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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED
DRYWALL PRODUCTS
LIABILITY LITIGATION

CIVIL DOCKET NO. 09-MD-2047 "L"
NEW ORLEANS, LOUISIANA
MONDAY, DECEMBER 7, 2015, 2:15 P.M.

THIS DOCUMENT RELATES TO
ALL CASES

TRANSCRIPT OF MONTHLY STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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I N D E X

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<u>AGENDA ITEMS</u>	<u>PAGE</u>
MONTHLY STATUS CONFERENCE.....	7
PSC'S MOTION TO STRIKE THE DECLARATION INCLUDED IN THE CNBM GROUP'S REPLY, THE PSC'S MOTION TO COMPEL 30 (B) (6) DEPOSITIONS, AND AN EVIDENTIARY HEARING REGARDING THE ORDER GRANTING KNAUF'S MOTION TO RECONSIDER OCEANIQUE'S <i>60 PERCENT AWARD</i>	8
DECLARATION.....	8
MOTIONS.....	9
PRETRIAL ORDERS.....	10
STATE COURT TRIAL SETTINGS.....	10
COORDINATION.....	11
OMNIBUS CLASS ACTION.....	11
LITIGATION EXPENSE FUND.....	12
REMEDIATION PROGRAM.....	12
INEX, BANNER, KNAUF SETTLEMENTS, ANYTHING ON THE GLOBAL SETTLEMENTS.....	12
OCEANIQUE.....	12
JAKE WOODY FROM BROWNGREER TO GIVE THE MONTHLY STATUS REPORT.....	12
TAISHAN.....	18
VENTURE SUPPLY AND PORTER BLAINE.....	20

1 PROFILE FORMS FOR THE PLAINTIFF OR DEFENDANTS..... 20
2 MATTERS SET FOR HEARING FOLLOWING THE CONFERENCE FOR
3 THE RECONSIDERATION MOTION..... 20
4 PHYSICAL EVIDENCE PRESERVATION..... 20
5 NEXT STATUS CONFERENCE IS ON JANUARY 14TH, AND THE
6 FOLLOWING ONE IS FEBRUARY 17TH, 2016, AND THAT ONE
7 IS AT TWO O'CLOCK..... 20
8 THE JANUARY MEETING ON THE 14TH, I'LL SEE THE
9 PARTIES A HALF HOUR BEFORE EACH ONE -- 8:30 ON THE
10 14TH AND 1:30 ON THE 17TH..... 20

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P-R-O-C-E-E-D-I-N-G-S

MONDAY, DECEMBER 7, 2015

A F T E R N O O N S E S S I O N

(COURT CALLED TO ORDER)

02:18:42 7 THE DEPUTY CLERK: All rise.

02:18:42 8 THE COURT: Be seated, please. Good afternoon, ladies
02:19:03 9 and gentlemen.

02:19:03 10 THE DEPUTY CLERK: MDL 2047, In re:
02:19:07 11 Chinese-Manufactured Drywall Products Liability Litigation.

02:19:09 12 THE COURT: Would liaison counsel make their appearance
02:19:10 13 for the record, please.

02:19:12 14 MR. LEVIN: Arnold Levin for Russ Herman, liaison
02:19:17 15 counsel.

02:19:17 16 MR. ROSENBERG: Good afternoon, Judge Fallon.
02:19:20 17 Harry Rosenberg as liaison counsel for CNBM and BNBM and
02:19:25 18 Taishan, Your Honor.

02:19:27 19 MR. MILLER: Good afternoon, Judge. Kerry Miller as
02:19:28 20 liaison counsel for the Knauf entities.

02:19:32 21 THE COURT: Okay. We're here today for our monthly
02:19:34 22 status conference. We had it in the afternoon because we have
02:19:37 23 a hearing tomorrow, but I met a moment ago with liaison lead
02:19:43 24 counsel.

02:19:44 25 The items of today that we'll be dealing with are

02:19:50 1 the PSC's motion to strike the declaration included in the CNBM
02:19:56 2 Group's reply, the PSC's motion to compel 30(b)(6) depositions,
02:20:01 3 and, of course, an evidentiary hearing regarding the order
02:20:05 4 granting Knauf's motion to reconsider Oceanique's *60 percent*
02:20:10 5 *award*, as they term it.

02:20:13 6 With regard to the declaration, you'll recall
02:20:16 7 that the plaintiffs responded to the motion, and in their
02:20:27 8 response they had a number of exhibits and also some commentary
02:20:36 9 declarations.

02:20:38 10 The defendant responded to the plaintiff's
02:20:44 11 response and attached to their response an affidavit from one
02:20:54 12 of the officers of CNBM and also a professor. The defendants
02:21:04 13 take the position that they did that not to add any new
02:21:07 14 material but to simply explain or correct certain comments made
02:21:12 15 by the documents or the comments made by the plaintiffs, that
02:21:20 16 there was nothing new. The plaintiffs take issue with that and
02:21:25 17 feel that this is something new and comes at the 11th hour and
02:21:30 18 that it should not be admitted, so they move to strike.

02:21:34 19 I talked to the parties. My observation of the
02:21:40 20 material is that I do think the material is relevant to the
02:21:45 21 motion before me. I do think the information, the material
02:21:51 22 that the defendants offer may well be helpful to the Court in
02:21:56 23 understanding the matter, but I do feel that it comes at a late
02:22:00 24 time for the plaintiffs.

02:22:03 25 Now, because it's relevant, because it's helpful

02:22:07 1 and we don't have a jury trial, I am inclined to allow it to be
02:22:13 2 presented; however, I have to deal with the fact that it may be
02:22:17 3 prejudicial at this time to the plaintiffs. So my inclination
02:22:23 4 is to keep the record open for 45 days to allow the plaintiffs
02:22:28 5 to either take the depositions of these individuals or to
02:22:32 6 offer, introduce a reply, a response or other evidence that
02:22:39 7 deals with those two witnesses' testimony or any other method
02:22:46 8 that they may have, but the record then will kept open for that
02:22:53 9 period of time to allow that to be done.

02:22:55 10 We also talked about motions. In cases of this
02:23:03 11 sort, the MDL, one of the reasons for an MDL is to make it an
02:23:09 12 efficient way of handling cases, and one of the ways that I
02:23:14 13 deal with it by making it efficient is to meet every month so
02:23:18 14 that we have it continually moving. Another way is to be
02:23:26 15 available to the parties. When they have an issue, they get
02:23:31 16 together and they call me and I have a court reporter, I listen
02:23:37 17 to each side, and I rule on it.

02:23:40 18 Occasionally I get an e-mail from one side or the
02:23:44 19 other with, of course, instructions from me that whatever is
02:23:50 20 given to me by one side is cc'd to the other side. They need
02:23:56 21 to know that all of the material that I get from either side
02:23:59 22 I'm going to put in the record with the exception of some
02:24:02 23 sensitive information dealing with fee issues or fee problems
02:24:09 24 maybe one side has and the other side does not have, not at
02:24:14 25 this stage of the litigation, but that happens over the course

02:24:17 1 of litigation of this sort. I have to deal with those with a
02:24:21 2 little more sensitivity and in a different fashion.

02:24:25 3 My hope is that each side, before they reach out
02:24:33 4 to me, will reach out to each other and see whether or not they
02:24:36 5 can resolve the case. If they have five issues, maybe they can
02:24:40 6 resolve one of them or three of them or four of them and then
02:24:44 7 get to me on the one they can't resolve.

02:24:47 8 When they recognize that there is one or more
02:24:49 9 that they can't resolve, then they ought to decide whether to
02:24:53 10 put it in the form of a motion or to invite my comments from
02:24:57 11 e-mail. Either way, I will be placing it in the record.

02:25:03 12 The reason I mention to give them some
02:25:07 13 flexibility is because, as you know, when you file a formal
02:25:11 14 motion, you have to file with it a memorandum of law, and
02:25:17 15 sometimes these issues have to do more with setting a date or
02:25:22 16 dealing with an issue of a deposition or something of that sort
02:25:27 17 that is really not a legal issue; it's more of a functional
02:25:34 18 issue of the matter. So I leave it up to them, but they do
02:25:38 19 have to understand that whatever they give to me will be in the
02:25:41 20 record.

02:25:41 21 Let me hear from liaison counsel on the agenda.
02:25:49 22 First item is pretrial orders, anything on that?

02:25:52 23 MR. LEVIN: No, sir.

02:25:53 24 THE COURT: State court trial settings?

02:25:55 25 MR. LEVIN: No, sir.

02:25:55 1 THE COURT: Any coordination matters? I might say
02:26:00 2 this, that I prepared a draft of a letter to all of the judges.
02:26:05 3 I circulated it to state liaison counsel and liaison counsel
02:26:11 4 for each side before I sent it. They felt it could be sent.

02:26:17 5 I sent it but I've gotten some calls from judges
02:26:20 6 from state court saying they don't have any of these cases, so
02:26:27 7 I ask state liaison counsel to check their lists to make sure
02:26:32 8 that I have the judges who have the cases.

02:26:36 9 In some of these states, they have established a
02:26:41 10 sort of a complex litigation section, that one judge handles
02:26:48 11 all complex litigation filed in that state so that if somebody
02:26:54 12 gets a case, they transfer it to that judge, and they may not
02:26:58 13 know that that judge is handling the case, but it comes up that
02:27:05 14 way.

02:27:07 15 Ms. Barrios, if you want to comment on it.

02:27:10 16 MS. BARRIOS: Your Honor, I just want to let you know
02:27:11 17 that we've taken care of the issue of the judges who don't
02:27:14 18 think they have a case. We have been on the phone with Toni of
02:27:16 19 your office and we've taken care of that.

02:27:18 20 THE COURT: Okay. Fine. Thank you.

02:27:20 21 Okay. So I will be contacting all of the judges
02:27:24 22 and seeing who can coordinate the matter that makes it more
02:27:28 23 efficient.

02:27:28 24 Okay. Any omnibus class action?

02:27:32 25 MR. LEVIN: Omni XX, we received the summons, and we've

02:27:35 1 served them pursuant to court order on counsel.

02:27:38 2 THE COURT: Any litigation expense fund issue?

02:27:41 3 MR. LEVIN: No, sir.

02:27:42 4 THE COURT: Remediation program, anything from --

02:27:46 5 MR. LEVIN: Well, just what's going to be this

02:27:49 6 afternoon.

