**IN THE MATTER OF:  
THE REQUEST FROM CHARLES TOWN  
RACETRACK TO REDUCE LIVE RACING  
DAYS FOR 2016**

**NOTICE OF HEARING**

You are hereby notified that on December 15, 2015, at 11:00 a.m., the West Virginia Racing Commission (“Commission”) will convene at the Clarion Hotel and Conference Center, 233 Lowe Drive, Salon A, Shepherdstown, West Virginia, in Jefferson County, for the purpose of conducting a hearing on the question of Charles Town Racetrack’s request to reduce live racing days for 2016. A quorum of the Commission shall conduct the hearing with the assistance of Hearing Officer, Jeffrey G. Blaydes, Esquire. Such hearing shall be conducted in accordance with West Virginia Code §§ 19-23-12b(b), 29A-5-1 *et seq.*, 178 W. Va. C.S.R. 6, and any other applicable statutes and regulations.

The purpose of the hearing is to determine the required number of live racing days at Charles Town Racetrack for 2016 based upon the following:

1. On or about November 9, 2015, Charles Town Racetrack made a request to the West Virginia Racing Commission to reduce its authorized live racing days for 2016 from 220 days to 170 days. (Exhibit A).
2. On November 18, 2015, the Commission received and discussed this request at a regularly scheduled meeting in Charleston, West Virginia.

3. Subsequently, as required in West Virginia Code § 19-23-12b(b), the Commission issued a notice to Charles Town Racetrack, the representative of a majority of the owners and trainers at Charles Town Racetrack, and the representative of a majority of the mutuel clerks at Charles Town Racetrack, that Charles Town Racetrack had made the above-referenced request to reduce its live racing days for 2016. The notice informed the interested parties that there would be a period of ten days in which they would be permitted to file an objection to the Racetrack's request.

4. On November 25, 2015, the Commission received an objection to Charles Town Racetrack's requested reduction in live racing days from Raymond J. Funkhouser, II, President of the Charles Town Horsemen's Benevolent and Protective Association. (Exhibit B).

5. Pursuant to the requirements of West Virginia Code § 19-23-12b(b), upon receipt of an objection, the Commission is required, within thirty days, to set a hearing upon the question of reducing racing days in a convenient place in Jefferson County.

6. Pursuant to the requirements of West Virginia Code § 19-23-12b(b), the Commission is required to hear from all parties concerned and, based upon testimony and documentary evidence presented at the hearing, determine the required number of live racing days.

7. The Commission and its Hearing Officer shall observe the following procedures to ensure that a full and fair hearing is had with regard to the question of Charles Town Racetrack's request to reduce live racing days in 2016:

a. Pursuant to West Virginia Code § 19-23-12b(b), Charles Town Racetrack shall have the burden of proving by a preponderance of the evidence that the requested reduction

in live racing days for 2016 is justified for reasons beyond its control related to adverse weather conditions, unforeseen casualty occurrences, a shortage of thoroughbred horses eligible to compete for purses, or other just cause that is within the Commission's plenary power and authority to recognize pursuant to West Virginia Code § 19-23-6. Accordingly, Charles Town Racetrack will have a full and fair opportunity to put on testimony and documentary evidence to meet its burden.

b. Because Charles Town Racetrack's request is to reduce the number of live racing days below 185 days, it shall be required pursuant to West Virginia Code § 19-23-12b(b) to file with the Commission a current financial statement, which shall be subject to independent audit.

c. Within a thirty minute period prior to the start of the hearing, concerned parties will be permitted to sign a roster indicating their desire to provide testimony and/or documentary evidence at the hearing on the question of Charles Town Racetrack's request to reduce live racing days for 2016. Concerned parties who sign the roster will be permitted to provide testimony and/or documentary evidence within reasonable time limits established by the Racing Commission and its Hearing Officer to ensure that the hearing is conducted in an orderly and efficient manner:

d. The hearing shall be conducted in an impartial manner.

e. The Racing Commission and its Hearing Officer shall allow a full presentation of the evidence and is not bound by the technical rules of evidence.

f. The Racing Commission and its Hearing Officer shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony.

g. The Racing Commission and its Hearing Officer may admit hearsay evidence if it is determined that the evidence is of a type that is commonly relied upon by reasonably prudent people.

h. The rules of privilege recognized by West Virginia law shall apply.

i. The Commission and its Hearing Officer may rule on the admissibility of evidence.

