IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, C. C-36

Raymond C. Whitaker III
on Sunday, May 31, 2020

neesons
A VERITEXT COMPANY

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Court File No. 20-00641220-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GREEN GROWTH BRANDS INC., GGB CANADA INC., GREEN GROWTH BRANDS REALTY LTD. AND XANTHIC BIOPHARMA LIMITED

Applicants

--- This is the Cross-Examination of RAYMOND C. WHITAKER III, taken via Neesons, a Veritext Company's virtual platform, on the 31st of May 2020.

A P P E A R A N C E S :

Lou Brzezinski, Esq.
& Varoujan Arman, Esq.
& Stephen Gaudreau, Esq.
& Natasha Rambaran, SAL, for Michael D. Horvitz Revocable Trust

Ashley Taylor, Esq.
& Michael Burkett, Esq.
& Sanja Sopic, Esq., for the Applicants

Mary Paterson, Esq.
& Marc Wasserman, Esq., for Ernst & Young in its capacity as Monitor for GGB

Martin Mendelzon, Esq., for Chiron Ventures Inc.

Graham Phoenix, Esq.
& Thomas Lambert, Esq., for Green Ops and WMB Resources

Stephen Brown-Okruhlik, Esq.
& Waël Rostom, Esq., for All Js

Also Present: Sharon Hamilton, Ernst & Young
& Kent Kiffner, Green Growth Brands

REPORTED BY: Carissa Stabbler, RPR

I N D E X

WITNESS: RAYMOND C. WHITAKER III

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The following list of undertakings, advisements and refusals is meant as a guide only for the assistance of counsel and no other purpose

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-- PROCEEDINGS COMMENCED AT 1:06 P.M. --

RAYMOND C. WHITAKER III: AFFIRMED.

CROSS-EXAMINATION BY MR. BRZEZINSKI:

1 Q. Good afternoon, Mr. Whitaker. Thank you for being here today and agreeing to be cross-examined on what appears to be three affidavits that you have filed in these proceedings.

Let me just make sure that we've got them all. So I believe you swore an affidavit that was dated May the 19th, 2020, in support of this application?

A. That's correct.

2 Q. And have you had a chance to review this affidavit prior to this cross-examination?

A. Yes, sir.

3 Q. And were the contents true when you swore that affidavit?

A. Yes, they were.

4 Q. Are they still true today?

A. I believe so, yes.

5 Q. I understand you swore affidavit number 2 on May the 26th, 2020. Do you recall that affidavit?

A. Yes, sir.
6 Q. And did you review it before you swore it?
A. I did.
7 Q. And were the contents true at the time you swore to that affidavit?
A. I believe so, yes.
8 Q. Are they still true today?
A. I believe so.
9 Q. Okay. We have just received, about an hour ago, an affidavit of today's date, May the 31st. Is this an affidavit that you swore to?
A. Yes, sir, it is.
10 Q. And were the contents true when you swore it?
A. Yes, they were.
11 Q. I presume they're still true now?
A. That's correct.
12 Q. So let's talk about some of the -- just a brief background, if you don't mind, Mr. Whitaker.
A. Sure.
13 Q. So when did you join -- I'm going to call the applicants collectively "GGB." Are you

okay with that?
A. Yes, sir.
14 Q. When did you first become employed at GGB?
A. Late February 2019.
15 Q. In what capacity was that employment? What did you do?
A. Chief Operating Officer. I had responsibility for the store's organization, both in CBD and THC, so the MSO side of the business. I had responsibility for real estate and store design, eComm for a brief while, and the M&A activities of the business.
16 Q. So you were looking after the CBD side of the business as well; right?
A. That's correct, at least as it relates to the store side of it, correct.
17 Q. Prior to being employed at GGB, did you have any relationship with the Shottenstein family?
A. I had met Jay one other time. That was it.
18 Q. I presume that it was -- the interview process which allows you to be hired at GGB, was that Mr. Shottenstein?

A. It was with Peter Horvath, the CEO prior to me.

19 Q. Yes.

A. And at one point, I met with Joey prior to --

THE COURT REPORTER: Sorry, I didn't hear that. There was a cough. "I met with Joey prior to" --

THE WITNESS: I interviewed with Peter Horvath, who was the CEO of Green Growth Brands, and then right prior to an offer being granted, I met with Joey Shottenstein for the first time. Did not meet with Jay again.

BY MR. BRZEZINSKI:

20 Q. I see. And at the time you were hired as COO, was Peter Horvath the CEO?

A. He was.

21 Q. Thank you.

How long did you hold that COO?

A. Until March 19th of this year when Peter resigned. So slightly over a year.

22 Q. And then you became the CEO?

A. On an interim basis, that's correct.

23 Q. When you say "an interim basis,"

does that mean that somebody else will be appointed in your stead shortly?
A. I can't answer that, but that's possible, I suppose.
24 Q. But that's the point of the word "interim," isn't it?
A. Yeah. Right.
25 Q. Do you have any plans to leave GGB?
MR. TAYLOR: Lou, can I interrupt for a sec? How is this relevant to the motion that we brought?
MR. BRZEZINSKI: Well, I want to see where he's going to.
MR. TAYLOR: How is that relevant to the motion we brought?
MR. BRZEZINSKI: The response that we made to your motion is that there is a connection between all the parties in this, and they are not dealing at arm's length. This is further to the response that we filed.
MR. TAYLOR: So is your question, then, whether or not he's been offered a job at AcquireCo, if I can use the word "AcquireCo"? Is that your question?

MR. BRZEZINSKI: No. If I can ask my own question, Ash, I'd appreciate that.

MR. TAYLOR: I'm trying to help.

MR. BRZEZINSKI: Thank you.

BY MR. BRZEZINSKI:

26 Q. Have you been offered a job by any company owned, controlled by Mr. Boich?

A. No.

27 Q. Have you been offered a job at any other company owned and controlled by the Shottenstein family?

A. No.

28 Q. Have you been offered a job at -- what Mr. Taylor and what I will refer to as "AcquireCo"?

A. No.

29 Q. Have you been offered a job from a company called All Js?

A. No.

30 Q. And I'm going to ask my team -- sorry, there's some background noise here that's a little concerning.

A. Sorry, I'm having a hard time hearing you, Lou.

31 Q. I'm going to move a little closer

to my computer.

