

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 18-33836-11
NEIGHBORS LEGACY HOLDINGS, § HOUSTON, TEXAS
INC., ET AL § WEDNESDAY,
DEBTOR. § AUGUST 1, 2018
§ 2:00 P.M. TO 3:18 P.M.

MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
COURTROOM DEPUTY: RUBEN CASTRO
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1 HOUSTON, TEXAS; WEDNESDAY, AUGUST 1, 2018; 2:00 P.M.

2 THE COURT: All right. Good afternoon. We're here
3 in the Neighbors Legacy Holdings case, it's 18-33836.

4 I'll take appearances in court, followed by any
5 appearances that we might have on the phone.

6 Mr. Higgins.

7 MR. HIGGINS: Good afternoon, Your Honor. John
8 Higgins, Eric English, and Genevieve Graham on behalf of the
9 Debtors.

10 THE COURT: Good afternoon.

11 MR. WARNER: Good afternoon, Your Honor.

12 THE COURT: Good afternoon, Mr. Warner.

13 MR. WARNER: Michael Warner, Cole Schotz, on behalf
14 of the Committee. And also in the courtroom is Mark Shapiro
15 from GlassRatner on behalf of the Committee, as well. Thank
16 you.

17 THE COURT: Thank you.

18 MR. TASHMAN: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MR. TASHMAN: Matthew Tashman, Reed Smith, on behalf
21 of Keybank, the agent for the pre-petition lenders.

22 THE COURT: Thank you, Mr. Tashman.

23 MR. RIORDAN: Good afternoon, Your Honor. Mike
24 Riordan, Foley Gardere --

25 THE COURT: Good afternoon, Mr. Riordan.

1 MR. RIORDAN: -- on behalf of Fostre, Incorporated.

2 MR. GERGER: Alan Gerger on behalf of Altus Health
3 Systems OpCo, LLC and Altus Health System Realty, LLC.

4 THE COURT: Good afternoon, Mr. Gerger.

5 MR. DURAN: Good afternoon. Hector Duran on behalf
6 of the U.S. Trustee.

7 THE COURT: Afternoon, Mr. Duran.

8 If anyone on the phone wishes to make an appearance,
9 you'll need to press five-star on your telephone. From
10 (281) 394-2716, who do we have on the telephone?

11 MR. JONES: John Jones for Central Bank of
12 St. Louis.

13 THE COURT: Thank you, Mr. Jones. Good afternoon.

14 MR. JONES: Good afternoon, Your Honor.

15 THE COURT: All right. Mr. Higgins, I came out 20
16 minutes late because you asked me to. Did it do any good?

17 MR. HIGGINS: I think it did, Your Honor.

18 THE COURT: Okay.

19 MR. HIGGINS: I think we're going to begin, Your
20 Honor, with the joint administration and the insurance motion,
21 and then we'll roll into the bid procedures and I'll bring you
22 up to speed on that.

23 THE COURT: Thank you.

24 Ms. Graham, good afternoon.

25 MS. GRAHAM: Your Honor, first, I'm going to start

1 with the joint administration motion. We did receive some
2 comments from the United States Trustee, we incorporated their
3 comments.

4 Basically, the agreement was that we are going to
5 give the United States Trustee and the Official Committee of
6 Unsecured Creditors an itemized list of disbursements based on
7 Debtor.

8 THE COURT: All right.

9 MS. GRAHAM: And I have an --

10 THE COURT: Let me --

11 MS. GRAHAM: -- order that --

12 THE COURT: Let me see --

13 MS. GRAHAM: -- I can --

14 THE COURT: -- the proposed --

15 MS. GRAHAM: -- hand up.

16 THE COURT: -- form of order that you've worked out.

17 MS. GRAHAM: Yes, Your Honor.

18 (Pause in proceedings)

19 THE COURT: So, if I look at Paragraph 9, are you
20 suggesting there will be a single claims register and that
21 parties will designate on that single claims register which
22 Debtor, or would they file it on the claims register against
23 that Debtor? How are you suggesting somebody actually file
24 their proof of claim?

25 MR. DURAN: Judge --

1 UNIDENTIFIED: That's a good question.

2 MR. DURAN: -- as I understood --

3 THE COURT: Mr. Duran, did you --

4 MR. DURAN: -- the proposed --

5 THE COURT: -- all reach a --

6 MR. DURAN: -- language, it was --

7 THE COURT: -- deal on that?

8 MR. DURAN: -- a separate claims registry on a per
9 Debtor basis.

10 UNIDENTIFIED: I have no problem with that.

11 THE COURT: I don't know that I care. What I want
12 is a lack of ambiguity in here. And right now, I think we've
13 got ambiguity as to just what that means. So you want
14 separate claims registers?

15 MR. DURAN: I think that would make sense.

16 (Participants confer)

17 THE COURT: I think that's the normal way we do it.

18 MR. HIGGINS: It is.

19 THE COURT: I don't know that we -- I don't know
20 that we have to do it the normal way, but I just don't want
21 ambiguity when a creditor reads this.

22 MR. HIGGINS: Based upon the number of Debtors, Your
23 Honor, we'll probably need to do that in this case. I'm
24 concerned that, if people start checking boxes in the claim
25 form, it's going to get very confusing.

1 THE COURT: Okay. So I'm going to fix that.

2 (Participants confer)

3 THE COURT: And I'm not sure of the difference
4 between Paragraph 9 and Paragraph 11, so I'm going to quickly
5 consolidate those into one. Oh, and Paragraph 12 says a
6 separate -- I think 9, 11, and 12 probably need to be
7 consolidated into one paragraph.

8 MS. GRAHAM: Yes, Your Honor. And I can fix that
9 while we're in court.

10 THE COURT: Okay.

11 MS. GRAHAM: We're just trying to get the bid
12 procedures order on the USB.

13 THE COURT: Do you have the order on a computer --

14 MS. GRAHAM: We --

15 THE COURT: -- where you can email it to me?

16 MS. GRAHAM: Yes, absolutely. I just -- we're
17 trying to get the bid procedures uploaded to the USB. If
18 you'll just give me one second.