02:27:50 7 THE COURT: Anything that you have on remediation,

02:27:56 8 Kerry? Anything?

02:27:56 9 MR. MILLER: No, Your Honor. We can defer to Jake's

02:28:00 10 presentation.

02:28:02 11 THE COURT: All right. INEX, Banner, Knauf

02:28:04 12 settlements, anything on the Global settlements?

02:28:07 13 MR. LEVIN: I jumped the gun. We have the Oceanique

02:28:10 14 this afternoon.

02:28:11 15 THE COURT: Right. Let's hear from the settlements at

02:28:15 16 this point, the status of them.

02:28:18 17 MR. WOODY: Good afternoon, Your Honor. My name is

02:28:34 18 Jake Woody from BrownGreer here to give the monthly status

02:28:38 19 report.

02:28:39 20 Although it's only been three weeks since the

02:28:41 21 last status conference and one of these weeks was Thanksgiving,

02:28:44 22 we have made some significant progress on important areas of

02:28:47 23 the settlement program. I'll start just briefly with our

02:28:49 24 payment numbers.

02:28:50 25 Our total payments to date are \$81,702,958.

02:28:58 1 That's an increase of \$136,791 since the last status conference
02:29:05 2 which was three weeks ago. The payments fit into two broad
02:29:09 3 categories -- Global, Banner, INEX Repair and Relocation
02:29:15 4 Damages. The total payments there are \$60,897,568. The other
02:29:22 5 categories is what we call *Other Loss Claims*, which are claims
02:29:26 6 outside of repair and relocation, things like bodily injury,
02:29:30 7 prerediation alternative living expenses, foreclosure
02:29:34 8 payments, etcetera. The total payments there are \$20,805,390.

02:29:39 9 We have paid, on the Global, Banner, INEX side,
02:29:44 10 we've paid 9,470 claimants. That's about 96 percent of all the
02:29:50 11 eligible claimants have been paid so far. We have 417 claims
02:29:54 12 that we have not paid yet. That's four percent of the total.

02:29:58 13 Those claims fit into three subcategories. 203
02:30:03 14 claimants were awaiting documentation from a W9 and
02:30:07 15 Verification of Claims form, and we do outreach to those
02:30:10 16 claimants to remind them to submit those documents so that we
02:30:13 17 can pay them.

02:30:14 18 175 are subject to what we call a *double payment*
02:30:17 19 *issue*, where we have received more than one claim for one
02:30:21 20 property. We're only allowed to pay a Global, Banner, INEX
02:30:27 21 payment once per property, so when we get claims from multiple
02:30:30 22 people, we have to try to resolve the dispute, and we've done
02:30:34 23 that and gotten that number down to 175. That requires
02:30:37 24 basically a hand-to-hand operation where we call people and
02:30:40 25 e-mail them and try to resolve those issues.

02:30:42 1 THE COURT: That's sometimes due for various reasons.
02:30:46 2 Occasionally we've had situations where a husband and wife
02:30:49 3 divorced --

02:30:50 4 MR. WOODY: Correct.

02:30:51 5 THE COURT: -- and they each make a claim for the
02:30:54 6 house. Sometimes we've have situations where somebody has sold
02:30:57 7 the house, and they make a claim for it, and then the person
02:31:00 8 who just bought the house makes a claim for it and that's a
02:31:04 9 double.

02:31:04 10 MR. WOODY: That's correct.

02:31:05 11 THE COURT: There are some other areas also.

02:31:07 12 MR. WOODY: So those take a little bit of time and
02:31:09 13 effort to resolve, but we have been largely successful in
02:31:12 14 getting that number down to 175. Of course, you have to divide
02:31:15 15 that by at least two to come up with the number of properties
02:31:19 16 at issue because, by definition, more than one claimant has
02:31:22 17 submitted a claim for the same property there. Then 39 are
02:31:25 18 ready for us to pay. We just need to cut them a check and
02:31:29 19 we'll do that this week.

02:31:30 20 When I last reported this to you, we had about
02:31:33 21 650 claims not paid. We reduced that number by a couple of
02:31:37 22 hundred since our last report. So we continue to work through
02:31:39 23 those.

02:31:39 24 I do remind anybody listening on the phone to
02:31:42 25 check that if you haven't given us the Verification of Claims

02:31:45 1 form and the W9 and you're wondering why you haven't been paid
02:31:50 2 yet, that's probably why.

02:31:51 3 Those documents are available on our website.
02:31:53 4 You can download them and then e-mail them to us at
02:31:58 5 CDWquestions@BrownGreer.com. We are able to issue payment
02:32:02 6 pretty quickly after we receive those documents.

02:32:03 7 I would like to talk quickly about what I think
02:32:06 8 is a pretty significant accomplishment on the Other Loss side.
02:32:12 9 I reported for the last few months that we've been very close
02:32:14 10 to finishing the Other Loss program.

02:32:17 11 We're down to 726 claims who have requested that
02:32:23 12 the Special Master award them additional money above what we
02:32:26 13 have already offered those people. On Thursday, December 3rd,
02:32:28 14 we e-mailed notifications to the lawyers and *pro se* claimants
02:32:33 15 who had made those requests. We e-mailed them with a list of
02:32:38 16 their claimants who had made the request and a determination
02:32:41 17 from the Special Master along with some instructions on how to
02:32:46 18 proceed. These claimants have until Friday, the 8th of
02:32:48 19 December, to get back to us on the.

02:32:51 20 There are two options for these people: You can
02:32:54 21 request reconsideration and have the Special Master take a
02:32:57 22 second look at the award, or you can accept the amount and
02:33:01 23 we'll pay you as soon as we can.

02:33:03 24 If you decide to request reconsideration, we do
02:33:07 25 request that you include reference to the specific documents in

02:33:11 1 your file that support the claim so that we don't have to hunt
02:33:14 2 through hundreds and hundreds of pages to figure out if you're
02:33:17 3 right or not, and also it's very helpful to receive a
02:33:20 4 calculation of why you believe you're entitled to what you
02:33:24 5 think you are. That helps us speed up the process. We can
02:33:26 6 look at your calculation, look at your supporting documents,
02:33:29 7 and determine if we agree with you or not or if the
02:33:32 8 Special Master agrees with you or not.

02:33:34 9 Finally, the amounts listed, and this was part of
02:33:37 10 the e-mail, but these are pro rata. These are subject to a
02:33:40 11 pro rata reduction. The Special Master looked at the claim and
02:33:45 12 determined what it was worth in a dollar amount. We do not
02:33:49 13 have enough money to pay off everyone a hundred cents on the
02:33:53 14 dollar for that, so we will have to reduce that amount by a
02:33:58 15 pro rata percentage.

02:33:59 16 I can't give you the exact percentage just yet
02:34:01 17 because I don't know how the request for reconsideration will
02:34:03 18 turn out. That, when claims increase in value, it affects the
02:34:08 19 pro rata calculation. So as soon as we are able to resolve any
02:34:12 20 of the reconsideration requests, we can have a better handle on
02:34:16 21 what the pro rata amount will be.

02:34:19 22 I will tell you that so far, although it's been a
02:34:22 23 very short time, we've received six acceptances and two
02:34:24 24 requests for reconsideration. Obviously those numbers will
02:34:27 25 change significantly over the next two weeks.

02:34:29 1 I also wanted to touch briefly on the stipend
02:34:33 2 issue. The Court entered PTO 30 on November 23rd of 2015.
02:34:40 3 PTO 30 establishes the method and procedures by which we can
02:34:44 4 issue any stipend payment, which is a thousand dollars per
02:34:48 5 Knauf property and \$150 per nonKnauf property.

02:34:52 6 The PTO contains the procedures by which these
02:34:56 7 claims can be paid, and also attached as an exhibit is a list
02:34:58 8 of all the properties in our system in our program and a list
02:35:03 9 of how much they were entitled to on the stipend front. The
02:35:08 10 deadline to note any objections to that was December 3rd.

02:35:12 11 Those objections were submitted to the PSC, and
02:35:15 12 we've worked closely with the PSC to categorize those
02:35:19 13 objections and put them into broad categories that we can
02:35:23 14 decide how to proceed with those objections.

02:35:25 15 Finally I've gotten a lot of questions about when
02:35:32 16 we can issue the stipend payment. We need to wait, I think,
02:35:35 17 until PTO 30 is final, which, I believe, under Federal Rule 4,
02:35:38 18 is 30 days after the order. That was issued November 23rd; so,
02:35:41 19 we can't make any payments until December 23rd. However, we
02:35:46 20 are ready to do that as soon as that date passes, and we'll
02:35:50 21 attempt to issue those as soon as possible after that date
02:35:54 22 passes.

02:35:54 23 Just a quick summary of what we've done in the
02:35:59 24 last weeks: We've made 37 payments totaling \$136,791. We've
02:36:05 25 issued 96 notices; and, again, we've issued 726 Special Master

02:36:09 1 award notifications, which is significant because that is --
02:36:12 2 those are really the last of the Other Loss claims.

02:36:16 3 Once we work through the reconsideration requests
02:36:19 4 and any appeals for that, we can disburse the amount remaining
02:36:23 5 in the fund and close that chapter of the settlement program.
02:36:27 6 We have closed 51 claims across the entire program.

02:36:30 7 Then on the stipend front, the objection deadline
02:36:34 8 passed, and we're working with the PSC to process those, and as
02:36:38 9 soon as the 30 days passes, we can begin to issue payments.

02:36:42 10 THE COURT: Okay. This, as I said before, is only one
02:36:48 11 aspect of the settlement. This is in addition to the full
02:36:53 12 remediation and the attorney's fees that was agreed to by
02:37:00 13 Knauf.

02:37:00 14 Some people do not have any additional claims;
02:37:05 15 some people do have additional claims, and that's what we have
02:37:08 16 been talking about here today. Everybody has the remediation
02:37:13 17 and the remediation has taken place, and it's a little over a
02:37:18 18 billion dollars, it looks like, that is going to be the amount;
02:37:19 19 so, this is in addition to that.

02:37:21 20 Okay. Anything on Taishan?

02:37:26 21 MR. LEVIN: Yes, Your Honor. Just some scheduling that
02:37:32 22 occurred in the liaison counsel's meeting. Harry will correct
02:37:37 23 me if I'm wrong because I'm a terrible note taker.