j. The Commission and its Hearing Officer may examine witnesses.

k. The Commission and its Hearing Officer may permit and limit oral argument.

l. The Commission and its Hearing Officer may require written arguments to be filed by Charles Town Racetrack and any concerned parties.

m. The Commission and its Hearing Officer may take notice of any and all judicially cognizable facts.

n. The Commission and its Hearing Officer may regulate the course of the hearing and may perform any duties necessary to a fair and proper hearing.

o. All witnesses at the hearing shall testify under oath or affirmation.

p. The hearing shall be recorded and transcribed by a court reporter.

q. Charles Town Racetrack and other concerned parties who participate in the hearing may be represented by legal counsel licensed to practice law in the State of West Virginia.

r. The Racing Commission may issue subpoenas to compel the testimony of witnesses and subpoenas duces tecum to compel the production of documents, books, records,

papers and other items. Requests for the issuance of subpoenas and/or subpoenas duces tecum must be made to the Chairman of the West Virginia Racing Commission, Jack Rossi, at 900 Pennsylvania Avenue, Suite 533, Charleston, West Virginia 25302, (phone) (304) 558-2150, (facsimile) (304) 558-6139. Any party requesting the issuance of subpoenas or subpoenas duces tecum shall be responsible for proper service and payment of fees for the attendance and travel of witnesses in accordance with the requirements of West Virginia Code § 29A-5-1(b).

s. After the conclusion of the hearing, the Racing Commission may issue an order containing findings of fact and conclusions of law in which it determines the required number of live racing days for Charles Town Racetrack for 2016. Such order shall be served upon all parties by certified mail, return receipt requested, or by personal service.

ENTERED THIS 4th DAY OF DECEMBER, 2015.

  
JACK ROSSI  
CHAIRMAN  
WEST VIRGINIA RACING COMMISSION

**HOLLYWOOD**  
*Casino*  
AT CHARLES TOWN RACES

VIA EMAIL

Mr. Joe Moore  
Executive Director  
West Virginia Racing Commission  
900 Pennsylvania Avenue, Suite 533  
Charleston, WV 25302

November 9, 2015

Joe:

Pursuant to our conversations, please consider this the formal request by Hollywood Casino at Charles Town Races ("HCCTR") to amend its previously submitted 2016 calendar to what is attached. Our previous submission, also dated November 9, 2015, requested two-hundred twenty (220) live days for 2016, while the attached calendar we are requesting approval for totals one-hundred seventy (170) days. The post times remain color coded according to the legend above the calendar.

If you have any questions, please don't hesitate to contact me.

Regards,



Erich Zimny  
Vice President of Racing Operations

CC: John Finamore  
Chris McErlean  
Al Britton  
Dickie Moore  
Charles McIntosh  
Maria Catignani

//with enclosures//

Ex. A

# HOLLYWOOD Casino®

AT CHARLES TOWN RACES

## 2016 Live Racing Schedule

Subject to Periodic Approval of WV Racing Commission

 12:45 PM Post

 5:00 PM Post

 7:05 PM Post

January						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Live Days: 12

February						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

Live Days: 12

March						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Live Days: 13

April						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Live Days: 15

May						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Live Days: 16

June						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Live Days: 18

July						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Live Days: 14

August						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Live Days: 12

September						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Live Days: 14

October						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Live Days: 14

November						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Live Days: 16

December						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Live Days: 14

April 23 Charles Town Classic day (13 Races)

September 17: Race for the Ribbon day (12 Races)

October 8: West Virginia Breeders' Classics XXX



## CHARLES TOWN

HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, INC.

PO BOX 581

CHARLES TOWN, WV 25414

PHONE (304) 725-1535 FAX (304) 728-2113

E-MAIL [cthbpa@yahoo.com](mailto:cthbpa@yahoo.com)

November 24, 2015

Mr. Joe Moore  
Executive Director  
West Virginia Racing Commission  
900 Pennsylvania Avenue, Suite 533  
Charleston, WV 25302

Mr. Moore:

CT HBPA and HCCTR are in agreement that although WV Legislative Code requires the racetrack to request 220 live race days at Charles Town, that number is unrealistic for calendar 2016. We believe a more reasonable number is 185 live racing days running 8 races per day at an average purse per night of \$121,502 (see proposed purse schedule and racing dates).