A. Thank you.

32 Q. I'm going to ask my team if they can put up the first affidavit that you swore, and I want to turn to paragraph 32.

A. Okay.

33 Q. So this is a list of assets that was taken from your audited book value as of June the 30th, 2019, at least that's what the affidavit says.

Can you tell me where we can find the revenue of the GGB group and what that revenue was at that same period of time?

A. It would be in our public filings, not on what you have here, which is an excerpt of a balance sheet.

34 Q. Can you tell me why the information was not contained in the affidavit?

A. I can't tell you that. I'm sorry. I don't know the answer to that.

35 Q. Okay. Do you know what GGB's revenue was at the end of December 31st, 2019?

A. December 31st? You mean the end of Q2?

36 Q. Yes.

A. I would have to look it up to give you the exact number, but I would say on or about $21 million.
37 Q. What is the year-end for GGB?
A. June 30th.
38 Q. Sorry, January 30th?
A. June 30th, which is what's been this document.
39 Q. Sorry, I didn't hear you. Is it June 30th or January 30th?
A. June 30th is our fiscal year-end.
40 Q. Thank you.
Now, you indicated that when you were the COO, you ran the MSO operation; is that accurate?
A. Yes, sir. Yes.
41 Q. And so I presume you're familiar with that operation?
A. Reasonably familiar, yes.
42 Q. And did you have direct involvement with the Nevada regulators regarding the Nevada cannabis licences?
A. I did not.
43 Q. Has there ever been a value placed on the cannabis licence for Nevada state?

MR. TAYLOR: Sorry, can you repeat? I couldn't hear you, Lou. Could you say that again?

BY MR. BRZEZINSKI:

44 Q. Has there ever been a valuation done of the Nevada cannabis licences?

A. I'm not sure if I understand completely. You mean like a -- bring in an audit firm to do that?

45 Q. Or a valuator or some other professional.

A. Not to my knowledge specific to Nevada.

46 Q. Has GGB, while you were there, ever received an offer to purchase the Nevada state licence for cannabis?

A. I'm sorry. I didn't hear you, the last part of that, Lou.

47 Q. While you were at GGB and up until the present, has there been any offers received by GGB to purchase the Nevada cannabis licences?

A. There -- offers, I don't know. There has been discussions with potential buyers of almost all assets that we've had along the way. How serious, I don't know that I could tell you that, Lou.

48 Q. But was there a formal offer tendered to purchase the Nevada state licences?
A. Not to my knowledge.
49 Q. Who were you negotiating with to sell or purchase the Nevada state licences?
A. There's been a number of companies along the way that, as we attempted to, I guess I call it monetize assets, we've talked to. Harvest Health would be one. There were conversations, albeit I wasn't in much of them, with MejMed (ph).
There were conversations, when I first joined, with Tilray about a business conversation, which I could not speak to at any depth. And I'd say that's probably the best of my recollection, Lou.
50 Q. Can you tell me with whom those negotiations were with?
MR. TAYLOR: Lou, can I interrupt you for a sec? Where are you going with this? We're bringing a motion seeking approval of a sale process pursuant to which the Monitor is going to go out and contact, right, a couple hundred people, and if these people are interested in making an offer, they have an opportunity to make an offer.
How does what happened prior to filing

make any difference for the motion that we have brought?

MR. BRZEZINSKI: It makes a difference in terms of how those Nevada state licences are valued for the purposes of sale. I'm trying to understand if there were offers --

MR. TAYLOR: But the value of those licences will be determined through the sale process. That's the whole point.

MR. BRZEZINSKI: Let me just ask these questions.

MR. TAYLOR: I don't see the relevance of these questions. If you could explain them to me, then maybe I will let you ask them.

MR. BRZEZINSKI: I think I have. It says the value of the licence, which is --

R/F MR. TAYLOR: Okay. I don't think that that's relevant for the motion.

MR. BRZEZINSKI: Thank you. I'll take that as a refusal.

BY MR. BRZEZINSKI:

51 Q. Has there been any valuation placed on the Florida state cannabis licences?

A. Not to my knowledge.

52 Q. Has there been any offers to

purchase the Florida --

R/F MR. TAYLOR: Lou, I'm going to make the same objection on this line of questioning as well. This is not relevant to our motion.

You know from the material that we filed that we have a process that's been underway for some time to try to sell those assets. That process is continuing, and any value that there is to that business will be determined through that process.

MR. BRZEZINSKI: I'm trying to get clarity and transparency into the process, Mr. Taylor. That's the problem. Clearly you're not assisting in doing this.

MR. TAYLOR: Well, you have the right under the initial order to make inquiries of the Monitor. If you're looking for information and to the extent it's not confidential, it will be provided.

Also, as I wrote to you last Wednesday, if you would like information about the Florida sale, we can talk about the terms pursuant to which we can provide you with confidential information, but it's not appropriate questioning for this examination.

BY MR. BRZEZINSKI:
53 Q. I have the same questions about the Massachusetts state licences. Have they ever been valued?
R/F MR. TAYLOR: And I'm going to have the same objection.
BY MR. BRZEZINSKI:
54 Q. Mr. Whitaker, it goes without -- well, you did say in your affidavit that All Js is one of GGB's existing creditors; is that correct?
A. Yes, sir.
55 Q. And All Js is also a shareholder of GGB; is that correct?
A. To my knowledge, that's correct.
56 Q. Are there any shareholders -- do they hold or own the largest amount of shares of any other shareholder that you're aware of?
A. I believe they do.
57 Q. Is it your view and understanding that All Js is the controlling shareholder of GGB?
MR. TAYLOR: Can I help here, Lou? I believe that you received a letter setting out this information, did you not?
Plus, who the shareholders are is a matter of public record, and so you don't need to

ask Mr. Whitaker about who the shareholders are. It's public information.

And one other thing is, as you know, we are in CCAA now. The value of those shares is zero, and shareholder approval is not required for a sale of the business.

MR. BRZEZINSKI: Thank you, Mr. Taylor.

BY MR. BRZEZINSKI:

58 Q. Mr. Whitaker, is All Js the controlling shareholder of GGB?

R/F MR. TAYLOR: I think that's a legal conclusion that Mr. Whitaker is not qualified to make.