02:37:42 24 The Rule 12 motion will be heard on
02:37:45 25 February 18th. The motions to dismiss, the motion to strike

02:37:51 1 the affidavits that the plaintiffs at least say were late
02:37:56 2 filed, that will be taken up after the argument tomorrow. The
02:38:00 3 30(b)(6) motions, there will be a schedule for the defendant's
02:38:06 4 response, and whether or not there is oral argument, that will
02:38:09 5 be taken up tomorrow as well.

02:38:10 6 MR. ROSENBERG: Your Honor, since Mr. Levin invited me
02:38:14 7 to correct him, I'm going to take that opportunity. We agree
02:38:18 8 to discuss both the need for whether oral argument is necessary
02:38:23 9 on the motion to compel additional 30(b)(6) depositions, as
02:38:29 10 well as the motion to strike. We are going to discuss that
02:38:32 11 tomorrow after the scheduled hearing before Your Honor.

02:38:36 12 Your Honor, there is one other footnote, if I
02:38:38 13 might, if the Court would indulge me. When we met with -- when
02:38:43 14 Your Honor met with liaison counsel earlier this afternoon, we
02:38:46 15 did discuss that if there was a motion that was going to be
02:38:49 16 filed by either side, the parties agree that they would notify
02:38:55 17 the opposing side of the nature of that motion and the timeline
02:38:59 18 for submission of that motion so we could hopefully continue to
02:39:02 19 amicably resolve these logistical issues without burdening the
02:39:09 20 Court. If we are unable to reach an accord, then we would ask
02:39:13 21 the Court for assistance.

02:39:14 22 MR. LEVIN: One additional thing, Your Honor. The
02:39:16 23 spoliation hearing which occurred a couple weeks ago with
02:39:19 24 regard to Taishan and the PSC, the findings of fact and
02:39:22 25 conclusions of law -- the proposed findings of fact and

02:39:25 1 conclusions of law will be filed today.

02:39:27 2 MR. ROSENBERG: I'm only going to take issue with
02:39:31 3 Mr. Levin's description of that as a *spoliation hearing*,
02:39:34 4 Your Honor, but the Court is aware of the time line for the
02:39:37 5 next hearing on that motion.

02:39:39 6 THE COURT: Okay. All right. Thank you.

02:39:41 7 Anything on the Venture Supply and Porter Blaine
02:39:48 8 defendants?

02:39:48 9 MR. LEVIN: No, sir.

02:39:49 10 THE COURT: Anything on the profile forms for the
02:39:53 11 plaintiff or defendants?

02:40:00 12 MR. LEVIN: No, sir.

02:40:00 13 THE COURT: We have some matters set for hearing
02:40:02 14 following the conference, as I mentioned, the reconsideration
02:40:11 15 motion.

02:40:13 16 Anything on physical evidence preservation?

02:40:16 17 MR. LEVIN: No, sir.

02:40:17 18 THE COURT: The next status conference is on
02:40:27 19 January 14th, and the following one is February 17th, and that
02:40:31 20 one is at two o'clock.

02:40:32 21 MR. LEVIN: Yes, sir.

02:40:33 22 THE COURT: Right. The January meeting on the 14th,
02:40:38 23 I'll see the parties a half hour before each one -- 8:30 on the
02:40:43 24 14th and 1:30 on the 17th.

02:40:46 25 MR. ROSENBERG: Yes, sir. Thank you, Your Honor.

02:40:48 1 MR. LEVIN: Thank you. Thank you, sir.

02:40:50 2 THE COURT: We'll take a five-minute break here, and
02:40:52 3 then we'll come back and deal with the reconsideration motion.

02:40:56 4 THE DEPUTY CLERK: All rise.

02:45:55 5 (WHEREUPON, at 2:45 p.m. the monthly status conference
6 concluded.)

7 * * *

8
9
10 REPORTER'S CERTIFICATE

11
12 I, Cathy Pepper, Certified Realtime Reporter, Registered
13 Merit Reporter, Certified Court Reporter in and for the State
14 of Louisiana, Official Court Reporter for the United States
15 District Court, Eastern District of Louisiana, do hereby
16 certify that the foregoing is a true and correct transcript to
17 the best of my ability and understanding from the record of the
18 proceedings in the above-entitled and numbered matter.

19
20 s/Cathy Pepper

21 Cathy Pepper, CRR, RMR, CCR
22 Certified Realtime Reporter
23 Registered Merit Reporter
24 Official Court Reporter
25 United States District Court
Cathy_Pepper@laed.uscourts.gov

\$	<p>2800 [2] - 2:4, 2:5 2:00 [1] - 1:7 2:45 [1] - 21:5</p>	8	<p>ALSTON [1] - 2:23 alternative [1] - 13:7 AMERICAS [1] - 3:6 amicably [1] - 19:19 amount [6] - 15:22, 16:12, 16:14, 16:21, 18:4, 18:18 amounts [1] - 16:9 AN [1] - 5:8 AND [10] - 2:3, 2:13, 2:23, 3:4, 3:13, 5:8, 5:25, 6:5, 6:6, 6:10 ANYTHING [1] - 5:19 appeals [1] - 18:4 appearance [1] - 7:12 APPEARANCES [4] - 1:15, 2:1, 3:1, 4:1 ARATA [1] - 3:22 areas [2] - 12:22, 14:11 argument [3] - 19:2, 19:4, 19:8 ARNOLD [1] - 1:21 Arnold [1] - 7:14 aspect [1] - 18:11 assistance [1] - 19:21 AT [1] - 6:7 ATLANTA [1] - 2:25 ATLANTIC [1] - 2:24 attached [2] - 8:11, 17:7 attempt [1] - 17:21 attorney's [1] - 18:12 available [2] - 9:15, 15:3 AVENUE [4] - 1:18, 2:20, 3:6, 3:24 awaiting [1] - 13:14 award [4] - 8:5, 15:12, 15:22, 18:1 AWARD..... [1] - 5:10 aware [1] - 20:4</p>	<p>BEIJING [2] - 3:3, 3:4 BENJAMIN [1] - 2:3 BERKOWITZ [1] - 2:18 BERMAN [1] - 1:21 best [1] - 21:17 better [1] - 16:20 billion [1] - 18:18 BIRD [1] - 2:23 bit [1] - 14:12 Blaine [1] - 20:7 BLAINE..... [1] - 5:25 BNBM [2] - 2:12, 7:17 bodily [1] - 13:6 bought [1] - 14:8 break [1] - 21:2 briefly [2] - 12:23, 17:1 broad [2] - 13:2, 17:13 BROWN [1] - 4:7 BROWNGREER [1] - 5:22 BrownGreer [1] - 12:18 BUILDING [5] - 3:3, 3:4, 3:12, 3:13, 3:19 burdening [1] - 19:19 BY [15] - 1:18, 1:21, 2:4, 2:9, 2:14, 2:18, 2:24, 3:6, 3:9, 3:15, 3:18, 3:23, 4:4, 4:14, 4:14</p>							
0	3	9	A	C							
<p>\$136,791 [2] - 13:1, 17:24 \$150 [1] - 17:5 \$20,805,390 [1] - 13:8 \$60,897,568 [1] - 13:4 \$81,702,958 [1] - 12:25</p>	<p>30 [5] - 17:2, 17:3, 17:17, 17:18, 18:9 30(B)(6) [1] - 5:8 30(b)(6) [3] - 8:2, 19:3, 19:9 30309 [1] - 2:25 33134 [1] - 2:10 3600 [1] - 2:20 365 [1] - 2:14 3650 [1] - 4:4 37 [1] - 17:24 39 [1] - 14:17 3rd [2] - 15:13, 17:10</p>	<p>8 [2] - 5:10, 5:11 820 [1] - 1:18 8:30 [2] - 6:9, 20:23 8th [1] - 15:18</p>	<p>ability [1] - 21:17 able [2] - 15:5, 16:19 above-entitled [1] - 21:18 accept [1] - 15:22 acceptances [1] - 16:23 accomplishment [1] - 15:8 accord [1] - 19:20 action [1] - 11:24 ACTION..... [1] - 5:16 add [1] - 8:13 addition [2] - 18:11, 18:19 additional [5] - 15:12, 18:14, 18:15, 19:9, 19:22 admitted [1] - 8:18 affects [1] - 16:18 affidavit [1] - 8:11 affidavits [1] - 19:1 afternoon [8] - 7:8, 7:16, 7:19, 7:22, 12:6, 12:14, 12:17, 19:14 agenda [1] - 10:21 AGENDA [1] - 5:3 ago [3] - 7:23, 13:2, 19:23 agree [3] - 16:7, 19:7, 19:16 agreed [1] - 18:12 agrees [1] - 16:8 ALEX [1] - 3:24 ALHAMBRA [1] - 2:10 ALL [1] - 1:9 allow [3] - 9:1, 9:4, 9:9 allowed [1] - 13:20 ALSO [1] - 4:7</p>	<p>4 [1] - 17:17 405 [1] - 3:19 40TH [1] - 3:24 417 [1] - 13:11 45 [1] - 9:4</p>	<p>9 [1] - 5:12 9,470 [1] - 13:10 94105 [1] - 3:20 96 [2] - 13:10, 17:25</p>	<p>ability [1] - 21:17 able [2] - 15:5, 16:19 above-entitled [1] - 21:18 accept [1] - 15:22 acceptances [1] - 16:23 accomplishment [1] - 15:8 accord [1] - 19:20 action [1] - 11:24 ACTION..... [1] - 5:16 add [1] - 8:13 addition [2] - 18:11, 18:19 additional [5] - 15:12, 18:14, 18:15, 19:9, 19:22 admitted [1] - 8:18 affects [1] - 16:18 affidavit [1] - 8:11 affidavits [1] - 19:1 afternoon [8] - 7:8, 7:16, 7:19, 7:22, 12:6, 12:14, 12:17, 19:14 agenda [1] - 10:21 AGENDA [1] - 5:3 ago [3] - 7:23, 13:2, 19:23 agree [3] - 16:7, 19:7, 19:16 agreed [1] - 18:12 agrees [1] - 16:8 ALEX [1] - 3:24 ALHAMBRA [1] - 2:10 ALL [1] - 1:9 allow [3] - 9:1, 9:4, 9:9 allowed [1] - 13:20 ALSO [1] - 4:7</p>	<p>5</p> <p>500 [2] - 1:23, 4:11 504 [1] - 4:12 51 [2] - 3:15, 18:6 510 [1] - 1:23 52ND [1] - 3:15 589-7779 [1] - 4:12</p>	<p>B</p> <p>B-275 [1] - 4:11 BAKER [1] - 2:17 Banner [4] - 12:11, 13:3, 13:9, 13:20 BANNER [1] - 5:19 BARR [1] - 3:6 BARRIOS [3] - 4:3, 4:4, 11:16 Barrios [1] - 11:15 BEARMAN [1] - 2:17 BEFORE [2] - 1:12, 6:9 begin [1] - 18:9</p>	<p>6</p> <p>60 [2] - 5:10, 8:4 60606 [1] - 3:10 650 [1] - 14:21</p>	<p>7</p> <p>7 [3] - 1:7, 5:5, 7:2 701 [1] - 4:4 70113 [1] - 1:19 70130 [2] - 2:15, 4:11 70139 [1] - 4:5 70163 [1] - 2:5 70170 [2] - 2:20, 3:25 726 [2] - 15:11, 17:25 7800 [1] - 3:10</p>	<p>CA [1] - 3:20 calculation [3] - 16:4, 16:6, 16:19 CALDWELL [1] - 2:18 CALLED [1] - 7:4 CANAL [1] - 2:14 care [2] - 11:17, 11:19 case [4] - 10:5, 11:12, 11:13, 11:18 cases [4] - 9:10, 9:12, 11:6, 11:8 CASES [1] - 1:9 CASTEIX [1] - 4:3 categories [3] - 13:3, 13:5, 17:13 categorize [1] - 17:12 Cathy [2] - 21:12, 21:21 CATHY [1] - 4:9 Cathy_Pepper@laed .uscourts.gov [2] - 4:12, 21:23 cc'd [1] - 9:20</p>
<p>09-MD-2047 [1] - 1:6</p>	<p>1</p> <p>10 [2] - 5:13, 5:14 10019 [1] - 3:16 10020 [1] - 3:7 11 [2] - 5:15, 5:16 1100 [1] - 2:5 11th [1] - 8:17 12 [6] - 5:17, 5:18, 5:20, 5:21, 5:23, 18:24 1201 [1] - 2:25 1221 [1] - 3:6 14TH [3] - 6:5, 6:8, 6:10 14th [3] - 20:19, 20:22, 20:24 175 [3] - 13:18, 13:23, 14:14 17th [2] - 20:19, 20:24 17TH [1] - 6:6 17TH..... . [1] - 6:10 18 [1] - 5:24 18th [1] - 18:25 19106 [1] - 1:23 1:30 [2] - 6:10, 20:24</p>	<p>1</p> <p>10 [2] - 5:13, 5:14 10019 [1] - 3:16 10020 [1] - 3:7 11 [2] - 5:15, 5:16 1100 [1] - 2:5 11th [1] - 8:17 12 [6] - 5:17, 5:18, 5:20, 5:21, 5:23, 18:24 1201 [1] - 2:25 1221 [1] - 3:6 14TH [3] - 6:5, 6:8, 6:10 14th [3] - 20:19, 20:22, 20:24 175 [3] - 13:18, 13:23, 14:14 17th [2] - 20:19, 20:24 17TH [1] - 6:6 17TH..... . [1] - 6:10 18 [1] - 5:24 18th [1] - 18:25 19106 [1] - 1:23 1:30 [2] - 6:10, 20:24</p>	<p>2</p> <p>20 [6] - 5:25, 6:1, 6:3, 6:4, 6:7, 6:10 2000 [1] - 2:14 201 [2] - 2:20, 3:24 2015 [3] - 1:7, 7:2, 17:2 2016 [1] - 6:6 203 [1] - 13:13 2047 [1] - 7:10 233 [1] - 3:10 23rd [3] - 17:2, 17:18, 17:19 255 [1] - 2:10</p>								