19 THE COURT: Not to the USB. If you can just email
20 them, I can give you the email address right now.

21 MS. GRAHAM: Okay.

22 THE COURT: And that way, you don't even have to go
23 through that and our security people are happier, too.

24 The correct email address for an in-court uploaded
25 order is isgur_usb@txs.uscourts.gov.

1 (Pause in proceedings)

2 THE COURT: I'm going to go ahead and turn on the
3 join.me, in case anyone -- I know that this joint
4 administration order, I'm probably the only one in the
5 courtroom that's terribly interested in what it says, but if
6 somebody on the phone cares, they can watch what I do with it.
7 So the website is join.me, and then the meeting you want to
8 join is one word: JudgeIsgur. I'm going to turn that on
9 right now.

10 (Pause in proceedings)

11 THE COURT: Okay. People on the phone ought to be
12 able to see the order.

13 (Pause in proceedings)

14 MR. TASHMAN: Your Honor?

15 THE COURT: Yes.

16 MR. TASHMAN: If I may, there is language in the
17 existing cash collateral order, and I believe in the ultimate
18 final DIP order, that allow -- that essentially deems the
19 acknowledgments in those documents to be proofs of claim by
20 the agent and the lenders. And I notice you just struck the
21 "or any other" order language.

22 (Pause in proceedings)

23 THE COURT: Does that work?

24 MR. TASHMAN: That's fine, Your Honor.

25 THE COURT: Thank you. We've already done that.

1 With those minor changes, does anyone object to the
2 joint administration order? Does that protect what you need
3 on the proof of claim side?

4 MS. GRAHAM: Yes, Your Honor. Thank you.

5 THE COURT: Thank you.

6 All right. What do you have next?

7 MS. GRAHAM: Your Honor, next up is the Debtors'
8 motion to maintain their insurance obligations. This is filed
9 at Docket Number 7, and the order is Docket 7-4.

10 We haven't received any responses or objections.
11 And really, this is just maintaining insurance obligations.
12 We do believe the Debtors are current, both under their
13 premium finance agreement and their separate policies, as of
14 the petition date.

15 THE COURT: All right. Does anyone have any comment
16 on whether we should grant ECF 7 on a final basis or on the
17 form of order that was attached?

18 (No verbal response)

19 (Pause in proceedings)

20 THE COURT: All right. Given the absence of
21 objections and the routine nature of the insurance motion,
22 I'll grant that.

23 MS. GRAHAM: Thank you, Your Honor.

24 THE COURT: If I can make it print.

25 What do you have next?

1 MS. GRAHAM: Your Honor, the next item on the
2 Agenda, I believe is interim cash collateral, which is being
3 moved to August 8th. And so, with that, we're moving on to
4 the bid procedures.

5 THE COURT: I'm sorry. I can't hear you.

6 MS. GRAHAM: We are -- the next item on the Agenda
7 that we filed was the interim cash collateral order, which is
8 not going forward today. That moved to August 8th with the
9 final DIP.

10 MR. HIGGINS: That's correct, Your Honor. We had
11 left today as a placeholder in the event we needed to draw
12 additional funds, even in a small amount, under the DIP. The
13 current cash projections show that we can make it up to the
14 final hearing next Wednesday.

15 THE COURT: All right. What's that ECF number?

16 (Participants confer)

17 THE COURT: I think that's 12, but I just want to be
18 certain that's right.

19 MS. GRAHAM: That's correct.

20 MR. HIGGINS: That's correct, Your Honor.

21 THE COURT: All right. ECF Number 12 is carried to
22 the hearing that is currently scheduled for August the 8th at
23 ten o'clock in the morning, and we'll take it up at the same
24 time.

25 What do you have next?

1 MR. HIGGINS: Your Honor, next, what we have on the
2 Agenda is the motion to approve bid procedures.

3 THE COURT: So I saw it when I got out here, but I
4 hadn't seen in chambers, that there were, while I was here
5 today, three additional documents filed this afternoon. I
6 don't even know if you've seen them or not, they weren't here
7 when I got in this morning. But I think I'll put them up on
8 the screen. These appear to be letters from doctors, which I
9 haven't read. I want to read them right now. I've read one
10 letter that did come in -- let me ...hold on.

11 So, in terms of the bid procedures, we had received
12 a letter that I'm going to treat as, effectively, an objection
13 to the bid procedures. It was filed by -- filed at ECF Number
14 115, for a physician -- my shorthand version of what was said
15 was, is that you all have intentionally locked physicians out
16 of the ability to bid for the assets as part of the bid
17 procedures.

18 I'm going to -- we now have several new ones that
19 are filed, and I don't know what they say. Like I say, I'm
20 going to put them up on the screen, so that I can look at
21 them; and then, in case you haven't seen them, you can, as
22 well.

23 MR. HIGGINS: Yes, Your Honor. Docket 115, I
24 believe, was the letter from Dr. Wall. I think it actually
25 hit the docket twice.

1 THE COURT: So let me just see. So 131 is a new,
2 newly filed ECF entry. Let me see if that's the same one that
3 he sent in before. I think --

4 MR. HIGGINS: Your Honor --

5 THE COURT: -- this is a --

6 MR. HIGGINS: -- that has --

7 THE COURT: -- different -- this is a different
8 letter.

9 MR. HIGGINS: Yes, 131, Your Honor. That is a
10 different letter, and I don't think it has anything to do with
11 the bid procedures.

12 THE COURT: Okay.

13 MR. HIGGINS: It has to do with distributions and
14 tax distributions.

15 THE COURT: All right. I agree that that's not an
16 objection to the bid procedures at 131.

17 At 132.

18 (Pause in proceedings)

19 THE COURT: I think this is -- this is the same
20 letter that I had read earlier by Dr. Ybarra. So I've --

21 MR. HIGGINS: That's 132, Your Honor?

22 THE COURT: Right. So I've already read that. But
23 it's the earlier one that was also filed at 115.

24 Then we have 133, a letter from Dr. Haacke. Again,
25 raises the same kind of objection, that employee buyout offers

1 are precluded. And it says that, in order to get financial
2 information -- and of course, I haven't looked at the merits
3 of this -- that they would have to give up all of their legal
4 rights to communicate with each other about their Class B
5 investor rights, in order to produce a joint bid.

6 If Dr. Haacke or Dr. Ybarra are on the phone, they
7 can press five-star and we'll listen to them orally.
8 Otherwise, I'll let you address their objections, and then
9 we'll see what we have to say about them. I don't see either
10 one pressing five-star on their phone, so go ahead.