MR. BRZEZINSKI: Mr. Taylor, are you prepared to answer that question then?

MR. TAYLOR: I don't know the answer to that, but you have the information about who holds what shares. And you're a lawyer. You can make that determination.

MR. BRZEZINSKI: Thank you for your cooperation.

MR. TAYLOR: You're welcome.

BY MR. BRZEZINSKI:

59 Q. Mr. Whitaker, in the course of your employment, both as COO and CEO, did you speak

to Mr. Shottenstein as part of your daily job?
A. Can you confirm? Which Mr. Shottenstein are you talking about? Sorry.
60 Q. Joey Shottenstein.
A. I speak with Joey, but I certainly don't speak with Joey daily.
61 Q. Do you consult with Joey before you make any decisions on behalf of GGB?
A. Not always, no.
62 Q. Most of the time?
A. I don't know if I could even say "most of the time."
63 Q. Well, tell me how many times --
A. I would say less than half the time, and yet I respect the fact that the Shottensteins are major shareholders and major debt holders.
64 Q. When you say you respect that, you mean you respect what they have to say to you about how the company should be run?
A. Well, I respect them like I respect any shareholder of significance. And the fact is they are involved in our business.
And having said that, we have a fully functioning board, so where appropriate, we talk to

them. I would say the majority of my conversations with them over the last six months has been around the financing of this company and cash flow.

65 Q. Did you discuss with them the filing of the CCA proceedings before you agreed to do that?

MR. TAYLOR: Sorry, could you clarify what you mean by -- you mean before the board approved the filing?

MR. BRZEZINSKI: Yes.

THE WITNESS: I'm sure I did, especially because we were talking to them about DIP financing.

BY MR. BRZEZINSKI:

66 Q. When you say "them," do you mean Joey or Jay?

A. Joey.

67 Q. Okay. So Joey was the middleman, if you wish, between All Js and GGB with respect to the DIP?

A. Joey and Ben Kraner, who works for SPG.

68 Q. Other than Joey and Ben Kraner, did you have any discussions with any other creditor for the purposes of obtaining a DIP loan?

A. I talked briefly with Wayne Boich.

69 Q. Okay. And were there discussions with any other lender for the purposes of obtaining a DIP loan?

A. Not that I was party to.

70 Q. Was there any process initiated either by yourself or anyone at GGB for the purposes of seeking and obtaining a DIP loan?

A. "Process" in what respect, Lou? I want to make sure I answer your question. I mean, yes, we talked with our board. Yes, we got approval from our board. Yes, we engaged a couple of weeks ahead of time with Sharon of the E&Y team, both to work on cash flows and potential DIP budgets.

So if that's how you're referencing it, I would say the answer to your question is yes.

71 Q. Well, then let me be more specific, Mr. Whitaker. Did you engage the services of an investment banker to obtain -- to search for a DIP loan?

A. I did not.

72 Q. Mr. Horvitz makes a reference of a meeting that he had with you on Ms. Jay Shottenstein's yacht on January 2020.

MR. TAYLOR: Lou, could you take the witness to the affidavit that you're referring to?

MR. BRZEZINSKI: Yes, paragraph 53(f) of the Horvitz affidavit. We can put that on the screen.

MR. TAYLOR: Could you go back to the beginning of this? Like, there's a (f). What was the beginning of it?

THE WITNESS: Okay.

BY MR. BRZEZINSKI:

73 Q. Mr. Horvitz swears to a conversation he had with you where you said that GGB had been insolvent since September 2019. Do you recall telling him that?

A. I do.

74 Q. When did you first know or learn of the insolvency of GGB?

A. GGB has always been a cash-flow-negative business, Lou, relying on investments from the outside, be it equity or debt.

So I would tell you that my entire tenure at GGB has been one that repeated insertions of funding have been required while the business went after its strategy.

75 Q. Now, the CBD business, which at

one time was part of and I think is -- well, technically it still is part of GGB. That is presently in receivership; is that correct?
A. Yes, sir.
76 Q. Okay. And were you involved in the restructuring of that part of the business?
A. Yes, I was.
77 Q. And did you form a special committee to determine alternatives to a solvency?
A. Relative to the CBD business, yes, we did. In early February, we did.
78 Q. And in that process or the special committee, was there any recommendations about how the business -- or the sale of the CBD business should be conducted?
A. We talked with our board and the special committee quite often, as a matter of fact, because as I included in my affidavit, after the special committee was formed, we entered into a stalking-horse agreement with a sub of the BRN Group and also at the same time engaged an outside financial advisor at AltaCorp to conduct a 30-day go-shop period to see if we could come up with a superior offer.
79 Q. And could you tell me, in terms of

the stalking-horse bid for the CBD business, how did you come to have that bid formalized in terms of did you find -- how did you find that purchase term? What was the process for doing that?

A. It was -- it was actually part of the conversation, at least the stalking-horse part of it was on the boat when Adam Arviv and Sean Posner suggested that it might be possible for the BRN company, which they're affiliated to, to buy the CBD business from GGB.

80 Q. That's BRN; right?

A. Yes, sir. That's my understanding.

81 Q. And that conversation was formalized into an actual stalking bid offer?

A. Yes, sir.

82 Q. Did you look for any other stalking horse -- stalking horses, I guess, other than the BRN offer?

A. Well, I would probably say this to you, Lou: We had been trying to sell that CBD business for a solid six or eight months before that point, right.

So during most of the fall, we were engaged with a Canadian LP who, quite candidly, we were very hopeful would end up purchasing the CBD business.

And unfortunately, that didn't come to fruition, which is how we formed special committee, and we obviously ended up with BRN through the go-shop process.

I -- my point of view, as I understand it, the go-shop process -- and this is documented in my affidavit -- was quite robust. I thought AltaCorp did an extraordinary job of identifying people who played in the space.

And candidly, we got very close with a competing offer up and to the point where COVID came, and that scared them away.

83 Q. Tell me about AltaCorp. What is their background? What did they do?

A. AltaCorp?

84 Q. Yes.

A. They're a bank. I don't have -- I didn't have exposure to them before this process. I was incredibly impressed with their thoroughness, I think as our board would say to you as well.

And I think they served -- they served a teaser document to 77 companies, 9 NDAs, 4 very serious players.

