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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
WEDNESDAY, OCTOBER 23, 2019, 9:00 A.M.

08:48:19

THIS DOCUMENT RELATES TO
ALL CASES

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

APPEARANCES:

FOR THE PLAINTIFFS'
LIAISON COUNSEL:

HERMAN HERMAN KATZ
BY: LEONARD A. DAVIS, ESQUIRE
STEPHEN HERMAN, ESQUIRE
820 O'KEEFE AVENUE
NEW ORLEANS, LA 70113

LEVIN, FISHBEIN, SEDRAN & BERMAN
BY: SANDRA L. DUGGAN, ESQUIRE
510 WALNUT STREET, SUITE 500
PHILADELPHIA, PA 19106

1 APPEARANCES CONTINUED:

2

3

GAINSBURGH BENJAMIN DAVID
MEUNIER AND WARSHAUER
BY: GERALD E. MEUNIER, ESQUIRE
2800 ENERGY CENTRE
1100 POYDRAS STREET, SUITE 2800
NEW ORLEANS, LA 70163

6

7

COLSON HICKS EIDSON
BY: PATRICK S. MONTOYA, ESQUIRE
225 ALHAMBRA CIRCLE, PENTHOUSE
CORAL GABLES, FL 33134

8

9

10

11

LAMBERT & NELSON
BY: CAYLE PETERSON, ESQUIRE
701 MAGAZINE STREET
NEW ORLEANS, LA 70130

12

13

14

FOR THE STATE/FEDERAL
COORDINATION COMMITTEE:

15

LAW OFFICES OF RICHARD J. SERPE
BY: RICHARD SERPE, ESQUIRE
580 EAST MAIN STREET, SUITE 310
NORFOLK, VA 23510

16

17

18

FOR TAISHAN GYPSUM CO.,
LTD, AND TAI'AN TAISHAN
PLASTERBOARD CO., LTD.:

19

20

ALSTON & BIRD
BY: CHRISTINA H. EIKHOFF, ESQUIRE
ONE ATLANTIC CENTER
1201 WEST PEACHTREE STREET
ATLANTA, GA 30309

21

22

23

24

25

1 APPEARANCES CONTINUED:

2

3 FOR THE KNAUF
4 LIAISON COUNSEL:

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ
BY: KERRY J. MILLER, ESQUIRE
201 ST. CHARLES AVENUE, SUITE 3600
NEW ORLEANS, LA 70170

6

7

8 FOR THE TAISHAN, BNMB
ENTITIES AND CNBM ENTITIES
9 LIAISON COUNSEL:

PHELPS DUNBAR
BY: HARRY ROSENBERG, ESQUIRE
365 CANAL STREET, SUITE 2000
NEW ORLEANS, LA 70130

10

11

12 FOR TAISHAN GYPSUM CO.,
13 LTD, AND TAI'AN TAISHAN
PLASTERBOARD CO., LTD.:

ALSTON & BIRD
BY: CHRISTINA H. EIKHOFF, ESQUIRE
BERNARD TAYLOR, SR., ESQUIRE
ONE ATLANTIC CENTER
1201 WEST PEACHTREE STREET
ATLANTA, GA 30309

16

17

18

ALSTON & BIRD
DAVID VENDERBUSH, ESQUIRE
90 PARK AVENUE, 15TH FLOOR
NEW YORK, NY 10016

19

20

21

22

23

24

25

1 APPEARANCES CONTINUED:

2

3 CHINA NATIONAL BUILDING
4 MATERIALS GROUP CORPORATION
5 AND CHINA NATIONAL BUILDING
6 MATERIALS COMPANY LIMITED

7 (COLLECTIVELY, "CNBM") : GORDON, ARATA, MCCOLLAM,
8 DUPLANTIS & EAGAN
9 BY: EWELL E. EAGAN, JR., ESQUIRE
10 DONNA P. CURRAULT, ESQUIRE
11 ALEX B. ROTHENBERG, ESQUIRE
12 201 ST. CHARLES AVENUE, 40TH FLOOR
13 NEW ORLEANS, LA 70170