11 MR. HIGGINS: Your Honor, first of all, just for the
12 record, I -- the first time I've seen these last couple of --
13 I'll call them "objection." We certainly vigorously dispute
14 the allegations contained therein. We've been very, very
15 careful to make sure that the process was open. We certainly
16 did require nondisclosure agreements to be signed by anybody
17 interested in bidding.

18 And I think what we probably should do, in order to
19 protect the record, is -- while I was rising to announce that
20 we were very happy that we had reached an agreement with the
21 lenders and with the unsecured creditors' Committee and Ms.
22 Potts and with the stalking horse bidders on the form of a
23 proposed order -- and I was going to walk you through certain
24 changes with respect thereto -- I think that we're going to
25 probably go ahead and put Mr. Shandler on the stand as the

1 CRO, and/or possibly Mr. Andrew Turnbull briefly, just to
2 address some of the specific accusations.

3 THE COURT: So let me just ask -- and that's fine.
4 But let me just ask you as counsel to tell me whether the NDA,
5 not only requires someone to retain information they receive
6 in confidence, but also to waive the legal right to bring any
7 claims against the estate.

8 MR. HIGGINS: Absolutely not, Your Honor.

9 THE COURT: Okay. So this allegation, you think, is
10 simply wrong, it just doesn't say that -- will I have a copy
11 of the NDA in front of me that I can look at or --

12 MR. HIGGINS: Your Honor, we didn't realize this was
13 going to be raised. I can certainly get a copy.

14 THE COURT: I think I -- you know, despite the fact
15 they're not here, they are *pro se*, and I think I have a duty
16 to look at the NDA. I don't have a problem at all with an NDA
17 saying that, if you get information, you have to retain it in
18 confidence, unless a court -- unless the Court authorizes you
19 to disclose the information to others. But if the NDA,
20 additionally, would require someone to sign away, for example,
21 an existing claim, I'd probably have a problem with it. I
22 mean, I'll listen to your objection to it.

23 So I think I need to look at it. Can we get it
24 uploaded somehow or introduced as an -- as a document into
25 evidence? You can either send it to that email address and

1 I'll print it, and you can --

2 MR. HIGGINS: We'll do that.

3 THE COURT: -- offer it --

4 MR. HIGGINS: We'll have --

5 THE COURT: -- into evidence --

6 MR. HIGGINS: -- Ms. Axton (phonetic), who I
7 introduced to the Court last time, email it to the judge, and
8 she can --

9 THE COURT: So it's isgur_usb@txs.uscourts.gov.

10 So however you want to proceed with the hearing. At
11 some point, I need to look at that to understand --

12 MR. HIGGINS: It may be a good use of our time to at
13 least walk you through the proposed order, Your Honor.

14 THE COURT: Sure.

15 MR. HIGGINS: And I think, from Ms. Graham's
16 computer, Mr. English just sent you the redline --

17 THE COURT: I've got it.

18 MR. HIGGINS: -- to the -- okay. And it may be most
19 efficient for me just to walk through that with you.

20 THE COURT: All right.

21 MR. HIGGINS: And this is a redline, Your Honor,
22 back to the bidding procedures --

23 THE COURT: I'm going to --

24 MR. HIGGINS: -- proposed --

25 THE COURT: -- put it on the screen, so that folks

1 on the phone can see it, as well.

2 MR. HIGGINS: Your Honor, we probably want to look
3 at the PDF, not the Word document.

4 THE COURT: Is there no red -- the Word document is
5 not redlined, is that the problem?

6 MR. HIGGINS: It's clean, I believe.

7 THE COURT: Okay.

8 MR. HIGGINS: Right?

9 (Pause in proceedings)

10 THE COURT: Do you want me to read through it or do
11 you want to talk me through it? What's best for you?

12 MR. HIGGINS: I can talk you through it, as you --

13 THE COURT: Okay.

14 MR. HIGGINS: Paragraph 1, Your Honor, we've -- at
15 the time of the filing of this -- well, actually, this is
16 throughout the bidding procedures. If the Court will recall,
17 we had not yet reached an agreement on Beaumont and with
18 respect to the sale of the non-Houston locations.

19 THE COURT: Correct.

20 MR. HIGGINS: So part of the conforming changes roll
21 -- that roll through and I'll sort of skip over is adding the
22 non-Houston --

23 THE COURT: Right.

24 MR. HIGGINS: -- stalking horse.

25 Page -- Paragraph 3, we added proposed counsel to

1 the official Committee, that they would actually receive copy
2 of the -- copies of the bids.

3 THE COURT: Right.

4 MR. HIGGINS: Paragraph 4, again, Your Honor, we
5 added the non-Houston operating locations. We added the
6 amount of the bid protection.

7 In Paragraph 3 and 4, we clarified the minimum
8 qualified bid, basically the first topping bid, Your Honor.
9 In both instances, the topping bid is purchase price plus
10 breakup, buyer protections, plus an overbid amount.

11 And then, in Footnote 4, in the event that there was
12 a --

13 THE COURT: So, if there's a two hundred and -- if
14 there's a two-hundred-and-fifty-thousand-dollar overbid
15 protection and that person spends -- and that person makes a
16 bid, the minimum overbid is \$500,000.

17 MR. HIGGINS: Correct.

18 THE COURT: All right.

19 MR. HIGGINS: That would be for the non-Houston.

20 THE COURT: Correct. Okay.

21 MR. HIGGINS: And then, in Footnote 4, because we're
22 now in the position where we would be hopeful for a bid for
23 all assets, it would be a topping bid. And so, in Footnote 4,
24 we clarified the minimum overbid would be the total
25 consideration of both stalking horse agreements plus the bid

1 protections for both proposed buyers, plus \$250,000.

2 THE COURT: Right.

3 MR. HIGGINS: Again, Page 3, Your Honor, we just
4 clarified that the -- well, we added it throughout, Your
5 Honor, consultation rights for the statutory Committee.

6 THE COURT: Right.

7 MR. HIGGINS: The same in Paragraph 5.

8 Footnote 5, Your Honor, is showing up as a redline,
9 but that was not in the original. And we're striking that
10 paragraph -- or footnote, I'm sorry.

