

In the Matter Of:  
Seelster Farms Inc., et al. vs  
Her Majesty The Queen In Right of Ontario, et al.

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RODNEY SEILING  
December 18, 2017

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Toronto, ON M5K 1A2  
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Court File No. 272/14  
ONTARIO  
SUPERIOR COURT OF JUSTICE  
B E T W E E N :  
  
SEELSTER FARMS INC., WINBAK FARM OF CANADA INC.,  
STONEBRIDGE FARM, 774440 ONTARIO INC., NORTHFIELDS  
FARM INC., JOHN MCKNIGHT, TARA HILLS STUD LTD.,  
TWINBROOK LTD., EMERALD RIDGE FARM, CENTURY SPRING  
FARMS, HARRY RUTHERFORD, DIANE INGHAM, BURGESS  
FARMS INC., ROBERT BURGESS, 453997 ONTARIO LTD.,  
TERRY DEVOS, SONIA DEVOS, GLENN BECHTEL, GARTH  
BECHTEL, 496268 NEW YORK INC., HAMSTAN FARM INC.,  
ESTATE OF JAMES CARR, deceased, by its executor  
Darlene Carr, ESTATE OF GUY POLILLO, deceased, by  
its executor Carolyn Polillo, DAVID GOODROW,  
TIMPANO GAMING INC., CRAIG TURNER, GLENGATE  
HOLDINGS INC., KENDAL HILLS STUD FARM LTD., ANDY  
KLEMENCIC, TIM KLEMENCIC, STAN KLEMENCIC, JEFF  
RUCH, BRETT ANDERSON, DR. BRETT C. ANDERSON  
PROFESSIONAL VETERINARY CORPORATION, KILLEAN ACRES  
INC., DECISION THEORY INC., 296268 ONTARIO LTD.,  
DOUGLAS MURRAY MCCONNELL, QUINTET FARMS INC., KARIN  
BURGESS, BLAIR BURGESS, ST. LAD'S LTD., WINDSUN  
FARM INC., SKYHAVEN FARMS, HIGH STAKES INC.,  
1806112 ONTARIO INC., GLASSFORD EQUI-CARE, JOHN  
GLASSFORD, GLORIA ROBINSON and KEITH ROBINSON  
Plaintiffs  
- and -  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and  
ONTARIO LOTTERY AND GAMING CORPORATION  
Defendants

-----  
--- This is the Continued Rule 39.03 Examination of  
RODNEY SEILING, a non-party witness herein, taken  
via teleconference at the offices of Neeson Court  
Reporting Inc., 77 King Street West, Suite 2020,  
Toronto, Ontario, Canada, M5K 1A2, on Monday, the  
18th of December, 2017.

-----  
V O L U M E 2

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

2

3 Ian C. Matthews, Esq. - for the Plaintiffs.

4 Vivien Milat, Esq.

5

6 Robert H. Ratcliffe, Esq. - for Defendant Crown.

7 Eunice Machado, Esq.

8 Meagan Williams, Esq.

9

10 H. Michael Rosenberg, Esq. - for Defendant, Ontario

11 Dharshini Sinnadurai, Esq. Lottery and Gaming

12 Corporation.

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14

15 ALSO IN ATTENDANCE:

16 Ms. Michele Valentini - Articling Student, MAG.

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25 REPORTED BY: Bonnie Lynn van der Meer, CSR

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I N D E X   O F   P R O C E E D I N G S

DESCRIPTION	PAGE
WITNESS: ROD SEILING; Previously Sworn.....	423
---(Witness attending via teleconference.)	
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---[ Reporter's note: The following indices of undertakings, under advisements, objections and refusals are provided for the assistance of counsel and do not purport to be complete or binding on the parties herein. ]

I N D E X   O F   U N D E R T A K I N G S

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: (None).

I N D E X   O F   U N D E R   A D V I S E M E N T S

The questions/requests taken under advisement are noted by U/A and appear on the following pages/lines: (None).

1                    I N D E X     O F     O B J E C T I O N S

2     The questions/requests refused are noted by O/B and  
3     appear on the following pages/lines: 424:13,  
4     427:17, 439:5, 470:24, 476:19, 505:19, 508:17,  
5     536:3, 537:13, 550:17, 553:17.

6

7                    I N D E X     O F     R E F U S A L S

8     The questions/requests refused are noted by R/F and  
9     appear on the following pages/lines: (None).

10

11

12                    I N D E X     O F     E X H I B I T S

13	EXHIBIT NO.	DESCRIPTION	PAGE/LINE
14	40:	Policy Directive No. 6, SB 5277;;	462:2
15	41:	CRE0030643	468:13
16	"A":	Letter and e-mail of Ms. Anna Meyers	
17		marked for identification purposes	480:10
18	42:	SB 0012705	482:8
19	43:	Ontario Racing Program Update, Phase-In	
20		of the Standardbred Program, dated January 18,	
21		2011, SB 0012710	483:7
22	"B":	Document SB 0012792 marked for	
23		identification purposes	494:22
24	"C":	OLGSB 1302, OLGSB 1330 and OLGSB 1331,	
25		marked for identification	516:7

11:11:45 1 ---Upon commencing at 11:11 a.m.

11:11:45 2 RODNEY SEILING; PREVIOUSLY AFFIRMED.

11:11:47 3 --- (Witness attending via

11:11:47 4 teleconference.)

11:11:47 5 EXAMINATION BY MR. ROSENBERG: (CONT'D)

11:11:47 6 1327 Q. We'll go on the record.

11:11:49 7 A. And I take it I'm still under

11:11:51 8 oath.

11:11:51 9 1328 Q. Yes, sir. I was just about to

11:11:51 10 remind you.

11:11:53 11 Do you understand that you're still

11:11:54 12 under oath from last day?

11:11:56 13 A. I fully understand.

11:11:57 14 1329 Q. Thank you. My plan had been to

11:12:01 15 pick up where we left off last day, but because of

11:12:02 16 a discussion we've had off the record about some

11:12:03 17 technical difficulties, what I would like to do is

11:12:05 18 re-arrange the order of my questions a little bit

11:12:07 19 to try to make use of the documents you have on

11:12:10 20 your screen first.

11:12:13 21 So you have before you the exhibits

11:12:14 22 from the first day of your examination, which was

11:12:16 23 December 15th, 2017?

11:12:18 24 A. Correct.

11:12:19 25 1330 Q. All right. When we were speaking

11:12:28 1 last day, you mentioned that the track or racetrack  
11:12:32 2 gets a lot more of a dollar wagered by a bettor who  
11:12:38 3 is physically at the track than a dollar wagered on  
11:12:42 4 a telecast or a simulcast, right?

11:12:44 5 A. Yes.

11:12:46 6 1331 Q. And then the house's take, the  
11:12:50 7 track's take, is split with the horsepeople?

11:12:52 8 A. Yes.

11:12:53 9 1332 Q. And that's pursuant to one of  
11:12:54 10 those agreements we talked about last time between  
11:12:57 11 the racetrack and the local horsepeople's  
11:13:01 12 association?

11:13:03 13 O/B MR. MATTHEWS: Objection.

11:13:04 14 THE WITNESS: Correct. They will come  
11:13:05 15 to -- they will negotiate and come to an agreement  
11:13:07 16 on the split.

11:13:09 17 MR. ROSENBERG: What's the objection,  
11:13:10 18 Mr. Matthews?

11:13:12 19 MR. MATTHEWS: If you're asking him  
11:13:14 20 about the siteholder agreements --

11:13:16 21 BY MR. ROSENBERG:

11:13:16 22 1333 Q. I'm not asking about the  
11:13:18 23 siteholder agreements. These are different, right,  
11:13:20 24 Mr. Seiling? You and I understand --

11:13:22 25 A. Correct. Yeah, it's a totally

11:13:24 1 different agreement.

11:13:25 2 1334 Q. A totally different agreement.

11:13:25 3 Okay.

11:13:28 4 Incidentally, when we're talking about

11:13:30 5 this totally different agreement between the

11:13:32 6 racetrack and the horsepeople's association, had

11:13:37 7 you ever seen any of those contracts?

11:13:39 8 A. I am aware of them.

11:13:42 9 Have I seen one? Well, I've seen one,

11:13:45 10 because when I was general manager of the

11:13:47 11 racetrack, I had to do that negotiation.

11:13:49 12 1335 Q. Right.

11:13:50 13 A. So from that perspective, I'm

11:13:52 14 familiar with it.

11:13:53 15 1336 Q. I see. So --

11:13:54 16 A. Do I, as the Chair of the Racing

11:13:57 17 Commission, see each individual contract between

11:14:02 18 the respective horsepeople association and the

11:14:05 19 track, no.

11:14:06 20 1337 Q. So it's not really the ORC's

11:14:09 21 business to get involved?

11:14:10 22 A. Staff more than likely will, but

11:14:12 23 it's not something that would come before me.

11:14:14 24 1338 Q. I see. So the ORC would have had

11:14:16 25 access to those contracts?



11:14:17 1 A. I am believing so. I wouldn't  
11:14:21 2 swear to it, but there has to be a contract in  
11:14:27 3 place for there to be racing.

11:14:28 4 1339 Q. Right.

11:14:30 5 A. As per the Canadian -- the CPMA  
11:14:33 6 regulations, not ours.

11:14:35 7 1340 Q. And the ORC would have wanted to  
11:14:38 8 satisfy itself that that contract was in place?

11:14:44 9 A. Well, we would go on word of the  
11:14:48 10 CPMA.

11:14:48 11 1341 Q. What do you mean by that?

11:14:50 12 A. It's their requirement. For  
11:14:51 13 wagering to take place, there has to be -- as I  
11:14:53 14 recall, there has to be agreement in place between  
11:14:55 15 the horsepeople association and the track.

11:14:56 16 1342 Q. Okay, but in terms of getting into  
11:14:57 17 the details, the terms of how much money is split,  
11:15:00 18 was the ORC involved in that?

11:15:02 19 A. We would not -- we're not a  
11:15:04 20 signatory, so it's not our requirement, so we would  
11:15:07 21 not be involved in that. Would we be made aware of  
11:15:10 22 it? Yes.

11:15:11 23 1343 Q. Right. And you said that when you  
11:15:15 24 were at Woodbine, you would have been involved in  
11:15:17 25 negotiating that agreement?

11:15:18 1 A. No. Actually, when I was at  
11:15:21 2 Elmira Raceway.  
11:15:22 3 1344 Q. Elmira Raceway. I see. And who  
11:15:25 4 would have been the counterparty to that agreement?  
11:15:28 5 A. OHHA.  
11:15:29 6 1345 Q. The Ontario Harness Horsemen's  
11:15:33 7 Association?  
11:15:33 8 A. Correct.  
11:15:33 9 1346 Q. And they would have been  
11:15:35 10 representing the owners of the racehorses that were  
11:15:39 11 going to race at the Elmira Raceway?  
11:15:42 12 A. Correct.  
11:15:42 13 1347 Q. All right. Now, when you were at  
11:15:54 14 Woodbine, do you remember what percentage the house  
11:15:56 15 took on a bet that was made at the track,  
11:16:00 16 physically at the track?  
11:16:02 17 O/B MR. MATTHEWS: Objection, relevance.  
11:16:04 18 BY MR. ROSENBERG:  
11:16:05 19 1348 Q. You can answer, sir.  
11:16:07 20 A. Umm. I am going to guess it's  
11:16:11 21 50/50. I wouldn't be 100 per cent certain.  
11:16:13 22 1349 Q. Sorry. Just a dollar bet; how  
11:16:19 23 much does the house get?  
11:16:20 24 A. I just said it would be split  
11:16:23 25 50/50.

11:16:24 1 1350 Q. Between...?

11:16:25 2 A. The track and the horsepeople.

11:16:26 3 1351 Q. So that's the house's take of the

11:16:30 4 wager. Do you remember what percentage would

11:16:33 5 actually go to the house?

11:16:35 6 A. Oh, you're asking -- well,

11:16:36 7 that's -- you flipped on me. So you moved from --

11:16:42 8 you moved from -- I think what you're talking about

11:16:45 9 is the commissions on individual bets.

11:16:47 10 1352 Q. Exactly. Yes, sir.

11:16:48 11 A. I don't remember. They vary.

11:16:50 12 1353 Q. Okay. And same answer if I ask

11:16:57 13 you what the commission is on an off-track wager?

11:16:59 14 A. Same -- same answer.

11:17:00 15 1354 Q. And just conceptually, is it

11:17:06 16 possible to compare the commission that the house

11:17:10 17 gets on a wager with the 20 per cent siteholder

11:17:15 18 commission that the racetrack received under SARP?

11:17:18 19 U/B MR. MATTHEWS: Objection.

11:17:19 20 THE WITNESS: I don't think there's any

11:17:21 21 relationship.

11:17:21 22 BY MR. ROSENBERG:

11:17:21 23 1355 Q. No relationship?

11:17:22 24 A. No.

11:17:22 25 1356 Q. Okay. So we talked a bit last

11:17:31 1 time about the prices realized for Standardbred  
11:17:35 2 yearlings at auction, and we looked at Exhibit 237  
11:17:46 3 which showed Standardbred yearling sale prices,  
11:17:49 4 which you agreed were variable, and you couldn't  
11:17:51 5 explain why prices fell significantly from 2002  
11:17:54 6 through 2005, but you suggested that the subsequent  
11:17:57 7 recovery might be due to improved Ontario Sires  
11:18:01 8 Stakes offerings.

11:18:02 9 Do you remember that?

11:18:02 10 A. Yes, and I can give you -- having  
11:18:04 11 thought about it, I can give you another reason as  
11:18:06 12 well.

11:18:06 13 1357 Q. Good.

11:18:08 14 A. All you would need in there to  
11:18:10 15 skew the numbers -- because it's an average. It's  
11:18:14 16 not a -- is if you had, for example, a couple of  
11:18:17 17 horses sell for \$100,000 or more, they would skew  
11:18:22 18 the average very quickly too and that can happen on  
11:18:26 19 a regular basis, that you get a yearling that has  
11:18:31 20 got excellent breeding, excellent confirmation,  
11:18:37 21 popular sire, very good bloodlines on the maternal  
11:18:42 22 side, and all of a sudden, you've got a bidding  
11:18:44 23 war, and the price goes up dramatically and that  
11:18:47 24 can -- that can jump the average price of a sale  
11:18:50 25 dramatically.

11:18:51 1 1358 Q. I see. But you're not able to say  
11:18:55 2 to me, you know, in 2002, the reason that the  
11:18:58 3 prices recorded there were the highest in that  
11:19:01 4 10-year span are because --  
11:19:03 5 A. No. You asked me could I give you  
11:19:05 6 any reason why were there might be a variance, and  
11:19:09 7 I've given you two now.  
11:19:10 8 1359 Q. But you're speculating, right?  
11:19:12 9 A. I'm just giving you what I think  
11:19:15 10 are very logical, possible explanations.  
11:19:17 11 1360 Q. Okay, but I just want to --  
11:19:19 12 A. And ones that -- and explanations  
11:19:22 13 that I've seen happen in person. So my personal  
11:19:25 14 knowledge of, of things like that, how it can  
11:19:29 15 change the, the sale averages.  
11:19:33 16 1361 Q. No, I appreciate that, sir, but I  
11:19:35 17 just want to be sure the nature of the evidence  
11:19:37 18 you're giving.  
11:19:38 19 You're not telling me that, in 2002,  
11:19:41 20 you can say that there were a bunch of horses --  
11:19:43 21 A. No, sir. I told you, I said I  
11:19:45 22 can't -- you asked me to speculate why it may  
11:19:48 23 change. I have given you what I think are two  
11:19:51 24 logical and very possible reasons.  
11:19:53 25 1362 Q. But again, you're just

11:19:54 1 speculating?

11:19:55 2 A. I confirmed that to you, sir.

11:19:57 3 1363 Q. Okay.

11:19:57 4 A. I didn't say, "Speculate". I said

11:20:01 5 I've given you two possible explanations that I've

11:20:05 6 seen happen in the past.

11:20:06 7 1364 Q. All right. I think we understand

11:20:07 8 each other.

11:20:10 9 A. I'm not -- that's all I can say.

11:20:12 10 1365 Q. Right. What I did want to show

11:20:15 11 you, though, was if you go to Exhibit 19, so this

11:20:24 12 is -- if you look at the bookmarks on the left-hand

11:20:32 13 side. Perhaps, we should go off the record to make

11:20:34 14 sure you have the document in front of you.

11:20:50 15 --- (Discussion off the record.)

11:22:10 16 MR. ROSENBERG: Why don't we go back

11:22:12 17 on?

11:22:12 18 THE WITNESS: That's Exhibit 11.

11:22:15 19 BY MR. ROSENBERG:

11:22:15 20 1366 Q. No. It's Exhibit 19.

11:22:17 21 If you are looking at --

11:22:19 22 A. Well --

11:22:20 23 1367 Q. -- pages in the PDF, I'm on page

11:22:25 24 346, is the one I'm going to take you to.

11:22:28 25 A. Well, just a minute. We have

11:22:30 1 somehow...

11:22:31 2 MR. ROSENBERG: Let's go off the record

11:22:33 3 again, please.

11:24:22 4 --- (Discussion off the record.)

11:24:22 5 MR. ROSENBERG: Why don't we go back

11:24:24 6 on.

11:24:26 7 BY MR. ROSENBERG:

11:24:26 8 1368 Q. So we're looking at page 7 of

11:24:28 9 Exhibit 19, and, sir, under the column

11:24:31 10 "Standardbred", I will put it to you that that is

11:24:35 11 the value of the Standardbred Improvement Program

11:24:37 12 in each of those years.

11:24:38 13 Does that look right?

11:24:40 14 A. You will have to read them out.

11:24:42 15 The brief reduction, I can't read it.

11:24:44 16 1369 Q. I see. So the value in 2005 is

11:24:56 17 about \$29-million, the value in 2006 is about

11:25:02 18 \$28-million, the value in 2007 is about

11:25:06 19 \$27-million, the value in 2008 is about

11:25:10 20 \$27-million, and the value in 2009 is about

11:25:15 21 \$26-million.

11:25:16 22 A. Well, just to stop you from

11:25:19 23 reading, these are documents that were put out by

11:25:21 24 the Commission --

11:25:22 25 1370 Q. Yes.

11:25:22 1 A. -- audited, so I would have no  
11:25:25 2 basis to say whether the numbers that are on the  
11:25:28 3 page are not the right -- are the correct numbers.

11:25:31 4 1371 Q. So I just wanted to direct your  
11:25:34 5 attention to the fact that it appears as though the  
11:25:38 6 Standardbred Improvement Program declined in value  
11:25:42 7 over that period we're talking about from 2005 to  
11:25:45 8 2009. It didn't become a richer incentive.

11:25:51 9 You will agree with that based on the  
11:25:53 10 numbers I have read to you?

11:25:55 11 A. Well, again, my answer to you will  
11:25:57 12 be the same as it was before. The numbers are what  
11:26:00 13 the numbers are, and if the number at the end, I  
11:26:05 14 can't read it, is lesser than the numbers earlier,  
11:26:11 15 then that's -- that's the proof of what the value  
11:26:12 16 is.

11:26:12 17 1372 Q. Okay. And with regard to the  
11:26:17 18 other possible explanation that you gave us about  
11:26:21 19 some years having very valuable horses that  
11:26:27 20 increase the average sales price, I think what  
11:26:34 21 you're saying is, there may be some years where the  
11:26:36 22 sale price is higher than the baseline because  
11:26:38 23 there are some very valuable horses, right?

11:26:41 24 A. You asked me the difference in the  
11:26:44 25 skews, and I said -- I gave you two possible



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explanations that I've seen could happen.  
I can't tell you the specifics of the years you asked me about because I have no knowledge.  
Q. And I'm just asking for the concept though, sir.  
A. And I -- I gave you them already. No sense in me repeating myself. I have given you two, one on Friday, one today.  
MR. MATTHEWS: Mr. Rosenberg, as you know, Rule 39 witnesses are here for their personal knowledge. They're not opinion expert witnesses. They're here for their personal knowledge.  
MR. ROSENBERG: I have your objection, Mr. Matthews.  
MR. MATTHEWS: It's not an objection, Mr. Rosenberg. It's just, you know, if you're putting him forward to try and get industry opinion evidence, this is not a witness to do that. He's here to give evidence about things that are in his personal knowledge.  
MR. ROSENBERG: I have your position, and I understand that the Plaintiffs certainly won't be putting this witness forward for any opinion evidence, so why don't I just keep going

11:27:41 1 with my examination.

11:27:41 2 BY MR. ROSENBERG:

11:27:46 3 1374 Q. If we go to page 30 of this

11:27:48 4 document, Exhibit 19, that we're looking at.

11:27:50 5 A. Okay, because I don't see any

11:27:51 6 page, so what's -- what am I looking at?

11:27:54 7 1375 Q. So there are page numbers in the

11:27:57 8 bottom, right-hand corner.

11:27:58 9 A. No, not in mine.

11:27:59 10 1376 Q. Or bottom left-hand corner as you

11:28:02 11 scroll down.

11:28:02 12 A. Neither. I'm now into the

11:28:06 13 Thoroughbred -- have I gone too far down, the

11:28:08 14 Thoroughbred Improvement Program?

11:28:10 15 1377 Q. We're going to go past the

11:28:15 16 Thoroughbred Improvement Program to the

11:28:17 17 Standardbred Improvement Program, please.

11:28:42 18 MS. MACHADO: Mr. Seiling, there are

11:28:45 19 numbers. They're just really, really, really

11:28:47 20 small, so you would have to kind of maximize the

11:28:49 21 document to be able to see them.

11:28:51 22 THE WITNESS: I have it maximized.

11:28:56 23 MS. MACHADO: Oh, okay.

11:28:58 24 THE WITNESS: I'm still at

11:28:58 25 Thoroughbred. Okay, Standardbred -- I've got it.

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Okay.

BY MR. ROSENBERG:

1378 Q. So I'm looking at a page titled  
Standardbred Improvement Program Restructuring  
Highlights.

A. Okay.

1379 Q. And if you look at --

A. Yeah, I've got it.

1380 Q. On the right-hand side --

A. And they're not readable. And I  
have my glasses on to even help. It's...

1381 Q. All right. Well, let me do my  
best then with you here, sir.

Under Standardbred Revenue and  
Allocations, it says SIP revenue sources and has  
the wagering levy at about \$12-million, and it has  
slot revenue at about \$10-million, and so it seems  
to me that the largest source of funding for the  
Standardbred Improvement Program was the wagering  
levy. Is that fair?

A. Well, it sounds like it's  
\$2-million more.

1382 Q. Was that pretty constant, that the  
major -- that the largest funding source for the  
Standardbred Improvement Program was the wagering

11:30:16 1

levy?

11:30:17 2

A. I don't recall and so you would

11:30:19 3

have to go back and look at the various reports.

11:30:21 4

That will tell you.

11:30:22 5

1383

Q. And if I look under Allocation of

11:30:34 6

Budgeted Funds, it lists Breeders' rewards.

11:30:38 7

That is the only money that was paid

11:30:40 8

directly to breeders under the Standardbred

11:30:45 9

Improvement Program?

11:30:45 10

A. Umm, to the best of my

11:30:48 11

recollection, yes.