<p>CCR [2] - 4:9, 21:21 CDWquestions@BrownGreer.com [1] - 15:5 CENTER [1] - 2:24 CENTRE [1] - 2:4 cents [1] - 16:13 certain [1] - 8:14 CERTIFICATE [1] - 21:10 CERTIFIED [2] - 4:10, 4:10 Certified [3] - 21:12, 21:13, 21:21 certify [1] - 21:16 change [1] - 16:25 chapter [1] - 18:5 CHARLES [2] - 2:20, 3:24 check [3] - 11:7, 14:18, 14:25 CHICAGO [1] - 3:10 CHINA [2] - 3:12, 3:13 CHINESE [1] - 1:4 Chinese [1] - 7:11 CHINESE-MANUFACTURED [1] - 1:4 Chinese-Manufactured [1] - 7:11 CHRISTINA [1] - 2:24 CHRISTOPHER [1] - 3:18 CIRCLE [1] - 2:10 circulated [1] - 11:3 CIVIL [1] - 1:6 claim [7] - 13:19, 14:5, 14:7, 14:8, 14:17, 16:1, 16:11 claimant [1] - 14:16 claimants [7] - 13:10, 13:11, 13:14, 13:16, 15:14, 15:16, 15:18 Claims [3] - 13:5, 13:15, 14:25 claims [12] - 13:5, 13:11, 13:13, 13:21, 14:21, 15:11, 16:18, 17:7, 18:2, 18:6, 18:14, 18:15 class [1] - 11:24 CLASS [1] - 5:16 CLERK [3] - 7:7, 7:10, 21:4 close [2] - 15:9, 18:5 closed [1] - 18:6 closely [1] - 17:12 CNBM [5] - 2:13, 5:7, 7:17, 8:1, 8:12</p>	<p>CO [2] - 2:22, 2:23 COLLECTIVELY [2] - 3:5, 3:14 COLSON [2] - 2:7 comment [1] - 11:15 commentary [1] - 8:8 comments [3] - 8:14, 8:15, 10:10 COMMITTEE [1] - 4:3 COMPANY [3] - 3:4, 3:5, 3:14 compel [2] - 8:2, 19:9 COMPEL [1] - 5:7 complex [2] - 11:10, 11:11 COMPUTER [1] - 4:14 concluded [1] - 21:6 conclusions [2] - 19:25, 20:1 conference [6] - 7:22, 12:21, 13:1, 20:14, 20:18, 21:5 CONFERENCE [3] - 1:12, 6:2, 6:5 CONFERENCE..... [1] - 5:5 contacting [1] - 11:21 contains [1] - 17:6 continually [1] - 9:14 continue [2] - 14:22, 19:18 CONTINUED [3] - 2:1, 3:1, 4:1 coordinate [1] - 11:22 COORDINATION [1] - 4:3 coordination [1] - 11:1 COORDINATION..... [1] - 5:15 CORAL [1] - 2:10 CORPORATION [1] - 3:13 correct [6] - 8:14, 14:4, 14:10, 18:22, 19:7, 21:16 counsel [11] - 7:12, 7:15, 7:17, 7:20, 7:24, 10:21, 11:3, 11:7, 12:1, 19:14 COUNSEL [3] - 1:17, 2:13, 2:17 counsel's [1] - 18:22 couple [2] - 14:21, 19:23 course [4] - 8:3, 9:19, 9:25, 14:14 Court [11] - 8:22, 17:2, 19:13, 19:20, 19:21,</p>	<p>20:4, 21:13, 21:14, 21:15, 21:22, 21:23 COURT [25] - 1:1, 4:9, 5:14, 7:4, 7:8, 7:12, 7:21, 10:24, 11:1, 11:20, 12:2, 12:4, 12:7, 12:11, 12:15, 14:1, 14:5, 14:11, 18:10, 20:6, 20:10, 20:13, 20:18, 20:22, 21:2 court [4] - 9:16, 10:24, 11:6, 12:1 CRR [2] - 4:9, 21:21 CURRAULT [1] - 3:23 cut [1] - 14:18</p> <p style="text-align: center;">D</p> <p>Damages [1] - 13:4 DANIEL [1] - 2:19 date [4] - 10:15, 12:25, 17:20, 17:21 DAVID [1] - 2:3 DAVIS [1] - 1:18 DAWN [1] - 4:4 days [3] - 9:4, 17:18, 18:9 deadline [2] - 17:10, 18:7 deal [4] - 9:2, 9:13, 10:1, 21:3 dealing [3] - 7:25, 9:23, 10:16 deals [1] - 9:7 DECEMBER [2] - 1:7, 7:2 December [4] - 15:13, 15:19, 17:10, 17:19 decide [3] - 10:9, 15:24, 17:14 declaration [2] - 8:1, 8:6 DECLARATION [1] - 5:6 DECLARATION..... [1] - 5:11 declarations [1] - 8:9 defendant [1] - 8:10 defendant's [1] - 19:3 defendants [4] - 8:12, 8:22, 20:8, 20:11 DEFENDANTS..... [1] - 6:1 defer [1] - 12:9 definition [1] - 14:16 DENTONS [2] - 3:5, 3:9</p>	<p>deposition [1] - 10:16 DEPOSITIONS [1] - 5:8 depositions [3] - 8:2, 9:5, 19:9 DEPUTY [3] - 7:7, 7:10, 21:4 description [1] - 20:3 determination [1] - 15:16 determine [1] - 16:7 determined [1] - 16:12 different [1] - 10:2 disburse [1] - 18:4 discuss [3] - 19:8, 19:10, 19:15 dismiss [1] - 18:25 dispute [1] - 13:22 District [3] - 21:15, 21:23 DISTRICT [3] - 1:1, 1:1, 1:13 divide [1] - 14:14 divorced [1] - 14:3 DOCKET [1] - 1:6 DOCUMENT [1] - 1:9 documentation [1] - 13:14 documents [6] - 8:15, 13:16, 15:3, 15:6, 15:25, 16:6 dollar [2] - 16:12, 16:14 dollars [2] - 17:4, 18:18 done [3] - 9:9, 13:22, 17:23 DONELSON [1] - 2:17 DONNA [1] - 3:23 double [2] - 13:18, 14:9 down [3] - 13:23, 14:14, 15:11 download [1] - 15:4 draft [1] - 11:2 DRIVE [1] - 3:10 Drywall [1] - 7:11 DRYWALL [1] - 1:5 due [1] - 14:1 DUGGAN [1] - 1:22 DUNBAR [1] - 2:13 DUPLANTIS [1] - 3:22 DYSART [1] - 2:19</p> <p style="text-align: center;">E</p> <p>e-mail [5] - 9:18, 10:11, 13:25, 15:4, 16:10</p>	<p>e-mailed [2] - 15:14, 15:15 EACH [1] - 6:9 EAGAN [2] - 3:22, 3:23 EASTERN [1] - 1:1 Eastern [1] - 21:15 efficient [3] - 9:12, 9:13, 11:23 effort [1] - 14:13 EIDSON [1] - 2:7 EIKHOFF [1] - 2:24 either [4] - 9:5, 9:21, 10:11, 19:16 ELDON [1] - 1:12 eligible [1] - 13:11 ENERGY [1] - 2:4 entered [1] - 17:2 entire [1] - 18:6 entities [1] - 7:20 ENTITIES [2] - 2:13 entitled [3] - 16:4, 17:9, 21:18 ERVIN [1] - 2:9 ESQ [1] - 3:18 ESQUIRE [20] - 1:18, 1:21, 1:22, 1:22, 2:4, 2:9, 2:9, 2:14, 2:18, 2:19, 2:19, 2:24, 3:6, 3:9, 3:15, 3:23, 3:23, 3:24, 4:4, 4:7 established [1] - 11:9 establishes [1] - 17:3 etcetera [1] - 13:8 EVIDENCE [1] - 6:4 evidence [2] - 9:6, 20:16 evidentiary [1] - 8:3 EVIDENTIARY [1] - 5:8 EWELL [1] - 3:23 exact [1] - 16:16 exception [1] - 9:22 exhibit [1] - 17:7 exhibits [1] - 8:8 EXPENSE [1] - 5:17 expense [1] - 12:2 expenses [1] - 13:7 explain [1] - 8:14</p> <p style="text-align: center;">F</p> <p>fact [3] - 9:2, 19:24, 19:25 FALLON [1] - 1:12 Fallon [1] - 7:16 far [2] - 13:11, 16:22 fashion [1] - 10:2 February [2] - 18:25,</p>
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<p>20:19 FEBRUARY [1] - 6:6 Federal [1] - 17:17 fee [2] - 9:23 fees [1] - 18:12 felt [1] - 11:4 FENTON [1] - 3:9 few [1] - 15:9 figure [1] - 16:2 file [3] - 10:13, 10:14, 16:1 filed [4] - 11:11, 19:2, 19:16, 20:1 final [1] - 17:17 finally [2] - 16:9, 17:15 findings [2] - 19:24, 19:25 fine [1] - 11:20 finishing [1] - 15:10 first [1] - 10:22 FISHBEIN [1] - 1:21 fit [2] - 13:2, 13:13 five [2] - 10:5, 21:2 five-minute [1] - 21:2 FL [1] - 2:10 flexibility [1] - 10:13 FLOOR [1] - 3:24 following [2] - 20:14, 20:19 FOLLOWING [2] - 6:2, 6:6 footnote [1] - 19:12 FOR [9] - 1:17, 2:12, 2:17, 2:22, 3:3, 4:3, 6:1, 6:2 foreclosure [1] - 13:7 foregoing [1] - 21:16 form [3] - 10:10, 13:15, 15:1 formal [1] - 10:13 forms [1] - 20:10 FORMS [1] - 6:1 four [2] - 10:6, 13:12 FRANCISCO [1] - 3:20 FRED [2] - 1:22, 2:9 Friday [1] - 15:18 FROM [1] - 5:22 front [2] - 17:9, 18:7 full [1] - 18:11 functional [1] - 10:17 fund [2] - 12:2, 18:5 FUND..... [1] - 5:17</p>	<p>2:3 gentlemen [1] - 7:9 GERALD [1] - 2:4 GIVE [1] - 5:22 given [2] - 9:20, 14:25 Global [4] - 12:12, 13:3, 13:9, 13:20 GLOBAL [1] - 5:20 GONZALEZ [2] - 2:8, 2:9 GORDON [1] - 3:22 granting [1] - 8:4 GRANTING [1] - 5:9 GREER [1] - 4:7 GROUP [2] - 3:4, 3:13 GROUP'S [1] - 5:7 Group's [1] - 8:2 gun [1] - 12:13 GYPsum [1] - 2:22</p> <p style="text-align: center;">H</p> <p>HALF [1] - 6:9 half [1] - 20:23 hand [2] - 13:24 hand-to-hand [1] - 13:24 handle [1] - 16:20 handles [1] - 11:10 handling [2] - 9:12, 11:13 HARRY [1] - 2:14 Harry [2] - 7:17, 18:22 hear [2] - 10:21, 12:15 heard [1] - 18:24 HEARD [1] - 1:12 HEARING [2] - 5:8, 6:2 hearing [7] - 7:23, 8:3, 19:11, 19:23, 20:3, 20:5, 20:13 helpful [3] - 8:22, 8:25, 16:3 helps [1] - 16:5 hereby [1] - 21:15 Herman [1] - 7:14 HERMAN [2] - 1:17 HERRINGTON [2] - 3:14, 3:18 HICKS [1] - 2:7 Honor [12] - 7:18, 11:16, 12:9, 12:17, 18:21, 19:6, 19:11, 19:12, 19:14, 19:22, 20:4, 20:25 HONORABLE [1] - 1:12 hope [1] - 10:3 hopefully [1] - 19:18 hour [2] - 8:17, 20:23</p>	<p>HOOR [1] - 6:9 house [3] - 14:6, 14:7, 14:8 HOWARD [1] - 3:19 hundred [2] - 14:22, 16:13 hundreds [2] - 16:2 hunt [1] - 16:1 husband [1] - 14:2</p> <p style="text-align: center;">I</p> <p>I'LL [1] - 6:8 IL [1] - 3:10 important [1] - 12:22 IN [2] - 1:4, 5:6 inclination [1] - 9:3 inclined [1] - 9:1 include [1] - 15:25 included [1] - 8:1 INCLUDED [1] - 5:6 increase [2] - 13:1, 16:18 individuals [1] - 9:5 indulge [1] - 19:13 INEX [5] - 5:19, 12:11, 13:3, 13:9, 13:20 information [2] - 8:21, 9:23 injury [1] - 13:6 instructions [2] - 9:19, 15:17 introduce [1] - 9:6 invite [1] - 10:10 invited [1] - 19:6 IS [3] - 6:5, 6:6, 6:7 issue [16] - 8:16, 9:15, 10:16, 10:17, 10:18, 11:17, 12:2, 13:19, 14:16, 15:5, 17:2, 17:4, 17:16, 17:21, 18:9, 20:2 issued [3] - 17:18, 17:25 issues [5] - 9:23, 10:5, 10:15, 13:25, 19:19 item [1] - 10:22 ITEMS [1] - 5:3 items [1] - 7:25</p> <p style="text-align: center;">J</p> <p>JACOB [1] - 4:7 Jake [1] - 12:18 JAKE [1] - 5:22 Jake's [1] - 12:9 JAMES [1] - 3:15 JANUARY [2] - 6:5,</p>	<p>6:8 January [2] - 20:19, 20:22 JR [1] - 3:23 judge [3] - 11:10, 11:12, 11:13 Judge [2] - 7:16, 7:19 JUDGE [1] - 1:13 judges [5] - 11:2, 11:5, 11:8, 11:17, 11:21 jumped [1] - 12:13 jury [1] - 9:1</p> <p style="text-align: center;">K</p> <p>KALBAC [1] - 2:8 KANE [1] - 2:8 KATZ [1] - 1:17 keep [1] - 9:4 kept [1] - 9:8 Kerry [2] - 7:19, 12:8 KERRY [1] - 2:18 KINGSDORF [1] - 4:3 KNAUF [2] - 2:17, 5:19 Knauf [4] - 7:20, 12:11, 17:5, 18:13 KNAUF'S [1] - 5:9 Knauf's [1] - 8:4</p> <p style="text-align: center;">L</p> <p>LA [7] - 1:19, 2:5, 2:15, 2:20, 3:25, 4:5, 4:11 ladies [1] - 7:8 largely [1] - 14:13 last [7] - 12:21, 13:1, 14:20, 14:22, 15:9, 17:24, 18:2 late [2] - 8:23, 19:1 law [3] - 10:14, 19:25, 20:1 lawyers [1] - 15:14 lead [1] - 7:23 least [2] - 14:15, 19:1 leave [1] - 10:18 legal [1] - 10:17 LEONARD [1] - 1:18 letter [1] - 11:2 Levin [2] - 7:14, 19:6 LEVIN [16] - 1:21, 1:21, 7:14, 10:23, 10:25, 11:25, 12:3, 12:5, 12:13, 18:21, 19:22, 20:9, 20:12, 20:17, 20:21, 21:1 levin's [1] - 20:3</p>	<p>LIABILITY [1] - 1:5 Liability [1] - 7:11 LIAISON [3] - 1:17, 2:13, 2:17 liaison [11] - 7:12, 7:14, 7:17, 7:20, 7:23, 10:21, 11:3, 11:7, 18:22, 19:14 LIMITED [3] - 3:3, 3:5, 3:14 line [1] - 20:4 list [3] - 15:15, 17:7, 17:8 listed [1] - 16:9 listen [1] - 9:16 listening [1] - 14:24 lists [1] - 11:7 Litigation [1] - 7:11 litigation [5] - 9:25, 10:1, 11:10, 11:11, 12:2 LITIGATION [2] - 1:5, 5:17 living [1] - 13:7 logistical [1] - 19:19 LONGER [2] - 1:22, 2:9 look [3] - 15:22, 16:6 looked [1] - 16:11 looks [1] - 18:18 Loss [4] - 13:5, 15:8, 15:10, 18:2 Louisiana [2] - 21:14, 21:15 LOUISIANA [2] - 1:1, 1:7 LTD [2] - 2:23, 2:23</p> <p style="text-align: center;">M</p> <p>mail [5] - 9:18, 10:11, 13:25, 15:4, 16:10 mailed [2] - 15:14, 15:15 MANUFACTURED [1] - 1:4 Manufactured [1] - 7:11 MARTINEZ [1] - 2:8 Master [6] - 15:12, 15:17, 15:21, 16:8, 16:11, 17:25 material [5] - 8:14, 8:20, 8:21, 9:21 MATERIAL [1] - 3:4 MATERIALS [3] - 3:3, 3:13, 3:14 matter [4] - 8:23, 10:18, 11:22, 21:18</p>
<p style="text-align: center;">G</p> <p>GA [1] - 2:25 GABLES [1] - 2:10 GAINSBURGH [1] -</p>				