And ultimately, you know, we were -- we were quite excited about a possible higher bid. And, you know, timing is what it is, and COVID reared its ugly head and, you know, sort of the rest is how it played out.

85 Q. What about the MSO business? Was that also up for sale and ultimately sold?

A. Ultimately sold?

86 Q. Sorry, rather, let's deal with it. Was that also put up for sale?

A. We -- I would say almost, Lou. Since I walked in the door in February of '19, we were looking for ways to monetize assets, form joint ventures, you know, expand the size of the company and/or sell off assets along the way.

I think, you know, as we moved into fall, it became quite clear that the CBD business required an extraordinary amount of cash to get up and moving.

And with, you know, certainly the help of our board and the special committee, we decided the best thing for our go-forward business would be to try to sell the CBD business to focus on the MSO business.

87 Q. And then what happened to the MSO

business?

A. We did not recapitalize our balance sheet, and we are where we sit today trying to go through a CCA process, you know, and we'll see where we come out the other side unfortunately.

But, you know, those conversations we had back in January were all about what the potential of the business was and strategy sessions on how best to try to recapitalize the balance sheet.

88 Q. So we're talking about the -- we see the January. We're talking about that, I guess, now-infamous meeting on the yacht; is that right?

A. Well, I don't know if it's infamous, but, yes, I'm referencing that. And that was --

89 Q. I don't mean that in a negative way.

A. I appreciate that. But the fact is we tried to get influential shareholders together, debt holders together, to come up with the right way, the creative way to protect the future of GGB.

90 Q. Was Jay Shottenstein present on

the yacht when those discussions took place?
A. He was.
91 Q. Was he part of the discussions?
A. He was. He was, yeah.
92 Q. Can you just clarify this for me? Is the MSO or the multistate operation -- is that part of the assets that are going to be sold in this CCA process?
A. That's part -- those are the assets that will be put into the SISP, yes.
93 Q. It just wasn't clear when I was reading it.
Now, I understand that the Florida licences are not part of this CCA process in Canada; is that right?
MR. TAYLOR: Well, indirectly, Lou, they're -- I mean, they're one of the OpCos, right, and as you know, they're not an applicant, but none of the operating businesses are applicants of the CCAA. They're all operating in the U.S. below the applicants. So when you say part of the CCAA, technically no.
BY MR. BRZEZINSKI:
94 Q. Okay. Well, through their ownership to the parent company in Canada, are

those Florida licences for sale in the CCAA?

MR. TAYLOR: Well, I think as we've disclosed, right, to you, you know that there is a process underway in Florida, right, which started pre-CCAA and is continuing now during the forbearance period, right, that was negotiated with GreenOps.

So are they for sale? Absolutely. Will they be sold in the same rhythm as other assets in the SISP? I doubt it because, right, the deadline on the forbearance agreement is shorter than the SISP deadline.

And so it is contemplated -- and this is in the record. It's contemplated that those assets could be sold prior to the SISP concluding.

I think it's also possible that the SISP will identify people who are interested in those assets and who may participate in the Florida process.

BY MR. BRZEZINSKI:

95 Q. Mr. Whitaker, if I can understand what Mr. Taylor has just said, the forbearance agreement, that is the agreement between GreenOps and the holder of the Florida licence; is that right?

A. I think that's -- that's a good question, Lou. I don't know the actual legal entities.

96 Q. I just called them the holder of the Florida licence. I'm not asking for a corporate name.

A. The forbearance --

MR. TAYLOR: I think the problem is is there's four entities down there, Lou. There's four Florida entities, and I'm not -- one of them is a HoldCo for land, and I don't know what the other ones -- I don't know which one holds the licence. So, I mean, it's -- do you need it to be so specific, or could it be --

MR. BRZEZINSKI: No, I don't. I think you've produced the forbearance agreement, Mr. Taylor, in the material, so I think we'll let that agreement speak for itself.

BY MR. BRZEZINSKI:

97 Q. But I'm just trying to get into this point here: That the forbearance agreement expires if there isn't a sale prior to the, if you wish, maturity and the fulsome expiry of the SISP here in Canada.

So it's conceivable that these assets

could no longer be available to a bidder during the CCA process either because they're sold or because the secure lender acts under security. Do I understand that right?

A. I think that's correct, Lou.

98 Q. And that secure lender is GreenOps.

I'm going to ask you this question. I'm pretty sure I know what the answer is going to be. Can you tell us who the proposed purchaser under the LOI is with Florida's licences?

MR. TAYLOR: Lou, that information is subject to a mutual nondisclosure agreement, right. This is the same issue with you putting the price of it into your Motion Record.

MR. BRZEZINSKI: That's right. Thank you.

MR. TAYLOR: Well, we can talk about terms under which we can provide that information to you, but that is not public information at this moment.

MR. BRZEZINSKI: Mr. Taylor, would you agree to provide us with that information on a confidential basis?

U/T MR. TAYLOR: Yeah, we can work out the terms of -- confidentiality terms to protect the process, yes.

MR. BRZEZINSKI: Okay. Thank you.

BY MR. BRZEZINSKI:

99 Q. Just in terms of the process for the sale of the Florida licence, was there a bidding process in Florida?

A. Are you -- are you saying with respect to how we got to the current LOI? Sorry.

100 Q. Yes.

A. You know, I would say this to you, Lou, part and parcel to what I said earlier: At some point or another, we tried to monetize every asset.

So to this question specifically, the company started to quietly market Florida and the Florida assets in the middle of April because, candidly, we just did not have enough cash to continue to operate it, and we were getting ourselves indebted to a place where we were running the risks of jeopardizing that licence.

So in the middle part of April, not only were we marketing it ourselves through the connections we have, but we also signed with a broker a nonexclusive deal to see if they could rally other interested parties.

The fact is we are in a nonbinding LOI currently with one bidder, and we have at least one other bidder that I know of that is interested in accessing the data room that exists.

101 Q. Are any of those bidders related to the Shottenstein family?

A. Not to my knowledge, no.

102 Q. Are any of those bidders related to Mr. Wayne Boich or any of his corporations?

A. Not to my knowledge, no.

103 Q. Let's go to the DIP for a moment. I'm not going to ask you specific provisions but just a general question. Are you aware that any part -- first of all, were you involved in the negotiation for the DIP?