9

10 ALSO PRESENT: JACOB WOODY, BROWNGREER
11 SARAH OLSON, PLAINTIFF

11

12

13 OFFICIAL COURT REPORTER: CATHY PEPPER, CRR, RMR, CCR
14 CERTIFIED REALTIME REPORTER
15 CERTIFIED MERIT REPORTER
16 500 POYDRAS STREET, ROOM B406
17 NEW ORLEANS, LA 70130
18 (504) 589-7779
19 Cathy_Pepper@laed.uscourts.gov

17

18 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT
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I N D E X

	<u>PAGE</u>
FAIRNESS HEARING ON DECEMBER 11TH, 2019.....	10
INITIAL PAYMENT UNDER THE SETTLEMENT HAS BEEN FULLY MADE BY TAISHAN.....	11
LONG FORM NOTICE WAS MAILED TO EVERY SINGLE KNOWN CLASS MEMBER.....	11
ESTIMATE LETTERS WERE SENT BY BROWNGREER TO EVERY PLAINTIFF ON THE MASTER SPREADSHEET.....	11
CLASS COUNSEL HAS SET UP A SETTLEMENT WEBSITE, CHINESEDRYWALLSETTLEMENT.COM, AND A CALL CENTER.....	11
UPDATED MASTER SPREADSHEET BY THE END OF THE MONTH...	13
NEXT CONFERENCE IS NOVEMBER 22ND, 2019	16

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

WEDNESDAY, OCTOBER 23, 2019

M O R N I N G S E S S I O N

(COURT CALLED TO ORDER)

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THE DEPUTY CLERK: All rise.

THE COURT: Be seated, please. Good morning, ladies and gentlemen.

VOICES: Good morning, Judge.

THE COURT: Let's call the case.

THE DEPUTY CLERK: MDL 2047, In re: Chinese Manufactured Drywall Products Liability Litigation.

THE COURT: Would counsel make their appearance for the record, please.

MR. ROSENBERG: Good morning, Judge Fallon. Harry Rosenberg, liaison counsel for Taishan, BNB, and CNBM.

MR. DAVIS: Good morning, Your Honor. Leonard Davis on behalf of the Plaintiffs' Steering Committee.

THE COURT: We're here today for our monthly status conference. The case initially started with numbers of plaintiffs against numbers of defendants. The unusual factor in this particular case is that I had about 20,000 individual claimants, which is not necessarily unusual or unwieldy, but in this particular case I had a thousand defendants, which is

09:02:31 1 unusual for this type of litigation.

09:02:34 2 In any event, the two types of defendants that
09:02:40 3 were involved in the case were manufacturers, and they were
09:02:49 4 grouped into the Chinese manufacturers and the German
09:02:54 5 manufacturers. The case proceeded against the German
09:02:57 6 manufacturers, Knauf, first, and it was resolved, settled, so
09:03:05 7 they are no longer in the case, with the potential exceptions
09:03:10 8 of one or two individual cases.

09:03:13 9 The case then proceeded with vigor against the
09:03:18 10 Chinese defendants, Taishan and others, and the case proceeded.
09:03:26 11 There were trials and so forth, both state and federal, and the
09:03:33 12 parties reached an agreement not too long ago. It's a
09:03:40 13 class-action settlement agreement, and that's where we are at
09:03:48 14 this particular point.

09:03:49 15 I had received a number of letters from
09:03:52 16 individuals -- individual people, not lawyers -- questioning
09:04:03 17 various aspects of it, and perhaps I should at least address
09:04:08 18 what the concept is as best, at least, I can.