<p>matters [2] - 11:1, 20:13 MATTERS [1] - 6:2 MATTHEWS [1] - 2:8 MCCOLLAM [1] - 3:22 MDL [3] - 7:10, 9:11 MECHANICAL [1] - 4:14 meet [1] - 9:13 MEETING [1] - 6:8 meeting [2] - 18:22, 20:22 memorandum [1] - 10:14 mention [1] - 10:12 mentioned [1] - 20:14 MERINO [1] - 2:19 MERIT [1] - 4:10 Merit [2] - 21:13, 21:22 met [3] - 7:23, 19:13, 19:14 method [2] - 9:7, 17:3 MEUNIER [2] - 2:3, 2:4 MICHAEL [1] - 3:6 might [2] - 11:1, 19:13 Miller [1] - 7:19 MILLER [3] - 2:18, 7:19, 12:9 minute [1] - 21:2 moment [1] - 7:23 MONDAY [2] - 1:7, 7:2 money [2] - 15:12, 16:13 month [1] - 9:13 MONTHLY [3] - 1:12, 5:5, 5:22 monthly [3] - 7:21, 12:18, 21:5 months [1] - 15:9 motion [17] - 8:1, 8:2, 8:4, 8:7, 8:21, 10:10, 10:14, 18:24, 18:25, 19:9, 19:10, 19:15, 19:17, 19:18, 20:5, 20:15, 21:3 MOTION [3] - 5:6, 5:7, 5:9 MOTION..... [1] - 6:3 motions [3] - 9:10, 18:25, 19:3 MOTIONS..... [1] - 5:12 move [1] - 8:18 moving [1] - 9:14 MR [24] - 7:14, 7:16, 7:19, 10:23, 10:25,</p>	<p>11:25, 12:3, 12:5, 12:9, 12:13, 12:17, 14:4, 14:10, 14:12, 18:21, 19:6, 19:22, 20:2, 20:9, 20:12, 20:17, 20:21, 20:25, 21:1 MS [1] - 11:16 multiple [1] - 13:21</p> <p style="text-align: center;">N</p> <p>name [1] - 12:17 NATIONAL [2] - 3:12, 3:13 nature [1] - 19:17 necessary [1] - 19:8 need [4] - 9:20, 14:18, 17:16, 19:8 new [3] - 8:13, 8:16, 8:17 NEW [12] - 1:7, 1:19, 2:5, 2:15, 2:20, 3:3, 3:4, 3:7, 3:16, 3:25, 4:5, 4:11 NEXT [1] - 6:5 next [3] - 16:25, 20:5, 20:18 NO [1] - 1:6 nonKnauf [1] - 17:5 note [2] - 17:10, 18:23 nothing [1] - 8:16 notices [1] - 17:25 notifications [2] - 15:14, 18:1 notify [1] - 19:16 November [2] - 17:2, 17:18 number [5] - 8:8, 13:23, 14:14, 14:15, 14:21 numbered [1] - 21:18 numbers [2] - 12:24, 16:24 NY [2] - 3:7, 3:16</p> <p style="text-align: center;">O</p> <p>o'clock [1] - 20:20 O'CLOCK..... [1] - 6:7 O'KEEFE [1] - 1:18 objection [1] - 18:7 objections [4] - 17:10, 17:11, 17:13, 17:14 observation [1] - 8:19 obviously [1] - 16:24 occasionally [2] -</p>	<p>9:18, 14:2 occurred [2] - 18:22, 19:23 Oceanique [1] - 12:13 Oceanique's [1] - 8:4 OCEANIQUE'S [1] - 5:10 OCEANIQUE..... [1] - 5:21 OF [3] - 1:1, 1:12, 3:6 offer [2] - 8:22, 9:6 offered [1] - 15:13 office [1] - 11:19 officers [1] - 8:12 OFFICIAL [1] - 4:9 Official [2] - 21:14, 21:22 Omni [1] - 11:25 OMNIBUS [1] - 5:16 omnibus [1] - 11:24 ON [5] - 5:19, 6:5, 6:8, 6:9, 6:10 once [2] - 13:21, 18:3 ONE [4] - 2:24, 6:6, 6:9 one [20] - 8:11, 9:11, 9:12, 9:18, 9:20, 9:24, 10:6, 10:7, 10:8, 11:10, 12:21, 13:19, 14:16, 18:10, 19:12, 19:22, 20:19, 20:20, 20:23 open [2] - 9:4, 9:8 operation [1] - 13:24 opportunity [1] - 19:7 opposing [1] - 19:17 options [1] - 15:20 OR [1] - 6:1 oral [2] - 19:4, 19:8 ORDER [2] - 5:9, 7:4 order [3] - 8:3, 12:1, 17:18 orders [1] - 10:22 ORDERS..... [1] - 5:13 ORLEANS [8] - 1:7, 1:19, 2:5, 2:15, 2:20, 3:25, 4:5, 4:11 ORRICK [3] - 3:14, 3:18, 3:19 ought [1] - 10:9 outreach [1] - 13:15 outside [1] - 13:6</p> <p style="text-align: center;">P</p> <p>P.M [1] - 1:7 p.m [1] - 21:5</p>	<p>PA [1] - 1:23 PAGE [1] - 5:3 pages [1] - 16:2 paid [7] - 13:9, 13:10, 13:11, 13:12, 14:21, 15:1, 17:7 part [1] - 16:9 parties [4] - 8:19, 9:15, 19:16, 20:23 PARTIES [1] - 6:9 passed [1] - 18:8 passes [3] - 17:20, 17:22, 18:9 pay [5] - 13:17, 13:20, 14:18, 15:23, 16:13 payment [6] - 12:24, 13:18, 13:21, 15:5, 17:4, 17:16 payments [8] - 12:25, 13:2, 13:4, 13:8, 17:19, 17:24, 18:9 PEACHTREE [1] - 2:25 PENTHOUSE [1] - 2:10 people [6] - 13:22, 13:24, 15:13, 15:20, 18:14, 18:15 Pepper [3] - 21:12, 21:20, 21:21 PEPPER [1] - 4:9 per [3] - 13:21, 17:4, 17:5 percent [3] - 8:4, 13:10, 13:12 PERCENT [1] - 5:10 percentage [2] - 16:15, 16:16 period [1] - 9:9 person [1] - 14:7 PHELPS [1] - 2:13 PHILADELPHIA [1] - 1:23 phone [2] - 11:18, 14:24 PHYSICAL [1] - 6:4 physical [1] - 20:16 place [1] - 18:17 placing [1] - 10:11 plaintiff [1] - 20:11 PLAINTIFF [1] - 6:1 plaintiff's [1] - 8:10 plaintiffs [7] - 8:7, 8:15, 8:16, 8:24, 9:3, 9:4, 19:1 PLAINTIFFS' [1] - 1:17 PLASTERBOARD [1] - 2:23 point [1] - 12:16 PORTER [1] - 5:25</p>	<p>Porter [1] - 20:7 position [1] - 8:13 possible [1] - 17:21 POYDRAS [3] - 2:5, 4:4, 4:11 prejudicial [1] - 9:3 prepared [1] - 11:2 preremediation [1] - 13:7 PRESENT [1] - 4:7 presentation [1] - 12:10 presented [1] - 9:2 preservation [1] - 20:16 PRESERVATION..... [1] - 6:4 pretrial [1] - 10:22 PRETRIAL [1] - 5:13 pretty [2] - 15:6, 15:8 pro [6] - 15:14, 16:10, 16:11, 16:15, 16:19, 16:21 problems [1] - 9:23 procedures [2] - 17:3, 17:6 proceed [2] - 15:18, 17:14 PROCEEDINGS [3] - 1:12, 4:14, 7:1 proceedings [1] - 21:18 process [2] - 16:5, 18:8 PRODUCED [1] - 4:14 PRODUCTS [1] - 1:5 Products [1] - 7:11 professor [1] - 8:12 profile [1] - 20:10 PROFILE [1] - 6:1 program [6] - 12:4, 12:23, 15:10, 17:8, 18:5, 18:6 PROGRAM..... [1] - 5:18 progress [1] - 12:22 properties [2] - 14:15, 17:8 property [5] - 13:20, 13:21, 14:17, 17:5 proposed [1] - 19:25 PSC [4] - 17:11, 17:12, 18:8, 19:24 PSC'S [2] - 5:6, 5:7 PSC's [2] - 8:1, 8:2 PTO [4] - 17:2, 17:3, 17:6, 17:17 PUBLIC [1] - 3:3 pursuant [1] - 12:1</p>
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<p>put^[3] - 9:22, 10:10, 17:13</p>	<p>REMEDIATION ^[1] - 5:18</p>	<p>SANDRA ^[1] - 1:22</p>	<p>20:3</p>	<p>18:20, 19:24</p>
<p>Q</p>	<p>remediation ^[5] - 12:4, 12:7, 18:12, 18:16, 18:17</p>	<p>schedule ^[1] - 19:3</p>	<p>ST ^[2] - 2:20, 3:24</p>	<p>TAISHAN..... ^[1] - 5:24</p>