11:30:49 12

1384

Q. And it lists that figure at about

11:30:54 13

\$2.8-million in 2008 and \$3-million, let's say, in

11:31:01 14

2009. Does that sound about right?

11:31:06 15

A. If that's what the numbers say,

11:31:08 16

that's what they would be.

11:31:09 17

1385

Q. And do you remember that that was

11:31:11 18

an increase over previous years?

11:31:16 19

A. I don't recall.

11:31:16 20

1386

Q. There was the introduction -- you

11:31:20 21

don't remember the introduction of the Ontario

11:31:22 22

breeder bonus?

11:31:23 23

A. I do vaguely, but it's a long time

11:31:25 24

ago.

11:31:25 25

1387

Q. All right. But if it's described

11:31:27 1 as being a new program introduced in this annual  
11:31:30 2 report, you don't have any reason to dispute that?

11:31:33 3 A. As I said to you, sir, if it's  
11:31:36 4 written in the report, I have no reason to doubt  
11:31:38 5 it.

11:31:38 6 1388 Q. If you look at page 35 of this  
11:31:49 7 document --

11:31:51 8 A. And what am I looking for in that?

11:31:53 9 1389 Q. It's a chart titled Ontario Sires  
11:31:57 10 Stakes Horses Nominated and Sustained. It's just a  
11:32:00 11 few pages down.

11:32:04 12 A. Do I have to go past all the --  
11:32:08 13 well, hold it. I have got breeders' awards now.  
11:32:26 14 Yeah, I've got it.

11:32:30 15 1390 Q. So what I put to you, sir, you'll  
11:32:33 16 recall last time we looked at a chart that was  
11:32:37 17 marked as Exhibit 38. It appears that that  
11:32:52 18 chart -- Mr. Matthews asked where it came from.  
11:32:55 19 That chart, I can tell you, came from the 2012  
11:32:59 20 Horse Improvement Program annual report.  
11:33:02 21 Unfortunately, we don't have that document in the  
11:33:06 22 productions.

11:33:07 23 What we do have is this 2008-2009  
11:33:11 24 report, and I just put to you, sir -- you don't  
11:33:15 25 have to flip back and forth between the documents

11:33:19 1 because I know it's difficult, but the same data  
11:33:24 2 from Exhibit 38, at least for the years featured  
11:33:30 3 here in Exhibit 19, page 36, appear to be  
11:33:35 4 replicated.

11:33:36 5 O/B MR. MATTHEWS: Objection. I don't see  
11:33:38 6 how this is helpful, Mr. Rosenberg. The documents  
11:33:41 7 say what they say.

11:33:42 8 MR. ROSENBERG: I'm just helping the  
11:33:43 9 witness because you, Counsel, asked where that page  
11:33:47 10 came from, but I have your objection.

11:33:59 11 BY MR. ROSENBERG:

11:33:59 12 1391 Q. And I take it, Mr. Seiling, your  
11:34:01 13 answer is the documents say what they say?

11:34:03 14 A. Correct.

11:34:03 15 1392 Q. And you have no reason to think  
11:34:05 16 they're inaccurate if they're --

11:34:07 17 A. Sir, for about the fifth time, I'm  
11:34:09 18 going to tell you, the reports on the Horse  
11:34:16 19 Improvement Program have been vetted and audited.  
11:34:19 20 I have no reason to doubt their authenticity or  
11:34:23 21 accuracy so... The figures are what the figures  
11:34:28 22 are.

11:34:28 23 1393 Q. Understood.

11:34:29 24 If you go to the next page, page 36.

11:34:38 25 I'm sorry, we've been referring to page 35 really.

11:34:40 1 We're now on page 36. You will see a chart on the  
11:34:43 2 right side that's headed Ontario Breeding Sector  
11:34:46 3 Participation.  
11:34:48 4 A. Ontario -- was this Goal on --  
11:34:50 5 1394 Q. It says Goal 3 at the top.  
11:34:53 6 A. Oh, Goal 3. That's right. Yeah.  
11:34:56 7 1395 Q. Do you see on the right-hand side  
11:34:58 8 there's Ontario Breeding Sector Participation?  
11:35:01 9 A. I do.  
11:35:02 10 1396 Q. It looks like the number of active  
11:35:04 11 breeders fell from 1,680 in 2007 to 1,401 in 2009.  
11:35:13 12 Do you see that?  
11:35:14 13 A. I do.  
11:35:15 14 1397 Q. And these are, I take it,  
11:35:17 15 Standardbred breeders, because we're in the  
11:35:19 16 Standardbred Improvement Program section?  
11:35:21 17 A. I'm waiting -- I see the chart.  
11:35:28 18 1398 Q. Was this part of a trend, that  
11:35:33 19 there was a declining number of active breeders,  
11:35:37 20 active Standardbred breeders, over the years?  
11:35:39 21 A. Well, there are various reasons.  
11:35:46 22 You could have some breeders drop out. There also  
11:35:49 23 was more partnerships going on so that people  
11:35:57 24 started to pool their resources.  
11:35:59 25 1399 Q. So I think the answer was, yes,

11:36:03 1 there were fewer active breeders over time. Is  
11:36:06 2 that right?

11:36:07 3 A. Now, what I -- well, the numbers  
11:36:09 4 are what the numbers -- you asked me was this a  
11:36:12 5 trend.

11:36:12 6 1400 Q. Yes.

11:36:13 7 A. And I said to you there are  
11:36:15 8 less -- there are less registered breeders there,  
11:36:17 9 but there was also, as I recall, a lot of breeders  
11:36:22 10 or a number of -- I shouldn't say a lot. A number  
11:36:26 11 of breeders started to pool their resources and  
11:36:28 12 form partnerships.

11:36:29 13 1401 Q. Understood.

11:36:30 14 Now if you look at the middle column of  
11:36:32 15 that page, it says:

11:36:37 16 "The program established a new  
11:36:39 17 definition of Ontario bred effective  
11:36:41 18 for Standardbred foals of 2009 and  
11:36:44 19 forward."

11:36:44 20 Do you remember the ORC establishing a  
11:36:47 21 new definition of Ontario bred?

11:36:50 22 A. Vaguely, yes, I do.

11:36:52 23 1402 Q. And that was something that was  
11:36:54 24 within the ORC's discretion to do?

11:36:56 25 A. Correct.



11:36:58 1 1403 Q. And that definition of Ontario  
11:37:00 2 bred would then make the horse eligible for certain  
11:37:06 3 incentives, right?

11:37:06 4 A. Correct. It was designed to  
11:37:09 5 increase the economic activity accruing from the  
11:37:13 6 breed improvement program directly into Ontario by  
11:37:17 7 having the mare resident here for a major portion  
11:37:20 8 of the time.

11:37:21 9 1404 Q. Right. And that was effectively  
11:37:25 10 the ORC changing the rules of the road, so to  
11:37:30 11 speak, to qualify for financial incentives from  
11:37:35 12 participation in horse breeding?

11:37:36 13 A. Yeah. It was designed to bring  
11:37:38 14 foreign-owned -- not that -- non-Ontario-owned  
11:37:44 15 mares into the province for a longer period of  
11:37:47 16 time.

11:37:47 17 1405 Q. Right.

11:37:48 18 A. Or for any time at all, because  
11:37:51 19 with semen transportation, they didn't even have to  
11:37:55 20 be here.

11:38:02 21 1406 Q. Right. And that was true not just  
11:38:03 22 of this Ontario Resident Mare Program, but the ORC  
11:38:06 23 had pretty broad discretion to set the ground rules  
11:38:10 24 for the Ontario Sires Stakes more broadly?

11:38:13 25 A. I think you have to be qualified

11:38:22 1 in that. You have to ask me -- I would say within  
11:38:25 2 reason I would agree with you.

11:38:26 3 1407 Q. All right. And certainly  
11:38:28 4 breeders' awards, the ORC had discretion to set how  
11:38:32 5 much money from the Horse Improvement Program was  
11:38:37 6 paid for breeders' awards?

11:38:38 7 A. Well, yes, but there was a certain  
11:38:41 8 pool of money, so if you took -- if you increased  
11:38:44 9 the breeders' award, it had to come from someplace  
11:38:49 10 else. It would come out of the program from  
11:38:52 11 someplace outside, so you're just robbing Peter to  
11:38:55 12 pay Paul.

11:38:56 13 1408 Q. Right. And you had to find the  
11:38:57 14 money one way or another, and the ORC would decide  
11:39:00 15 what the right level of money was for those  
11:39:02 16 breeders' awards?

11:39:03 17 A. In consultation with the industry.

11:39:05 18 1409 Q. Right, but at the end of the day,  
11:39:07 19 the decision is the ORC's?

11:39:10 20 A. Yes, but it's highly unlikely we  
11:39:13 21 would have done something like that without having  
11:39:16 22 buy-in from the industry.

11:39:18 23 1410 Q. Understood.

11:39:19 24 And if you go down two pages to page  
11:39:38 25 38.

11:39:44 1 A. What's the heading on top? Go  
11:39:46 2 Forward?  
11:39:47 3 1411 Q. Go Forward, yes. When you look at  
11:39:49 4 the chart, it says, Percentage of Total Ontario  
11:39:51 5 purses won by Ontario-sired horses, on the right  
11:39:53 6 side of the page?  
11:39:54 7 A. Yes.  
11:39:55 8 1412 Q. Am I reading that right to say  
11:40:03 9 that the majority of Ontario purses were won by  
11:40:11 10 horses that were sired outside of Ontario?  
11:40:13 11 A. Correct. I don't think that's an  
11:40:19 12 anomaly at all. I think that actually shows the  
11:40:23 13 strength of the program, that close to 50 per cent  
11:40:26 14 of all purses paid out were won by Ontario-sired  
11:40:29 15 horses.  
11:40:29 16 1413 Q. I see.  
11:40:31 17 A. You're talking about a  
11:40:33 18 jurisdiction that is relatively young and its breed  
11:40:41 19 improvement program against other jurisdictions who  
11:40:46 20 had been at it for many, many years, such as  
11:40:50 21 Pennsylvania and New York.  
11:40:52 22 1414 Q. When you say --  
11:40:54 23 A. So --  
11:40:54 24 1415 Q. -- relatively young breed  
11:40:57 25 improvement program, I understand it that the Horse

11:41:00 1 Improvement Program began -- well you tell me. Do  
11:41:04 2 you remember when it began?  
11:41:05 3 A. No, but I'm just telling you that  
11:41:08 4 if you look at the size and scope of the breeding  
11:41:13 5 farms in other jurisdictions and what you had here,  
11:41:18 6 that the -- I would -- I mean, obviously everyone  
11:41:25 7 would like to have it more, but I think, you know,  
11:41:29 8 close to 50 per cent give, and you also have to  
11:41:35 9 remember, included in that, you have a number of --  
11:41:40 10 not a number, a lot of major stake races that would  
11:41:45 11 go for \$1-million or more, and so you get an  
11:41:50 12 American-sired horse win that, that's -- that's a  
11:41:55 13 huge number.  
11:41:56 14 A better chart here would be,  
11:42:03 15 perhaps -- and I don't even know if it exists, I  
11:42:06 16 suspect it doesn't even exist, but it might, I  
11:42:09 17 doubt it -- the number of races won by  
11:42:14 18 Ontario-sired horses.  
11:42:15 19 1416 Q. Right.  
11:42:16 20 A. Because if I look at horses racing  
11:42:20 21 in the "B" -- what we'll call the "B" Tracks for  
11:42:27 22 now, they would be -- the vast majority of those  
11:42:29 23 would be all Ontario-sired horses, but the purse at  
11:42:35 24 that versus just one race at Mohawk or Woodbine for  
11:42:43 25 a million dollars just skews it like crazy. So

11:42:46 1 again, I think that the 50 per cent is not out the  
11:42:48 2 of the question. It doesn't, to me -- it really  
11:42:51 3 shows the success of the program.

11:42:53 4 1417 Q. And when you say success of the  
11:42:56 5 program, a lot of what the Horse Improvement  
11:42:59 6 Program was doing was promoting those "B" Track and  
11:43:01 7 "C" Track horses?

11:43:02 8 A. No, it -- a lot of the -- a lot of  
11:43:08 9 the horses racing there, but there was all kinds of  
11:43:11 10 Ontario-sired horses racing at Woodbine and Mohawk.  
11:43:15 11 That's -- that's not the issue.

11:43:17 12 You've got to remember the pyramid, and  
11:43:20 13 so the best of the best, and we had open racing  
11:43:24 14 here in Ontario, we didn't have restricted racing  
11:43:29 15 for some, I think, very good reasons.  
11:43:32 16 Jurisdictions that have restricted racings never  
11:43:35 17 grew their program, they stayed mediocre, and we  
11:43:39 18 were trying to help develop and -- by way of  
11:43:44 19 incentives a world class breeding operation here  
11:43:49 20 that could breed horses that could race against the  
11:43:52 21 best on a day-to-day basis, and I think the program  
11:43:55 22 was well on its way to doing that.

11:43:57 23 1418 Q. But you will agree with me, sir,  
11:43:59 24 the horses that really need the --

11:44:01 25 A. Sorry, I had to move the phone

11:44:03 1 from -- my hand was going to sleep, so repeat the  
11:44:06 2 question.

11:44:06 3 1419 Q. You will agree with me, sir, that  
11:44:09 4 the horses that really need the Horse Improvement  
11:44:14 5 Program most are not the ones that are competing in  
11:44:16 6 the premier races for \$1-million; it's the "B" and  
11:44:21 7 "C" Track horses that you were just talking about?  
11:44:24 8 Those are the ones who most need --

11:44:26 9 A. I wouldn't agree at all, because  
11:44:28 10 again, the pyramid. You want to breed horses that  
11:44:31 11 can race against the best, and the only way you can  
11:44:35 12 do that is to incentivize breeders to breed to the  
11:44:38 13 best stallions and to buy the best broodmares with  
11:44:42 14 the best bloodlines, and again, it's a feeder  
11:44:47 15 system. You want and you hope that those horses  
11:44:51 16 develop and go on and do race against the best in  
11:44:54 17 the world and, in fact, they were. Again, as I --  
11:45:02 18 the other day I couldn't remember the name of her,  
11:45:06 19 Someday Somewhere, Ontario-sired horse, was a world  
11:45:11 20 champion.

11:45:11 21 1420 Q. Yes, you mentioned that.

11:45:12 22 A. So...

11:45:14 23 1421 Q. You've told us that there was  
11:45:15 24 frequently a lack of cooperation among the various  
11:45:18 25 parties in the horse racing industry?

11:45:21 1 A. There's always been tension  
11:45:23 2 amongst the two parties of -- the two partners of  
11:45:29 3 the stool, if you go back to the three-legged  
11:45:29 4 stool.

11:45:29 5 1422 Q. Right.

11:45:33 6 A. Tracks and horsepeople.

11:45:35 7 1423 Q. Right. And what was the tension  
11:45:40 8 that was always there?

11:45:41 9 A. Well, the tension is over race  
11:45:45 10 dates and, obviously, money splits.

11:45:48 11 1424 Q. So tell me about the tension over  
11:45:50 12 race dates.

11:45:51 13 A. Well, primarily -- well, OHHA, who  
11:45:58 14 were the representatives -- the only  
11:46:01 15 representatives for a lot of time until they went  
11:46:04 16 on strike and got voted out at -- at Woodbine, uh,  
11:46:07 17 Mohawk, wanted to race as many days as possible.

11:46:10 18 They -- they viewed the, uh, the system  
11:46:21 19 as the lowest common denominator; didn't look at  
11:46:26 20 the competitor value, but the races as more of a  
11:46:26 21 purse distribution system.

11:46:28 22 Tracks would want to race, and  
11:46:32 23 depending on the tracks, would want to -- not  
11:46:35 24 actually race that many days because of the need to  
11:46:45 25 know their own market and what that market could

11:46:47 1 support.

11:46:47 2 And, of course, you will see there's  
11:46:50 3 other information around that there were a few  
11:46:55 4 tracks, privately-owned tracks, who took the  
11:47:01 5 perspective -- the viewpoint to race less days and  
11:47:06 6 be able to generate a better bottom line.

11:47:10 7 1425 Q. And that was because they were  
11:47:13 8 generating their profits from slots money, which  
11:47:16 9 was disconnected from horse racing, right?

11:47:23 10 A. No. Well, I can't tell you that.  
11:47:25 11 We had great difficulty getting financials out of a  
11:47:31 12 certain company where we could ascertain whether  
11:47:35 13 the day was profitable or not and how they banked  
11:47:39 14 costs and revenues. It became very difficult, and  
11:47:44 15 that was one of the reasons why you will see that  
11:47:48 16 we put a moratorium on race dates I think for 2010,  
11:47:53 17 and that's why we developed the Ontario Racing  
11:47:56 18 Program, because we needed a basis under which we  
11:48:02 19 could allocate race dates on a -- with some firm  
11:48:08 20 guidelines and rationale as to whether we would  
11:48:13 21 agree or not agree to a date application, and  
11:48:18 22 tracks had to use those points as a basis to put in  
11:48:22 23 their race date applications.

11:48:24 24 1426 Q. I want to talk about that  
11:48:25 25 moratorium in a moment, but just before I do, in



11:48:28 1 the run-up to the moratorium, I understand that  
11:48:34 2 there was a dispute between Woodbine and OHHA when  
11:48:41 3 OHHA's contract ran out at the end of 2008 and they  
11:48:45 4 couldn't agree to a new one. Do you remember that?

11:48:47 5 A. I do.

11:48:53 6 1427 Q. And OHHA asked the ORC to get  
11:48:54 7 involved?

11:48:55 8 A. They did.

11:48:55 9 1428 Q. And what was your response?

11:48:57 10 A. We did not. We did not get  
11:48:59 11 involved in purse negotiations.

11:49:04 12 1429 Q. And what was the issue that was in  
11:49:06 13 dispute between the parties?

11:49:07 14 A. Well, they -- there was a  
11:49:17 15 disagreement -- I'm not sure how much it was over  
11:49:20 16 dollars and how much it was over -- I'm just going  
11:49:24 17 by memory, over private property rights.

11:49:27 18 The President of OHHA had been barred  
11:49:33 19 from Woodbine, as I recall.

11:49:36 20 1430 Q. I see. Well --

11:49:38 21 A. I think his horse could race there  
11:49:41 22 but he couldn't be there. I could be wrong, but  
11:49:43 23 those issues were floating around.

11:49:45 24 1431 Q. Was this about rates dates at all?

11:49:47 25 A. No.

11:49:49 1 1432 Q. I see.

11:49:50 2 A. Not that I recall.

11:49:51 3 1433 Q. Okay. So let's talk about race

11:49:56 4 dates.

11:49:56 5 You told me last time that the number

11:49:59 6 of race dates was another metric by which we could

11:50:02 7 measure the impact of SARP, and I think you said

11:50:06 8 the number of race dates --

11:50:08 9 A. No, I don't think -- I don't

11:50:10 10 recall saying that.

11:50:10 11 1434 Q. Well, I think you told me the

11:50:11 12 number of race dates drives the demand for horses.

11:50:16 13 A. It does, but I didn't say -- I

11:50:18 14 don't recall saying it's a metric on which to judge

11:50:22 15 SARP, because you could have less race dates and

11:50:28 16 still say that SARP was a success.

11:50:29 17 1435 Q. Right.

11:50:32 18 A. And when we -- when we developed

11:50:34 19 the Ontario Racing Program, one of the objectives

11:50:42 20 the Commission always has is the Slots at Racetrack

11:50:47 21 Program to support live horse racing and that was

11:50:52 22 front and centre, but the number of race dates

11:50:59 23 isn't necessarily a metric, because what we wanted

11:51:02 24 to do -- maybe go back and look -- I don't have it

11:51:08 25 in front of me, but you've been through them, the

11:51:10 1 criteria, and one was the customer demand and so  
11:51:14 2 it -- and to put competitive races in front of the  
11:51:18 3 public in which they would want to wager money and  
11:51:23 4 not sit back and twiddle their thumbs because it  
11:51:27 5 was wasn't a competitive race.

11:51:29 6 1436 Q. But I just want to be clear.  
11:51:32 7 Generally speaking, if there are fewer race dates,  
11:51:35 8 the demand for horses is lower.

11:51:41 9 A. Not necessarily, because if you  
11:51:44 10 have -- okay, in -- you're not totally wrong, I  
11:51:51 11 think, but it's also better for the horse to only  
11:51:56 12 have so many starts in a year and so extra race  
11:52:00 13 dates could mean that horses were racing too many  
11:52:03 14 times.

11:52:04 15 1437 Q. So you're telling me that the  
11:52:08 16 horse racing industry -- let me actually just say  
11:52:11 17 the horse owners and breeders didn't want more race  
11:52:17 18 dates?

11:52:17 19 A. The breeders are not a part of  
11:52:19 20 this discussion.

11:52:20 21 1438 Q. I see. Okay. Let's just focus on  
11:52:22 22 the horse owners. I thought you said the horse  
11:52:25 23 owners wanted more race dates?

11:52:27 24 A. Umm, OHHA did, yes. That was  
11:52:31 25 their position. It wasn't necessarily the position

11:52:33 1 of all their members, but OHHA always favoured more  
11:52:37 2 race dates.

11:52:38 3 1439 Q. The idea being that it would  
11:52:40 4 increase the demand for horses?

11:52:43 5 A. It would increase earning  
11:52:45 6 opportunities for their owners.

11:52:47 7 1440 Q. Right. More races means more  
11:52:50 8 purses to win?

11:52:53 9 A. Not necessarily more in -- in the  
11:52:56 10 aggregate. It could be spread out more because  
11:52:59 11 it's -- by and large, the -- the purse level may  
11:53:11 12 not change.

11:53:11 13 There's always been a discussion,  
11:53:17 14 question, however you want to put it.

11:53:19 15 For example, should a track -- I'm just  
11:53:22 16 using Woodbine/Mohawk. Are they better off to race  
11:53:26 17 five days -- or six days a week or five? And there  
11:53:31 18 are those that can produce figures that say you  
11:53:36 19 will make just as much money and -- and revenue on  
11:53:39 20 five days as you would in six because you spread it  
11:53:43 21 -- you spread it out.

11:53:43 22 And so that's an ongoing debate that I  
11:53:46 23 don't think ever saw any final conclusion because  
11:53:50 24 different people can figure different ways and come  
11:53:53 25 up with a different answer.

11:53:54 1 1441 Q. All right. But --

11:53:55 2 A. But the one question that is...,

11:54:00 3 or the one issue that is, I think, certain is that

11:54:05 4 if you just assume that it was roughly the same

11:54:09 5 amount of money will be paid out in purses, it will

11:54:11 6 be spread out to a wider distribution.

11:54:14 7 1442 Q. Okay. And that's what OHHA

11:54:17 8 preferred, as you said?

11:54:18 9 A. Correct.

11:54:19 10 1443 Q. In the interest of saving time, I

11:54:28 11 can tell you that at Exhibit 35, page 33, there

11:54:35 12 are -- so Exhibit 35 is the Ontario Racing

11:54:39 13 Commission 2009 to 2010 annual and statistical

11:54:43 14 report.

11:54:44 15 A. Okay, I've got it.

11:54:46 16 1444 Q. And page 33 of that document.