11 Page 4.

12 THE COURT: I'm sorry. I missed that footnote.

13 MR. HIGGINS: I'm sorry, Your Honor.

14 THE COURT: I missed what you just said to be about
15 Footnote 5.

16 (Participants confer)

17 MR. HIGGINS: Okay. Never mind, Your Honor. It's
18 -- I thought it was showing up on your copy --

19 THE COURT: Okay.

20 MR. HIGGINS: -- and it's not.

21 THE COURT: Okay.

22 MR. HIGGINS: We clarified on Paragraph 10, we went
23 ahead and put in dates in order to avoid counting --

24 THE COURT: Okay.

25 MR. HIGGINS: -- issues.

1 We added the minimum overbid amounts in Paragraph
2 10, also, Your Honor. We also added the statutory Committee.
3 Selection of highest and best, we added consultation rights
4 with the Committee.

5 THE COURT: Who is the agent here? Oh, the agent
6 being the bank.

7 MR. HIGGINS: T Bank.

8 THE COURT: Okay. Got it.

9 MR. HIGGINS: And then Paragraph 15, Your Honor,
10 we'll spend just a minute on.

11 I'm sorry. The sale hearing, we went ahead and put
12 in a date. You had previously given us the time --

13 THE COURT: Let me --

14 MR. HIGGINS: -- and --

15 THE COURT: -- just confirm that's around. It's
16 still there. Okay.

17 MR. HIGGINS: Paragraph 15. The next --

18 THE COURT: Is 5 different than what we already did?
19 I guess it may just duplicate it. I thought that was in the
20 earlier footnote that we had seen.

21 MR. HIGGINS: One second --

22 THE COURT: So --

23 MR. HIGGINS: -- Your Honor.

24 THE COURT: -- in case there's any language
25 different, I wouldn't want to duplicate it and maybe have a

1 slight conflict.

2 MR. HIGGINS: Your Honor, it does look like it's the
3 same footnote.

4 THE COURT: I think that --

5 MR. HIGGINS: Let me --

6 THE COURT: -- was the same --

7 MR. HIGGINS: -- compare (indiscernible).

8 THE COURT: -- as Footnote 3, maybe.

9 (Participants confer)

10 MR. HIGGINS: Your Honor, can you scroll up to where
11 the footnote is?

12 THE COURT: The other one? Yeah.

13 MR. HIGGINS: Just so I can see it in context. We
14 may have, for purposes of clarity, left it twice. Keep
15 coming, Your Honor --

16 THE COURT: Well, that's --

17 MR. HIGGINS: -- to where I can see where the
18 numbered footnote is.

19 THE COURT: That's Footnote 4.

20 MR. HIGGINS: I meant the body.

21 (Participants confer)

22 MR. HIGGINS: I'm sorry, Your Honor. The other
23 direction, Footnote 5.

24 (Participants confer)

25 THE COURT: Well, I'm trying to figure out where

1 Footnote 4 comes in.

2 (Participants confer)

3 MR. HIGGINS: There it is, Your Honor. It's right
4 by the two fifty.

5 THE COURT: Right.

6 (Pause in proceedings)

7 MR. HIGGINS: I'm not sure it's necessary there,
8 Your Honor.

9 THE COURT: Okay. I'd rather -- if it's not
10 necessary, I'd rather take it out because --

11 MR. HIGGINS: I agree.

12 THE COURT: -- if there's a comma difference or a
13 prepositional difference that we're not going to notice, it
14 could later turn into an ambiguity, and I'd rather just have
15 it one time.

16 MR. TASHMAN: I don't know that I care, Your Honor.
17 I think it maybe does belong there only because it's a second
18 reference for the concept of the two-hundred-and-fifty-
19 thousand-dollar overbid, and again, just flagging the fact
20 that, if there's an aggregate bid, the two hundred fifty isn't
21 duplicated.

22 MR. TASHMAN: I don't really --

23

24 THE COURT: Why don't we just --

25 MR. TASHMAN: -- (indiscernible).

1 THE COURT: -- in Footnote 5, then say subject to
2 Paragraph 4.

3 MR. TASHMAN: Okay. That's fine.

4 THE COURT: Something like that.

5 MR. TASHMAN: Yep.

6 THE COURT: I don't mind the clarity of it, I just -
7 - I've seen too many where there's one capitalization
8 difference or something, and then -- okay. If everybody is
9 okay with that, we'll do it that way.

10 So 15 you were going to talk about?

11 MR. HIGGINS: Yes, Your Honor. If you can scroll to
12 the next page. The issue here, Your Honor, is as follows:

13 The agent has the right to credit bid.

14 THE COURT: Right.

15 MR. HIGGINS: And in the event the agent were to
16 credit bid -- and let's assume, hypothetically, that we had
17 borrowed \$4 million under the DIP --

18 THE COURT: Right.

19 MR. HIGGINS: -- and they credit bid. The question
20 was: Do they apply that credit bid or reduce the outstanding
21 indebtedness to the pre-petition amount of the debt or should
22 they first apply it to the DIP and then the remaining balance
23 to their pre-petition claim.

24 THE COURT: Right.

25 MR. HIGGINS: The agent has agreed and we have so

1 clarified. And I'm going to give the Committee a lot of
2 assistance in this drafting and negotiation. So the DIP
3 lenders have agreed that they would first apply it to the
4 outstanding post-petition amounts and then to the pre-petition
5 amounts --

6 THE COURT: Okay.

7 MR. HIGGINS: -- therefore, not leaving us with a
8 large admin claim that we would have very little ability to
9 satisfy.

10 Further, Your Honor, the agent has agreed, under
11 that scenario, we would also would, in the event of a credit
12 bid that was a topping bid, we would still be obligated to pay
13 the stalking horse bidders their breakup protection.

14 THE COURT: Okay.

15 MR. HIGGINS: And so the DIP lender had -- has
16 agreed that, under the terms of the DIP, the -- in such an
17 event and they were a credit bidder, it would be an approved
18 budget item to allow us to draw on a DIP to satisfy those
19 obligations.

20 THE COURT: Got it. Okay.

21 MR. HIGGINS: And then there was some additional
22 Committee reservation of rights language added at the very end
23 --

24 THE COURT: So --

25 MR. HIGGINS: -- which was --

1 THE COURT: -- there --

2 MR. HIGGINS: -- approved by the DIP lender.

3 THE COURT: There was a Committee objection that
4 said -- in my words, not in theirs -- that, if the stalking
5 horse bidder for the non-Houston assets engages in its due
6 diligence and walks away on a technicality, they shouldn't be
7 given \$250,000. How did that get resolved?