<p>questions ^[1] - 17:15 quick ^[1] - 17:23 quickly ^[2] - 15:6, 15:7</p>	<p>remind ^[2] - 13:16, 14:24</p> <p>RENE ^[1] - 2:19</p> <p>Repair ^[1] - 13:3</p> <p>repair ^[1] - 13:6</p> <p>reply ^[2] - 8:2, 9:6</p>	<p>scheduled ^[1] - 19:11</p> <p>scheduling ^[1] - 18:21</p> <p>se ^[1] - 15:14</p> <p>seated ^[1] - 7:8</p> <p>second ^[1] - 15:22</p> <p>section ^[1] - 11:10</p> <p>SEDRAN ^[1] - 1:21</p> <p>see ^[2] - 10:4, 20:23</p> <p>SEE ^[1] - 6:8</p> <p>seeing ^[1] - 11:22</p> <p>sensitive ^[1] - 9:23</p> <p>sensitivity ^[1] - 10:2</p> <p>sent ^[3] - 11:4, 11:5</p> <p>served ^[1] - 12:1</p> <p>set ^[1] - 20:13</p> <p>SET ^[1] - 6:2</p> <p>setting ^[1] - 10:15</p> <p>settings ^[1] - 10:24</p> <p>SETTINGS..... ^[1] - 5:14</p> <p>settlement ^[3] - 12:23, 18:5, 18:11</p> <p>SETTLEMENTS ^[1] - 5:19</p> <p>settlements ^[3] - 12:12, 12:15</p> <p>SETTLEMENTS..... ^[1] - 5:20</p> <p>short ^[1] - 16:23</p> <p>side ^[13] - 9:17, 9:18, 9:20, 9:21, 9:24, 10:3, 11:4, 13:9, 15:8, 19:16, 19:17</p> <p>significant ^[3] - 12:22, 15:8, 18:1</p> <p>significantly ^[1] - 16:25</p> <p>simply ^[1] - 8:14</p> <p>situations ^[2] - 14:2, 14:6</p> <p>six ^[1] - 16:23</p> <p>sold ^[1] - 14:6</p> <p>sometimes ^[3] - 10:15, 14:1, 14:6</p> <p>soon ^[5] - 15:23, 16:19, 17:20, 17:21, 18:9</p> <p>sort ^[4] - 9:11, 10:1, 10:16, 11:10</p> <p>SOUTH ^[1] - 3:10</p> <p>Special ^[6] - 15:12, 15:17, 15:21, 16:8, 16:11, 17:25</p> <p>specific ^[1] - 15:25</p> <p>speed ^[1] - 16:5</p> <p>spoliation ^[2] - 19:23,</p>	<p>stage ^[1] - 9:25</p> <p>start ^[1] - 12:23</p> <p>STATE ^[1] - 5:14</p> <p>state ^[5] - 10:24, 11:3, 11:6, 11:7, 11:11</p> <p>State ^[1] - 21:13</p> <p>STATE/FEDERAL ^[1] - 4:3</p> <p>STATES ^[2] - 1:1, 1:13</p> <p>States ^[2] - 21:14, 21:23</p> <p>states ^[1] - 11:9</p> <p>status ^[7] - 7:22, 12:16, 12:18, 12:21, 13:1, 20:18, 21:5</p> <p>STATUS ^[4] - 1:12, 5:5, 5:23, 6:5</p> <p>STENGEL ^[1] - 3:15</p> <p>STENOGRAPHY ^[1] - 4:14</p> <p>stipend ^[5] - 17:1, 17:4, 17:9, 17:16, 18:7</p> <p>STREET ^[8] - 1:23, 2:5, 2:14, 2:25, 3:15, 3:19, 4:4, 4:11</p> <p>strike ^[4] - 8:1, 8:18, 18:25, 19:10</p> <p>STRIKE ^[1] - 5:6</p> <p>subcategories ^[1] - 13:13</p> <p>subject ^[2] - 13:18, 16:10</p> <p>submission ^[1] - 19:18</p> <p>submit ^[1] - 13:16</p> <p>submitted ^[2] - 14:17, 17:11</p> <p>successful ^[1] - 14:13</p> <p>SUITE ^[6] - 1:23, 2:5, 2:14, 2:20, 3:10, 4:4</p> <p>summary ^[1] - 17:23</p> <p>summons ^[1] - 11:25</p> <p>SUPPLY ^[1] - 5:25</p> <p>Supply ^[1] - 20:7</p> <p>support ^[1] - 16:1</p> <p>supporting ^[1] - 16:6</p> <p>SUTCLIFFE ^[2] - 3:14, 3:18</p> <p>system ^[1] - 17:8</p>	<p>taker ^[1] - 18:23</p> <p>term ^[1] - 8:5</p> <p>terrible ^[1] - 18:23</p> <p>testimony ^[1] - 9:7</p> <p>Thanksgiving ^[1] - 12:21</p> <p>THAT ^[1] - 6:6</p> <p>THE ^[46] - 1:12, 1:17, 2:12, 2:17, 3:6, 3:19, 4:3, 5:6, 5:7, 5:9, 5:19, 5:22, 6:1, 6:2, 6:3, 6:5, 6:8, 6:9, 6:10, 7:7, 7:8, 7:10, 7:12, 7:21, 10:24, 11:1, 11:20, 12:2, 12:4, 12:7, 12:11, 12:15, 14:1, 14:5, 14:11, 18:10, 20:6, 20:10, 20:13, 20:18, 20:22, 21:2, 21:4</p> <p>THIS ^[1] - 1:9</p> <p>thousand ^[1] - 17:4</p> <p>three ^[4] - 10:6, 12:20, 13:2, 13:13</p> <p>Thursday ^[1] - 15:13</p> <p>timeline ^[1] - 19:17</p> <p>TO ^[6] - 1:9, 5:6, 5:7, 5:9, 5:22, 7:4</p> <p>today ^[4] - 7:21, 7:25, 18:16, 20:1</p> <p>together ^[1] - 9:16</p> <p>tomorrow ^[4] - 7:23, 19:2, 19:5, 19:11</p> <p>Toni ^[1] - 11:18</p> <p>total ^[4] - 12:25, 13:4, 13:8, 13:12</p> <p>totaling ^[1] - 17:24</p> <p>touch ^[1] - 17:1</p> <p>transcript ^[1] - 21:16</p> <p>TRANSCRIPT ^[2] - 1:12, 4:14</p> <p>transfer ^[1] - 11:12</p> <p>trial ^[2] - 9:1, 10:24</p> <p>TRIAL ^[1] - 5:14</p> <p>true ^[1] - 21:16</p> <p>try ^[2] - 13:22, 13:25</p> <p>turn ^[1] - 16:18</p> <p>TWO ^[1] - 6:7</p> <p>two ^[7] - 9:7, 13:2, 14:15, 15:20, 16:23, 16:25, 20:20</p>
<p>R</p>	<p>REPLY ^[1] - 5:7</p> <p>report ^[2] - 12:19, 14:22</p> <p>REPORT..... ^[1] - 5:23</p> <p>reported ^[2] - 14:20, 15:9</p> <p>Reporter ^[7] - 21:12, 21:13, 21:14, 21:21, 21:22, 21:22</p> <p>REPORTER ^[3] - 4:9, 4:10, 4:10</p> <p>reporter ^[1] - 9:16</p> <p>REPORTER'S ^[1] - 21:10</p> <p>request ^[5] - 15:16, 15:21, 15:24, 15:25, 16:17</p> <p>requested ^[1] - 15:11</p> <p>requests ^[4] - 15:15, 16:20, 16:24, 18:3</p> <p>requires ^[1] - 13:23</p> <p>resolve ^[9] - 10:5, 10:6, 10:7, 10:9, 13:22, 13:25, 14:13, 16:19, 19:19</p> <p>responded ^[2] - 8:7, 8:10</p> <p>response ^[5] - 8:8, 8:11, 9:6, 19:4</p> <p>RICHARD ^[1] - 3:9</p> <p>rise ^[2] - 7:7, 21:4</p> <p>RMR ^[2] - 4:9, 21:21</p> <p>ROOM ^[1] - 4:11</p> <p>ROSENBERG ^[5] - 2:14, 7:16, 19:6, 20:2, 20:25</p> <p>Rosenberg ^[1] - 7:17</p> <p>ROTHENBERG ^[1] - 3:24</p> <p>rule ^[1] - 9:17</p> <p>Rule ^[2] - 17:17, 18:24</p> <p>Russ ^[1] - 7:14</p>	<p>SEE ^[1] - 6:8</p> <p>seeing ^[1] - 11:22</p> <p>sensitive ^[1] - 9:23</p> <p>sensitivity ^[1] - 10:2</p> <p>sent ^[3] - 11:4, 11:5</p> <p>served ^[1] - 12:1</p> <p>set ^[1] - 20:13</p> <p>SET ^[1] - 6:2</p> <p>setting ^[1] - 10:15</p> <p>settings ^[1] - 10:24</p> <p>SETTINGS..... ^[1] - 5:14</p> <p>settlement ^[3] - 12:23, 18:5, 18:11</p> <p>SETTLEMENTS ^[1] - 5:19</p> <p>settlements ^[3] - 12:12, 12:15</p> <p>SETTLEMENTS..... ^[1] - 5:20</p> <p>short ^[1] - 16:23</p> <p>side ^[13] - 9:17, 9:18, 9:20, 9:21, 9:24, 10:3, 11:4, 13:9, 15:8, 19:16, 19:17</p> <p>significant ^[3] - 12:22, 15:8, 18:1</p> <p>significantly ^[1] - 16:25</p> <p>simply ^[1] - 8:14</p> <p>situations ^[2] - 14:2, 14:6</p> <p>six ^[1] - 16:23</p> <p>sold ^[1] - 14:6</p> <p>sometimes ^[3] - 10:15, 14:1, 14:6</p> <p>soon ^[5] - 15:23, 16:19, 17:20, 17:21, 18:9</p> <p>sort ^[4] - 9:11, 10:1, 10:16, 11:10</p> <p>SOUTH ^[1] - 3:10</p> <p>Special ^[6] - 15:12, 15:17, 15:21, 16:8, 16:11, 17:25</p> <p>specific ^[1] - 15:25</p> <p>speed ^[1] - 16:5</p> <p>spoliation ^[2] - 19:23,</p>	<p>STATES ^[2] - 1:1, 1:13</p> <p>States ^[2] - 21:14, 21:23</p> <p>states ^[1] - 11:9</p> <p>status ^[7] - 7:22, 12:16, 12:18, 12:21, 13:1, 20:18, 21:5</p> <p>STATUS ^[4] - 1:12, 5:5, 5:23, 6:5</p> <p>STENGEL ^[1] - 