09:04:14 19 Let me say a word about class actions. Maybe the
09:04:23 20 complexity of society, nationwide sales, opportunities of goods
09:04:31 21 and material, instantaneous communication, and perhaps even
09:04:37 22 lawyer advertising, this has brought about a situation where
09:04:42 23 the traditional case, the traditional common-law case of one
09:04:47 24 plaintiff, one defendant has morphed into numbers of plaintiffs
09:04:56 25 and sometimes numbers of defendants. Therefore, some vehicle

09:05:00 1 had to be established legislatively and enforced judicially to
09:05:07 2 deal with this situation where you had multiple plaintiffs,
09:05:12 3 20,000 individual plaintiffs, with a thousand lawyers, or
09:05:17 4 thereabouts, filing suit.

09:05:20 5 The traditional method of one plaintiff, one
09:05:26 6 defendant -- one lawyer for the plaintiff, one lawyer for the
09:05:30 7 defendant -- wasn't a vehicle that was able to be handled;
09:05:34 8 therefore, legislatively a method of dealing with that type of
09:05:40 9 litigation was created, and it was called a *class action*.

09:05:44 10 It was adopted in the Federal Rules of Civil
09:05:49 11 Procedure 23 to create a class action which created a method of
09:05:55 12 dealing with litigation that involved multiple parties on at
09:06:01 13 least one side of the case. In order to qualify as a class
09:06:07 14 action, you had to have some commonality. It just wasn't the
09:06:11 15 fact that you had a case, you had to have some commonality, and
09:06:15 16 those commonalities had to preponderate in order for you to
09:06:22 17 have an opportunity to join together as a class.

09:06:30 18 The class action has some advantages to it, at
09:06:36 19 least from the plaintiffs' standpoint, from the litigants'
09:06:40 20 standpoint. They can join together, and they can pool their
09:06:44 21 costs so that it's not one person paying all of the costs. The
09:06:50 22 group, in a sense, pays the costs and attorney's fees, pays the
09:06:56 23 attorney's fees, and they don't do it up front. They are able
09:07:00 24 to pool their resources, so to speak. They have a common
09:07:07 25 representation. They are able to collect information more

09:07:15 1 easily and house that information more easily, so those are
09:07:22 2 advantages.

09:07:23 3 But there are some disadvantages, and the
09:07:29 4 disadvantages are sort of like a family situation where you
09:07:34 5 have 12 kids, and the turkey comes on the table, and 12 want a
09:07:43 6 drumstick. There are only two. There are two drumsticks, and
09:07:47 7 so if everybody wants a drumstick, they compromise on they get
09:07:53 8 a piece of it. They don't get the whole drumstick. There are
09:07:57 9 not 12 drumsticks on a turkey. That's a disadvantage.

09:08:03 10 Sometimes the disadvantages outweigh the
09:08:07 11 advantages. What to do in that situation. Well, the
09:08:12 12 legislation allows for that. They allow for you to leave the
09:08:16 13 table. You go on your own and get your own turkey, and that's
09:08:27 14 what the opt-out means in this type of litigation.

09:08:34 15 So there are advantages and there are
09:08:36 16 disadvantages, and the litigants are notified of this. They
09:08:41 17 are notified of the dinner, and they can come to the table or
09:08:46 18 they don't have to come to the table. If they don't want to
09:08:49 19 come to the table, though, they have to tell people. They have
09:08:53 20 to say, "I'm not going to be there," so that they don't set a
09:08:57 21 table for you. So you have to say, "I want out. I'm opting
09:09:03 22 out of this litigation," and you have that opportunity.

09:09:06 23 So the notice goes out and everybody is notified
09:09:14 24 of it. They have the opportunity to ask questions of their
09:09:21 25 attorney. Whatever question they have, they have an

09:09:24 1 opportunity to do so.

09:09:26 2 I received a long letter from Mr. Moody, who had
09:09:33 3 a number of questions, but he has met already five or six or
09:09:37 4 seven times with his attorney, and his attorney has endeavored
09:09:41 5 to answer those questions.

09:09:43 6 Sometimes the answers are not satisfactory, but
09:09:48 7 they are answers. If you don't like the answer, you have the
09:09:51 8 opportunity to say, "I'm not coming to the dinner, folks. I'm
09:09:55 9 just letting you know, I'm out," and go to your own place and
09:10:05 10 seek to obtain your dinner.