A. I was.

104 Q. And did you negotiate the terms of the DIP?

A. With counsel with E&Y.

105 Q. Okay. Do you know whether the DIP will be used to pay pre-filing debt?

A. I believe the affidavit I said -- submitted suggested it would not be.

106 Q. Okay.

MR. TAYLOR: Are you talking about pre-filing debt of the applicants, Lou --
MR. BRZEZINSKI: Yes.
MR. TAYLOR: -- or are you talking about -- of the applicants, right, because -- as opposed to the U.S. companies, right, or ongoing companies with no state, right, but --
MR. BRZEZINSKI: I'm talking about the parties to whom the DIP loan will be made.
MR. TAYLOR: Right, the applicants. Okay. Yeah, I think it's made to GGB, the one TopCo. Okay.
BY MR. BRZEZINSKI:
107 Q.   I'm sorry, so your answer is that the funds for the DIP loan will not be used to pay pre-filing debt?
A.   Now that you just clarified that with Ash, let me -- let me be clear on what I think, right. If there are -- if there are debts in Massachusetts and Nevada that are due, then the DIP loan will pay for past-due AP.
So let me give you an example. In Nevada, there is sales and use tax that's due from prior to the date we filed for CCAA. My understanding is that we not only have to pay those

things, but we are indeed going to use DIP funds to get ourselves current over the 13-week period of time. So just as a matter of example for clarity. Hopefully that cleared that up, right.

108 Q. Just in terms of that, you're saying that the DIP loan might go to pay the outstanding payables and expenses in Massachusetts?

A. In the U.S. entities, as an example. If you asked me to further clarify, if I could use the DIP loan to pay for AltaCorp at a public company AP, I believe the answer is no.

109 Q. Okay. So then what would be an expense that the DIP loan would be used to pay?

A. Back to my example of sales and use tax that's from March and April, in Nevada, when appropriately we would use the DIP loan to get ourselves current during the term of the DIP loan.

110 Q. Prior to the DIP loan facility being negotiated and signed, was All Js funding the operations of GGB?

A. They were, and I would say at a very base level.

111 Q. All right.

A. Payroll, key vendors. Absolutely required expenses, not much more.

112 Q. Approximately $800,000?
A. For the secured part of it, but the unsecured earlier, February, March, April, I think was closer to $3.4 million.
113 Q. Okay. And is any part of the DIP loan going to be used to pay back All Js from that funding?
A. Not to my knowledge, no.
MR. BRZEZINSKI: I wonder whether my team could bring up the DIP loan facility. If we can get to paragraph 20. Thank you. And if you scroll down to (o). There we go.
BY MR. BRZEZINSKI:
114 Q. Mr. Whitaker, I'll give you a chance just to read that provision, if you like, or any part of it that you want to see first before I ask you any questions.
A. I'm not terribly familiar with this, Lou, so let me -- let me read through here. Okay. So this is sort of the terms of the SISP. Okay.
MR. TAYLOR: Lou, could you show the preamble to this? I mean, this is (o). What does the first part say?
MR. BRZEZINSKI: We'll get up to there.

MR. TAYLOR: Okay.
BY MR. BRZEZINSKI:
115 Q. I know, Mr. Whitaker, this is about as (AUDIO CUT OUT) as you can get.
A. I appreciate the chance to scroll here.
116 Q. Do you just want to go through the whole thing before you -- just take a look. If that's the case, we'll let you read it.
MR. BRZEZINSKI: We'll go off the record.
-- OFF THE RECORD DISCUSSION --
BY MR. BRZEZINSKI:
117 Q. The DIP loan terms, in particular, the terms at 20(o), sets forth a series of benchmarks or milestones that the debtor on the DIP loan has to achieve by certain dates. Would you agree with that?
A. Yes.
118 Q. That includes having the SISP order entered into before a certain date, being June the 8th, and the different phases involved in the -- and the sales process being achieved at other dates in that particular section, such as July the 6th, July 8th, and July the 13th.

A. Yes, sir.
119 Q. Now, do you understand the consequences to the debtor if those milestones are not achieved on the date set forth in the DIP?
A. In terms of being in a default situation with the DIP, you're saying?
120 Q. Yes.
A. Yes. I mean, I do understand that, and I -- you know, I take some comfort in the speed, but I appreciate that E&Y and counsel has also reviewed this, and it's consistent with the timing that's required given the length of the DIP loan that we were able to secure.
121 Q. So to a large extent, the terms of the DIP loan dictate the process that the applicant will take under the CAA in terms of selling the asset; would that be accurate?
A. I think that's accurate.
122 Q. Let's turn to the stalking-horse that -- before we do that, let me look at the SISP order.
MR. BRZEZINSKI: Can we bring up the SISP order? And for the clarification of my team, there is a new SISP order in place, an amended one, that we just received this afternoon.

THE WITNESS: I don't believe I've had a chance to review it.
BY MR. BRZEZINSKI:
123 Q. Well, it's in your affidavit, Mr. Whitaker.
A. Oh, you're talking about the third one this morning?
124 Q. That's right.
A. Okay. I'm sorry.
125 Q. That's okay. So I just want to look at a couple of terms in the proposed and amended which we got this morning. First --
MR. TAYLOR: Sorry, Lou, what is -- the document that you're showing the witness now is what document? The document that you received this morning?
MR. BRZEZINSKI: Yes.
MR. TAYLOR: Oh, okay. Sorry. Let me just get it up. I was looking at the original Motion Record.
UNIDENTIFIED SPEAKER: Tab 3, the amended SISP.
MR. TAYLOR: So this is the supplementary response -- no, I opened up yours.
MR. BRZEZINSKI: It's the one you

served, Mr. Taylor, about an hour and a half ago.

MR. TAYLOR: Yeah, just give me a sec, and I'll get it open. Okay. So yes, okay.

BY MR. BRZEZINSKI:

126 Q. Only a couple of -- two or three terms I want to look at, first of all the definition of "superior offer."

So a superior offer means an offer that's made by a qualified bidder. We'll get to what constitutes a qualified bidder in a moment, but let's just look at the provisions of the superior offer.

Now, there is an amendment. I think -- is it in turquoise or light blue? I don't know what colour that is.

MR. TAYLOR: Light blue.