3:15</p> <p>STENOGRAPHY ^[1] - 4:14</p> <p>stipend ^[5] - 17:1, 17:4, 17:9, 17:16, 18:7</p> <p>STREET ^[8] - 1:23, 2:5, 2:14, 2:25, 3:15, 3:19, 4:4, 4:11</p> <p>strike ^[4] - 8:1, 8:18, 18:25, 19:10</p> <p>STRIKE ^[1] - 5:6</p> <p>subcategories ^[1] - 13:13</p> <p>subject ^[2] - 13:18, 16:10</p> <p>submission ^[1] - 19:18</p> <p>submit ^[1] - 13:16</p> <p>submitted ^[2] - 14:17, 17:11</p> <p>successful ^[1] - 14:13</p> <p>SUITE ^[6] - 1:23, 2:5, 2:14, 2:20, 3:10, 4:4</p> <p>summary ^[1] - 17:23</p> <p>summons ^[1] - 11:25</p> <p>SUPPLY ^[1] - 5:25</p> <p>Supply ^[1] - 20:7</p> <p>support ^[1] - 16:1</p> <p>supporting ^[1] - 16:6</p> <p>SUTCLIFFE ^[2] - 3:14, 3:18</p> <p>system ^[1] - 17:8</p>	<p>THAT ^[1] - 6:6</p> <p>THE ^[46] - 1:12, 1:17, 2:12, 2:17, 3:6, 3:19, 4:3, 5:6, 5:7, 5:9, 5:19, 5:22, 6:1, 6:2, 6:3, 6:5, 6:8, 6:9, 6:10, 7:7, 7:8, 7:10, 7:12, 7:21, 10:24, 11:1, 11:20, 12:2, 12:4, 12:7, 12:11, 12:15, 14:1, 14:5, 14:11, 18:10, 20:6, 20:10, 20:13, 20:18, 20:22, 21:2, 21:4</p> <p>THIS ^[1] - 1:9</p> <p>thousand ^[1] - 17:4</p> <p>three ^[4] - 10:6, 12:20, 13:2, 13:13</p> <p>Thursday ^[1] - 15:13</p> <p>timeline ^[1] - 19:17</p> <p>TO ^[6] - 1:9, 5:6, 5:7, 5:9, 5:22, 7:4</p> <p>today ^[4] - 7:21, 7:25, 18:16, 20:1</p> <p>together ^[1] - 9:16</p> <p>tomorrow ^[4] - 7:23, 19:2, 19:5, 19:11</p> <p>Toni ^[1] - 11:18</p> <p>total ^[4] - 12:25, 13:4, 13:8, 13:12</p> <p>totaling ^[1] - 17:24</p> <p>touch ^[1] - 17:1</p> <p>transcript ^[1] - 21:16</p> <p>TRANSCRIPT ^[2] - 1:12, 4:14</p> <p>transfer ^[1] - 11:12</p> <p>trial ^[2] - 9:1, 10:24</p> <p>TRIAL ^[1] - 5:14</p> <p>true ^[1] - 21:16</p> <p>try ^[2] - 13:22, 13:25</p> <p>turn ^[1] - 16:18</p> <p>TWO ^[1] - 6:7</p> <p>two ^[7] - 9:7, 13:2, 14:15, 15:20, 16:23, 16:25, 20:20</p>
<p>R</p>	<p>REPLY ^[1] - 5:7</p> <p>report ^[2] - 12:19, 14:22</p> <p>REPORT..... ^[1] - 5:23</p> <p>reported ^[2] - 14:20, 15:9</p> <p>Reporter ^[7] - 21:12, 21:13, 21:14, 21:21, 21:22, 21:22</p> <p>REPORTER ^[3] - 4:9, 4:10, 4:10</p> <p>reporter ^[1] - 9:16</p> <p>REPORTER'S ^[1] - 21:10</p> <p>request ^[5] - 15:16, 15:21, 15:24, 15:25, 16:17</p> <p>requested ^[1] - 15:11</p> <p>requests ^[4] - 15:15, 16:20, 16:24, 18:3</p> <p>requires ^[1] - 13:23</p> <p>resolve ^[9] - 10:5, 10:6, 10:7, 10:9, 13:22, 13:25, 14:13, 16:19, 19:19</p> <p>responded ^[2] - 8:7, 8:10</p> <p>response ^[5] - 8:8, 8:11, 9:6, 19:4</p> <p>RICHARD ^[1] - 3:9</p> <p>rise ^[2] - 7:7, 21:4</p> <p>RMR ^[2] - 4:9, 21:21</p> <p>ROOM ^[1] - 4:11</p> <p>ROSENBERG ^[5] - 2:14, 7:16, 19:6, 20:2, 20:25</p> <p>Rosenberg ^[1] - 7:17</p> <p>ROTHENBERG ^[1] - 3:24</p> <p>rule ^[1] - 9:17</p> <p>Rule ^[2] - 17:17, 18:24</p> <p>Russ ^[1] - 7:14</p>	<p>SEE ^[1] - 6:8</p> <p>seeing ^[1] - 11:22</p> <p>sensitive ^[1] - 9:23</p> <p>sensitivity ^[1] - 10:2</p> <p>sent ^[3] - 11:4, 11:5</p> <p>served ^[1] - 12:1</p> <p>set ^[1] - 20:13</p> <p>SET ^[1] - 6:2</p> <p>setting ^[1] - 10:15</p> <p>settings ^[1] - 10:24</p> <p>SETTINGS..... ^[1] - 5:14</p> <p>settlement ^[3] - 12:23, 18:5, 18:11</p> <p>SETTLEMENTS ^[1] - 5:19</p> <p>settlements ^[3] - 12:12, 12:15</p> <p>SETTLEMENTS..... ^[1] - 5:20</p> <p>short ^[1] - 16:23</p> <p>side ^[13] - 9:17, 9:18, 9:20, 9:21, 9:24, 10:3, 11:4, 13:9, 15:8, 19:16, 19:17</p> <p>significant ^[3] - 12:22, 15:8, 18:1</p> <p>significantly ^[1] - 16:25</p> <p>simply ^[1] - 8:14</p> <p>situations ^[2] - 14:2, 14:6</p> <p>six ^[1] - 16:23</p> <p>sold ^[1] - 14:6</p> <p>sometimes ^[3] - 10:15, 14:1, 14:6</p> <p>soon ^[5] - 15:23, 16:19, 17:20, 17:21, 18:9</p> <p>sort ^[4] - 9:11, 10:1, 10:16, 11:10</p> <p>SOUTH ^[1] - 3:10</p> <p>Special ^[6] - 15:12, 15:17, 15:21, 16:8, 16:11, 17:25</p> <p>specific ^[1] - 15:25</p> <p>speed ^[1] - 16:5</p> <p>spoliation ^[2] - 19:23,</p>	<p>STATES ^[2] - 1:1, 1:13</p> <p>States ^[2] - 21:14, 21:23</p> <p>states ^[1] - 11:9</p> <p>status ^[7] - 7:22, 12:16, 12:18, 12:21, 13:1, 20:18, 21:5</p> <p>STATUS ^[4] - 1:12, 5:5, 5:23, 6:5</p> <p>STENGEL ^[1] - 3:15</p> <p>STENOGRAPHY ^[1] - 4:14</p> <p>stipend ^[5] - 17:1, 17:4, 17:9, 17:16, 18:7</p> <p>STREET ^[8] - 1:23, 2:5, 2:14, 2:25, 3:15, 3:19, 4:4, 4:11</p> <p>strike ^[4] - 8:1, 8:18, 18:25, 19:10</p> <p>STRIKE ^[1] - 5:6</p> <p>subcategories ^[1] - 13:13</p> <p>subject ^[2] - 13:18, 16:10</p> <p>submission ^[1] - 19:18</p> <p>submit ^[1] - 13:16</p> <p>submitted ^[2] - 14:17, 17:11</p> <p>successful ^[1] - 14:13</p> <p>SUITE ^[6] - 1:23, 2:5, 2:14, 2:20, 3:10, 4:4</p> <p>summary ^[1] - 17:23</p> <p>summons ^[1] - 11:25</p> <p>SUPPLY ^[1] - 5:25</p> <p>Supply ^[1] - 20:7</p> <p>support ^[1] - 16:1</p> <p>supporting ^[1] - 16:6</p> <p>SUTCLIFFE ^[2] - 3:14, 3:18</p> <p>system ^[1] - 17:8</p>	<p>THAT ^[1] - 6:6</p> <p>THE ^[46] - 1:12, 1:17, 2:12, 2:17, 3:6, 3:19, 4:3, 5:6, 5:7, 5:9, 5:19, 5:22, 6:1, 6:2, 6:3, 6:5, 6:8, 6:9, 6:10, 7:7, 7:8, 7:10, 7:12, 7:21, 10:24, 11:1, 11:20, 12:2, 12:4, 12:7, 12:11, 12:15, 14:1, 14:5, 14:11, 18:10, 20:6, 20:10, 20:13, 20:18, 20:22, 21:2, 21:4</p> <p>THIS ^[1] - 1:9</p> <p>thousand ^[1] - 17:4</p> <p>three ^[4] - 10:6, 12:20, 13:2, 13:13</p> <p>Thursday ^[1] - 15:13</p> <p>timeline ^[1] - 19:17</p> <p>TO ^[6] - 1:9, 5:6, 5:7, 5:9, 5:22, 7:4</p> <p>today ^[4] - 7:21, 7:25, 18:16, 20:1</p> <p>together ^[1] - 9:16</p> <p>tomorrow ^[4] - 7:23, 19:2, 19:5, 19:11</p> <p>Toni ^[1] - 11:18</p> <p>total ^[4] - 12:25, 13:4, 13:8, 13:12</p> <p>totaling ^[1] - 17:24</p> <p>touch ^[1] - 17:1</p> <p>transcript ^[1] - 21:16</p> <p>TRANSCRIPT ^[2] - 1:12, 4:14</p> <p>transfer ^[1] - 11:12</p> <p>trial ^[2] - 9:1, 10:24</p> <p>TRIAL ^[1] - 5:14</p> <p>true ^[1] - 21:16</p> <p>try ^[2] - 13:22, 13:25</p> <p>turn ^[1] - 16:18</p> <p>TWO ^[1] - 6:7</p> <p>two ^[7] - 9:7, 13:2, 1</p>