11:54:50 17 A. Okay, just... Oh, there's pages

11:54:57 18 in this one. Good. At least we did something

11:55:03 19 right. What page was it now?

11:55:08 20 1445 Q. 33, sir.

11:55:12 21 A. Now, I've lost it. Oh, I've got

11:55:14 22 it now. I have got it, 10-year comparison of live

11:55:36 23 race dates?

11:55:38 24 1446 Q. Yes. And you have no reason to

11:55:40 25 doubt the correctness of these figures? You've

11:55:42 1 told me it's an ORC document.

11:55:45 2 A. Same answer.

11:55:46 3 1447 Q. And so you'll agree with me that  
11:55:49 4 when we look at the total Standardbred race dates,  
11:55:53 5 towards the bottom there, that the change from 2000  
11:55:59 6 to 2009 is not particularly significant?

11:56:01 7 A. No, from -- total Standardbred has  
11:56:05 8 gone from 1,307 to 1,358, so they actually  
11:56:10 9 increased.

11:56:10 10 1448 Q. Right. But... By 51.

11:56:15 11 And there had been a period in the  
11:56:17 12 middle there where it had been higher in 2005-2006?

11:56:21 13 A. Yeah. I see that's in the 1400's.

11:56:27 14 1449 Q. Right.

11:56:27 15 A. But I think that's -- you know,  
11:56:29 16 that there could be various reasons for it.

11:56:36 17 In fact, umm, I would say the major  
11:56:40 18 reason for that, if you look at the WEG  
11:56:50 19 Standardbred, their reduction, they were one of the  
11:56:55 20 tracks who were -- had this ongoing internal debate  
11:57:00 21 about how many days of the week to race, so I think  
11:57:04 22 you will see there that they cut some dates.

11:57:11 23 1450 Q. Okay. So I want to move now to  
11:57:14 24 one of the documents that I sent you, so if you  
11:57:19 25 could --

11:57:19 1 A. I have to get out of this.

11:57:20 2 MR. ROSENBERG: Yes. Let's go off the

11:57:22 3 record.

12:03:20 4 --- (Discussion off the record.)

12:03:52 5 MR. ROSENBERG: Let's go back on

12:03:53 6 record.

12:04:11 7 BY MR. ROSENBERG:

12:04:12 8 1451 Q. If I actually could ask you to

12:04:12 9 turn to the document at Tab 6.

12:04:14 10 So this is a notice to the industry --

12:04:14 11 A. I thought you told me you

12:04:17 12 wanted -- okay, I will go back. Tab 6 now?

12:04:20 13 1452 Q. Yes. That's February 1st.

12:04:22 14 A. I'm at Tab 6.

12:04:25 15 1453 Q. Notice to the industry. This is

12:04:25 16 CRE0030643.

12:04:29 17 A. The first one is Policy Directive

12:04:32 18 No. 6-2009. That's not it?

12:04:34 19 1454 Q. No, this is the next document.

12:04:36 20 A. Okay.

12:04:36 21 1455 Q. A New Model For Racing: A

12:04:39 22 Collaborative Approach.

12:04:49 23 A. Yeah. Okay.

12:04:50 24 1456 Q. And you're quoted in...

12:05:04 25 A. You have got it highlighted?

12:05:06 1 1457 Q. Yes.

12:05:06 2 A. Do you want me to read it?

12:05:09 3 1458 Q. No, I just want to draw your

12:05:11 4 attention, you're quoted as saying:

12:05:13 5 "The seriousness of this

12:05:14 6 situation requires a level of

12:05:16 7 attention and investigation well

12:05:18 8 beyond the normal race date

12:05:20 9 process."

12:05:22 10 A. What paragraph are you into?

12:05:24 11 1459 Q. I think I'm looking at the second.

12:05:29 12 A. No, the second paragraph says:

12:05:29 13 "The board directed ORC

12:05:31 14 executive director John Blakney to

12:05:37 15 lead an industry-based consultative

12:05:37 16 process."

12:05:37 17 1460 Q. You're right, sir. You know what,

12:05:41 18 I apologize. I have the wrong document in front of

12:05:42 19 you there. I apologize for that.

12:05:44 20 Just give me a moment.

12:06:00 21 All right. I'm afraid that I don't

12:06:32 22 have the document to which I was intending to refer

12:06:35 23 you in the brief that was sent to you, and I

12:06:40 24 apologize.

12:06:41 25 What I was looking for was a notice to



12:06:44 1 the industry dated October 8th, 2009, from the  
12:06:49 2 Ontario Racing Commission, SB 5276.

12:06:53 3 Do you remember giving notice to the  
12:07:03 4 industry or the ORC giving notice to the industry  
12:07:06 5 that there had been a proposal to reduce the number  
12:07:09 6 of race dates by about 150 in 2010 as compared to  
12:07:13 7 2009?

12:07:13 8 A. Vaguely, yes.

12:07:15 9 1461 Q. And that's what caused the ORC to  
12:07:18 10 impose a moratorium to prevent the reduction in  
12:07:22 11 race dates?

12:07:23 12 A. Correct.

12:07:26 13 1462 Q. And you would have communicated to  
12:07:28 14 the industry --

12:07:29 15 A. You have it -- I have it here in  
12:07:31 16 front of me. You've given it to me. It's Policy  
12:07:36 17 Directive No. 6-2009 dated October 8, 2009.

12:07:40 18 1463 Q. There was a letter that covered  
12:07:42 19 it, a notice to the industry from the ORC, but --

12:07:48 20 A. Mmm. Might be. We normally  
12:07:54 21 would, with something like this, we would  
12:07:55 22 communicate via a policy directive.

12:08:00 23 1464 Q. But would the ORC have  
12:08:01 24 communicated to the industry that the seriousness  
12:08:04 25 of this situation requires a level of investigation

12:08:07 1 beyond the normal course?

12:08:10 2 A. Well, I've got -- I have the  
12:08:13 3 directive right here, and I think it speaks for  
12:08:16 4 itself. It says:

12:08:16 5 "Whereas, in accordance with  
12:08:16 6 policy directive 3-2007, the  
12:08:16 7 Executive Director of the Ontario  
12:08:16 8 Racing Commission received  
12:08:22 9 applications for 2010 licences --"

12:08:29 10 --- (Court reporter appeals.)

12:08:29 11 MS. MACHADO: Mr. Seiling, the reporter  
12:08:29 12 has to catch your evidence. So I'm sorry --

12:08:33 13 THE WITNESS: Okay. So I'll start  
12:08:33 14 again and I'll read slower.

12:08:33 15 MS. MACHADO: Thanks.

12:08:35 16 THE WITNESS: Okay.

12:08:36 17 "Whereas, in accordance with  
12:08:37 18 policy directive 3-2007, the  
12:08:41 19 Executive Director of the Ontario  
12:08:44 20 Racing Commission has received  
12:08:46 21 applications for 2010 licenses from  
12:08:48 22 racetrack operators, including  
12:08:50 23 applications for 2010 race date  
12:08:53 24 schedules;

12:08:56 25 "And whereas, the race date

12:08:59 1 applications for Standardbred racing  
12:09:01 2 include reductions from seven  
12:09:03 3 racetrack operators totalling 150  
12:09:06 4 race dates, a decline of 11 per  
12:09:10 5 cent;

12:09:10 6 "And whereas, it is recognized  
12:09:13 7 that such a decline may have  
12:09:15 8 significant and permanent impact on  
12:09:16 9 the participants and the future of  
12:09:18 10 the horse racing industry in  
12:09:20 11 Ontario;

12:09:22 12 "And whereas, the industry has  
12:09:24 13 been faced with increasing  
12:09:25 14 applications for reductions over the  
12:09:26 15 last number of years --"

12:09:30 16 BY MR. ROSENBERG:

12:09:30 17 1465 Q. So let me just stop you there,  
12:09:32 18 sir. I just want to make sure that I've got that  
12:09:34 19 in pieces.

12:09:35 20 You remember that racetracks had been  
12:09:37 21 trying to reduce race dates over the last number of  
12:09:40 22 years?

12:09:40 23 A. Certain ones were.

12:09:42 24 1466 Q. And that had resulted in overall  
12:09:44 25 race date reduction since 2006?

12:09:47 1 A. Yes.

12:09:50 2 1467 Q. And you were communicating, the

12:09:52 3 ORC was communicating to the industry that the

12:09:56 4 decline in race dates proposed for 2010 could have

12:10:00 5 a significant and permanent impact on horse racing

12:10:04 6 industry participants?

12:10:07 7 A. You're just reading from the

12:10:08 8 directive.

12:10:09 9 1468 Q. Right.

12:10:10 10 A. It is what it is. I have already

12:10:12 11 read it.

12:10:13 12 1469 Q. And it was intended that this

12:10:14 13 notice would come to the attention of industry

12:10:17 14 participants?

12:10:18 15 A. Correct.

12:10:19 16 1470 Q. Including the Standardbred

12:10:22 17 breeders?

12:10:23 18 A. Correct.

12:10:32 19 MR. ROSENBERG: Why don't we mark the

12:10:34 20 Policy Directive No. 6, SB 5277, as our next

12:10:34 21 exhibit?

12:10:45 22 THE WITNESS: It's already an exhibit,

12:10:47 23 sir. That's what I've been reading from, is it

12:10:49 24 not? Oh, no, it's yours. I'm sorry. I apologize.

12:10:55 25 And again, this was primarily directed at

12:11:06 1 for-profit racetracks.

12:11:10 2 ---EXHIBIT NO. 40: Policy Directive

12:10:35 3 No. 6, SB 5277.

12:11:25 4 BY MR. ROSENBERG:

12:11:26 5 1471 Q. Now, you have told us that this

12:11:28 6 decline in the number of race dates and the

12:11:32 7 moratorium is what prompted you to implement the

12:11:37 8 Ontario Racing Program that we discussed last time.

12:11:41 9 A. Yeah, I've been very clear on why

12:11:43 10 it was established. If you want to go over it

12:11:48 11 again, we can, but it's somewhat redundant.

12:11:51 12 1472 Q. So the next document I have is a

12:11:53 13 notice to the industry dated February 1st, 2010.

12:11:56 14 This is at Tab 7 of the brief that I sent you.

12:12:00 15 A. Just a minute. I'll get to it.

12:12:13 16 Okay.

12:12:13 17 1473 Q. And you authored this notice?

12:12:14 18 A. Hold it. I'm by it now.

12:12:16 19 1474 Q. This is CRE0030643.

12:12:24 20 A. Am I under Tab 7?

12:12:26 21 1475 Q. Yes. Sorry, Tab 6. Tab 6, sir.

12:12:31 22 A. Pardon me?

12:12:31 23 1476 Q. Tab 6, sir. I apologize.

12:12:44 24 A. Dated February 1, 2010?

12:12:46 25 1477 Q. Yeah.

12:12:51 1 A. Yeah.

12:12:51 2 1478 Q. You authored this notice to the  
12:12:53 3 industry?

12:12:53 4 A. If it say it's from me, it's from  
12:12:58 5 me, sir. Got my name on the bottom.

12:12:59 6 1479 Q. Right.

12:13:13 7 A. Go down a little farther to check.

12:13:14 8 1480 Q. And in this notice to the  
12:13:15 9 industry, you say you were concerned that there was  
12:13:18 10 that current impasse, and you wanted the industry  
12:13:20 11 to come together.

12:13:21 12 You will see this in the third  
12:13:23 13 paragraph from the bottom.

12:13:24 14 A. Third from the bottom. Okay.  
12:13:26 15 Just a minute. Are you talking about the deep  
12:13:37 16 concern I have, that's the paragraph?

12:13:41 17 1481 Q. Yes.

12:13:41 18 A. Yes.

12:13:43 19 1482 Q. And you're wondering if the  
12:13:46 20 industry was up to the challenge.

12:13:49 21 A. Correct.

12:13:49 22 1483 Q. And you were calling on the  
12:13:57 23 industry to do things differently with your Ontario  
12:14:00 24 Racing Program model to allocate race dates?

12:14:04 25 A. Correct.

12:14:04 1 1484 Q. And surely, you were conveying a  
12:14:13 2 message here that it was important that the  
12:14:15 3 industry do things differently?

12:14:17 4 A. Well, yes, on the basis that we  
12:14:24 5 wanted them to come forward with realistic  
12:14:28 6 proposals rather than leave it up to the Commission  
12:14:31 7 to make all the decisions.

12:14:32 8 1485 Q. Right. And as I understand it,  
12:14:40 9 this program that you were describing was going to  
12:14:44 10 see purse money redistributed to match wagering and  
12:14:48 11 participation?

12:14:49 12 A. No. We -- the only purse --  
12:14:56 13 you're talking about purse pooling.

12:14:59 14 The only purse pooling that was --  
12:15:02 15 there was always purse pooling between -- on the  
12:15:08 16 WEG tracks that had been accepted industry  
12:15:12 17 practice, and there had been some purse pooling  
12:15:16 18 between the three tracks that Windsor owned,  
12:15:21 19 Windsor, Dresden and Woodstock. There was no purse  
12:15:35 20 pooling across different corporate structure --  
12:15:37 21 horsing structures.

12:15:37 22 1486 Q. I see. So it was really just a  
12:15:39 23 plan to allocate race dates to ensure the best  
12:15:40 24 horses raced against each other?

12:15:42 25 A. Correct.

12:15:44 1 1487 Q. And to ensure that they raced  
12:15:46 2 where the economics justified it?

12:15:48 3 A. Well, yeah. We wanted -- the  
12:15:50 4 whole objective was to, again go to the pyramid,  
12:15:54 5 have the best horses race against the best horses,  
12:15:58 6 and at the top, where you would have your major  
12:16:01 7 wagering.

12:16:02 8 So you would have your grassroots just  
12:16:05 9 like -- if you want to make the comparison to  
12:16:09 10 sports, you have the different levels of the minors  
12:16:14 11 working their way up to the major league level  
12:16:21 12 where the majority of the action takes place from  
12:16:25 13 an economic standpoint.

12:16:26 14 1488 Q. And this change was intended to  
12:16:29 15 reconnect horse racing with its customer base?

12:16:29 16 A. Correct.

12:16:29 17 1489 Q. And to ensure its future?

12:16:31 18 A. To help ensure its future, yes.

12:16:33 19 1490 Q. And you say in the second-to-last  
12:16:35 20 paragraph here, "with so much riding on the  
12:16:41 21 outcome."

12:16:43 22 And, in fact, there was so much riding  
12:16:45 23 on the outcome? I mean, this was an important  
12:16:49 24 change for the industry, right?

12:16:50 25 A. Correct.



12:16:50 1 1491 Q. And this notice to the industry  
12:16:54 2 was obviously intended to come to the attention of  
12:16:56 3 the industry?

12:16:57 4 A. Correct.

12:16:58 5 1492 Q. Including the Standardbred  
12:17:01 6 breeders?

12:17:01 7 A. They would be aware of it.

12:17:03 8 1493 Q. And obviously, as much as you had  
12:17:09 9 a plan, you couldn't be certain that the Ontario  
12:17:15 10 Racing Program would succeed, right?

12:17:16 11 A. Umm, I would say that the plan put  
12:17:27 12 the industry in a much better position for success  
12:17:30 13 than if the current status quo had occurred, and I  
12:17:38 14 think that there are industry, senior industry  
12:17:44 15 executives around when the plan was announced that  
12:17:49 16 said the same.

12:17:50 17 1494 Q. All right. But, you know, I  
12:17:52 18 understand you think your plan is -- or was a good  
12:17:55 19 idea, but surely you will accept that change --

12:17:59 20 A. Sir, you've asked me for an  
12:18:01 21 opinion. I gave it to you.

12:18:02 22 1495 Q. I'm just asking you, sir, a change  
12:18:04 23 of this nature, there's a possibility it doesn't  
12:18:07 24 work out, right?

12:18:08 25 A. Anything is possible, but I'm

12:18:10 1 telling you that the Ontario Racing Program gave  
12:18:14 2 the industry a much better chance for future  
12:18:18 3 success than the old status quo.

12:18:20 4 1496 Q. Did all of the industry  
12:18:22 5 participants support your Ontario racing plan?

12:18:26 6 A. Yes. We had one, then after  
12:18:26 7 agreeing to it under oath, came back afterwards and  
12:18:34 8 said they didn't, but they did.

12:18:36 9 1497 Q. Who was that?

12:18:36 10 A. OHHA.

12:18:37 11 1498 Q. Why didn't they ultimately support  
12:18:39 12 your plan?

12:18:40 13 A. Uh. You'd have to ask them.

12:18:42 14 1499 Q. They didn't communicate a reason  
12:18:45 15 to you?

12:18:45 16 A. Uh. No.

12:18:45 17 1500 Q. They just said, 'We are not  
12:18:48 18 supporting you'?

12:18:53 19 A. That's right. But we had them at  
12:18:54 20 a hearing, supporting it.

12:18:56 21 1501 Q. Okay. But those --

12:18:57 22 A. With -- with transcript.

12:18:58 23 1502 Q. Okay. But the horse owners  
12:19:01 24 ultimately represented by OHHA didn't support your  
12:19:05 25 plan?

12:19:05 1 A. I would -- I would say that you  
12:19:12 2 have to separate -- a lot of horse owners did  
12:19:16 3 support it who had membership in OHHA.

12:19:21 4 This was politics at play.

12:19:23 5 1503 Q. I see. So the industry  
12:19:24 6 association wasn't necessarily speaking for its  
12:19:28 7 members?

12:19:28 8 A. Not all of them, I would submit.

12:19:31 9 1504 Q. Now, if you go to the next  
12:19:42 10 document. This is Tab 7. It's SB 12625. Sorry,  
12:19:52 11 before we do that, let's just mark CRE0030643 as  
12:19:58 12 our next exhibit, which is 41.

12:20:02 13 ---EXHIBIT NO. 41: CRE0030643.

12:20:17 14 THE WITNESS: I have Tab 7 here. It  
12:20:20 15 seems it's a memo from a Patti Cunning.

12:20:20 16 BY MR. ROSENBERG:

12:20:24 17 1505 Q. Right, and it's forwarding an  
12:20:26 18 e-mail from Anna Meyers dated March 2nd, 2010. Do  
12:20:29 19 you see that below?

12:20:30 20 A. It says, Hi Patti, Can you please  
12:20:34 21 circulate, yes.

12:20:34 22 1506 Q. Right. Do you know who Anna  
12:20:37 23 Meyers is?

12:20:37 24 A. She's married to the gentleman who  
12:20:39 25 was at the hearing on Friday.

12:20:43 1 1507 Q. That was Dr. Meyers who was  
12:20:45 2 sitting in?  
12:20:45 3 A. Right.  
12:20:45 4 1508 Q. And she's a Standardbred breeder?  
12:20:45 5 A. Correct.  
12:20:45 6 1509 Q. And it appears that this e-mail  
12:21:06 7 attaches a document that's at Tab 8, SB 0012626.  
12:21:10 8 It's a draft letter starting, Dear Bill.  
12:21:14 9 A. Yeah.  
12:21:15 10 1510 Q. If I put it to you, sir, that this  
12:21:24 11 Bill was Bill Fines -- do you know who Bill Fines  
12:21:28 12 was?  
12:21:34 13 A. I do.  
12:21:34 14 1511 Q. And was Bill receiving submissions  
12:21:36 15 on behalf of the ORC from stakeholders in respect  
12:21:37 16 of the Ontario Racing Program we were just  
12:21:39 17 discussing?  
12:21:39 18 A. I think he was. I think he was  
12:21:42 19 working with Wendy Hoogeveen, so I would accept  
12:21:48 20 that he would have. I'm not 100 per cent certain,  
12:21:51 21 but it would seem, based on this letter, that that  
12:21:53 22 would be true.  
12:21:54 23 1512 Q. And it begins by saying:  
12:21:58 24 "Thank you for inviting the  
12:21:59 25 Standardbred Breeders of Ontario to

12:22:01 1 comment on race dates and  
12:22:04 2 specifically items that we believe  
12:22:05 3 could benefit the racing industry in  
12:22:07 4 Ontario as a whole."  
12:22:09 5 Do you see that?  
12:22:09 6 A. Yeah. Yes, I do.  
12:22:10 7 1513 Q. Do you know if the ORC ever  
12:22:13 8 received this letter?  
12:22:16 9 A. I couldn't tell you.  
12:22:17 10 1514 Q. All right. I think Ms. Meyers'  
12:22:24 11 evidence was that it was sent and that appears to  
12:22:26 12 be confirmed in the Standardbred Breeders of  
12:22:30 13 Ontario Association board minutes, and I'm happy to  
12:22:33 14 show you those, but --  
12:22:35 15 MR. MATTHEWS: Well, sent in this form?  
12:22:39 16 MR. ROSENBERG: We don't have any other  
12:22:41 17 form, so I'm going to put it to you that the best  
12:22:43 18 information I have is that a letter was sent, but  
12:22:48 19 we haven't been provided with a signed copy.  
12:22:53 20 So my question is not obviously to have  
12:22:55 21 you confirm the letter. You have said that you  
12:22:58 22 don't know if it was received, but I want to look  
12:23:01 23 at some of the things that Ms. Meyers says.  
12:23:09 24 O/B MR. MATTHEWS: Well, I object to that,  
12:23:11 25 Mr. Rosenberg, because I don't know if this witness

12:23:12 1 is in a position to give you his personal knowledge  
12:23:16 2 of anything that Ms. Meyers is thinking.

12:23:18 3 MR. ROSENBERG: Well, I've got a  
12:23:19 4 suggestion, counsel. How about I ask the questions  
12:23:22 5 first and then you object to them as opposed to  
12:23:24 6 objecting beforehand?

12:23:25 7 MR. MATTHEWS: Just trying to save some  
12:23:27 8 time.

12:23:32 9 MR. ROSENBERG: Well, that's true. If  
12:23:33 10 you objected to all my questions before I asked  
12:23:35 11 them, it would save us some time, but it might  
12:23:37 12 defeat the purpose of this exercise.

12:23:40 13 BY MR. ROSENBERG:

12:23:40 14 1515 Q. All right. Looking at the second  
12:23:42 15 paragraph, Ms. Meyers says:

12:23:44 16 "As you know, the breeding  
12:23:46 17 sector has struggled for many  
12:23:48 18 years."

12:23:49 19 Was that your impression as  
12:23:51 20 commissioner of the ORC?

12:23:52 21 A. No.

12:23:52 22 1516 Q. It was not your impression?

12:23:55 23 A. Well, has it struggled for many  
12:23:57 24 years? I think that's -- I don't know. I'm on the  
12:23:59 25 record. You can go back and look at the

12:24:03 1 transcript. My testimony on Friday was that the  
12:24:06 2 breeding sector was not doing as well as it thought  
12:24:11 3 it should be, which you characterize as struggling  
12:24:20 4 depending, I guess, your perspective, but I did  
12:24:23 5 tell you that for whatever reason they had agreed,  
12:24:25 6 decided, whatever the word should be, with the  
12:24:27 7 implementation of the slot program, that they  
12:24:30 8 wouldn't get a direct cut of the benefits; that  
12:24:33 9 they would benefit out of the trickle down to the  
12:24:37 10 breeders.

12:24:37 11 1517 Q. Right. So that trickle down that  
12:24:39 12 was anticipated would have been the same for other  
12:24:45 13 industry participants, like veterinarians,  
12:24:48 14 blacksmiths, farmhands, right?