MR. BRZEZINSKI: Thank you. And I'm just having some problems reading it because it's extremely light. Thank you.

BY MR. BRZEZINSKI:

127 Q. What is the purpose of that amendment? Can you explain to me, Mr. Whitaker, why this amendment is in the SISP today? What's the consequence of that?

MR. TAYLOR: Maybe I could be of

assistance, Lou, because we made these amendments. These amendments were made in response to concerns that you and Mr. Groia's client raised with respect to the fact that as previously drafted, another bidder was obligated to pay cash for the GAOC Note.

So the purpose of this amendment is to say that you can deal with the GAOC Note in one of two ways: You can either pay it in cash, because keep in mind that that note is in default, and the entire amount is due and owing now and is subject to the stay, or you can reach an agreement with the holder of the GAOC Note providing for the assumption of that note, so presumably extended terms and to leave the note in place.

So it's to give another bidder the same opportunity that the stalking-horse bidder had to negotiate an agreement with the holder of the GAOC Note so they didn't have to pay cash for it.

BY MR. BRZEZINSKI:

128 Q. Has there been an agreement reached between the stalking-horse bidder, All Js, and the holder of the GAOC Note, GreenOps, whereby All Js can assume that liability without paying it?

MR. TAYLOR: Well, the stalking-horse agreement contemplates that the note would stay in place. So --

MR. BRZEZINSKI: Does that mean --

MR. TAYLOR: We have not seen the details of the agreement between them. I believe that you have. But the stalking-horse agreement contemplates that the note would be extended and stay in place.

MR. BRZEZINSKI: Okay. So I think you've answered, but I would like Mr. Whitaker's answer.

BY MR. BRZEZINSKI:

129 Q. Is there presently an agreement between All Js, as far as you know, and GreenOps which allows All Js to assume the note?

A. Not to my knowledge. I have not been involved in those conversations, Lou.

130 Q. So you don't know whether such an agreement exists or not?

A. I do not.

131 Q. Were you involved in the negotiation, if there was an agreement with Mr. Boich with respect to the assumption of that note?

A. I was not.

132 Q. Do you know who was?

A. I don't.
133 Q. Would it have been somebody from All Js? Do you know?
MR. TAYLOR: He just said he didn't know, Lou.
THE WITNESS: Don't know.
MR. BRZEZINSKI: Well, to me, I think it's an essential term to understand. I mean, you've just amended it. Anyhow, I'm not going to editorialize any further on that.
If we continue to go through the -- I just want to stay here. (c), you've made the amendment.
MR. TAYLOR: Yeah, if I could address this, Lou, again because Stikeman did these amendments on behalf of the company, but this is -- this is sort of hand in glove with the amendment you were just looking at.
So before, it had in here -- right, for greater certainty, you had to pay out the GAOC Note in cash. We made this amendment to fit with the other one to provide that you did not have to pay it in cash. And so it's -- just because of the defined terms, we had to back it out of here just so the agreement worked.

MR. BRZEZINSKI: And correct me if I'm wrong, Mr. Taylor, but subject to reaching an agreement with the holder of the GAOC Note?

MR. TAYLOR: Sorry, I missed half of that. You kind of broke up.

MR. BRZEZINSKI: Okay. I presume, to be consistent with the earlier amendment, that this be subject to an agreement reached with the holder of the GAOC Note?

MR. TAYLOR: Yeah, you've either got to get an agreement, or you've got to pay it in cash.

MR. BRZEZINSKI: All right. If we can continue to scroll down, and let's get to qualified bidder process. Let's go to that. Keep going. I think it's qualified purchase bid. There it is.

MR. TAYLOR: So we're in Phase II of the SISP here; right?

MR. BRZEZINSKI: Yes. Page 33 of the PDF.

MR. TAYLOR: Thank you.

MR. BRZEZINSKI: Keep going down. Thank you. There we go. Paragraph (j) -- sorry, paragraph (i).

BY MR. BRZEZINSKI:

134 Q. So if a qualified bidder reaches

Phase II, he has to deliver a deposit as part of that deal; is that correct?

A. That's how I --

MR. TAYLOR: Did you show him the preamble to this paragraph?

MR. BRZEZINSKI: Let's go back up.

MR. TAYLOR: Or I can answer it for you, Lou, if you want. The answer is yes.

MR. BRZEZINSKI: Okay. Let's finish with this one. I have to go back to superior offer, but I want to finish this last part of the qualified purchase bid. Scroll right down to the bottom of that provision. Right there, (j).

Can you explain to me why this has been amended?

MR. TAYLOR: Yeah, it was to loosen up the requirements so they weren't so restricted. So before, I said that they had to already be licenced, and so now it's to provide the opportunity for someone who was not licenced to also be a bidder. The purpose of it was to try to make it easier for people to bid.

BY MR. BRZEZINSKI:

135 Q. How long is the period of time, Mr. Whitaker, between the time a Phase II bidder is

accepted and the time that they need to get a licence in Nevada?

MR. TAYLOR: I mean, that's a bit of an unfair question given the thickness of this, right, that in this agreement, if you -- I mean, it's set out in this agreement, so you can either figure it out yourself, or I think to be fair, you would have to show Mr. Whitaker, right, the provisions that set it out. It's not fair to expect him to know that off the top of his head.

MR. BRZEZINSKI: So the closing has to be, according to the stalking-horse period, September the 4th?

MR. TAYLOR: Can I correct you on that? Because there's also a provision in the stalking-horse bid that provides that if people are trying to -- if they need additional time in order to put the licences in place, then it can be extended for 30 days.

BY MR. BRZEZINSKI:

136 Q. Okay. In terms of the stalking-horse bidder, All Js, have they already been qualified to receive and operate a Nevada cannabis licence?

MR. TAYLOR: Isn't that a question for

All Js as opposed to Mr. Whitaker?

THE WITNESS: I don't -- I don't know the answer to that one.

MR. BRZEZINSKI: Let's go back up to superior offer.

BY MR. BRZEZINSKI:

137 Q. Now, a qualified bidder must provide a minimum cash consideration -- and I'm looking at (b) -- for the senior secured claim. Let's just go back. I'll look at (iii). There we go.

MR. TAYLOR: Sorry, what definition are we looking at?