<p>under [1] - 17:17 UNITED [2] - 1:1, 1:13 United [2] - 21:14, 21:23 up [6] - 10:18, 11:13, 14:15, 16:5, 19:2, 19:5 US [2] - 3:5, 3:9</p>
V
<p>value [1] - 16:18 various [1] - 14:1 VEJNOSKA [1] - 3:18 Venture [1] - 20:7 VENTURE [1] - 5:25 Verification [2] - 13:15, 14:25</p>
W
<p>W9 [2] - 13:14, 15:1 WACKER [1] - 3:10 wait [1] - 17:16 WALNUT [1] - 1:23 WARSHAUER [1] - 2:3 ways [1] - 9:12 website [1] - 15:3 week [1] - 14:19 weeks [6] - 12:20, 12:21, 13:2, 16:25, 17:24, 19:23 WEST [2] - 2:25, 3:15 WHEREUPON [1] - 21:5 wife [1] - 14:2 witnesses' [1] - 9:7 wondering [1] - 15:1 WOODY [6] - 4:7, 5:22, 12:17, 14:4, 14:10, 14:12 Woody [1] - 12:18 worth [1] - 16:12</p>
X
<p>XX [1] - 11:25</p>
Y
<p>YORK [2] - 3:7, 3:16</p>
“
<p>“BNBM” [1] - 3:5 “CNBM” [1] - 3:14</p>