8 MR. HIGGINS: Your Honor, what's happened is, when
9 you read through the document, it's not quite that broad. I
10 know the Committee was just retained. We had a conversation
11 late yesterday afternoon. There are instances where we're
12 unable -- I'll call it the "Debtor's fault," we're unable to
13 close the transaction, but we entered into an alternative
14 trans -- I'm sorry -- and we couldn't close the transaction
15 with the stalking horse bidder, then we would still be
16 obligated to pay the obligate -- the \$250,000.

17 THE COURT: So this would be your inability to
18 close, rather than their doing due diligence and determining
19 that you breached a representation --

20 MR. HIGGINS: That's correct --

21 THE COURT: -- for a -- yeah.

22 MR. HIGGINS: -- Your Honor. And in the event they
23 breach, they certainly do not --

24 THE COURT: Right.

25 MR. HIGGINS: -- receive a --

1 THE COURT: But what if --

2 MR. HIGGINS: Go ahead.

3 THE COURT: Let's assume for a minute that you've
4 made a representation that the attached financial statements
5 are true and correct, and they do due diligence and find that
6 an attached financial statement isn't true and correct. Can
7 they then walk away and get two fifty, or they can't walk away
8 and get two fifty?

9 MR. HIGGINS: In that particular one, Your Honor --
10 hold on.

11 (Pause in proceedings)

12 MR. HIGGINS: The language, Your Honor, is, "Buyer
13 shall have" --

14 (Pause in proceedings)

15 MR. HIGGINS: We must have performed in all material
16 respects all of our covenants and agreements hereunder
17 required to be performed by or on -- prior to the closing
18 date, and the reps and warranties must have been true in all
19 material respects.

20 THE COURT: And is your buyer represented today?

21 MR. HIGGINS: Yes, by Mr. Riordan.

22 THE COURT: Okay. Mr. Riordan, let me tell you --
23 and I want to think about this on what I had -- was going to
24 ask if it worked for everybody, is I think it's really
25 difficult to define down when it's appropriate to get the fee

1 and when it's not appropriate to get the fee. I think there
2 are some things that are obvious: The Debtor doesn't perform,
3 the Debtor can't perform, the Debtor does sell to someone
4 else. In all those instances, you get the fee.

5 For anything else, I would rather have language that
6 says, if you determine that a covenant was breached or a
7 representation was breached, that the parties, if they can't
8 reach an agreement on whether the fee should be paid, will
9 come to court, and we'll determine an equitable result, rather
10 than have it be attempted to be defined because I think it's
11 so hard to define.

12 MR. RIORDAN: Understood, Your Honor.

13 THE COURT: Do you have --

14 MR. RIORDAN: And --

15 THE COURT: -- any problem with that kind of an
16 issue?

17 MR. RIORDAN: I would have to take it back to the
18 client. I don't think that's something I can just agree to on
19 the spot here.

20 But just to give you some background, I mean, this
21 was something -- this was a very key term that was negotiated.

22 THE COURT: Okay.

23 MR. RIORDAN: It was a condition to us entering into
24 the APA, and we did go back and forth with the Debtors about
25 it, so it is very important to our client and --

1 THE COURT: So I don't have an -- I really don't
2 have a problem that you can get it if it's the right thing to
3 do.

4 MR. RIORDAN: Right.

5 THE COURT: And I just -- I don't know how to define
6 it that well. Is your client available on the phone, where
7 you can reach him?

8 MR. RIORDAN: I don't believe he's available, Your
9 Honor.

10 THE COURT: Okay.

11 MR. RIORDAN: But I can try to reach them.

12 THE COURT: Well, I mean, we can also just get this
13 either uploaded later or we can figure out what to do, if your
14 client won't agree to it later. I'm not looking to say they
15 can't get it. I thought that probably went too far, in terms
16 of what the Committee objected to. But I'm just not
17 comfortable going as far as what you're asking me to do. And
18 I'm not -- I'm -- I guess I'm not telling you I can't get over
19 the discomfort. I don't know what I'll do if I have to deal
20 with it.

21 MR. RIORDAN: Could I understand the more marginal
22 concerns that you would want to be brought back to court?
23 What sort of things would Your Honor prefer for us to bring
24 back, if I can convince my client to --

25 THE COURT: Well --

1 MR. RIORDAN: -- do so?

2 THE COURT: Well, the ones I don't need to come back
3 on are, obviously, if they sell to somebody else --

4 MR. RIORDAN: Okay.

5 THE COURT: -- if they can't sell to you --

6 MR. RIORDAN: Okay.

7 THE COURT: -- if they refuse to sell to you. So,
8 if they breach a -- essentially, if they breach an obligation
9 from this day forward, I'm really not going to have a problem
10 with it.

11 MR. RIORDAN: Okay.

12 THE COURT: If it's a breach of something that
13 happened in the past -- yesterday, they made a representation
14 to you and you've investigated it -- well, this is a
15 bankruptcy case, right? And you find out that, had your
16 accountants done the financial statements, they wouldn't have
17 booked that expenditure as a capital asset, they would have
18 expensed it; and, therefore, the Debtor would have lost money
19 during that quarter. I have a problem saying, in that
20 instance that we should fight through whether that was a
21 capital expenditure or an expense matter. It's a judgment
22 call as to how to undo it, even if your side is right.

23 MR. RIORDAN: Yeah. Understood, Your Honor.
24 That's --

25 THE COURT: I --

1 MR. RIORDAN: I'm happy to --

2 THE COURT: Yeah.

3 MR. RIORDAN: -- discuss it.

4 THE COURT: I think that, if it turns out that --
5 I'll give you an example of sort of one of the judgment call
6 ones that I would think I would have a difficult time not
7 giving you the money on, and that is somebody intentionally
8 gave you a false financial statement. I think, if -- in that
9 instance, you know, that's a different story. And I think you
10 would get it, even though it was in the past.

11 But I just think it's almost impossible to define.
12 It's going to be one of those you'll know it when you see it
13 kind of things.