MR. BRZEZINSKI: I think we scrolled by it inadvertently. We're looking at superior offer. There we go. So just up above that. Thank you.

BY MR. BRZEZINSKI:

138 Q. So (iii), do you see that a qualified bidder has to pay a break fee in the amount of $2 million?

A. I see that.

139 Q. Can you tell me how that amount was calculated?

A. I don't know the exact calculation. What I have been told is that given the value of the bid, this is -- would have been market of what a standard break fee percentage would be.

140 Q. What is that percentage?

A. I don't know the range, but I believe it's 2 to 4 percent, but I'm not --

MR. TAYLOR: Are you asking what percentage 2 million is, or were you asking what the range was?

MR. BRZEZINSKI: Yeah, what percentage.

THE WITNESS: Sorry, I answered the range.

MR. TAYLOR: It's 1.9 percent. It can include the break fee and the expense reimbursement.

BY MR. BRZEZINSKI:

141 Q. And I presume that the stalking-horse bidder won't have to pay a break fee obviously?

MR. TAYLOR: Correct.

THE WITNESS: Correct.

BY MR. BRZEZINSKI:

142 Q. We now turn to the stalking-horse bid. Before we take a look at it, can you tell me whether GGB has retained the services of an

investment banker, the market being assets in the SISP?
A. We've retained E&Y to do that who -- well, we retained E&Y to do that.
143 Q. Why not retain services of the investment banker you used to sell the CBD business?
A. That's a good question. I suppose we could have. I think we felt very comfortable on the recommendation that we got and in the conversations we had that E&Y has a fairly extensive background in this space and, more specifically, would have been the cannabis space as well. So the board also felt comfortable, and we elected to just use E&Y.
MR. WASSERMAN: It's Marc Wasserman speaking. I'm sorry to interrupt, Lou. Just to be specific, E&Y's authority to run anything with respect to a process will be derived from the order and the Court's direction. There's no retention at this point given that E&Y is a Monitor.
BY MR. BRZEZINSKI:
144 Q. So is there a separate agreement to retain E&Y to sell the business other than what they already have, the retainer they've already

received?

MR. TAYLOR: Are you asking Mr. Whitaker?

MR. BRZEZINSKI: Yes.

THE WITNESS: Not to my knowledge.

BY MR. BRZEZINSKI:

145 Q. Okay. And where can we look at the terms of their engagement to sell a business that is presently the subject matter of the SISP?

MR. TAYLOR: I think Mr. Wasserman just answered that for you.

MR. WASSERMAN: That will be the subject of the Court order to the extent the Court grants the SISP which provides E&Y with the authority to run the SISP under the Court's direction.

MR. BRZEZINSKI: I understand that, but beyond that, is there any terms of a contract, agreement, retainer between GGB and E&Y with respect to the SISP?

MR. WASSERMAN: Are you asking me that, or are you asking the affiant?

MR. BRZEZINSKI: I'm asking Mr. Whitaker.

THE WITNESS: Not to my knowledge.

BY MR. BRZEZINSKI:
146 Q. Is there any retainer and agreement between GGB and E&Y?
A. Outside of the process around the Monitor, not to my knowledge.
147 Q. Can we see that process of the Monitor, that agreement?
MR. TAYLOR: I think you've been told twice now there is no agreement with respect to the sales process. It will be the SISP order and the SISP.
MR. BRZEZINSKI: I understand that, but I'd like to see the general agreement with E&Y.
U/A MR. TAYLOR: We'll consider your request and get back to you.
MR. WASSERMAN: Yeah, I mean, just for the record -- again, it's Marc Wasserman speaking -- that agreement is at an end. When the Monitor gets appointed under the Court process, the Monitor is the Court officer, and his directions are taken from the Court. So any agreement that was entered into as a financial advisor pre-CCAA is no longer relevant.
MR. BRZEZINSKI: Well, we'd like to see it anyway.

U/A MR. WASSERMAN: We'll consider the request as well.

MR. BRZEZINSKI: Thank you.

BY MR. BRZEZINSKI:

148 Q. Is E&Y being paid a success fee?

A. Not to my knowledge, Lou.

149 Q. Let's look at the acquisition agreement, which is in front of you now.

MR. BRZEZINSKI: Before I go on, Mr. Taylor, were there any changes or amendments to this agreement?

MR. TAYLOR: I do not believe so.

MR. BRZEZINSKI: Can we look at Article 10, please, on page 9, liabilities. Let Mr. Whitaker read the entire section.

THE WITNESS: Yeah, I'm sorry. You'll need to scroll back up a little bit. I apologize.

BY MR. BRZEZINSKI:

150 Q. Starts at "at closing."

A. Yeah, I see that. Thank you, Lou.

151 Q. Is it your understanding that the assumed liabilities will be paid by the stalking-horse?

MR. TAYLOR: Sorry, could you repeat that, Lou? I just missed it. Say it again.

BY MR. BRZEZINSKI:

152 Q. Is it your understanding, Mr. Whitaker, that the assumed liabilities as described in this contract will be paid by the stalking-horse acquirer?

A. I'd have to scroll back up.

153 Q. If we scroll back up to the beginning, it says --

MR. TAYLOR: I think you want to show (3).

MR. BRZEZINSKI: Yes.

THE WITNESS: Purchaser shall assume the liability and become responsible, so yes.

BY MR. BRZEZINSKI:

154 Q. So, yes, and that the purchaser will pay all the assumed liabilities?

A. Yes.

MR. TAYLOR: Yeah, that's what it says, Lou.

THE WITNESS: In respect to, you know, paragraphs -- yeah.

BY MR. BRZEZINSKI:

155 Q. Do you know of any deal or any arrangement of which a debt will not be repaid but, rather, converted into equity?

A. I do not.

156 Q. Were you involved in the negotiation of the stalking-horse acquisition agreement?

A. I was to some extent, yes.

157 Q. And with whom did you negotiate this with?

A. The All Js' counsel, our counsel and their counsel, and I assume both sides.

158 Q. With respect to the new company to be formed, AcquireCo, do you know what role Mr. Boich or GreenOps will play in that company?

A. I do not.

159 Q. Do you know whether Mr. Boich's security, the note, GAOC Note, will be converted into equity?

A. As I said earlier, I have not seen the term sheet for this.

160 Q. Okay. But you know that there is one?

A. We mentioned it earlier that you may have it. I -- listen, I know they're talking, but I have not been privy to any type of detail around what AcquireCo is going to ultimately look like.