12:24:51 15 A. No, I don't, I don't -- I don't  
12:25:01 16 think there's the same relationship there.

12:25:03 17 1518 Q. Well, surely they were  
12:25:05 18 participants in the horse racing industry, right?

12:25:07 19 A. They were, but they're suppliers.  
12:25:09 20 They're not -- they're suppliers to the industry.  
12:25:10 21 They're not part of the industry.

12:25:11 22 1519 Q. Okay, but aren't breeders  
12:25:13 23 suppliers of horses?

12:25:14 24 A. No. Let's go back to the  
12:25:16 25 three-legged stool. The industry is comprised of

12:25:18 1 three legs; racetracks, horsepeople, breeders. Not  
12:25:24 2 suppliers, not vets, not feed people, not harness  
12:25:30 3 makers. Those are all suppliers.

12:25:33 4 1520 Q. You draw a distinction between  
12:25:38 5 horse breeders and those other folks?

12:25:41 6 A. Yes.

12:25:42 7 1521 Q. All right, but suffice to say --

12:25:47 8 A. And I would -- in support of my  
12:25:51 9 position, I don't recall in the documentation I've  
12:25:56 10 been provided and saw on Friday any signatory from  
12:26:02 11 farriers or feed people or veterinarians to the  
12:26:07 12 slot program.

12:26:08 13 1522 Q. Well, you know, did those folks  
12:26:12 14 have industry associations?

12:26:14 15 A. No.

12:26:15 16 1523 Q. Right. So, they weren't organized  
12:26:19 17 the same way as the --

12:26:21 18 A. I'm just --

12:26:21 19 1524 Q. -- horse breeders?

12:26:23 20 A. I'm just giving you the rationale  
12:26:25 21 for my position; that's all.

12:26:27 22 1525 Q. I understand the rationale, but  
12:26:29 23 surely, you would agree that the Slots at Racetrack  
12:26:31 24 Program was intended to benefit those people as  
12:26:34 25 well as participants, whether suppliers or



12:26:38 1 otherwise, in the horse racing industry?

12:26:40 2 A. Well, I will say that it went to

12:26:44 3 the benefit of live racing. Beneficiaries of live

12:26:48 4 racing include the feed dealer, the vets. All the

12:26:53 5 suppliers all benefit from live racing.

12:26:57 6 1526 Q. Right. And the Slots at Racetrack

12:27:04 7 Program, insofar as it was intended to benefit the

12:27:08 8 horse racing industry, was intended to benefit all

12:27:11 9 of those folks who were going to get a trickle

12:27:12 10 down, like the vets, like the farriers, like the

12:27:15 11 farmhands, right?

12:27:16 12 A. I'm not disagreeing. I'm just

12:27:19 13 saying that they're suppliers to the industry.

12:27:21 14 They're not the industry as per breeders,

12:27:24 15 racetracks and horsepeople.

12:27:26 16 1527 Q. Okay. Well --

12:27:27 17 A. We don't -- okay?

12:27:28 18 1528 Q. I think we're in violent agreement

12:27:31 19 here, sir.

12:27:32 20 You're saying that SARP was intended to

12:27:35 21 benefit the horse racing industry and the suppliers

12:27:37 22 to the horse racing industry, right?

12:27:38 23 A. Well, their suppliers, yeah. They

12:27:41 24 do benefit by having live racing.

12:27:43 25 1529 Q. Okay. And if we continue on in

12:27:45 1 Ms. Meyers' letter, she talks about this trickle  
12:27:51 2 down that you just described:

12:27:54 3 "When slots were introduced  
12:27:55 4 into the province, everyone  
12:27:56 5 anticipated that money would trickle  
12:27:59 6 down to the breeders."

12:27:59 7 And she says:

12:28:01 8 "Clearly, this did not happen."  
12:28:03 9 Was that her experience?

12:28:16 10 A. I would suggest that Ms. Meyers is  
12:28:18 11 putting an extra sell on her letter here, and  
12:28:22 12 again, I'm... I was a breeder. I made money as a  
12:28:26 13 market breeder.

12:28:27 14 1530 Q. Before SARP?

12:28:28 15 A. No. In SARP, when SARP was,  
12:28:35 16 was -- there was a Sires Stakes program.

12:28:38 17 1531 Q. No, sir, you told us you exited  
12:28:41 18 breeding in the early '90s.

12:28:44 19 A. Umm, well -- oh, maybe I didn't --  
12:28:46 20 no, I'm sorry, I did not have benefit from SARP. I  
12:28:48 21 apologize, I didn't -- but I benefited from --  
12:28:51 22 there was an Ontario Sires Stakes program, and there  
12:28:55 23 were breeders' rewards, so I did benefit from the  
12:29:04 24 program, and I did -- I was actually making money  
12:29:07 25 at it before I got out.

12:29:11 1 So all I'm saying is that I... Had  
12:29:27 2 the -- and I do recognize -- I'm recalling. The  
12:29:29 3 input costs for breeders had increased  
12:29:31 4 dramatically, whether it be stud fees, the price of  
12:29:35 5 acquiring mares, your daily operating costs, be  
12:29:42 6 they a bale of hay. When I came back, I was  
12:29:46 7 dumbfounded by what the cost of a bale of hay was  
12:29:48 8 versus what it had been when I was buying hay or  
12:29:52 9 selling hay and what the vet bills were. So I'm  
12:30:06 10 unable to give you a definitive on Ms. Meyers'  
12:30:10 11 statement as to the accuracy of it.

12:30:12 12 1532 Q. Okay. She says:

12:30:14 13 "While the average yearling  
12:30:16 14 price has increased at Ontario  
12:30:18 15 sales, it is still not a level that  
12:30:21 16 covers cost of production."

12:30:23 17 Was that something you were hearing  
12:30:24 18 from the breeders?

12:30:25 19 O/B MR. MATTHEWS: Mr. Rosenberg, again, I  
12:30:27 20 object not only because Ms. Meyers has sworn an  
12:30:30 21 Affidavit in support of summary judgment where she  
12:30:34 22 has actually given evidence elaborating on exactly  
12:30:39 23 what she means, but because this witness is not in  
12:30:40 24 a position to tell you what Ms. Meyers means in a  
12:30:42 25 letter that it's not even clear was sent in the

12:30:45 1 form written to the ORC. It's not appropriate.

12:30:49 2 BY MR. ROSENBERG:

12:30:49 3 1533 Q. That wasn't my question, Mr.

12:30:50 4 Matthews. I asked this witness --

12:30:52 5 A. And, Mr. Rosenberg, I've told you,

12:30:55 6 I've said I'm not in a position to know the

12:30:57 7 accuracy of the statement, because I don't know

12:30:58 8 what their input costs were.

12:31:00 9 I've told you that I was dumbfounded by

12:31:04 10 the increase in some of the input costs, and I do

12:31:08 11 know the stud fees had increased significantly and

12:31:12 12 the price of breeding stock, so that's all I can

12:31:15 13 tell you.

12:31:15 14 1534 Q. Right. What I'm asking you though

12:31:17 15 is slightly different, sir. I'm not asking you

12:31:19 16 whether it was true that breeders were not able to

12:31:23 17 cover the costs of production.

12:31:24 18 I'm asking if you were hearing from

12:31:26 19 breeders or if the ORC was hearing from breeders

12:31:29 20 that they were not able to cover their costs of

12:31:32 21 production.

12:31:32 22 A. The breeders participated with the

12:31:35 23 administration. They didn't -- as you can see, the

12:31:39 24 letter supposedly went to Mr. Fines, not to me, not

12:31:42 25 to any commissioner.

12:31:44 1 We had to stay out of it because we had  
12:31:46 2 to make decisions, so there was no communication to  
12:31:50 3 me.

12:31:55 4 1535 Q. You didn't hear from breeders that  
12:31:56 5 they were losing money?

12:31:57 6 A. Sir, you're asking me about this  
12:32:03 7 letter.

12:32:03 8 1536 Q. No, I'm asking you more generally.  
12:32:05 9 I'm not saying did you hear it from Anna Meyers.  
12:32:10 10 I'm saying did you hear it from horse breeders?

12:32:11 11 A. I'm on the record already as  
12:32:13 12 telling you on Friday that when we were trying to  
12:32:17 13 do some things to the -- to the HIP program, that  
12:32:21 14 breeders were saying that their revenues weren't  
12:32:26 15 sufficient.

12:32:26 16 Now, whether that -- whether that was  
12:32:29 17 they were losing money, not making enough money, I  
12:32:31 18 can't tell you.

12:32:33 19 1537 Q. And you will see that in this  
12:32:38 20 letter Ms. Meyers is proposing changes to the  
12:32:45 21 structure of the bonus system and purse payments  
12:32:48 22 for Ontario-breds. You'll see that --

12:32:50 23 A. Yeah.

12:32:51 24 1538 Q. -- third paragraph from the  
12:32:53 25 bottom.

12:32:53 1 A. Mm-hmm.

12:32:53 2 1539 Q. This is a similar idea to what you

12:32:58 3 talked about on Friday, which was moving more of

12:33:00 4 the SARP money into the Horse Improvement Program?

12:33:05 5 A. Well, "putting more money", how it

12:33:10 6 would come out was never decided. Those were

12:33:15 7 potential avenues.

12:33:17 8 1540 Q. Right.

12:33:17 9 A. How it would come out, there was

12:33:21 10 never any definitive decision.

12:33:23 11 1541 Q. And ultimately, again, this was at

12:33:26 12 the discretion of the ORC as to how it came out?

12:33:28 13 A. So again, insofar as we had a

12:33:33 14 total amount of money available, how it would be

12:33:36 15 distributed, again, was if you take more -- put

12:33:42 16 more in here, you had less over here, so same

12:33:46 17 answer.

12:33:46 18 1542 Q. Right.

12:33:56 19 MR. ROSENBERG: Why don't we make

12:33:57 20 Ms. Meyers' e-mail and letter the next Exhibit?

12:34:02 21 MR. MATTHEWS: I think it should be

12:34:03 22 marked for identification. The witness isn't able

12:34:05 23 to authenticate this document. He didn't author

12:34:08 24 it, he didn't receive it. It's not appropriate to

12:34:11 25 mark it as an exhibit.

12:34:13 1 If you want to mark it for  
12:34:14 2 identification, that's fine.  
12:34:16 3 MR. ROSENBERG: Well, Mr. Matthews,  
12:34:17 4 there has been lots of documents we've marked in  
12:34:20 5 examination that have not been identified by the  
12:34:22 6 witness, and we've not marked them for the purpose  
12:34:24 7 of identification, but I have your objection, and  
12:34:27 8 so if that's what you insist, we'll call this  
12:34:30 9 Exhibit A.  
12:34:52 10 ---EXHIBIT NO. "A": Letter and e-mail  
12:34:52 11 of Ms. Anna Meyers marked for identification  
12:34:55 12 purposes.  
12:34:55 13 BY MR. ROSENBERG:  
12:35:27 14 1543 Q. The next document I would take you  
12:35:29 15 to, sir, is at Tab 10 of the brief --  
12:35:29 16 A. Tab 10?  
12:35:32 17 1544 Q. -- that I sent you. This is SB  
12:35:34 18 0012705, and it's headed Ontario Racing Program.  
12:35:40 19 A. Yes.  
12:35:40 20 1545 Q. Do you recognize this document?  
12:35:51 21 A. I am aware of the Ontario Racing  
12:35:52 22 Program. Whether I recognize this document, it's a  
12:35:56 23 long time ago.  
12:35:56 24 1546 Q. It looks like a question and  
12:35:57 25 answer: Ontario Racing Program - The Basics.

12:36:00 1 A. Yeah. Ontario Racing Program.

12:36:03 2 And then -- oh. I get it. I

12:36:07 3 understand what you're talking about. It's

12:36:07 4 questions that I get.

12:36:09 5 Is that the one you're talking about?

12:36:12 6 1547 Q. Yeah.

12:36:12 7 A. Yeah, okay.

12:36:13 8 1548 Q. Now, if we look at the second page

12:36:14 9 of that under "Why Change At All"; do you see that

12:36:17 10 heading?

12:36:17 11 A. Yes.

12:36:18 12 1549 Q. The second bullet is:

12:36:21 13 "The status quo or doing

12:36:23 14 nothing was not an option."

12:36:25 15 A. Yeah.

12:36:26 16 1550 Q. Is that a message that the ORC was

12:36:28 17 conveying to the industry?

12:36:29 18 A. I think -- we've talked about it.

12:36:33 19 I told you the status quo was not going to work

12:36:36 20 earlier.

12:37:01 21 1551 Q. And, sir, as much as you may not

12:37:03 22 remember this exact document, are you satisfied

12:37:05 23 that it was, in fact, distributed by the Ontario

12:37:08 24 Racing Commission?

12:37:08 25 A. Correct.



12:37:09 1 1552 Q. You just don't know to whom it  
12:37:12 2 would have been sent?  
12:37:12 3 A. To the industry.  
12:37:13 4 1553 Q. Okay.  
12:37:14 5 MR. ROSENBERG: Why don't we mark that  
12:37:15 6 as our next exhibit? That's Exhibit 42, SB  
12:37:15 7 0012705.  
12:37:30 8 ---EXHIBIT NO. 42: SB 0012705.  
12:37:34 9 BY MR. ROSENBERG:  
12:37:35 10 1554 Q. And the intention of this document  
12:37:35 11 was to answer questions that the industry might  
12:37:37 12 have about the new Ontario Racing Program?  
12:37:39 13 A. Correct.  
12:37:40 14 1555 Q. Now, the next document I have is  
12:38:05 15 Tab 11. This is Ontario Racing Program Update,  
12:38:13 16 Phase-In of the Standardbred Program, dated January  
12:38:26 17 18, 2011, SB 0012710.  
12:38:27 18 A. Yeah.  
12:38:27 19 1556 Q. Is this another notice to the  
12:38:29 20 industry that the ORC would have distributed?  
12:38:31 21 A. Well, we would have published it,  
12:38:35 22 yes.  
12:38:35 23 1557 Q. And you will see in the last page,  
12:38:39 24 it appears to come from Bill Fines.  
12:38:42 25 A. Yes.

12:38:54 1 1558 Q. And what was Mr. Fines's role with  
12:38:57 2 the Ontario Racing Program?

12:38:58 3 A. Well, he was an official, an  
12:39:03 4 employee of the Racing Commission.

12:39:07 5 MR. ROSENBERG: Why don't we make that  
12:39:10 6 our next exhibit? This is Exhibit 43.

12:38:09 7 ---EXHIBIT NO. 43: Ontario Racing  
12:38:10 8 Program Update, Phase-In of the Standardbred  
12:38:25 9 Program, dated January 18, 2011, SB 0012710.

12:38:25 10 BY MR. ROSENBERG:

12:39:11 11 1559 Q. And again, you will see again  
12:39:22 12 under the heading "Why change?"

12:39:24 13 A. Going back up?

12:39:26 14 1560 Q. On the first page, yes.

12:39:35 15 A. Yes.

12:39:35 16 1561 Q. It says:

12:39:36 17 "More than a year ago, the  
12:39:38 18 Standardbred racing community in  
12:39:39 19 Ontario recognized that the status  
12:39:42 20 quo was no longer an option and that  
12:39:44 21 the tried and true ways of racing  
12:39:46 22 needed to adapt to become, among  
12:39:50 23 other things, a more customer  
12:39:51 24 focused model."

12:39:52 25 Do you see that?

12:39:53 1 A. Correct.

12:39:53 2 1562 Q. Why is it the ORC is saying the

12:39:57 3 Standardbred racing community in Ontario recognized

12:40:00 4 that?

12:40:00 5 A. Because we had people agreeing

12:40:03 6 with us.

12:40:03 7 1563 Q. Who?

12:40:04 8 A. Industry participants, licensees.

12:40:10 9 1564 Q. Standardbred breeders?

12:40:13 10 A. I couldn't comment on that. I

12:40:15 11 don't know. They didn't participate in the race

12:40:19 12 date program, so I wouldn't be talking to them.

12:40:26 13 1565 Q. But you were satisfied, the ORC

12:40:28 14 was satisfied, that the Standardbred racing

12:40:30 15 community in Ontario had recognized that the status

12:40:34 16 quo was no longer an option?

12:40:36 17 A. The old model was not working.

12:40:38 18 1566 Q. Right.

12:40:38 19 A. Testified to that, sir.

12:40:40 20 1567 Q. And that was by 2010? Or I

12:40:44 21 suppose more than a year ago, 2009?

12:40:47 22 A. When we put a moratorium on race

12:40:47 23 dates for a year.

12:40:53 24 1568 Q. Right.

12:40:53 25 A. It took a year to do a

12:40:56 1 consultative process. And I think you -- you asked  
12:41:04 2 me about the industry. In there, you have quotes  
12:41:13 3 from two senior executives saying -- commenting  
12:41:18 4 very positively about the Ontario Racing Program.

12:41:20 5 1569 Q. Yes, I see that. You're referring  
12:41:22 6 to the box on the right-hand side of the first  
12:41:25 7 page.

12:41:26 8 A. Correct. Jamie Martin, executive  
12:41:28 9 vice-president at WEG, and Ted Clarke, who was the  
12:41:30 10 general manager of Grand River.

12:41:30 11 1570 Q. But the result, as I understand  
12:41:30 12 it, of introducing the Ontario Racing Program was  
12:41:47 13 that there was still a reduction in the number of  
12:41:49 14 race dates requested for 2011?

12:42:02 15 A. I don't have the numbers in front  
12:42:05 16 of me, so I can't comment, but again, going back to  
12:42:07 17 the criteria for the program, we -- when you put  
12:42:13 18 all that criteria together, it came up with  
12:42:15 19 creating the circuits, managing horse supply, and  
12:42:25 20 the need to have full fields and move the horses up  
12:42:28 21 the pyramid; that's what the end result was.

12:42:31 22 1571 Q. A reduction of race dates in 2011?

12:42:40 23 A. I don't recall what the number of  
12:42:42 24 race dates were 2011 versus 2009 or '10. I suspect  
12:42:46 25 there might have been some.

12:42:47 1 Or were there a lot? I don't think  
12:42:49 2 there were, but again, it created the circuits.  
12:42:55 3 You could easily have seen some dates dropped.

12:42:58 4 1572 Q. I'm going to put it to you, sir,  
12:43:01 5 that there were -- when all the dates were  
12:43:03 6 submitted, there was a request to reduce the number  
12:43:06 7 of race dates by 207 race dates for Standardbred  
12:43:12 8 races, does that sound right, in 2011?

12:43:15 9 A. I don't know what -- I would be  
12:43:16 10 more interested in answering your question how many  
12:43:19 11 race dates were approved, not how many were -- what  
12:43:21 12 the request was, because I'm pretty sure the  
12:43:23 13 request would not have been approved, but again, I  
12:43:26 14 don't know what it was.

12:43:26 15 1573 Q. Right. A request that big, the  
12:43:28 16 ORC would have said you have to race more dates?

12:43:31 17 A. So I don't know what the number of  
12:43:34 18 race dates were, but if it was -- my recollection,  
12:43:34 19 it wasn't on the approved and -- it wasn't on the  
12:43:45 20 requested dates. So the total number of race dates  
12:43:47 21 would have been higher than those requested.

12:43:49 22 1574 Q. So the ORC was still making  
12:43:52 23 racetracks race more dates than they wanted to?

12:43:56 24 A. Potentially, yes.

12:43:58 25 1575 Q. And that --

12:44:06 1 A. Again --

12:44:07 2 1576 Q. Sorry.

12:44:08 3 A. Again -- and I have said it in my

12:44:13 4 testimony, some for-profit tracks took the

12:44:17 5 viewpoint that they would race as few dates as

12:44:23 6 possible to increase their bottom line and that was

12:44:25 7 one of the needs from the Ontario Racing Program,

12:44:28 8 to develop criteria upon which to judge a track's

12:44:34 9 date application.

12:44:34 10 1577 Q. Because that wasn't good for the

12:44:37 11 horse racing industry if tracks raced as few days

12:44:39 12 as they could get away with, right?

12:44:42 13 A. In a global sense, yes.

12:44:43 14 Again, each application would be

12:44:46 15 treated differently, so I wouldn't give you a

12:44:48 16 blanket statement, but in a general statement, yes.

12:44:51 17 Again, the race dates were approved on -- well, one

12:44:58 18 of the major criteria, to support live horse

12:45:01 19 racing, so what was good for live horse racing, and

12:45:04 20 we recognized racing every single day of the week

12:45:07 21 was not good, but where was the -- the balance.

12:45:11 22 1578 Q. All right. By late 2011 or early

12:45:16 23 2012, had the ORC communicated to industry

12:45:20 24 participants that the Horse Improvement Program was

12:45:23 25 not sustainable?

12:45:25 1 A. I can't comment. I wasn't there  
12:45:26 2 in 2012.  
12:45:35 3 1579 Q. Sorry, I think you were, sir.  
12:45:36 4 A. I think I was gone. I left --  
12:45:38 5 well, I could have my dates wrong, but again, I  
12:45:41 6 have testified...  
12:45:45 7 1580 Q. Do you not remember when you left  
12:45:46 8 the Ontario Racing Commission?  
12:45:46 9 --- (No verbal response; teleconference  
12:46:04 10 call connection lost.)  
12:46:04 11 MR. MATTHEWS: Go off the record.  
12:46:16 12 --- (Discussion off the record.)  
12:46:16 13 MR. MATTHEWS: Just put on --  
12:46:18 14 MS. MACHADO: The call was  
12:46:19 15 disconnected.  
12:46:20 16 MR. MATTHEWS: We're going to try  
12:46:21 17 Mr. Seiling back.  
12:46:21 18 --- (Attempts made to reconnect the  
12:46:21 19 teleconference call.)  
12:50:58 20 --- Recess at 12:50 p.m.  
12:54:18 21 --- On resuming at 12:54 p.m.  
12:54:22 22 THE WITNESS: Hello.  
12:54:22 23 BY MR. ROSENBERG:  
12:54:24 24 1581 Q. Hi, Mr. Seiling. It's Michael  
12:54:24 25 Rosenberg here.

12:54:24 1 A. Yeah, I apologize. Rogers did  
12:54:24 2 something. I lost everything.  
12:54:33 3 1582 Q. Oh, dear. Sorry to hear that.  
12:54:35 4 A. Anyway, we can continue now. I  
12:54:37 5 seem to have -- it's back working. Everything went  
12:54:37 6 down.  
12:54:43 7 1583 Q. We were just establishing that --  
12:54:50 8 well, when did you --  
12:54:50 9 MR. MATTHEWS: We're on the record?  
12:54:50 10 BY MR. ROSENBERG:  
12:54:52 11 1584 Q. Yes. When did you conclude your  
12:54:54 12 time as commissioner at the Ontario Racing  
12:54:58 13 Commission?  
12:54:58 14 A. It was in October. I can't  
12:55:00 15 remember what year it was now.  
12:55:01 16 1585 Q. If I said 2013, would that sound  
12:55:03 17 right?  
12:55:10 18 A. It might be right. I don't  
12:55:10 19 remember now. I thought it was '12, but it could  
12:55:12 20 be '13. I thought I was five years retired, but it  
12:55:16 21 could be four from there. I wouldn't disagree with  
12:55:25 22 you.  
12:55:26 23 1586 Q. Okay.  
12:55:26 24 A. Anyway, continue on. I...  
12:55:29 25 1587 Q. Suffice to say, whether or not you



1 were at the ORC, you don't remember any discussion  
2 in late 2011 or early 2012 where the ORC told the  
3 industry before SARP was cancelled that the Horse  
4 Improvement Program was not sustainable?