The combination of increased competition and legislative actions of 2014 and 2015 have wreaked havoc on funds available for purses at Hollywood Casino at Charles Town. For months, the CT HBPA has worked in collaboration with track management to find solutions to dealing with the negative effects of the "hair cut bill" and the resultant dwindling funds.

What we propose is what we believe to be a reasonable compromise after considerable discussion with track management. There are several important issues to be considered in this scenario:

- 1.) This plan integrates a 7.409% (effective rate) purse cut for all race conditions.
- 2.) This plan incorporates CT HBPA's recommended \$121,502 average purse per night, and would require HCCTR's Racing Secretary to strictly adhere to \$121,502, which should be monitored by the WV Racing Commission on a weekly basis.
- 3.) This plan considers that for calendar year 2016 CT HBPA is proposing 185 live racing days.

Ex. B

- 4.) Historically, \$500,000 has been deducted in April to fund the WV Racing Commission Retirement Plan for Backstretch Personnel. The CT HBPA respectfully requests the WVRC approve the annual date of distribution of this \$500,000 to October to mitigate any overpayment situation created by the "hair cut bill."
- 5.) In April, \$1,500,000 is deducted from the purse account for HCCTR's Charles Town Classic.

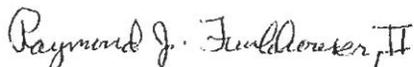
The CT HBPA and HCCTR are contractually bound by an agreement that permits HCCTR access to an amount equal to 8% of overnight purse funds paid out in the previous year. This amount equates to \$2,050,000 for calendar year 2016. While we recognize and agree that the stakes program is an integral part of HCCTR's overall racing promotion program, HCCTR's election to run its Charles Town Classic in April depletes the purse fund of \$1,500,000 for stakes. This coupled with the \$500,000 deduction for the aforementioned retirement plan (item 4), and due to the 2014 stipulations of the "hair cut bill", horsemen's purses only receive 3.6% of net terminal revenue during the months of January through June, plus a monthly appropriation (that will likely be exhausted by the end of April).

This will result in purse funds being depleted by early May 2016 forcing either a purse overpayment situation or racetrack closure until future purse funds become available. Neither HCCTR nor CT HBPA are predisposed to putting the purse account into "overpayment" (a situation where the actual funds are depleted and purses would be paid out of anticipated gaming revenue and "hair cut bill" appropriations). Unfortunately, the negative effects of the "hair cut bill" have created this situation. The real solution is to repeal the "hair cut bill" that jeopardizes this entire industry and the 7,300 jobs it encompasses.

However, during difficult times we feel it is necessary to continue to work with the WVRC and HCCTR to create a mutually beneficial solution that incorporates an appropriate 2016 live racing calendar that integrates our projected purse funds with an adequate number of live racing dates to stabilize our industry.

The CT HBPA will continue to meet with management to hopefully devise a mutually acceptable resolution to our 2016 racing dates and purse structure. However, we must respond to the WVRC Notice to register our objection to HCCTR's proposed 170 race day calendar for 2016, and regretfully request a hearing on the matter as outlined by WV Code 19-23-12b (b) unless we can come to mutual agreement with HCCTR.

Respectfully,



Raymond J. Funkhouser, II  
President

# 2016

## HBPA 2016 Live Racing Calendar - 185 Days

### JANUARY

S	M	T	W	T	F	S
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

Live days: 12

### MAY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7	8	9	10	11

Live days: 16

### SEPTEMBER

S	M	T	W	T	F	S
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	1
2	3	4	5	6	7	8

### FEBRUARY

S	M	T	W	T	F	S
28	29	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2
3	4	5	6	7	8	9

Live days: 18

### JUNE

S	M	T	W	T	F	S
26	27	28	29	30	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

Live days: 18

### OCTOBER

S	M	T	W	T	F	S
25	26	27	28	29	30	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31	1	2	3	4	5

### MARCH

S	M	T	W	T	F	S
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

Live days: 15

### JULY

S	M	T	W	T	F	S
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

Live days: 12

### NOVEMBER

S	M	T	W	T	F	S
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7

### APRIL

S	M	T	W	T	F	S
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
1	2	3	4	5	6	7

Live days: 15

### AUGUST

S	M	T	W	T	F	S
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3
4	5	6	7	8	9	10

Live days: 12

### DECEMBER

S	M	T	W	T	F	S
27	28	29	30	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
1	2	3	4	5	6	7