161 Q. Was there any process implemented to find a stalking horse other than All Js?
A. No. You know, I would say it this way: No with the exception of brief conversation with Wayne Boich. And candidly, that was partially driven by the fact that we had urgent needs for money as well to keep the business operating.
162 Q. Did you have any role to play -- maybe I've asked you this, and if I did, I apologize -- in this new AcquireCo?
A. I do not -- I do not know about that.
MR. TAYLOR: Lou, I think we've gone on the record about a dozen times now saying that we're not in possession of that term sheet. We don't know what's in that term sheet. We heard talk about the term sheet, but we don't know what's in it.
BY MR. BRZEZINSKI:
163 Q. Would you agree with me, Mr. Whitaker, that the terms of that term sheet are important and essential to understand what AcquireCo would look like?
A. I guess it depends on the party, Lou. I mean, it's important to understand what

comes out the other end.
164 Q. Of course.
A. I guess that would depend on to who.
165 Q. Who's going to be on the other end?
A. The person who is asking the question.
166 Q. I see. And presumably, it would be somebody who has a debt that will either be assumed or converted; right?
MR. TAYLOR: I'm not sure this is a proper question, Lou. You're asking Mr. Whitaker to speculate as to what unknown people, right, might care about this.
If you have a question for him and what he knows about this, then that's fine, but speculation about hypotheticals is not appropriate.
BY MR. BRZEZINSKI:
167 Q. If we can turn to the issue of closing, paragraph 5. Let's look down to the purchaser's obligations, specifically the last one of purchaser's obligations.
A. I'm sorry. What line, Lou?
168 Q. I'm going to get you there.

A. Okay. I'm sorry.
169 Q. "Conditions to Purchaser's Obligation," that's where I'm looking at, 5.3.
MR. TAYLOR: Mr. Whitaker, if you want to read the preamble there under Section 5.3, and then we'll scroll down, I think, to (i) as well.
THE WITNESS: Okay.
MR. BRZEZINSKI: Mr. Ashley is exactly right -- Mr. Taylor, rather.
MR. TAYLOR: I'll be Mr. Ashley, and you'll be Mr. Lou. We'll just do that.
THE WITNESS: Okay. Well, I didn't read the rest of 4(i), so if you want to ask your question, I have to go back.
BY MR. BRZEZINSKI:
170 Q. I'm only interested in (i).
A. Okay. Go ahead.
171 Q. So if we can just scroll right to the beginning of that section, Section 5.3, it says:
"The Purchaser's obligation to effect the Closing shall be subject to the fulfillment (or express written waiver by the Purchaser)."

I'm pointing you to the fact that these conditions can be waived by the purchaser. Let's scroll down.

So specifically, the purchaser can waive the condition that he has obtained or in the process of consuming a transaction which will allow him to operate and receive a cannabis licence.

So in essence, you might be -- a stalking-horse bidder might be buying an asset to which they have no licence; isn't that correct?

MR. TAYLOR: I think you're asking him for a hypothetical. The document speaks for itself, Lou. You can read the document, and you can interpret the document yourself. You don't need Mr. Whitaker to interpret the document.

BY MR. BRZEZINSKI:

172 Q. Let me ask you this question. I think I have already. The AcquireCo that will be formed as a result of this stalking horse, will there be -- has that company or any person on behalf of that company already obtained approval for the Nevada cannabis licence?

MR. TAYLOR: You have asked that question already, and he already answered that he did not know.

MR. BRZEZINSKI: Just wanted to make sure.
THE WITNESS: I don't know.
MR. BRZEZINSKI: Give me a couple of minutes. I'm nearing the end, and I just want to make sure I covered all the bases.
Can we go off the record while I do that.
-- OFF THE RECORD DISCUSSION --
BY MR. BRZEZINSKI:
173 Q. Now, you indicated that you weren't involved or had some involvement with the stalking-horse bid; is that right, Mr. Whitaker?
A. I had -- I had some involvement, correct.
174 Q. Was there anybody else at GGB other than yourself that would have had more involvement with this process, with the stalking-horse?
A. General counsel potentially.
175 Q. In your position as COO and later as CEO, did you ever form an opinion as to the value of the Nevada state cannabis licence?
R/F MR. TAYLOR: We've already told you that this is not relevant to the motion. We're not

answering questions about it. The value of it will be determined through the process.

MR. BRZEZINSKI: Well, we want to know whether the process would realize the full value of the licence. We're entitled to know what his opinion is of that value.

MR. TAYLOR: We all want to know what the process is going to determine, and in the fullness of time, it will tell us.

MR. BRZEZINSKI: All right. I'll take that as a no.

MR. TAYLOR: Correct.

MR. BRZEZINSKI: I think subject to whatever agreements that you've provided to provide documents -- I don't think there are any --

MR. TAYLOR: I don't think we agreed to provide any documents. I think we said -- both we and counsel to the Monitor said we would consider your request to see the Monitor's engagement letter, and we will look at that. I don't recall anything else.

BY MR. BRZEZINSKI:

176 Q. Same issue with respect to the Massachusetts licence, have you formed an opinion as a result of your experience as a COO and CEO?

R/F MR. TAYLOR: Same answer.
BY MR. BRZEZINSKI:
177 Q. Mr. Boich, will you be receiving any employment offer from All Js?
MR. TAYLOR: Sorry, I don't know if Mr. Boich is on the line.
MR. BRZEZINSKI: I'm sorry. Mr. Whitaker.
MR. TAYLOR: You've already asked all of these questions, Lou. We're not going to go through them again.
MR. BRZEZINSKI: I have no further questions. Thank you very much. I appreciate your time.
THE WITNESS: Thank you, Lou.
MR. TAYLOR: Thank you, Mr. Whitaker. Thank you, Lou. Thank you, everyone.

-- PROCEEDINGS CONCLUDED AT 2:29 P.M. --

REPORTER'S CERTIFICATE

I, CARISSA STABBLER, Registered Professional Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 31st day of May 2020.

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NEESONS, A VERITEXT COMPANY
PER: CARISSA STABBLER, RPR
COURT REPORTER

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