14 MR. RIORDAN: I understand --

15 THE COURT: My guess is --

16 MR. RIORDAN: -- Your Honor.

17 THE COURT: -- your client is more worried about an
18 intentional mis-rep than something else. And you know --

19 MR. RIORDAN: Well, and part of the reason we were
20 looking for this was it had been a very long negotiation
21 process; we've been negotiating for months. At first, we were
22 trying to purchase all of the assets and did diligence on all
23 of the assets.

24 Right now, the bid protections roughly approximate
25 the current costs that have been incurred.

1 THE COURT: Right.

2 MR. RIORDAN: So it is -- even though it is
3 described as a "bid protection," it is, in the event there's
4 an alternative transaction, but it also sort of acts as a
5 breakup fee. And those are not entirely rare and sometimes
6 they do occur on breaches of reps and warranties
7 (indiscernible) reps and warranties.

8 THE COURT: I agree. But if it got spent before the
9 bankruptcy case --

10 MR. RIORDAN: Understood.

11 THE COURT: -- it ain't going to do you much good,
12 right? So it's kind of a sum cost.

13 I don't have a problem with the amount, don't get me
14 wrong.

15 MR. RIORDAN: Okay.

16 THE COURT: But telling me that you deserve that
17 amount because, pre-petition, they owe you some breakup fee,
18 yeah, if what your client wants is an unsecured claim, I might
19 be pretty liberal about that. But I don't think that's what
20 they want.

21 MR. RIORDAN: Okay.

22 THE COURT: I think they want an admin claim.

23 MR. RIORDAN: Understood, Your Honor. Thank you.

24 THE COURT: So we'll talk about how to get there.
25 But I'd like to fix that one footnote to incorporate in 5

1 Footnote 4 by reference, and then see if you can work out some
2 language with Mr. Riordan's client; and, if not, we can deal
3 with it.

4 MR. HIGGINS: That's fine, Your Honor. We can try
5 to figure out some language.

6 THE COURT: Mr. Warner?

7 (Participants confer)

8 THE COURT: So the NDA has now been emailed here.
9 Can I hear, other than the NDA issue, is there any party-in-
10 interest that has a problem with what Mr. Higgins' client is
11 proposing?

12 Mr. Warner, you've signed off at this point, right?

13 MR. WARNER: We are signed off, Your Honor. The
14 language that we wanted is now in there, primarily the 15
15 language and a few other things. So, yes, thank you.

16 MR. HIGGINS: Perhaps you could (indiscernible)
17 line --

18 MR. WARNER: I don't --

19 MR. HIGGINS: -- before I added in the addition to
20 Paragraph 15. Could you just scroll by and just -- I know he
21 trusts me, but ...

22 MR. WARNER: Well ...

23 (Laughter)

24 THE COURT: That may be misplaced. We don't know,
25 right?

1 MR. HIGGINS: There it is.

2 MR. WARNER: Looks good to me. Thank you, Your
3 Honor.

4 THE COURT: Thank you.

5 And I assume that mister -- if Mr. Riordan's client
6 agrees that the payment of the fee in those limited
7 circumstances would be an equitable determination by the
8 Court, as opposed to mandatory, that neither of your clients
9 are going to object to that, but --

10 MR. HIGGINS: That's fine with the Debtor.

11 MR. WARNER: That's fine.

12 THE COURT: Okay. So let's see what Mr. Riordan's
13 client has to say.

14 So here's the NDA I'm putting up on the screen, and
15 I'm going to make the NDA an exhibit to this hearing. Have
16 you already labeled exhibits, so you care what number I --

17 MR. HIGGINS: We have, Your Honor.

18 THE COURT: What do you want me to make the NDA?

19 (Participants confer)

20 MR. HIGGINS: Your Honor, if we can mark it
21 Exhibit 12, Debtors' Exhibit 12.

22 THE COURT: We'll make the NDA Exhibit 12.

23 (Nondisclosure Agreement marked Debtors' Exhibit 12 for
24 identification).

25 MR. HIGGINS: And may I approach, Your Honor, and

1 hand you the other exhibits.

2 THE COURT: Is there any objection to the admission
3 of the NDA as Exhibit 12, just so that we have the target
4 document that deals with the objections filed by the two
5 physicians.

6 MR. GERGER: Your Honor, we don't have an objection.
7 But I was wondering if we could get a -- somehow a paper copy
8 of this most recent proposed order with revised Paragraph 15.
9 I think that was done as we were sitting here.

10 MR. HIGGINS: Correct, it was.

11 THE COURT: Do you want the PDF version or do you
12 want the clean version?

13 MR. GERGER: The revised -- the redlined version.

14 THE COURT: I'm printing it right now. Maybe.

15 So I'm reading exhibit -- I'm admitting Exhibit 12
16 without objection and I'm going to read it.

17 (Debtors' Exhibit 12 received in evidence)

18 (Pause in proceedings)

19 MR. GERGER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Pause in proceedings)

22 THE COURT: So, in the third full paragraph on
23 Page 2, the doctors are agreeing that, if they get this
24 information, they could never make a competing offer for the
25 company. Why is that fair and why isn't that what they're

1 complaining about?

2 MR. HIGGINS: I'm sorry. Which paragraph are you
3 looking at --

4 THE COURT: The one that --

5 MR. HIGGINS: -- the "in addition"?

6 THE COURT: -- begins with the words "in addition."
7 It's the third full paragraph on Page 2 that says:

8 "-- you further agree that, without the prior
9 written consent of the company, neither you, nor any of your
10 affiliates will directly or indirectly, alone or in concert
11 with others" --

12 Try to buy anything from the company. How does that
13 facilitate active participation in the case and their ability
14 to propose, for example, a competing plan, if the law allows
15 them to file a competing plan?

16 MR. HIGGINS: Your Honor, that's certainly not what
17 that was intended to mean. And I can tell you -- in fact,
18 we'll put Mr. Turnbull on the stand -- we had numerous
19 discussions with the doctors about proposing to make bids,
20 both in combination for respective locations and/or for --

21 THE COURT: Right. This let's --

22 MR. HIGGINS: -- (indiscernible).

23 THE COURT: -- them do it with your consent. But if
24 they don't like what you're doing, they can't come in with
25 their own plan any longer, once they get the material. If you

1 want to make an exception that says that this won't apply to
2 any of the Class B holders or the physicians, or tell me why
3 it's helpful to the estate to prohibit them from filing a
4 competing plan once, you know, they are legally allowed to do
5 so.