5 A. I have never said that, that I  
6 recall.

7 1588 Q. Okay. And you don't recall  
8 anybody else from the ORC communicating that  
9 message?

10 A. No. I don't think we would.

11 1589 Q. Okay.

12 A. It would be counter to what we  
13 were trying to do.

14 1590 Q. So the document at Tab 13 --

15 A. Okay, just a minute. I will go  
16 down to it.

17 That's not to say it couldn't be  
18 improved, but anyway, I'm -- okay, I'm at 13.

19 1591 Q. And --

20 A. It just twigged on me. Before --  
21 in case Rogers does something to us again, do you  
22 have a phone number that -- if I have to get back  
23 to you?

24 1592 Q. Yes, 416-728-7351.

25 A. Okay, just in case Rogers pulls

12:57:01 1 another quick one on us.

12:57:03 2 1593 Q. Yes. Thank you, sir. So the

12:57:06 3 document is SB 0012792.

12:57:17 4 A. Yeah. I have got it. I'm at the

12:57:20 5 bottom, so I have got to go -- yeah.

12:57:22 6 1594 Q. And it appears to be an e-mail

12:57:24 7 forwarded on behalf of Tammy McNiven. Do you know

12:57:28 8 who Tammy McNiven is?

12:57:29 9 A. I'm aware of her name, yeah.

12:57:31 10 1595 Q. Is she a Standardbred breeder?

12:57:33 11 A. She is.

12:57:34 12 1596 Q. And it's dated January 10, 2012.

12:57:41 13 A. Yes.

12:57:42 14 1597 Q. It's, "Hi, Directors", and then,

12:57:45 15 "Please, see below from Tammy".

12:57:48 16 I'm going to put it to you that these

12:57:49 17 are the directors of the SBOA, Standardbred

12:57:59 18 Breeders of Ontario Association.

12:58:00 19 A. It could be. I can't comment. I

12:58:05 20 don't know.

12:58:05 21 1598 Q. And it says under HIP Funding

12:58:12 22 Model -- do you see that heading?

12:58:13 23 A. Yep.

12:58:15 24 1599 Q. "Additionally, the group will be

12:58:17 25 tasked with reviewing the Program's

12:58:20 1 current funding model, another  
12:58:22 2 project directed by the ORC Board."

12:58:27 3 Did the ORC Board direct a group of  
12:58:30 4 industry participants to review the program's  
12:58:33 5 current funding model?

12:58:34 6 A. I have already testified to that,  
12:58:37 7 that the administration had an ongoing consultation  
12:58:42 8 process with the breeders.

12:58:45 9 1600 Q. Okay. But it looks like there's a  
12:58:46 10 direction to review the program's current funding  
12:58:49 11 model. That seems to be different than just an  
12:58:52 12 ongoing consultation.

12:58:54 13 A. I don't recall, so I can't  
12:58:58 14 comment.

12:58:59 15 As I -- as I testified on Tuesday, the  
12:59:09 16 ORC administration had a consultation process with  
12:59:15 17 the signatories to the SARP program to see whether  
12:59:19 18 there was any appetite to making more funding  
12:59:26 19 available to the breeders' program.

12:59:30 20 That was not -- I guess they couldn't  
12:59:38 21 find agreement. We'll leave it at that.

12:59:40 22 1601 Q. Okay, but my understanding was  
12:59:42 23 that happened around -- this is in 2012.

12:59:44 24 A. Well, again, I don't recall this,  
12:59:55 25 so I can't comment anymore. Obviously, we were

12:59:57 1 well aware of the comments coming from the breeding  
13:00:08 2 sector that the trickle down format wasn't working  
13:00:11 3 for them, so if there was another meeting or  
13:00:17 4 process going forward to look at how HIP could be  
13:00:30 5 improved, that would not be a surprise, but again,  
13:00:33 6 the ORC was powerless to do anything. All it could  
13:00:36 7 do was move money from within the current funding  
13:00:40 8 block, that's it.

13:00:41 9 1602 Q. Ms. McNiven continues though:

13:00:44 10 "As you know, the Program is  
13:00:46 11 not sustainable under the current  
13:00:47 12 model and significant decisions will  
13:00:49 13 have to be made in the near future  
13:00:51 14 to either secure new funding or make  
13:00:53 15 significant cuts to the Program."

13:00:56 16 Again, program being the Horse  
13:00:59 17 Improvement Program.

13:00:59 18 A. Yeah.

13:01:00 19 1603 Q. Was this a message communicated to  
13:01:07 20 industry participants by the ORC?

13:01:11 21 A. No, I don't think so. This was  
13:01:13 22 breeders talking to administration staff. We would  
13:01:16 23 not be -- the last thing we would be doing would be  
13:01:19 24 broadcasting that message.

13:01:21 25 1604 Q. So you say the breeders were

13:01:22 1 telling the ORC that the Horse Improvement Program  
13:01:25 2 was unsustainable?

13:01:27 3 A. Well, I'm reading -- I'm reading,  
13:01:29 4 I'm just reading what the writer of this document  
13:01:32 5 is saying. And so, you know, cuts to the program  
13:01:40 6 could simply be changing the breeders' awards.

13:01:48 7 1605 Q. All right. You're telling me you  
13:01:50 8 don't remember a discussion about the program being  
13:01:53 9 unsustainable?

13:01:54 10 A. I have told you before, as the  
13:01:56 11 Commission, we didn't have discussions with these  
13:01:59 12 people. They had discussions with staff.

13:02:00 13 1606 Q. "These people" being Standardbred  
13:02:04 14 breeders?

13:02:05 15 A. Correct.

13:02:09 16 MR. ROSENBERG: Okay. I want to mark  
13:02:10 17 this document SB 0012792 as the next exhibit.

13:02:14 18 MR. MATTHEWS: Perhaps, for  
13:02:24 19 identification, Mr. Rosenberg.

13:02:26 20 MR. ROSENBERG: If you insist, Mr.  
13:02:28 21 Matthews. That's Exhibit B.

13:02:11 22 ---EXHIBIT NO. "B": Document SB  
13:02:13 23 0012792 marked for identification purposes.

13:02:48 24 BY MR. ROSENBERG:

13:02:48 25 1607 Q. Now, Mr. Seiling, I understand

13:02:49 1 that there were some discussions between yourself  
13:02:54 2 on behalf the ORC and the Ministry of Finance in  
13:02:57 3 late 2011 with respect to a new memorandum of  
13:03:02 4 understanding from the ORC?

13:03:04 5 A. Correct.

13:03:05 6 1608 Q. Do you remember who you were  
13:03:07 7 speaking with?

13:03:07 8 A. Not -- no, I don't at this point  
13:03:12 9 in time. I don't.

13:03:13 10 1609 Q. And as I understand it, the new  
13:03:18 11 memorandum of understanding was to appoint the ORC  
13:03:22 12 as the body responsible for determining the  
13:03:26 13 appropriate level of horse racing funding in  
13:03:29 14 Ontario?

13:03:29 15 A. If I saw a document in front of me  
13:03:36 16 that said that, I would agree.

13:03:37 17 The only thing I remember is that the  
13:03:42 18 only significant changes -- change to the -- to the  
13:03:49 19 old MOU was adding -- they wanted us to, the  
13:03:55 20 Commission to -- looking for the right words now,  
13:04:01 21 to -- financial management, I guess, something to  
13:04:05 22 that effect, and accountability, I think, as well,  
13:04:12 23 and I do recall telling the government, and I  
13:04:18 24 suspect that at the same time -- and it may have  
13:04:20 25 come through my executive director, the opening

13:04:23 1 discussions markedly started there, and then I  
13:04:32 2 would have had a discussion somewhere along the  
13:04:34 3 line. I told them that if they were going to add  
13:04:36 4 that to the MOU, they would have to tell the  
13:04:39 5 industry first, that this would be seen as an  
13:04:42 6 overreach by the Commission, and the reaction would  
13:04:44 7 be very bad.

13:04:45 8 1610 Q. So you didn't want that  
13:04:46 9 responsibility?

13:04:46 10 A. No. Well, no, because we were  
13:04:51 11 then managing their business.

13:04:52 12 1611 Q. And you were communicating to the  
13:04:55 13 Ministry of Finance that the ORC didn't want that  
13:04:59 14 responsibility?

13:05:00 15 A. Well, they were giving it to us.  
13:05:02 16 It wasn't -- it wasn't that we had an option. They  
13:05:05 17 said: We're putting it in there.

13:05:08 18 1612 Q. I see.

13:05:08 19 A. And I, again, made the comment  
13:05:13 20 back that: If you're doing this, then you have  
13:05:17 21 to -- then you have to communicate that to the  
13:05:20 22 industry.

13:05:20 23 1613 Q. Okay. So this was sort of an  
13:05:23 24 economic oversight mandate that the Ministry of  
13:05:26 25 Finance was --

13:05:27 1 A. If you want to characterize it  
13:05:29 2 that way, that might work, too. Economic  
13:05:33 3 management, economic oversight.

13:05:34 4 1614 Q. All right. Was it your --

13:05:36 5 A. We're splitting hairs.

13:05:37 6 1615 Q. Was it your understanding that the  
13:05:40 7 Ministry of Finance was asking the ORC to decide  
13:05:44 8 the amount of funding that the horse racing  
13:05:48 9 industry was going to get?

13:05:54 10 A. No, that was never my  
13:05:56 11 understanding at all.

13:05:57 12 1616 Q. So what was it that you thought  
13:06:01 13 the Ministry of Finance was asking the ORC to do?

13:06:04 14 A. Was to deal with tracks --  
13:06:05 15 specifically, my recollection, it had to deal with  
13:06:09 16 tracks and how they were allocating their funds and  
13:06:15 17 whether they were doing enough to offer a  
13:06:20 18 competitive product such as were they investing in  
13:06:24 19 adequate marketing, were they investing enough in  
13:06:29 20 their plant; things like that.

13:06:30 21 It had nothing to do with, with the  
13:06:34 22 SARP program at all. This was the day-to-day  
13:06:41 23 operations of the racetrack.

13:06:43 24 1617 Q. So marketing is a good transition  
13:06:45 25 to my last series of questions for you, sir, and



13:06:53 1 this is actually where I had intended to start  
13:06:56 2 today.

13:06:56 3 A. Okay.

13:06:56 4 1618 Q. But we, because of the technical  
13:06:58 5 difficulties, started with the exhibits from last  
13:07:01 6 time, but I just wanted to pick up where we left  
13:07:05 7 off last time.

13:07:06 8 We were talking about marketing and  
13:07:07 9 looking at some advertisements, and I showed you an  
13:07:11 10 advertisement that I said was for the Ontario Sires  
13:07:18 11 Stakes and from August of 2012, and you said you  
13:07:20 12 weren't certain about whether the ORC continued to  
13:07:23 13 advertise the Ontario Sires Stakes after it learned  
13:07:27 14 that SARP would be cancelled.

13:07:29 15 You remember that?

13:07:30 16 A. Correct.

13:07:30 17 1619 Q. And that was because you weren't  
13:07:32 18 sure there would be an Ontario Sires Stakes?

13:07:35 19 A. Correct.

13:07:35 20 1620 Q. And that's reflective of the  
13:07:37 21 careful approach that the ORC took to its public  
13:07:40 22 statements?

13:07:40 23 A. Correct.

13:07:40 24 1621 Q. The ORC didn't promise things that  
13:07:42 25 it couldn't deliver?

13:07:44 1 A. Correct.

13:07:44 2 1622 Q. Now, funding for its programs, the  
13:07:54 3 Horse Improvement Program, for example, now it was  
13:07:55 4 contingent on a lot of things, right?

13:07:57 5 A. Correct.

13:07:58 6 1623 Q. And the ORC didn't make promises  
13:08:01 7 about money that would be spent in the future from  
13:08:02 8 its programs?

13:08:03 9 A. Well, that's not quite correct.

13:08:05 10 1624 Q. Well, help me out then.

13:08:08 11 A. Well, because with the breed  
13:08:12 12 improvement programs, one had to anticipate that,  
13:08:17 13 for example, the Slots at Racetrack Program was  
13:08:20 14 going to continue, because to -- for breeders to  
13:08:26 15 breed and buyers to buy, they had to have certainty  
13:08:30 16 that there would be a program.

13:08:31 17 So if you were to buy a horse in 2017,  
13:08:37 18 just if the sale had just ended a few months ago,  
13:08:44 19 you needed certainty that there would be a program  
13:08:47 20 in place for 2018 and 2019. So we had to -- and  
13:08:50 21 you will see in all the documentation that you have  
13:08:53 22 taken me through and that are marked exhibits, you  
13:08:58 23 will see the programs move out into future years,  
13:09:07 24 because you had to convey that there was going to  
13:09:10 25 be a program and what type of money they would be

13:09:13 1 racing for in those subsequent years.

13:09:16 2 So we did have to make projections into  
13:09:24 3 the future.

13:09:25 4 1625 Q. Well, I just want to be clear on  
13:09:27 5 that, sir, because that's exactly my point.

13:09:29 6 A. I understand where you're going.

13:09:32 7 1626 Q. You never said that the money  
13:09:35 8 would be there because, in fact, you didn't have  
13:09:39 9 budget approval for future years, right?

13:09:41 10 A. Well, we -- I guess we did and we  
13:09:47 11 didn't.

13:09:47 12 The government was apprised of all the  
13:09:57 13 things we did, including the breed improvement  
13:09:59 14 programs.

13:10:00 15 They saw the documentation we produced.  
13:10:04 16 They saw the projections. During my tenure at the  
13:10:13 17 Commission, never once did they say we were not  
13:10:15 18 supposed to do that. They were well-aware of those  
13:10:17 19 projections.

13:10:18 20 1627 Q. No, I understand that, sir, but  
13:10:20 21 those are just projections, right? They're  
13:10:22 22 effectively if we have the money to fund these  
13:10:26 23 purses or these programs, this is how we intend to  
13:10:29 24 spend it, right?

13:10:29 25 A. You're splitting -- again, I've

13:10:32 1 given my testimony. Did we have the money in hand?  
13:10:37 2 No, it came in future years, but no one ever  
13:10:40 3 said -- whether it be OLG or the government of  
13:10:42 4 Ontario, no one ever said not to put those numbers  
13:10:47 5 forward and project them and, in fact, without  
13:10:49 6 those projections, you wouldn't have had a breed  
13:10:52 7 improvement program. No one would buy a yearling  
13:10:55 8 if you put a question mark of what the purses were  
13:10:58 9 going to be for the coming year. There would be no  
13:11:02 10 program.

13:11:02 11 1628 Q. No, I understand that's the  
13:11:04 12 reality in which you found yourself working; that  
13:11:09 13 you didn't have the money in the bank, and yet, you  
13:11:11 14 had people who were looking to you for long-term  
13:11:18 15 assurance, right?

13:11:19 16 A. Correct.

13:11:20 17 1629 Q. But the best you could give them  
13:11:23 18 was: These are our projections as to how we would  
13:11:27 19 spend the money if we had --

13:11:30 20 A. I don't recall ever sending them  
13:11:34 21 projections. You and I know what we were doing.  
13:11:38 22 My testimony is -- I can't say anything different.  
13:11:40 23 That's what it is.

13:11:41 24 1630 Q. Well, hold on a second. Sir, last  
13:11:43 25 time we looked at these things that are called

13:11:46 1 projections. I can take you to them.

13:11:48 2 A. I understand they're projections,  
13:11:51 3 but I said to you, you and I know they're  
13:11:53 4 projections, but we didn't put a big asterisk in  
13:11:57 5 front and say they're projections. That was our  
13:12:01 6 guesstimate of what the program would be worth.

13:12:03 7 1631 Q. No, no. Sir, I want to be clear  
13:12:06 8 on this.

13:12:07 9 The tables that Mr. Matthews took you  
13:12:09 10 to last time, which show spending going out a  
13:12:13 11 number of years -- and I can find them for you,  
13:12:14 12 although you will have to get the exhibit back up.

13:12:19 13 You will agree that those all say,  
13:12:22 14 "Projections" at the top, right?

13:12:24 15 A. If you tell me -- if you and  
13:12:26 16 Mr. Matthews are looking at it and say they're  
13:12:29 17 projections, I will agree with you. I don't recall  
13:12:31 18 that.

13:12:32 19 All I know is that the industry took  
13:12:34 20 that to believe that's approximately what they  
13:12:38 21 would be racing for in that year.

13:12:40 22 1632 Q. All right. But as we discussed  
13:12:42 23 last time, that understanding was contingent on a  
13:12:49 24 number of things, right? Like the amount of money  
13:12:51 25 that you got from wagering, right?

13:13:00 1 A. Right.

13:13:01 2 1633 Q. And like the amount of money that  
13:13:03 3 you got from the slots program?

13:13:05 4 A. Correct, but on the other hand,  
13:13:07 5 those two numbers were fairly predictable.

13:13:09 6 1634 Q. Well, they were fairly predictable  
13:13:12 7 if, you know -- I mean, they had been predictable  
13:13:15 8 is what you're saying, right?

13:13:17 9 A. Well, they were until the program  
13:13:19 10 was ended, yes.

13:13:20 11 1635 Q. Right. And so I'm looking at  
13:13:22 12 Exhibit 16, and I think that Mr. Matthews will  
13:13:26 13 agree that these charts are headed "Projections".

13:13:30 14 A. Yeah.

13:13:30 15 1636 Q. So, you know, the projections that  
13:13:36 16 go out a number of years. I understand that you're  
13:13:43 17 communicating to the industry and trying to give  
13:13:45 18 them as much certainty as you can by making  
13:13:49 19 projections, but at the end of the day, you are not  
13:13:52 20 promising them that this money will be there,  
13:13:55 21 right?

13:13:55 22 A. Promising, we couldn't promise,  
13:14:01 23 but expecting it, yes, and I -- you and I can agree  
13:14:05 24 to debate this all day long, and all I'm going to  
13:14:09 25 tell you again is that without those numbers, no

13:14:15 1 one, virtually no one, would have bought a  
13:14:20 2 yearling.

13:14:20 3 1637 Q. Right.

13:14:23 4 A. And a track record, a proven track  
13:14:26 5 record, that gave people comfort in the fact that  
13:14:29 6 our projections were pretty close.

13:14:31 7 1638 Q. Right. You had, in previous  
13:14:34 8 years, projected, and as it happened, as you say,  
13:14:37 9 you came pretty close, right?

13:14:39 10 A. Yes.

13:14:41 11 1639 Q. But I guess what I'm getting at  
13:14:46 12 here is that that's -- that's the comfort that  
13:14:48 13 people in the industry could take, right?

13:14:50 14 A. Correct.

13:14:54 15 1640 Q. But, you know, we can take a look  
13:15:00 16 at a document that I have in the brief that I gave  
13:15:16 17 you. This is Tab 4. It's a document that I pulled  
13:15:36 18 off the internet yesterday.

13:15:38 19 MR. MATTHEWS: I want to be very clear,  
13:15:40 20 Mr. Rosenberg, before you put this document to the  
13:15:44 21 witness, which I appreciate you seem to have pulled  
13:15:47 22 off the Internet, but if you're going to be trying  
13:15:49 23 to make a substantive point about this, our  
13:15:52 24 position is that it's not appropriate given that  
13:15:55 25 Mr. Seiling has already testified that he left the

13:15:58 1 industry in 2013, asking him to give you a view on  
13:16:01 2 a document that purports to relate to the year  
13:16:05 3 2018.

13:16:08 4 MR. ROSENBERG: Why don't you let me  
13:16:09 5 ask the question first, Mr. Matthews, and then you  
13:16:11 6 can object.

13:16:11 7 BY MR. ROSENBERG:

13:16:13 8 1641 Q. You have that document, sir? It  
13:16:14 9 says --

13:16:14 10 A. I have it in front of me, Notices  
13:16:14 11 & Updates, Ontario Racing Announces 2018 SIP  
13:16:24 12 Program?

13:16:24 13 1642 Q. Yes. You see it?

13:16:26 14 A. I see it.

13:16:27 15 1643 Q. And what that is, is -- it looks  
13:16:30 16 to me to be an announcement of the amount of money  
13:16:33 17 that would be available for the Ontario Sires Stakes  
13:16:39 18 in 2018, right?

13:16:41 19 O/B MR. MATTHEWS: I object.

13:16:43 20 THE WITNESS: Okay. Go on.

13:16:45 21 BY MR. ROSENBERG:

13:16:45 22 1644 Q. And that was the way that it  
13:16:46 23 happened during your time as commissioner; that on  
13:16:49 24 a yearly basis, you would get actual approval for  
13:16:54 25 the amount of money that was available for the



13:16:56 1 Horse Improvement Program?

13:16:58 2 A. I can't comment on this, and I

13:17:00 3 will not give any evidence because I don't know

13:17:02 4 what the arrangement is between racing and the

13:17:09 5 government now, so I can't comment. It may be

13:17:12 6 totally different. I don't know, so I can't

13:17:14 7 comment.

13:17:16 8 1645 Q. But I'm just trying to understand,

13:17:16 9 sir.

13:17:19 10 A. I can't comment. I will not

13:17:20 11 comment.

13:17:20 12 1646 Q. I'm not talking about the

13:17:22 13 relationship today. I'm not asking you to comment

13:17:25 14 on that.

13:17:25 15 A. I am talking about this document

13:17:26 16 you have here.

13:17:27 17 I cannot comment on it because I don't

13:17:30 18 know on the basis of which they base that

13:17:34 19 announcement.

13:17:35 20 1647 Q. Okay. Forget the document in

13:17:38 21 front of you. Let me just ask you this question:

13:17:40 22 When you were the commissioner of the Ontario

13:17:42 23 Racing Commission, did the amount of money

13:17:44 24 available for the Horse Improvement Program get

13:17:46 25 approved on a yearly basis?

13:17:49 1 A. Not to the best of my knowledge,  
13:17:52 2 no, but I can't remember. Actually, I can't  
13:17:56 3 remember. The government was aware of the  
13:18:01 4 projections. I never once heard them -- the  
13:18:06 5 government come back and say not to do that, that  
13:18:08 6 this is wrong.

13:18:08 7 So the government was fully aware of  
13:18:10 8 the projections going out in the future as to the  
13:18:15 9 value of the program.

13:18:16 10 1648 Q. Right. No, I understand that's  
13:18:17 11 your position, sir.

13:18:18 12 What I'm trying to get at is the  
13:18:20 13 mechanics of how this actually worked.

13:18:21 14 A. I just told you, sir, that we put  
13:18:23 15 projections out.

13:18:25 16 Not once did I ever hear the government  
13:18:26 17 say not to do it. That's -- that's my recollection  
13:18:30 18 of how the process went.

13:18:31 19 1649 Q. I understand you remember that you  
13:18:33 20 made projections, but in terms of when you actually  
13:18:36 21 had the funding to pay for a particular year's Sires  
13:18:45 22 Stakes, when did that happen? When did you know  
13:18:46 23 you had the money to pay for a particular year's  
13:18:50 24 Sires Stakes?

13:18:50 25 A. I can't give you the timing. It

13:18:52 1 was not part of our responsibility. That was the  
13:18:55 2 administration. It was not a board issue.

13:18:57 3 1650 Q. All right. And if we think back  
13:19:10 4 to the documents that Mr. Matthews took you  
13:19:14 5 through, we've talked about the projections. He  
13:19:19 6 took you through a number of annual reports. We  
13:19:22 7 talked about advertisements.

13:19:23 8 In any of the statements that were made  
13:19:30 9 by the ORC during your time as commissioner, do you  
13:19:33 10 remember any of those statements being untrue at  
13:19:40 11 the time they were made?

13:19:40 12 A. No.

13:19:41 13 1651 Q. And, of course, you would have  
13:19:42 14 taken reasonable care to ensure that the ORC wasn't  
13:19:47 15 making untrue statements, right?

13:19:49 16 A. Correct.

13:19:51 17 O/B MR. MATTHEWS: So I object insofar as  
13:19:52 18 you're asking about a legal standard here, Mr.  
13:19:55 19 Rosenberg.

13:19:56 20 BY MR. ROSENBERG:

13:19:56 21 1652 Q. Do you understand what reasonable  
13:19:58 22 care is, sir?

13:19:59 23 A. I do.

13:19:59 24 1653 Q. And again, you would have taken  
13:20:02 25 reasonable care to ensure that the ORC was not

13:20:04 1 making untrue statements?

13:20:06 2 A. We had an -- we had -- the whole  
13:20:10 3 account -- the whole program was audited and which  
13:20:15 4 you know I have already testified.

13:20:16 5 1654 Q. But more than that, in making  
13:20:19 6 statements to the public, you would have taken care  
13:20:21 7 to ensure that what the ORC was saying was true,  
13:20:23 8 right?

13:20:23 9 A. Correct.

13:20:24 10 1655 Q. And you did, in fact, take such  
13:20:29 11 care?

13:20:29 12 A. Pardon me?

13:20:30 13 1656 Q. You did take such care?

13:20:32 14 A. To the best of our ability.

13:20:34 15 1657 Q. We had a discussion about whether  
13:20:39 16 the SBOA -- sorry, whether the ORC continued to  
13:20:45 17 advertise for the Ontario Sires Stakes program after  
13:20:49 18 the cancellation of SARP and so I wanted to show  
13:20:52 19 you two documents -- three documents.

13:21:03 20 If you look at Tab 1 of the brief that  
13:21:06 21 I gave you.

13:21:16 22 A. Yeah.

13:21:17 23 1658 Q. This is a document, OLGSB 1302,  
13:21:22 24 and if you look at the first two pages, you will  
13:21:34 25 see that the print quality isn't great. If you

13:21:38 1 scroll down to the third and fourth pages, you'll  
13:21:41 2 see the print quality is better.

13:21:42 3 A. I only see -- just Tab 1?

13:21:43 4 1659 Q. Tab 1. It's an article, Average  
13:21:46 5 Sale Price of--

13:21:46 6 A. Oh, yeah. Yep.

13:21:49 7 1660 Q. --Canadian Yearling Sales,  
13:21:51 8 September 16th, 2013?

13:21:52 9 A. Yeah.

13:21:53 10 1661 Q. You will see, from the bottom of  
13:21:53 11 the page, it appears that this document was  
13:21:56 12 accessed on November 17th, 2014?

13:22:03 13 A. I see nothing untowards of that.  
13:22:06 14 That's talking about past results. It's not  
13:22:09 15 talking about the future.

13:22:10 16 1662 Q. Right. And that is, we'll agree,  
13:22:13 17 the banner on the right-hand side, that's an  
13:22:15 18 advertisement for the Ontario Sires Stakes?

13:22:17 19 A. "Racing Future"? I'm not sure. I  
13:22:21 20 don't remember, but --

13:22:22 21 1663 Q. No. Look at the first page, sir,  
13:22:26 22 or page 3 of the document.

13:22:29 23 You see, there's "New for 2015, Ontario  
13:22:32 24 Sires Stakes, over \$700,000 in new purse bonuses"?

13:22:37 25 A. This is the Standardbred breeders'

13:22:43 1 publication, not a Racing Commission publication.

13:22:46 2 1664 Q. No. But it's like the other  
13:22:48 3 advertisements that we saw.

13:22:50 4 This is the Ontario Racing Commission,  
13:22:51 5 I assume, paying money to place an advertisement?

13:22:55 6 MR. MATTHEWS: Mr. Rosenberg, again,  
13:22:57 7 this is after --

13:22:58 8 THE WITNESS: But, sir, again, I'm  
13:22:59 9 going to -- I don't see anything, and if you direct  
13:23:02 10 me to it, I'll agree with you.

13:23:05 11 What I see here is information based on  
13:23:09 12 past results; nothing into the future.

13:23:12 13 BY MR. ROSENBERG:

13:23:13 14 1665 Q. Well, it says:

13:23:14 15 "Over \$700,000 in new purse  
13:23:22 16 bonuses for Ontario-sired  
13:23:24 17 two-year-olds, new for 2015."

13:23:25 18 So surely, that's talking about --

13:23:26 19 A. Okay. I don't -- I don't see it,  
13:23:27 20 but anyway, I... Umm. All I can --

13:23:29 21 1666 Q. Well, I want to make sure you have  
13:23:30 22 the right page in front of you, then, sir.

13:23:31 23 A. Okay. 'Average sale price up at  
13:23:34 24 Canadian Yearlings, SBOA'?

13:23:34 25 1667 Q. Yes.

13:23:37 1 A. "St. Lad's Farm" in the top right  
13:23:40 2 corner?  
13:23:40 3 1668 Q. Yes. Now, look under "St. Lad's  
13:23:40 4 Farm". Do you see that advertisement?  
13:23:41 5 A. It says, "To reach..."  
13:23:42 6 "St. Lad's", yeah.  
13:23:46 7 1669 Q. You see:  
13:23:47 8 "Over \$700,000 in new purse  
13:23:50 9 bonuses for Ontario-sired  
13:23:53 10 two-year-olds, new for 2015."  
13:23:56 11 A. Just a minute. I'm putting my  
13:23:58 12 glasses on. I can't...  
13:23:59 13 1670 Q. If you look at --  
13:24:00 14 A. If you just give me a chance to  
13:24:02 15 read it, sir. I see now the 2015. I have never  
13:24:05 16 seen this document before, and it's not something  
13:24:08 17 that -- that I or the board would have approved.  
13:24:11 18 1671 Q. And why is that?  
13:24:14 19 A. Because there was no -- there's no  
13:24:17 20 guarantee there was going to be any program in the  
13:24:19 21 coming year.  
13:24:20 22 1672 Q. And so where there's no guarantee  
13:24:23 23 that there's that program, you and your board  
13:24:25 24 wouldn't have approved an advertisement suggesting  
13:24:28 25 that people should rely on one, right?

13:24:31 1 A. Well, at that point in time -- and  
13:24:35 2 again, I have told you this -- tracks were not  
13:24:39 3 going to apply for race dates for the coming year.  
13:24:43 4 I have testified to that on a number of times. So  
13:24:48 5 if we didn't have one racetrack that was going to  
13:24:51 6 race, it would be very difficult to have a Sires  
13:24:54 7 Stakes race.

13:24:54 8 1673 Q. Okay. No, I understand that, sir,  
13:24:56 9 but this is now 2014.

13:24:58 10 MR. MATTHEWS: So I want to register --

13:25:01 11 THE WITNESS: If it's 2014, then I'm  
13:25:03 12 out of the picture, so I can't comment on it. I  
13:25:09 13 thought you were taking me to -- and I apologize, I  
13:25:13 14 didn't twig.

13:25:15 15 I was gone in 2014, so I can't even  
13:25:18 16 comment on this ad, so disregard anything I've said  
13:25:21 17 on this ad or this -- I was not part of it, and so  
13:25:25 18 I have no comment, I have no knowledge.

13:25:27 19 MR. ROSENBERG: All right. Then,  
13:25:28 20 perhaps, for identification purposes, we could mark  
13:25:30 21 as the next exhibit, OLGSB0001302, 1330, and 1331,  
13:25:49 22 both the copy, as produced, and the better print  
13:25:56 23 quality copy.

13:25:58 24 MR. MATTHEWS: So can I just -- it's  
13:26:03 25 not clear to me, Mr. Rosenberg, because certain of



13:26:06 1 the documents we've been looking at don't appear to  
13:26:08 2 have document identification numbers in the bottom.  
13:26:12 3 I just want to be clear we have a shared  
13:26:14 4 understanding of what's being marked here. So if  
13:26:16 5 we start with what you've labelled as Tab 1.

13:26:20 6 MR. ROSENBERG: Yes.

13:26:21 7 MR. MATTHEWS: For me, Tab 1, I have a  
13:26:23 8 two-page document that's OLGSB 1302. Following  
13:26:27 9 that, I have a further two pages that don't appear  
13:26:30 10 to have any document identification at all.

13:26:33 11 MR. ROSENBERG: So that's just a better  
13:26:35 12 print of OLGSB 1302.

13:26:44 13 THE WITNESS: And just for  
13:26:45 14 clarification, I cannot comment on anything in Tab  
13:26:48 15 1 because I was no longer at the ORC.

13:26:54 16 MS. MACHADO: One is from September  
13:26:55 17 2013.

13:26:55 18 BY MR. ROSENBERG:

13:26:55 19 1674 Q. Ms. Machado is noting that the  
13:26:58 20 article is from September of 2013, but I think  
13:26:58 21 that --

13:27:01 22 A. Well, that's not what you were  
13:27:01 23 trying to take me to. It says, Purchase for 2015,  
13:27:05 24 so it can't be a 2013 article when it's talking  
13:27:10 25 about 2015, I wouldn't think.

1 MR. MATTHEWS: So I think the  
2 difficulty is that, given the point in time at  
3 which this page gets printed off from the Internet,  
4 the advertisements are the advertisements that  
5 appear on that website at the time the page is  
6 printed off. So notwithstanding the fact that the  
7 article, itself, is dated September 16th, 2013,  
8 given that it was printed on November 17th, 2014, I  
9 expect that the advertisements reflect the  
10 advertisements that were on that website on  
11 November 17th, 2014.

12 THE WITNESS: So then if we make that  
13 assumption, then my earlier comments about the  
14 verbiage stand, that they're about what had  
15 happened, not what was going to happen.

16 MR. ROSENBERG: Okay. So we have OLGSB  
17 1302 and a better print, OLGSB 1330, which is an  
18 article title Ontario-Sired, Bene Bene, Brings  
19 Highest Amount Ever Paid For Ontario-Sired Trotter,  
20 from October 1st, 2014, and a better print of that,  
21 and OLGSB 1331, which is an article titled Mach  
22 Three Filly, Jiminey Three, Tops Forest City  
23 Yearling Sale, dated October 13th, 2014 and a  
24 better print of that.

25 Those documents together make up the

13:28:58 1 next Exhibit, and Mr. Matthews, if you insist it be  
13:29:02 2 for identification, --  
13:29:03 3 MR. MATTHEWS: Yes.  
13:29:04 4 MR. ROSENBERG: -- it will be Exhibit  
13:29:05 5 C.  
13:29:05 6 MR. MATTHEWS: Yes, thank you.  
13:29:08 7 ---EXHIBIT NO. "C": OLGSB 1302, OLGSB  
13:29:12 8 1330 and OLGSB 1331, marked for identification.  
13:29:55 9 THE WITNESS: Okay. In fact, I'm just  
13:29:56 10 looking at this document right now, uh, to confirm  
13:29:58 11 its date.  
13:29:58 12 If you look at the top, left-hand  
13:29:59 13 corner, it says, "For the latest news on the  
13:30:02 14 breeders' lawsuit," so the ad has been added in, is  
13:30:06 15 what I'm saying.  
13:30:07 16 BY MR. ROSENBERG:  
13:30:07 17 1675 Q. That's quite right.  
13:30:08 18 We were looking, I think, at a late  
13:30:10 19 2014 announcement of 2015 Sires -- Ontario Sires  
13:30:17 20 Stakes incentives.  
13:30:20 21 A. Yeah. So again, I have no  
13:30:22 22 comment.  
13:30:22 23 Are we done?  
13:30:24 24 1676 Q. We're certainly done with that  
13:30:25 25 document, sir.

13:30:32 1 With respect to the ORC, could people  
13:30:35 2 sue it while it was in existence?

13:30:45 3 A. I'm sorry, I couldn't hear you.

13:30:45 4 1677 Q. Could people sue the ORC while it  
13:30:45 5 was in existence?

13:30:45 6 A. There were challenges in court  
13:30:45 7 over decisions. That's the best of my -- I don't  
13:30:46 8 know of any lawsuit against the ORC. I know that  
13:30:50 9 decisions that the ORC made, as all decisions, are  
13:30:55 10 open to review by the courts.

13:31:04 11 1678 Q. Was it your understanding that ORC  
13:31:08 12 was a separate legal person?

13:31:09 13 A. I believe it to be. It's an  
13:31:11 14 agency of the Crown. You would know better than I.  
13:31:15 15 You represent one.

13:31:17 16 1679 Q. Yes, sir. For my next question, I  
13:31:40 17 would have you turn up the brief of exhibits, but  
13:31:43 18 perhaps we could do this. No, I know the hassle.

13:31:58 19 Let me try it this way: You recall  
13:32:00 20 last time Mr. Matthews showed you Exhibit 21, which  
13:32:04 21 was OLG SB 0000586, which was a consultation  
13:32:10 22 memorandum prepared by OLG from ORC's March 24th,  
13:32:14 23 2011 meeting with OLG. You had an opportunity to  
13:32:20 24 review that consultation memorandum.

13:32:27 25 Do you remember if it accurately

13:32:29 1 reflected what was said in that meeting?

13:32:32 2 A. Without looking at it, I can't --  
13:32:35 3 I believe I -- if you go back and look at my  
13:32:38 4 testimony, that would be the answer. I was  
13:32:40 5 questioned on it already. I wouldn't change my  
13:32:43 6 testimony from what Mr. Matthews asked me, so I  
13:32:46 7 suspect you already have it in the transcripts.

13:32:49 8 1680 Q. Yes. No, I had some follow-up  
13:32:52 9 questions, but I would like to avoid having to  
13:32:56 10 go...

13:32:57 11 A. So, are you telling me I have to  
13:32:59 12 go back and pull it up?

13:33:01 13 1681 Q. No, no, let's avoid that.

13:33:03 14 MR. MATTHEWS: Is there a particular  
13:33:04 15 statement that you want to put to him and ask him  
13:33:07 16 if it was accurate?

13:33:11 17 BY MR. ROSENBERG:

13:33:11 18 1682 Q. No. That's all right. Why don't  
13:33:13 19 we just keep going.

13:33:19 20 A. Are we going to finish today?

13:33:21 21 1683 Q. Yes, I'm almost finished.

13:33:23 22 A. You said that some time ago, and  
13:33:26 23 I've got Ms. Machado yet.

13:33:29 24 1684 Q. No, I understand that, sir.

13:33:40 25 A. Three-and-a-half hours.

13:33:41 1 1685 Q. Well, sir, we have only been at  
13:33:43 2 this for two-and-a-half hours today.  
13:33:45 3 A. Well, we started at 11:00, did we  
13:33:45 4 not?  
13:33:47 5 1686 Q. Yes, and it's now 1:30.  
13:33:49 6 A. Oh, 1:30, sorry.  
13:33:49 7 1687 Q. All right, sir, it sounds like  
13:33:49 8 you're --  
13:33:51 9 A. I'm just learning how to tell  
13:33:53 10 time.  
13:33:53 11 1688 Q. Do you want a break? I'm almost  
13:33:54 12 finished.  
13:33:56 13 A. No, let's keep going, because I  
13:33:57 14 understand -- and I don't know how long Ms. Machado  
13:33:58 15 is going be, and we want to be done.  
13:34:01 16 1689 Q. All right. In your notes -- this  
13:34:14 17 is Exhibit 34. I'm not going to ask you to turn it  
13:34:16 18 up because I just am asking for clarification of a  
13:34:19 19 statement.  
13:34:20 20 You wrote something to the effect of:  
13:34:25 21 "Why did OHRIA hire a Tory  
13:34:28 22 (Sadinsky) --  
13:34:29 23 A. Yeah.  
13:34:29 24 1690 Q. -- and have a lobbyist who  
13:34:31 25 represents MGM?"

13:34:34 1

What did that mean?

13:34:39 2

A. I think what it meant was that it

13:34:41 3

was my understanding -- well, first of all,

13:34:43 4

Mr. Sadinsky was a well-known Conservative in the

13:34:47 5

past. It seemed strange that one would hire a

13:34:52 6

well-known Conservative to lobby the Liberal

13:34:57 7

government. Also, it was alleged that Mr. Sadinsky

13:35:06 8

was doing some work for MGM, the casino company.

13:35:06 9

1691

Q. I see.

13:35:17 10

A. That was the reference. I have no

13:35:20 11

basis or proof that he was -- had done anything for

13:35:24 12

MGM. I have no way of knowing. There had been

13:35:28 13

rumours to that effect, so it's just a question.

13:35:37 14

It was more, I guess, a reference to the political

13:35:40 15

smarts and not the legal smarts of some people with

13:35:46 16

OHRIA.

13:35:47 17

1692

Q. Right. Now, you told us that

13:35:54 18

ultimately you were told to either resign or be

13:35:57 19

fired from the ORC?

13:35:59 20

A. Correct.

13:35:59 21

1693

Q. Were you disappointed with this

13:36:03 22

decision?

13:36:03 23

A. Surprised. I had -- I was

13:36:10 24

supposed to have a meeting with the government. I

13:36:12 25

was going to France to visit my granddaughter. The

13:36:16 1 day -- I can't remember, the day before or the day  
13:36:18 2 of the meeting, it was cancelled, and my Executive  
13:36:23 3 Director and I spoke from England and that's when  
13:36:29 4 they conveyed the message to me either to --  
13:36:32 5 either -- that he had been told -- had a message  
13:36:34 6 from the government to resign or be fired.

13:36:37 7 1694 Q. And you say you were surprised,  
13:36:45 8 but were you also disappointed?

13:36:48 9 A. I will leave it at surprised.

13:36:51 10 1695 Q. You still felt like there was a  
13:36:54 11 lot of work to do at the ORC?

13:36:56 12 A. Again, sir, I was surprised.

13:36:58 13 1696 Q. Did the way with -- your time at  
13:37:08 14 the ORC leave a bitter taste in your mouth?

13:37:10 15 A. No, we -- I think during my tenure  
13:37:13 16 there, we accomplished a lot for the good of horse  
13:37:17 17 racing on a whole wide range of issues.

13:37:20 18 1697 Q. No, I understand that, sir, but  
13:37:25 19 surely, you felt that there was more that you could  
13:37:27 20 do at the ORC?

13:37:27 21 A. Well, I didn't know whether there  
13:37:30 22 was going to be an ORC. So again, I'm leaving it  
13:37:34 23 I'm surprised. It speaks for itself.

13:37:40 24 MR. ROSENBERG: If you just give me a  
13:37:41 25 moment, I will review my notes and confirm that I



13:37:44

1

don't have any further questions.

13:37:46

2

THE WITNESS: Okay.

13:37:48

3

---Recess at 1:37 p.m.

13:39:41

4

---On resuming at 1:39 p.m.

13:39:43

5

MR. ROSENBERG: All right, sir. Those

13:39:44

6

are my questions. Thank you very much.

13:39:46

7

THE WITNESS: Okay. Thank you. So are

13:39:48

8

you -- we'll hang up. Are you going to call -- how

13:39:49

9

long before you're going to call me back? I

13:39:51

10

recognize that the court reporter needs a break, so

13:39:54

11

I appreciate that.

13:39:55

12

MR. MATTHEWS: Well, let's go off the

13:39:58

13

record here.

13:39:58

14

---(Discussion off the record.)

13:40:48

15

---Luncheon at 1:40 p.m.

14:07:48

16

---On resuming at 2:07 p.m.

14:07:48

17

EXAMINATION BY MS. MACHADO:

14:07:48

18

1698

Q. Good afternoon, Mr. Seiling. I

14:07:50

19

will try to make this as painless as possible.

14:07:53

20

A. Okay.

14:07:54

21

1699

Q. Hopefully, we don't have to turn

14:07:55

22

up any documents. I don't suspect that we will.

14:07:58

23

A. Well, good, because right now I

14:08:00

24

was explaining to Mr. Matthews in your absence, I

14:08:05

25

turned my computer off. I've turned it back on

14:08:08 1 just in case, and Microsoft sent down a ton of  
14:08:13 2 stuff for like -- so 20 minutes now. It now  
14:08:16 3 says -- before it said it was a hundred-something  
14:08:18 4 per cent complete. Now it's gone back to 30 per  
14:08:21 5 cent complete, so...

14:08:21 6 1700 Q. All right. Well, we'll let it do  
14:08:23 7 its thing while we have our conversation then.

14:08:26 8 So really I'm just kind of confirming  
14:08:28 9 certain points, so I will be jumping around a  
14:08:32 10 little bit.

14:08:32 11 A. Okay.

14:08:32 12 1701 Q. One thing I know we have talked  
14:08:34 13 about quite a bit was the three-legged stool, and  
14:08:37 14 you said before, I think, that the three-legged  
14:08:41 15 stool for you is breeders, horsepeople and tracks.

14:08:45 16 Is that right?

14:08:45 17 A. Correct.

14:08:46 18 1702 Q. Okay.

14:08:46 19 A. And that's a commonly-accepted --  
14:08:49 20 that isn't me. You talk to anybody in racing,  
14:08:54 21 that's a standard colloquialism for lack of a  
14:08:58 22 better term.

14:08:59 23 1703 Q. Got it, and horsepeople, in your  
14:09:00 24 definition, is that just the owners of the  
14:09:02 25 racehorses?

14:09:03 1 A. No, that would be owners,  
14:09:05 2 trainers, drivers, jockeys, grooms, put that whole  
14:09:10 3 category in there.

14:09:11 4 1704 Q. Okay. It was my understanding  
14:09:13 5 that that was just the owners when you were  
14:09:17 6 answering before, but --

14:09:18 7 A. Not really. They fall under that  
14:09:20 8 category.

14:09:23 9 1705 Q. Okay, and so when we're talking  
14:09:26 10 about the purse accounts and trying to negotiate  
14:09:28 11 purse accounts and you said that those are between  
14:09:31 12 the tracks and the horsepeople, you're talking  
14:09:34 13 about that whole crew of people?

14:09:36 14 A. They have an association that  
14:09:38 15 represents them.

14:09:38 16 1706 Q. And that's OHHA?

14:09:39 17 A. Not -- no, well, depending on  
14:09:43 18 where in the Province, there are at least --  
14:09:48 19 there's at least three. You have OHHA, you have  
14:09:52 20 COSA, and you have -- oh, I've got to think.  
14:09:57 21 They're the group that would represent horsepeople  
14:10:00 22 at Rideau Carleton. I forget whether it's  
14:10:03 23 Eastern -- I did know the name, but I don't  
14:10:03 24 remember whether it's Eastern Ontario -- oh, I'm  
14:10:06 25 sorry, Capital Region it's called. They're called

14:10:10 1 Capital Region Horsemen's Association, something  
14:10:12 2 like that.