6 MR. HIGGINS: That was certainly not the intent,
7 Your Honor. And we certainly don't have any problem with
8 that.

9 THE COURT: Or they should be able to contact the
10 board and say do this, right?

11 MR. HIGGINS: Once again, Your Honor, that's --

12 THE COURT: Okay.

13 MR. HIGGINS: -- not the intent.

14 THE COURT: Okay. Is there anyone that objects to
15 including in the order that approves the bidding procedures a
16 provision that makes clear that the last portion of paragraph
17 -- the third paragraph on Page 2 that begins with the words
18 "you further agree that" will have a proviso that it will not
19 apply to any physician that is employed by or an agent or an
20 affiliate of the company, et cetera?

21 MR. TASHMAN: Your Honor, I certainly don't object.
22 I wonder if we might be able to put the agreement on the
23 screen because we're just struggling with not being able to
24 see --

25 THE COURT: I apologize.

1 MR. TASHMAN: -- (indiscernible).

2 THE COURT: I meant to do that.

3 (Participants confer)

4 THE COURT: It's right here. This is the language
5 that -- I can understand the nature of their complaint, based
6 on that language.

7 MR. HIGGINS: Your Honor, Mr. Trumbull reminded me
8 that the intent of this paragraph was really more in the
9 nature to prevent claims trading, where somebody was trying to
10 come in, get information, and then pick up claims, and then
11 try to block the Debtor from effectuating its plan. But we
12 certainly don't have a problem with the clarification, either
13 way.

14 THE COURT: If you want to do is just to change that
15 to say that no one that gets the information can then acquire
16 claims thereafter, meaning that they would be acquiring the
17 claims based on insider information, I got no problem with
18 that at all. So, if we can just change that to say nobody can
19 buy -- if that's what you're trying to accomplish.

20 MR. HIGGINS: I think it will --

21 THE COURT: Let's just --

22 MR. HIGGINS: -- be easier --

23 THE COURT: -- say that --

24 MR. HIGGINS: -- Your Honor. We may take a look at
25 this later. I think I'd rather just include your language in

1 the order.

2 THE COURT: Let me see if anyone --

3 UNIDENTIFIED:

4 THE COURT: -- objects to the language that says
5 this just isn't going to apply to people of the class of these
6 two doctors. And I -- as to how that gets defined, I mean, in
7 part, they are Class B interest holder -- Class B holders; in
8 part, they are physicians employed by them. They've got
9 several relationships. And if we can carve them out of this,
10 I think it would --

11 MR. HIGGINS: I --

12 THE COURT: -- go a long way towards making me
13 comfortable with it.

14 (Participants confer)

15 MR. HIGGINS: Yeah, I think we might even go broader
16 than that and say any physicians that are -- they're not
17 employees, Your Honor; they're 1099s, so I don't want to --

18 THE COURT: Yeah, you'll --

19 MR. HIGGINS: I don't want to --

20 THE COURT: -- have to define them.

21 MR. HIGGINS: -- start restricting --

22 THE COURT: Yeah, I'm --

23 MR. HIGGINS: -- B's and A's or A's and B's. So I
24 think we're just going to make it even a little bit broader.

25 THE COURT: However, I don't have a -- let's do

1 both, now that I'm thinking about this. Let's except them
2 from the paragraph. But then let's also say that, even as --
3 in those shoes, they can't get the insider information then
4 become claims traders. I don't think that's fair for anyone
5 to do. And so, since that was really the intent, let's
6 restrict the claims trading, and then otherwise make the
7 paragraph -- it's going to require sort of a major rewrite,
8 but if you can fix it to do that.

9 Mr. Duran, I know this is an issue that normally you
10 would want to participate in. What is your view on those
11 kinds of changes, given the objection?

12 MR. DURAN: I don't think I have a problem with
13 those proposals. But I guess the offending language is where
14 it says "or assets of the company." I can see where it tries
15 to prohibit claims trading. But when it says --

16 THE COURT: Right.

17 MR. DURAN: -- "or purchase any assets of the
18 company," it goes too far, I think.

19 THE COURT: So, for all of that, they're going to
20 exclude everyone that's a physician. But I'm saying if -- so
21 they're going to be -- this whole section isn't going to apply
22 to physicians that are affiliated with the company somehow.

23 Having said that, I'm still not going to let those
24 physicians get the insider information and participate in
25 claims trading.

1 MR. DURAN: Claims trading after.

2 MR. HIGGINS: Yeah, I mean, if --

3 MR. DURAN: I -- that would be fine.

4 MR. HIGGINS: And if you read it in context, Your
5 Honor, it's purchasing a claim against the company or a claim
6 against the assets. It could be --

7 THE COURT: Well, I think --

8 MR. HIGGINS: But again --

9 THE COURT: I think --

10 MR. HIGGINS: -- we'll make the --

11 THE COURT: -- in fairness --

12 MR. HIGGINS: -- clarification.

13 THE COURT: -- it says they can't purchase -- you
14 can -- I think we've all got the idea. If no one objects to
15 the idea, let me let you craft some language that does that.

16 MR. HIGGINS: I'm --

17 THE COURT: And with that, given that those guys
18 that wrote objections aren't here, I find that I'm going to
19 sustain the objections in part only. I don't find that there
20 is any waiver of existing claims against the company that
21 these folks might have. I think that's a misreading of it.
22 There is a waiver of claims related to the proposed
23 transactions, so they can't sue the company. If they get the
24 insider information and then they don't like the outcome of
25 the bidding process, there's no suit about that. I think

1 that's the law anyway, once we approve the transaction.

2 But they're not giving up, as I read this agreement,
3 in order to get the insider information, any existing claim
4 that they may have against the company or any of its insiders
5 for, for example, pre-petition conduct, which is the kind of
6 thing that they are alleging in the letter. I'm going to
7 overrule the objection because I don't think it says that.

8 I'm going to sustain the objection, to the extent
9 that it, I think, alleges that it is too restrictive to their
10 future bidding rights. And given that I'm sustaining it as to
11 that, we're going to amend the NDA along the lines that we
12 have suggested, at which point the objection is mute on that
13 issue.

14 And then I'm going to tell you that those are the
15 only objections, so that you can put on evidence if you want.
16 But given that they're not here to prosecute it, I'm doing my
17 best to deal with what they said and I think I have. So you
18 tell me what kind of evidence you want.