14:10:13 3 1707 Q. Okay. Haven't heard of those  
14:10:15 4 folks before, but --

14:10:16 5 A. Well, you learned something new  
14:10:18 6 today.

14:10:18 7 1708 Q. I learn something new absolutely  
14:10:20 8 everyday. So in each of those three associations,  
14:10:23 9 are you telling me then that their members would be  
14:10:26 10 the owners of racehorses, as well as the trainers  
14:10:30 11 and the jockeys, et cetera?

14:10:32 12 A. Oh, yeah, and actually, there's  
14:10:34 13 another group. The Thoroughbreds would have --  
14:10:37 14 Thoroughbreds and Quarter Horse would have their  
14:10:41 15 own association as well. Again, we're just talking  
14:10:42 16 about Standardbred. To the best of my knowledge,  
14:10:45 17 there's three.

14:10:45 18 And yes, the various groups are  
14:10:49 19 represented by the association, and they have  
14:10:52 20 elections to vote in the representatives,  
14:10:58 21 directors.

14:10:59 22 1709 Q. Okay, and those purse accounts  
14:11:01 23 then, they're treated differently from track to  
14:11:04 24 track, so the -- is my understanding.

14:11:06 25 Is that right?

14:11:07 1 A. No. They would all be the same.

14:11:10 2 1710 Q. Oh, okay. Because I thought you

14:11:11 3 were saying that at each track, there's a

14:11:13 4 negotiation for what the purse account is going to

14:11:17 5 look like?

14:11:17 6 A. Oh. As to the split.

14:11:18 7 1711 Q. As to the split, yes.

14:11:19 8 A. It could be different, but they're

14:11:21 9 treated the same.

14:11:21 10 1712 Q. By "treated the same", you mean

14:11:24 11 from the purposes of the ORC, you have to audit it

14:11:27 12 in the same fashion?

14:11:28 13 A. That, and how money is disbursed.

14:11:31 14 1713 Q. Okay. How money is disbursed or

14:11:34 15 how much? It's the split that I am really

14:11:36 16 interested in.

14:11:38 17 A. Well, the -- so the money goes

14:11:40 18 into the purse account.

14:11:40 19 1714 Q. Yes.

14:11:42 20 A. Horsepeople -- the horses race and

14:11:45 21 that money is then allotted out to the horse

14:11:51 22 owners, depending how they finish.

14:11:53 23 1715 Q. Right.

14:11:55 24 A. And so depending from track to

14:11:57 25 track -- and I'm getting maybe -- I'll just say

14:12:00 1 that it's paid out, because in some places owners  
14:12:04 2 may have an account. They just deposit it in their  
14:12:06 3 account. Like at Woodbine and Mohawk, it's  
14:12:08 4 deposited in their account. Other smaller tracks,  
14:12:11 5 cheques are written and given to the owners, but  
14:12:17 6 the payout is the same. So 50 per cent for  
14:12:21 7 finishing first, 25 and down to a fifth place  
14:12:25 8 finish. So that's -- in a Standardbred race,  
14:12:29 9 that's standard across the board.

14:12:32 10 1716 Q. Okay, and how about the split with  
14:12:33 11 the racetrack though, because they get some amount  
14:12:35 12 of -- I thought that was what they were  
14:12:37 13 negotiating, or is --

14:12:39 14 A. Each horseman association  
14:12:42 15 negotiates with their respective track to determine  
14:12:45 16 the split on the commissions from wagering.

14:12:47 17 1717 Q. Okay, so that's what I mean. So  
14:12:48 18 at the end of the day, how much is actually  
14:12:51 19 available in the purse for the races versus the  
14:12:53 20 racetrack is contingent on whatever agreement that  
14:12:57 21 track has with its horsepeople, is that right?

14:12:59 22 A. Correct.

14:13:00 23 1718 Q. Okay. All right. Thank you.

14:13:01 24 On the -- like I said, we're going to  
14:13:06 25 be jumping around a little bit. On the

14:13:08 1 advertisements --

14:13:08 2 A. That's all right.

14:13:09 3 1719 Q. -- that you have seen before, the

14:13:12 4 ones that encourage people to race, breed and buy,

14:13:17 5 I think it is. Do I have that wrong?

14:13:19 6 A. Yeah.

14:13:19 7 1720 Q. Yeah.

14:13:21 8 A. It's close enough.

14:13:21 9 1721 Q. Close enough.

14:13:22 10 A. I know what you're talking about.

14:13:24 11 1722 Q. You know what I'm talking about.

14:13:26 12 A. Yes.

14:13:26 13 1723 Q. So did Ontario ever give the ORC

14:13:33 14 the messaging that it wanted to go into

14:13:36 15 advertisements?

14:13:36 16 A. They certainly approved it, and I

14:13:38 17 can't tell you whether they did or not.

14:13:42 18 I can tell you that I'm aware that

14:13:49 19 they -- the Ministry -- Minister's office. I

14:13:57 20 better say the Ministry, because some staff people

14:14:00 21 in the Ministry -- from the Deputy Minister on down

14:14:03 22 may get upset. We had -- we couldn't get them

14:14:07 23 to -- for the longest time to give us an okay to

14:14:10 24 release our annual report, so we had 2009 to 2010

14:14:15 25 go just about the same time, and we were told to

14:14:20 1 take the foal off the front cover of one of those  
14:14:23 2 reports. I can't tell you which one, but I'm aware  
14:14:26 3 of it.

14:14:27 4 So I would have to say that yes, they  
14:14:31 5 did have input into it. They certainly saw them  
14:14:35 6 before it went, and I wouldn't necessarily be aware  
14:14:39 7 that -- of how much they would have said, but I do  
14:14:41 8 know they saw it and, of course, in this one  
14:14:44 9 instance, I do know they made a request to have --  
14:14:47 10 not a request, an order to have it changed. So  
14:14:50 11 they saw all the advertising.

14:14:51 12 1724 Q. Okay. So --

14:14:52 13 A. In advance.

14:14:53 14 1725 Q. I have looked at the memorandum of  
14:14:55 15 understanding, and I don't see anything in there  
14:14:57 16 that says you have to pass the advertisements on --  
14:15:00 17 you know, the small ads that you would place in  
14:15:04 18 newspapers, et cetera, but you're telling me that  
14:15:06 19 each one of those ads had to be approved?

14:15:08 20 A. To the best of -- I didn't say  
14:15:10 21 they have to be approved.

14:15:11 22 1726 Q. Okay.

14:15:11 23 A. To the best of my ability, Wendy  
14:15:16 24 Hoogeveen informed the government and would  
14:15:20 25 communicate to them regularly on what she was



14:15:22 1

doing.

14:15:29 2

1727

Q. Okay. So you can't say

14:15:30 3

specifically whether she would have been sending

14:15:32 4

the advertisements to the government? You assume

14:15:35 5

that that was part of her responsibilities?

14:15:37 6

A. It was her -- I'm not assuming it

14:15:40 7

was her responsibility.

14:15:41 8

1728

Q. Okay.

14:15:42 9

A. And I would be 99.99 per cent

14:15:42 10

certain that, when she sent stuff down, she would

14:15:42 11

send a complete package down so they would see the

14:15:46 12

advertising.

14:15:47 13

1729

Q. And what do you mean by complete

14:15:49 14

package?

14:15:50 15

A. Well, she wouldn't send bits and

14:15:52 16

pieces of information down on the program.

14:15:55 17

She would -- as the plans were evolving

14:15:58 18

for the coming year, she would send down a package

14:16:02 19

as part of what was going to be happening, along

14:16:06 20

with we were making changes to a program, marketing

14:16:12 21

initiatives, stuff like that. I don't believe that

14:16:16 22

she would just be selective given her thoroughness.

14:16:23 23

She had a history of sending more -- of doing more,

14:16:27 24

not less.

14:16:27 25

1730

Q. Okay.

14:16:28 1 A. I will leave it at that.

14:16:29 2 1731 Q. Fair enough. You weren't copied  
14:16:30 3 on those reports though? You probably had enough  
14:16:33 4 e-mail coming to you already?

14:16:34 5 A. I would not be copied on them  
14:16:36 6 because we -- we would get the package at the end  
14:16:40 7 of the cycle giving our final approval for it to go  
14:16:47 8 forward and not necessarily -- we wouldn't approve  
14:16:51 9 every ad, that wouldn't come to us.

14:16:53 10 1732 Q. I'm sorry, you wouldn't approve  
14:16:55 11 every ad?

14:16:55 12 A. No. We would approve a marketing  
14:16:59 13 initiative. She would tell us what she was going  
14:17:01 14 to do.

14:17:01 15 We... I was a greater believer in not  
14:17:06 16 counting pencils with my staff.

14:17:08 17 1733 Q. Fair enough. So you wanted them  
14:17:10 18 to have enough berth to be able to carry on their  
14:17:13 19 jobs, I guess?

14:17:14 20 A. Exactly.

14:17:15 21 1734 Q. When you said that you wouldn't  
14:17:16 22 approve certain ads, is there something that sticks  
14:17:19 23 in your mind as something you said, Absolutely not,  
14:17:21 24 that can't go out?

14:17:22 25 A. No, what I was saying earlier, I

14:17:31 1 think I'm reading you right, we would never have  
14:17:33 2 approved of anything going out in a marketing sense  
14:17:35 3 once a decision was made to end SARP.

14:17:38 4 1735 Q. Oh, okay.

14:17:38 5 A. Not knowing if there was going to  
14:17:41 6 be a program.

14:17:41 7 1736 Q. Okay. No, fair enough. No,  
14:17:43 8 you're not reading me right, because you're  
14:17:46 9 probably ahead of me, maybe 16 questions later.

14:17:49 10 A. Okay, I'm sorry.

14:17:50 11 1737 Q. I know it's hard, because you're  
14:17:51 12 hoping to just get to the chase, but sometimes --

14:17:54 13 A. No, no, I'm fine. I just  
14:17:58 14 misunderstood you. I apologize.

14:18:00 15 1738 Q. No, no, fair enough. So I'm just  
14:18:03 16 asking if -- like every once in awhile obviously  
14:18:03 17 you would change marketing plans or you might get a  
14:18:06 18 marketing agency involved to better communicate  
14:18:10 19 whatever ideals the ORC is trying to promote. I'm  
14:18:10 20 just asking if Wendy would or somebody would be  
14:18:16 21 showing you the advertisements and saying: Are  
14:18:19 22 these okay to go?

14:18:21 23 A. She would -- I mean, she would  
14:18:21 24 from time to time, but I don't recall we approved  
14:18:24 25 the ads.

14:18:24 1 1739 Q. You generally approved the ads?

14:18:27 2 A. No, we did not approve the ads. I

14:18:29 3 don't recall approving each individual ad.

14:18:31 4 1740 Q. Oh, okay. So this was a -- this

14:18:32 5 was her directive, and she was sort of entitled to

14:18:34 6 run with it?

14:18:35 7 A. Correct.

14:18:35 8 1741 Q. Okay. Now, you had a bit of a

14:18:47 9 discussion about the projections with my colleague,

14:18:51 10 Mike Rosenberg. I guess I'm trying to

14:18:54 11 understand -- you'll have to help me out here.

14:18:56 12 A. Okay.

14:18:56 13 1742 Q. When somebody is going out to

14:18:58 14 breed a horse, maybe they saw some of the ads,

14:19:00 15 maybe they said, Well, gosh, I would like to be

14:19:02 16 able to -- you know, I hear there's a lot of money

14:19:05 17 in this or there can be, so I would like to go out

14:19:08 18 and try and breed a horse. When they start out in

14:19:11 19 that process, do you agree with me there's no

14:19:14 20 guarantee that they're going to make money off of

14:19:16 21 this obviously?

14:19:16 22 A. Well, it's like any other

14:19:19 23 business. There's no guarantee you're going to

14:19:21 24 make money.

14:19:21 25 1743 Q. Right. And especially in this

14:19:24 1 industry, it seems to be it's kind of feast or  
14:19:28 2 famine, because ultimately you end up with a horse  
14:19:33 3 that's fantastic and could make \$1-million, or you  
14:19:37 4 probably end up with a lot of duds that, you know,  
14:19:40 5 maybe don't even make it to the racetrack.

14:19:41 6 A. That is inherent in the business.

14:19:43 7 1744 Q. Okay.

14:19:45 8 A. It is a... Well, there's -- when  
14:19:50 9 you breed a horse, there's no guarantee, first of  
14:19:53 10 all, that the mare is going to get in foal.

14:19:56 11 1745 Q. Right.

14:19:56 12 A. There's no guarantee that the --  
14:19:58 13 what you're going to get for that foal if you go  
14:20:00 14 sell it, and there's no guarantee that it's going  
14:20:04 15 to make it to the races, and if it does go to the  
14:20:08 16 races, there's no guarantee how well it will do.

14:20:10 17 1746 Q. Okay, and to get one of the  
14:20:12 18 breeders' awards, it means that the horse that  
14:20:16 19 you've bred has to have competed at some point, and  
14:20:18 20 that's how you get entitled to a breeders' award,  
14:20:21 21 is that right?

14:20:21 22 A. Correct.

14:20:22 23 1747 Q. Okay. So that's a few stages down  
14:20:24 24 where you're hoping you've created a good foal, the  
14:20:27 25 foal is good enough to be sold, or you have decided

14:20:30 1 to go on as a breeder to actually race it yourself  
14:20:33 2 and then it has to actually participate in races,  
14:20:36 3 and that's how you get one of those awards?

14:20:39 4 A. Correct.

14:20:39 5 1748 Q. Okay. And then to get the sort of  
14:20:42 6 sweepstakes of horse awards, you have to actually  
14:20:44 7 have your horse win something for the breeder to  
14:20:48 8 then be entitled to --

14:20:49 9 A. Yeah.

14:20:49 10 1749 Q. -- like bonuses basically for  
14:20:52 11 having bred the winning horse?

14:20:54 12 A. Yeah, just a correction. To get a  
14:20:56 13 breeders' award, the horse would have to have done  
14:21:00 14 well, not -- if you're the breeder of a horse  
14:21:02 15 that's just raced in some races, you don't get a  
14:21:05 16 breeders' award. It has to have finished in the  
14:21:08 17 money and done well.

14:21:09 18 1750 Q. Okay. Thank you for that.

14:21:10 19 A. So just entering a race doesn't  
14:21:14 20 get you a breeders' award. It's based on how well  
14:21:18 21 it does in the race and races.

14:21:20 22 1751 Q. Gotcha. So from the person -- the  
14:21:24 23 naive me who is thinking of getting involved in the  
14:21:25 24 industry because I see all of this money that's  
14:21:27 25 available to be won, what I've lost is, if that

14:21:29 1 money is not available next year, is the chance to  
14:21:32 2 get a large award, is that fair?  
14:21:36 3 O/B MR. MATTHEWS: Can I just interject? I  
14:21:38 4 don't understand how this relates to the liability  
14:21:40 5 part of your case, Ms. Machado. This is motions  
14:21:43 6 for summary judgment on liability only. Damages  
14:21:46 7 are not on the table at this juncture. I'm  
14:21:48 8 struggling to understand how this fits in any way  
14:21:52 9 with the liability issues.  
14:21:54 10 MS. MACHADO: As I understand it, the  
14:21:56 11 Plaintiff has a motion on the table as well for  
14:21:57 12 summary judgment.  
14:21:58 13 MR. MATTHEWS: On liability.  
14:22:03 14 MS. MACHADO: Thanks. Thanks for your  
14:22:04 15 objection. I will continue on.  
14:22:04 16 BY MS. MACHADO:  
14:22:07 17 1752 Q. So did you understand the question  
14:22:07 18 or should I try and rephrase that, sir?  
14:22:09 19 A. Why don't you rephrase it?  
14:22:09 20 1753 Q. Okay.  
14:22:10 21 A. Repeat it, just repeat it.  
14:22:12 22 1754 Q. I won't be able to repeat it  
14:22:14 23 because I can't remember it either, so let me do my  
14:22:17 24 best.  
14:22:17 25 A. You have the same disease I have.

14:22:18 1 1755 Q. That's right. Just younger, so  
14:22:21 2 I'm at a greater loss here.  
14:22:23 3 So we were talking about the person who  
14:22:25 4 has decided to get invested in the industry and  
14:22:28 5 decided to breed in the industry because they've  
14:22:30 6 seen that there's potentially a lot of money to be  
14:22:33 7 had for a winning horse.  
14:22:34 8 So when that money is no longer there a  
14:22:37 9 year from now or two years from now, would you  
14:22:40 10 agree with me then that what they've lost is sort  
14:22:42 11 of the chance at making a good amount of money in  
14:22:45 12 the future?  
14:22:46 13 O/B MR. MATTHEWS: So same objection on the  
14:22:47 14 basis --  
14:22:49 15 MS. MACHADO: I understand it.  
14:22:50 16 THE WITNESS: Well, first of all, it's  
14:22:52 17 a slight correction.  
14:22:52 18 BY MS. MACHADO:  
14:22:53 19 1756 Q. Yes.  
14:22:56 20 A. If I am the breeder, I'm breeding  
14:23:00 21 these horses based on the foals are going to be  
14:23:04 22 eligible to a Sires Stakes program, which is  
14:23:08 23 currently worth X millions of dollars.  
14:23:11 24 If that program wasn't there, I  
14:23:17 25 wouldn't have bred them. I wouldn't be in that



14:23:20 1 business.

14:23:20 2 Take it the next step further. If I'm  
14:23:24 3 the owner, if that program is not there for X  
14:23:29 4 millions of dollars, I'm never going to buy the  
14:23:32 5 foal.

14:23:34 6 1757 Q. I understand that. I'm just  
14:23:34 7 saying though that if you're participating in this  
14:23:37 8 industry, you're participating with the hope --  
14:23:39 9 basically, you're gambling with --

14:23:42 10 A. I know where you're trying to get  
14:23:44 11 me to go, but I have given you my explanation. I  
14:23:47 12 can't go any further.

14:23:49 13 1758 Q. Well, it's not about going further  
14:23:51 14 exactly, Mr. Seiling. All I'm saying is what  
14:23:53 15 you've already kind of articulated.

14:23:55 16 A. I've already given you what I  
14:23:57 17 think you're looking for.

14:23:59 18 Not every horse is guaranteed to make  
14:24:02 19 money.

14:24:02 20 1759 Q. Right. Fair enough. I think I  
14:24:27 21 heard you correctly before, Mr. Seiling, that you  
14:24:31 22 saw the government's decision to cancel SARP as a  
14:24:34 23 government policy? Is that right?

14:24:36 24 A. No. What I had said in my  
14:24:44 25 previous testimony, as it relates to the Racing

14:24:47 1 Commission, government makes the policy.

14:24:49 2 1760 Q. Yes.

14:24:49 3 A. The Racing Commission enforces the

14:24:52 4 rules.

14:24:52 5 1761 Q. Fair enough. So the decision to

14:24:54 6 cancel SARP, was that a government policy in your

14:24:58 7 view?

14:24:58 8 A. It was.

14:24:58 9 1762 Q. Okay.

14:24:59 10 A. It certainly wasn't the Racing

14:25:01 11 Commission.

14:25:01 12 1763 Q. Fair enough, fair enough. And

14:25:15 13 the --

14:25:17 14 A. Just as an add-on to that

14:25:19 15 question.

14:25:19 16 1764 Q. Yes.

14:25:20 17 A. Taking the willing sense of

14:25:24 18 disbelief, even if the Racing Commission, we were a

14:25:27 19 signatory to the..., to the stakeholder agreement,

14:25:29 20 so we were a bystander from Day One.

14:25:33 21 1765 Q. "The stakeholder agreement"; which

14:25:35 22 agreement are you talking about?

14:25:36 23 A. Well, the agreement signed between

14:25:38 24 OLG, the government, and the racetracks. The

14:25:42 25 siteholder agreement. Isn't that what we're

14:25:45 1 talking about? That's what -- that's what created  
14:25:47 2 SARP, is it not?  
14:25:47 3 1766 Q. The siteholder agreement? I  
14:25:50 4 thought the ORC wasn't a participant in the --  
14:25:53 5 A. I just said, we weren't a  
14:25:56 6 participant.  
14:25:56 7 1767 Q. Yeah.  
14:25:56 8 A. We weren't a signatory.  
14:25:58 9 1768 Q. Yeah. Fair enough.  
14:26:00 10 Sorry. I'm just -- there's long pauses  
14:26:02 11 sometimes only because I'm reading through my notes  
14:26:05 12 to get to the next question.  
14:26:05 13 A. That's all right. No, no. I was  
14:26:07 14 just -- I was just adding further to my response to  
14:26:10 15 you, because --  
14:26:10 16 1769 Q. Yeah.  
14:26:10 17 A. -- as not being a signatory, we  
14:26:14 18 had no ability to do anything on a policy basis  
14:26:17 19 regarding the program.  
14:26:19 20 1770 Q. Yeah. No, I get it. Thank you.  
14:26:21 21 After SARP was cancelled, you were  
14:26:25 22 still in your office for a year-and-a-half or  
14:26:27 23 something like that.  
14:26:29 24 Was there a significant contraction in  
14:26:32 25 how many people were working at the ORC during that

14:26:35 1 time?

14:26:35 2 A. We had some -- we had people leave

14:26:40 3 on their own.

14:26:43 4 1771 Q. Yes.

14:26:43 5 A. We had a bit of contraction, but

14:26:50 6 we were still racing -- racing was to continue in

14:26:54 7 its current form until March 31.

14:26:56 8 1772 Q. Right.

14:26:57 9 A. So there would not be... Our

14:27:01 10 needs are directly related to the amount of

14:27:04 11 activity in the industry, so our staffing remained

14:27:11 12 fairly stable. It may be down a bit. As I said,

14:27:16 13 we had a couple of people, two or three, I don't

14:27:20 14 know how many, people leave because of the

14:27:25 15 likelihood in their view that they would have no

14:27:28 16 job come March 31, and we also -- of course within

14:27:34 17 we had a lot of stress.

14:27:37 18 1773 Q. Sure.

14:27:38 19 A. Because of people not knowing

14:27:40 20 whether they would have a job or not, and I know

14:27:42 21 that our Executive Director had to have staff

14:27:45 22 meetings to try and keep morale up and continue to

14:27:54 23 ask for employees to -- for their professionalism

14:27:57 24 in doing the job they've always done.

14:27:59 25 1774 Q. Fair enough. And you were still

14:28:00 1 there between March and October, I think, after the  
14:28:02 2 year was over, the year's notice period.

14:28:06 3 Was there any contraction during that  
14:28:09 4 period, because you were talking until sort of the  
14:28:12 5 March deadline. The ORC had to be around the same  
14:28:16 6 size because it had the same obligations. Was  
14:28:19 7 there a change from March to October?

14:28:22 8 A. Well, I left before March 31 came  
14:28:24 9 around.

14:28:24 10 1775 Q. I think --

14:28:30 11 A. If I'm understanding your  
14:28:31 12 question. I left in October and racing was going  
14:28:33 13 on until March 31. So I was gone before SARP ended  
14:28:39 14 in its entirety.

14:28:41 15 1776 Q. Okay. Do you recall when you left  
14:28:43 16 the ORC, sir? That was the question actually that  
14:28:46 17 my colleague had asked you when the phones  
14:28:48 18 disconnected. I don't think he got an answer.

14:28:52 19 A. I believe -- I'm going to guess it  
14:28:54 20 was in October. I -- September or October. I was  
14:29:00 21 in Europe at the time when I got the word to  
14:29:06 22 vacate.

14:29:06 23 1777 Q. But I understood that that was in  
14:29:08 24 2013, not 2012.

14:29:11 25 A. You're asking me where I was in

14:29:12 1  
14:29:13 2  
14:29:15 3  
14:29:18 4  
14:29:21 5  
14:29:25 6  
14:29:33 7  
14:29:33 8  
14:29:35 9  
14:29:39 10  
14:29:43 11  
14:29:46 12  
14:29:50 13  
14:29:54 14  
14:29:58 15  
14:30:02 16  
14:30:05 17  
14:30:08 18  
14:30:09 19  
14:30:11 20  
14:30:15 21  
14:30:22 22  
14:30:25 23  
14:30:30 24  
14:30:37 25

2012?

1778 Q. No, no. I'm saying I believe that, when you left office, it was October of 2013.

A. Okay. I'm misunderstanding, because I thought you were -- you had already asked me about the size of the ORC staffing.

1779 Q. Yes.

A. And I told you that we lost a few people and -- and through efficiencies. We were -- we were working and doing our best to bring efficiency into place as per the government request and also to get ready for any downsizing.

For example, we -- are you aware, for example, the NHL, they have the -- what they call the war room in Toronto that has -- they're watching every game, and if they need a check replayed, it comes back to Toronto?

1780 Q. Sure, yeah.

A. We instituted the same thing for racing, and we had a war room in the office which was staffed all the time by officials, and they would be part of the judging crew. So we reduced our staffing on site by -- depending on the size of the track except for the top-rated one who still continued with three officials. We downsized at

14:30:40 1 the other tracks.

14:30:41 2 1781 Q. Okay. So thank you for that.

14:30:43 3 So some of it was due to efficiencies

14:30:46 4 that you created, which the government is always

14:30:48 5 promoting as beneficial, no doubt.

14:30:51 6 By the time that you leave in October

14:30:53 7 of 2013, I think you had said before that, sort of

14:30:56 8 in its regular form, the ORC was about 100

14:30:59 9 employees full-time and part-time.

14:31:01 10 Can you tell me how many there were

14:31:04 11 when you left in October of 2013?

14:31:05 12 A. I couldn't tell you.

14:31:06 13 1782 Q. Okay. I'm going to talk just for

14:31:13 14 a couple of minutes about the documents that you

14:31:15 15 provided to us. It's Exhibit 34.

14:31:17 16 A. Sure.

14:31:18 17 1783 Q. You don't need to turn them up

14:31:20 18 but --

14:31:21 19 A. I have copies here.

14:31:23 20 1784 Q. Oh, fair enough.

14:31:25 21 A. Just a minute. I'm going to get

14:31:27 22 them. Okay, I have them in my hands.

14:31:41 23 1785 Q. Fantastic. I know that you said

14:31:44 24 that you didn't draft all of the notes sort of

14:31:46 25 contemporaneously with the telephone calls. I'm

14:31:50 1 wondering, how did -- like how much further into  
14:31:50 2 the future were you drafting these notes?

14:31:53 3 A. I said I couldn't tell you exactly  
14:31:55 4 when. I used little bits and pieces of notes,  
14:31:58 5 scribbles that I had. I'm one of the few around  
14:32:02 6 that you would know that still had a hard copy  
14:32:05 7 day-timer.

14:32:07 8 1786 Q. Fair enough. I like those things.

14:32:09 9 A. And my staff, especially my  
14:32:16 10 assistant chided me numerous times until she'd have  
14:32:19 11 to come and ask me to take a look at my day-timer  
14:32:23 12 because her system had crashed.

14:32:25 13 1787 Q. Gotcha. So --

14:32:26 14 A. So I would have -- I would have  
14:32:27 15 notes that I would have -- if I was going to have a  
14:32:29 16 discussion with Mr. Stransky, I would have made  
14:32:32 17 some notes that, uh, just talking points that I  
14:32:37 18 wanted, so I didn't forget. And I would obviously  
14:32:40 19 write down some things that he would have said, so  
14:32:43 20 that would be the basis for a lot of them.

14:32:48 21 1788 Q. Okay. And so you would have  
14:32:50 22 scribbled some things in your day-timer, and then  
14:32:53 23 would it be fair --

14:32:53 24 A. And I also had -- and I also had  
14:32:55 25 some notes that -- I just had a file that I kept on



14:32:58 1 the whole thing.

14:32:59 2 1789 Q. Okay.

14:32:59 3 A. And so I would use those.

14:33:02 4 1790 Q. And then, would you be making --

14:33:05 5 the notes that we saw them in their form, would you

14:33:09 6 have written that out like a day later, a week

14:33:11 7 later? Do you have any sense?

14:33:13 8 A. The first ones would be, I

14:33:16 9 couldn't tell you how much later. As I said, as I

14:33:19 10 testified, I started to... I made these things

14:33:24 11 when it became obvious to me that there was a

14:33:27 12 chance there might be a lawsuit develop out of

14:33:31 13 this, and so I thought I'd better take some notes

14:33:34 14 because memories have a way of -- and mine is no

14:33:40 15 better or no worse than anybody else's, I guess.

14:33:43 16 But -- and so, that's the basis for those notes.

14:33:44 17 I would suggest they're quite accurate

14:33:48 18 in content --

14:33:51 19 1791 Q. Okay. All right. Thank you.

14:33:52 20 A. -- because of the notes I had

14:33:55 21 kept.

14:33:58 22 1792 Q. Okay. On page 10 of that package,

14:34:02 23 it was a December --

14:34:05 24 A. Just...

14:34:05 25 1793 Q. Yeah. It was a note to

14:34:07 1 Mr. Stransky,--

14:34:09 2 A. Okay, just a minute.

14:34:10 3 1794 Q. --December 20th.

14:34:23 4 A. I'm just going to try and find it

14:34:24 5 here.

14:34:25 6 1795 Q. Sure. So I guess I lied. I'm

14:34:26 7 taking you to a document, but just --

14:34:27 8 A. That's all right.

14:34:28 9 Now, what's the date of it?

14:34:31 10 1796 Q. December 20th --

14:34:31 11 A. I've got it.

14:34:31 12 1797 Q. Okay.

14:34:32 13 A. It starts off, "Discussion

14:34:34 14 racing"?

14:34:34 15 1798 Q. Yes. So it says in there

14:34:36 16 somewhere that you didn't want to know the exact

14:34:38 17 details?

14:34:39 18 A. That was... He told me that, as I

14:34:47 19 recall, that OLG's land-based gaming strategy would

14:34:49 20 be coming out shortly, and I told him I didn't want

14:34:52 21 -- I didn't want to know the details in case there

14:34:56 22 was a leak.

14:34:56 23 1799 Q. So you didn't want to know because

14:34:59 24 you were concerned there would be a leak, and they

14:35:01 25 would blame you? Is that --

14:35:03 1 A. That's right.

14:35:04 2 1800 Q. Okay. And that was just about the

14:35:06 3 OLG gaming strategy, is what you --

14:35:08 4 A. Yes. And he also -- he said,

14:35:14 5 'Statement based on nothing bad,' so I took that as

14:35:18 6 nothing bad for racing.

14:35:19 7 1801 Q. Okay.

14:35:19 8 In another one of your notes - and this

14:35:25 9 is just a clarifying question again - I think it

14:35:25 10 was a meeting that you had with Jamie Martin.

14:35:27 11 It suggests that Thoroughbreds will

14:35:29 12 still be able to race, but Standardbreds will be

14:35:32 13 more difficult.

14:35:32 14 This is after the cancellation,

14:35:34 15 obviously.

14:35:35 16 A. Yeah, mm-hmm.

14:35:35 17 1802 Q. Why would there be a difference

14:35:37 18 between the Thoroughbreds and the Standardbreds?

14:35:40 19 A. The number of race days, the

14:35:41 20 wagering levels; those types of things.

14:35:53 21 1803 Q. Okay.

14:35:53 22 A. So the impact of SARP ending was

14:35:55 23 much more severe for Standardbreds than for

14:35:55 24 Thoroughbreds.

14:36:04 25 MS. MACHADO: All right. If you just

14:36:06 1 give me a couple of minutes, I'm just going to see  
14:36:08 2 if that's it for...

14:36:10 3 THE WITNESS: Sure.

14:36:23 4 --- (Discussion off the record.)

14:36:23 5 MS. MACHADO: Okay. Those are all my  
14:36:24 6 questions, Mr. Seiling. Thank you for your time  
14:36:27 7 and your patience.

14:36:28 8 THE WITNESS: Okay. Thank you.

14:36:28 9 FURTHER EXAMINATION BY MR. MATTHEWS:

14:36:34 10 1804 Q. All right. So a few more  
14:36:35 11 questions from me, Mr. Seiling, but it won't be  
14:36:38 12 long, so I don't think we need to take another  
14:36:40 13 break.

14:36:40 14 You recall that my friend,  
14:36:43 15 Mr. Rosenberg, was asking you about some of the  
14:36:44 16 different ways in which the impact of the Slots at  
14:36:48 17 Racetrack Program could be measured, and he  
14:36:57 18 suggested to you that one of the ways to measure  
14:36:57 19 the impact of SARP would be wagering on Ontario  
14:36:57 20 product.

14:37:03 21 Do you recall that?

14:37:03 22 A. I do.

14:37:03 23 1805 Q. And so, as I took those questions,  
14:37:06 24 the suggestion to you was that wagering had fallen  
14:37:10 25 and that might be indicative of the fact that the

14:37:13 1 Slots at Racetrack Program was having less of an  
14:37:16 2 impact on wagering.

14:37:16 3 Do you recall those questions, sir?

14:37:18 4 A. I do.

14:37:20 5 1806 Q. Do you accept, Mr. Seiling, that  
14:37:23 6 when slot machines were installed into racetracks,  
14:37:28 7 the slot machines were competing with the  
14:37:30 8 racetracks for the customers who came to the  
14:37:33 9 racetracks to gamble? Do you accept that?

14:37:37 10 A. I do.

14:37:37 11 1807 Q. And so, would you also agree with  
14:37:39 12 me, sir, that one reason wagering on Ontario racing  
14:37:42 13 product could have declined was because customers  
14:37:45 14 who had a certain amount of money to gamble went to  
14:37:49 15 the racetrack and chose instead to put their money  
14:37:52 16 into a slot machine instead of wagering on horses?

14:37:58 17 O/B MR. ROSENBERG: Objection. You've just  
14:38:00 18 objected to my questions that this gentleman is not  
14:38:02 19 an industry expert and, therefore, can't comment on  
14:38:06 20 these things, Mr. Matthews.

14:38:08 21 THE WITNESS: Well, quite the contrary,  
14:38:10 22 Mr. Rosenberg. I do have knowledge of this, and  
14:38:12 23 you can go back and look in other jurisdictions.

14:38:15 24 There is a direct correlation between  
14:38:26 25 the intervention of gaming, competing gaming, and

14:38:29 1 its impact on wagering, and there's numerous  
14:38:37 2 studies on it, and if you look in any jurisdiction,  
14:38:41 3 it's clear, and added to that, when the competing  
14:38:45 4 gaming continues to expand, the negative impacts  
14:38:50 5 continue to rise, and it's for that reason that  
14:38:53 6 whether you go to Ohio, New York, Pennsylvania,  
14:38:58 7 whatever state you want, those jurisdictions have  
14:39:04 8 seen fit to put money into horse racing to  
14:39:08 9 compensate for the negative impacts of, in each  
14:39:12 10 case, government-fostered gaming.

14:39:16 11 BY MR. MATTHEWS:

14:39:16 12 1808 Q. You were asked a number of  
14:39:17 13 questions about advertisements, including  
14:39:20 14 advertisements through the Ontario Sires Stakes  
14:39:23 15 program, to breed, buy and race Ontario.

14:39:26 16 Do you recall that?

14:39:27 17 A. I do.

14:39:27 18 1809 Q. And you were also asked some  
14:39:30 19 questions just confirming that the statements  
14:39:33 20 coming out of the ORC, including advertisements,  
14:39:36 21 were true at the time they were made.

14:39:37 22 Do you recall those questions?

14:39:38 23 A. I do.

14:39:39 24 1810 Q. And as I understood it, you  
14:39:41 25 answered that yes, to the best of your knowledge,

14:39:43 1 those statements were true at the time they were  
14:39:45 2 made; correct?

14:39:45 3 A. I do, except with the one caveat.  
14:39:49 4 I was shown a document that seemed to indicate  
14:39:52 5 there was an ad that went out after the  
14:39:54 6 announcement of SARP ending. I certainly had never  
14:39:58 7 seen it before and certainly I can state  
14:40:03 8 unequivocally that the board of the Racing  
14:40:07 9 Commission would never have okayed that had it  
14:40:10 10 known -- in fact, if that's true -- again, I have  
14:40:13 11 never seen it 'til the other day and -- but we  
14:40:16 12 would never have agreed to have anything go out as  
14:40:19 13 I explained, because until there was some  
14:40:22 14 definitive answers as to whether there would be  
14:40:25 15 racing post-March 31, it would be impossible to be  
14:40:29 16 having ads out for the coming season.

14:40:34 17 1811 Q. And when you were putting out  
14:40:36 18 these statements, you understood you were doing so  
14:40:39 19 as an agent of the government; correct?

14:40:41 20 A. Correct.

14:40:42 21 1812 Q. And so, when you say that the  
14:40:44 22 statements were true at the time they were made,  
14:40:46 23 you're saying that because as far as you  
14:40:49 24 understood, you were saying things that you  
14:40:51 25 understood to be accurate based on what you

14:40:54 1 understood the position of the government of the  
14:40:55 2 day to be, right?  
14:40:56 3 A. Correct.  
14:40:58 4 1813 Q. In other words, you wouldn't say  
14:41:00 5 anything that was contradictory to or at odds with  
14:41:05 6 what you understood the government's view of horse  
14:41:08 7 racing to be; correct?  
14:41:08 8 A. Correct, and we never had  
14:41:13 9 information flowing back from the government saying  
14:41:15 10 what we were doing was incorrect.  
14:41:16 11 1814 Q. But you remember I put a document  
14:41:17 12 to you, it was an e-mail, in your examination when  
14:41:20 13 you were here the other day, from people at the  
14:41:22 14 Ministry of Finance where they were saying in  
14:41:26 15 e-mails that they weren't being honest with the  
14:41:28 16 ORC. Do you remember that?  
14:41:30 17 O/B MR. ROSENBERG: Objection. That was  
14:41:32 18 from the post-SARP cancellation period,  
14:41:36 19 Mr. Matthews.  
14:41:37 20 BY MR. MATTHEWS:  
14:41:37 21 1815 Q. Okay. So my point only,  
14:41:40 22 Mr. Seiling, is that you can only go on the  
14:41:41 23 information that you're getting coming from the  
14:41:43 24 government; correct?  
14:41:44 25 A. Correct.



14:41:45 1 1816 Q. So if they're not telling you  
14:41:48 2 something, you can't -- you can't reflect what the  
14:41:52 3 Ontario government's not telling you in  
14:41:55 4 communications that are going out to the industry,  
14:41:57 5 right?

14:41:57 6 A. Correct.

14:41:58 7 1817 Q. You were asked just a moment ago  
14:42:01 8 by Ms. Machado about the handwritten notes. Can  
14:42:04 9 you just confirm, sir, that those handwritten notes  
14:42:07 10 are accurate to the best of your recollection when  
14:42:09 11 you made them?

14:42:10 12 A. They are.

14:42:11 13 1818 Q. All right.

14:42:12 14 A. Correct.

14:42:12 15 1819 Q. You were taken to some documents  
14:42:15 16 by Mr. Rosenberg about the Ontario Racing Program,  
14:42:19 17 and there was some suggestion in those documents  
14:42:22 18 that the Ontario Racing Program publications was  
14:42:26 19 telling the industry that they had to do something  
14:42:28 20 differently.

14:42:28 21 Do you recall those documents?

14:42:31 22 A. Yes, I do.

14:42:33 23 1820 Q. And I just want to focus your  
14:42:36 24 attention on breeders specifically, and what, if  
14:42:41 25 anything, differently they had to do.

14:42:43 1 Because would you agree, sir, that  
14:42:46 2 while you were the ORC Chair, the consistent  
14:42:50 3 message that the ORC was sending to the breeders  
14:42:53 4 was to make investments in their farms and horses  
14:42:57 5 to benefit the agricultural economy and improve the  
14:43:01 6 quality of horses?

14:43:02 7 A. Yes. The Ontario Racing Program  
14:43:05 8 only dealt with breeders to the extension that the  
14:43:10 9 number of race dates would have some correlation to  
14:43:15 10 horse supply.

14:43:15 11 The changes to the Ontario Racing  
14:43:20 12 Program were not made because of issues within the  
14:43:22 13 breeding industry.

14:43:24 14 1821 Q. But the changes to the race dates  
14:43:26 15 were intended, among other things, to ensure  
14:43:29 16 stability and confidence so that breeders could  
14:43:32 17 continue to make investments in the horse and their  
14:43:35 18 farms; correct?

14:43:36 19 A. That's correct. As I said during  
14:43:39 20 the questioning, underlying the whole changes for  
14:43:47 21 the Ontario Racing Program was our mandate to  
14:43:49 22 support live racing.

14:43:51 23 1822 Q. You were asked some questions  
14:43:53 24 about money from the Slots at Racetrack Program  
14:43:57 25 making their way to breeders, and I believe

14:44:00 1 Mr. Rosenberg took you to a document authored by  
14:44:07 2 Anna Meyers, and you made the comment that the  
14:44:09 3 trickle-down format wasn't working for the  
14:44:11 4 breeders. Do you recall that?

14:44:12 5 A. I do.

14:44:13 6 1823 Q. And just so I make sure I  
14:44:15 7 understand your evidence, sir, and in reference to  
14:44:21 8 sort of the three-legged stool that we have been  
14:44:23 9 talking about, is it your evidence that when you  
14:44:25 10 say the trickle-down format wasn't working well for  
14:44:28 11 the breeders, you mean that, relative to the other  
14:44:30 12 two legs on the three-legged stool, the breeders  
14:44:33 13 felt that they weren't benefiting to the same  
14:44:35 14 degree from the Slots at Racetracks Program?

14:44:37 15 A. Correct.

14:44:37 16 1824 Q. But you're not suggesting, sir,  
14:44:40 17 that breeders were telling you, when you were ORC  
14:44:42 18 Chair, that they weren't benefiting at all from the  
14:44:45 19 Slots at Racetrack Program, are you?

14:44:47 20 A. Correct. No, they never said they  
14:44:50 21 weren't benefiting. They just -- my understanding  
14:44:54 22 is that they weren't benefiting to the degree -- to  
14:44:58 23 the degree they thought they would through trickle  
14:45:02 24 down.

14:45:02 25 1825 Q. Ms. Machado in her questions a

14:45:04 1 little while ago asked you to venture an opinion on  
14:45:07 2 whether or not the decision to cancel the Slots at  
14:45:09 3 Racetrack Program was a government policy decision.

14:45:11 4 Do you recall that?

14:45:12 5 A. I do.

14:45:13 6 1826 Q. Do you have any information, sir,  
14:45:16 7 on who within the government actually made the  
14:45:19 8 decision to terminate the revenue sharing from  
14:45:23 9 Slots at Racetrack Program?

14:45:23 10 A. I don't know.

14:45:25 11 1827 Q. Do you have any direct knowledge  
14:45:27 12 on how that decision was made or when it was made?

14:45:29 13 A. I don't know. They never  
14:45:33 14 consulted with us.

14:45:33 15 1828 Q. And when you say that, that it was  
14:45:36 16 a government policy decision, sir, are you just  
14:45:39 17 referring to the fact that the decision was  
14:45:43 18 communicated by the government of Ontario as being  
14:45:46 19 a direction that the government of Ontario was  
14:45:49 20 going to go in as it relates to Slots at Racetrack  
14:45:52 21 Program?

14:45:52 22 A. Well, I'm only -- my answer saying  
14:45:59 23 that government policy, it's the government through  
14:46:02 24 Mr. Stransky, who worked for Minister Duncan, told  
14:46:06 25 me what was happening. So I would have thought

14:46:10 1 that, given that the OLG is an agency of the  
14:46:17 2 government, that at some point they would have had  
14:46:22 3 some input in the decision-making process as to end  
14:46:27 4 the program.

14:46:27 5 1829 Q. All right, and in one of your  
14:46:30 6 answers to Ms. Machado's question, you made  
14:46:33 7 reference to being requested to take the foal off  
14:46:39 8 the cover of one of the ORC annual reports.

14:46:42 9 Do you recall that?

14:46:43 10 A. I do.

14:46:43 11 1830 Q. What are you talking about there?  
14:46:45 12 Is this an annual report that was supposed to come  
14:46:49 13 out after the announcement regarding the  
14:46:53 14 cancellation of revenue sharing?

14:46:55 15 A. If I recall the timing, I believe  
14:46:58 16 that would be correct. They had been sitting --  
14:46:59 17 and I can't tell you why we had been -- staff had  
14:47:05 18 been -- and I think even I had inquired a couple of  
14:47:09 19 times, because staff couldn't get anywhere, as to  
14:47:12 20 why the holdup in not allowing the annual report to  
14:47:17 21 go. It was so late, it was almost going to be  
14:47:20 22 redundant, and it's my information that staff was  
14:47:29 23 directed to take the foal off the cover of the  
14:47:31 24 report.

14:47:32 25 1831 Q. Did you ever hear from your staff

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why, why they were -- why they were told?  
A. No. I don't think they knew  
either, but I don't know that. I was never told.  
Q. Do you have a belief?  
A. No, I -- I guess one could presume  
that since the program -- SARP program was ending,  
they didn't want to see young horses on there, but  
I don't know that.  
Q. Okay.  
A. I'm surmising.  
MR. MATTHEWS: Those are my follow-up  
questions, sir. Thank you for your patience with  
me and for all of us, and we really appreciate you  
making the effort to make yourself available.  
THE WITNESS: Thank you. Merry  
Christmas to all of you. Thank you very much.  
MR. MATTHEWS: Thank you, Mr. Seiling.  
We're going to disconnect you now.  
THE WITNESS: Okay. Good-bye.  
MR. MATTHEWS: Okay, bye.  
---[ Ending time: 2:48 p.m. ]

REPORTER'S CERTIFICATE

I, BONNIE LYNN VAN DER MEER, C.S.R.,  
Chartered Shorthand Reporter, hereby certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness continued to be  
under oath;

That the testimony of the witness and  
all objections made at the time of 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 1st day of February, 2018.



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BONNIE LYNN VAN DER MEER, CSR  
NEESON COURT REPORTING INC.

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<b>\$1-million</b> 445:11 447:6 534:3	<b>0000586</b> 517:21	<b>1328</b> 423:9	<b>1362</b> 430:25	<b>1398</b> 440:18
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