19 MR. HIGGINS: That was going to be only evidence we
20 believe we needed to rebut today. But based upon your Court's
21 ruling, I don't think we need to call a witness at this time.

22 I do want to make one additional clarification, Your
23 Honor, that I did not. And I should offer at this time
24 Exhibits 1 through -- actually, it will be Exhibit 1, 3, 4, 5,
25 and that's it, Your Honor.

1 THE COURT: Any objection to 1, 3, 4, and 5?

2 MR. HIGGINS: And for the record -- not everybody
3 has a copy -- it's the declaration of Mr. Shandler; it is the
4 notice of designation of Fostre as the stalking horse bidder,
5 which occurred after the filing of the motion; it is the two
6 APA agreements, and that's it.

7 THE COURT: All right. Those are admitted. Thank
8 you.

9 (Debtors' Exhibits 1, 3, 4, and 5 received in evidence)

10 MR. HIGGINS: And then, Your Honor, with respect to
11 Exhibit 5, I wanted to announce that we are going to make one
12 change. We're already drafting, just because of some time
13 deadlines, an amendment to both APAs. We're trying to conform
14 the bid procedures to the APAs, and so we've got a short-form
15 amendment that's being circulated last night and today. We
16 anticipate having that signed up in the next day or so.

17 But one amendment that I did state that I would
18 state on the record is the definition of an "alternative
19 transaction" in Exhibit 5, which is on Page 3. It provides
20 that they would only be entitled, in the event that we closed
21 an alternative transaction, that the Express ER purchaser
22 would only be entitled to a breakup fee in the event we sold
23 all or a substantial portion of the transferred assets. We
24 were agreeing to delete the word "substantial."

25 So, for example, if, out of the locations, we

1 determined it was in our best interest, we got a bid for one
2 location and that bid was more than the \$5.5 million, and we
3 could still liquidate the other locations, and the combined
4 liquidation plus the single bid for one location was a better
5 -- higher and better bid, then we wanted to have the right to
6 select that. We did not want to have a -- have to have a
7 dispute over that one purchase being substantial or not
8 substantial. So we agreed that, in that scenario, they would
9 be entitled to the two fifty.

10 THE COURT: All right. I'll just --

11 MR. HIGGINS: And we've --

12 THE COURT: -- accept that --

13 MR. HIGGINS: -- run that --

14 THE COURT: -- announcement.

15 MR. HIGGINS: -- by the Committee and the banks.

16 THE COURT: Okay. Thank you.

17 All right. So there's -- I'm sorry. Mr. Gerger.

18 MR. GERGER: Your Honor, with respect to Paragraph

19 15 --

20 THE COURT: Paragraph which?

21 MR. GERGER: -- there's a phrase that we're --

22 THE COURT: Paragraph which?

23 MR. GERGER: 15.

24 THE COURT: Of the order?

25 MR. GERGER: The bidding procedures.

1 THE COURT: Got it. The bidding procedures or --
2 oh, the bidding procedures. Okay.

3 MR. GERGER: So this would be at the top of --

4 THE COURT: Well, I've changed the pagination, so
5 I'm looking at the clean --

6 MR. GERGER: Yes.

7 THE COURT: -- instead of the redline.

8 MR. GERGER: The continuation of that paragraph.
9 Let's see. The next-to-last line, the phrase "subject to
10 court approval" seems to be ambiguous as to, number one,
11 whether -- what it applies to and if it's even necessary.

12 We represent Altus, who's the stalking horse bidder
13 for the Houston stores.

14 THE COURT: Right.

15 MR. GERGER: They want to be --

16 THE COURT: Hold on. Let me just focus on the
17 sentence for a minute.

18 (Pause in proceedings)

19 THE COURT: I agree. I think I should approve that
20 right now and I don't have a problem approving that right now.

21 MR. GERGER: Approving the --

22 THE COURT: So we would take out "subject to court
23 approval."

24 MR. GERGER: Yes.

25 THE COURT: And is there any objection by anyone to

1 doing that?

2 UNIDENTIFIED: None, Your Honor.

3 THE COURT: Okay. We'll take it out.

4 MR. GERGER: And we just want to make sure that the
5 agent, to the extent that they may be the bidder that -- the
6 selected buyer, that the bid procedures are funded and paid.

7 THE COURT: I think, if we take out "subject to
8 court approval," that is what it says.

9 MR. GERGER: All right. All right. Then that's
10 fine, Your Honor.

11 THE COURT: Okay. I'll just ask, in the final
12 version, we take out those words. Thank you.

13 All right. Anyone else have any objections to
14 the --

15 MR. GERGER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Either to the substantive relief or the form of the
18 order?

19 (No verbal response)

20 THE COURT: Then we're going to announce that we're
21 approving, with the changes that we have announced on the
22 record, the bid procedures and the bid protections and call
23 for an order to be uploaded after Mr. Riordan and the
24 Committee sign off on it. So I want those three parties to
25 sign off on it. I don't want to have the whole world sign off

1 on it. But if those three sign off, just upload it.

2 If there's a problem with Mr. Riordan's client, then
3 I would ask that you and Mr. Riordan contact Ms. Do, and let's
4 have maybe just an immediate kind of telephone conference on
5 the matter, instead of bringing everybody back down here, and
6 let me see what the problem might be. It will be on the
7 record, but it will be probably on very short notice to people
8 because I want to just fit that in and get this done, so we
9 can start the bidding.

10 MR. HIGGINS: That's acceptable to the Debtor, Your
11 Honor.

12 THE COURT: Thank you. All right.

13 MR. HIGGINS: And I believe that concludes our
14 matters this afternoon.

15 THE COURT: Is there anyone else that has a matter
16 that we need to take up today in the Neighbors case?

17 (No verbal response)

18 THE COURT: Okay. And I think the only order we're
19 waiting on then will be the bid order, right?

20 MR. HIGGINS: Right.

21 THE COURT: We've done everything else today. Okay.
22 All right. Let me just take a look and make sure.

23 We're in adjournment until 4:30, we'll come back
24 then. Thank you.

25 THE COURT OFFICER: All rise.

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(Proceedings concluded at 3:18 p.m.)

* * * * *

I certify that the foregoing is a correct transcript to the best of my ability produced from the electronic sound recording of the proceedings in the above-entitled matter.

/S./ MARY D. HENRY

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