09:10:06 11 So that's what we're doing, and the notice has
09:10:11 12 gone out, and we are having a last fairness hearing on
09:10:19 13 December 11th, is it, December 11th. Everybody has been
09:10:24 14 notified, and it's very costly to notify everybody, but the
09:10:29 15 class counsel has a duty, and they've extended a lot of
09:10:38 16 resources and time to make sure that everybody was noticed.

09:10:41 17 It seems to me that it's a fair notice. It's an
09:10:46 18 adequate notice. They are doing everything they can. They
09:10:50 19 have call operators to explain what the facts are, what the
09:10:56 20 opportunities are, what the disadvantages are, answer any
09:11:00 21 questions, and so people have an opportunity to do that, and
09:11:06 22 we'll have that hearing.

09:11:08 23 Today I have a status conference just to find out
09:11:13 24 what's happening and what response it's having, so I'll hear
09:11:17 25 from the parties at this time.

09:11:20 1 MS. DUGGAN: Good morning, Your Honor. Sandra Duggan
09:11:23 2 on behalf of the plaintiffs. Your Honor, I would like to
09:11:26 3 report that the initial payment under the settlement has been
09:11:29 4 fully made by Taishan. Those monies are now safely held in the
09:11:34 5 court registry. The notice has gone out, long form notice was
09:11:38 6 mailed to every single known class member and estimate letters
09:11:42 7 were sent by BrownGreer to every plaintiff on the master
09:11:45 8 spreadsheet.

09:11:47 9 Under the settlement and the Court's approval
09:11:50 10 notice, class members had until October 3rd to dispute the
09:11:54 11 information on the master spreadsheet. BrownGreer has received
09:11:57 12 all of the disputes and will be publishing a revised master
09:12:00 13 spreadsheet by the end of this month, and that will go on the
09:12:04 14 docket so everybody can see it.

09:12:06 15 Class counsel has set up a settlement website,
09:12:10 16 ChineseDrywallSettlement.com. We also have a call center that
09:12:14 17 has been functioning, and I believe it's been working very
09:12:18 18 well. On the website itself there has been over 99,000 views,
09:12:23 19 and 72,000 of those have been from new users from all 50 states
09:12:28 20 plus the District of Columbia.

09:12:30 21 As regarding the call center, we've had over 200
09:12:35 22 callers. Class counsel have been returning the phone calls.
09:12:37 23 We have been responding to emails, and we have inquiries from
09:12:40 24 class members from 21 different states.

09:12:42 25 So we feel that the notice is working, people are

09:12:45 1 asking questions, and we are answering all of those questions
09:12:48 2 to the best of our abilities:

09:12:50 3 THE COURT: All right. Anything from defense counsel?

09:12:53 4 MS. EIKHOFF: No. Just to reiterate the report of
09:13:00 5 Ms. Duggan that we do believe that the notice is working and
09:13:03 6 agree that it has been fair and adequate.

09:13:05 7 THE COURT: Okay.

09:13:07 8 Jake, do you want to give me some feel for what's
09:13:09 9 happening?

09:13:10 10 MR. WOODY: Yes, Judge. We did receive the challenges
09:13:14 11 that Ms. Dugan referred to. We've received 109 of them that
09:13:18 12 break down into various categories.

09:13:20 13 THE COURT: What are the major categories of concern?

09:13:22 14 MR. WOODY: The biggest category of concern is the one
09:13:26 15 that affects the dollar values the most, which is people who
09:13:30 16 want to switch from -- they claim that they in Amarin, we have
09:13:34 17 them in Brook, or they are in neither, and they want to be in
09:13:36 18 one of them, but those do affect the claim values the most, but
09:13:40 19 they also are fairly black and white for us to deal with.

09:13:45 20 THE COURT: The square footage, is that an issue?

09:13:48 21 MR. WOODY: Square footage, we did receive some
09:13:50 22 challenges on that. Most of the challenges are for a
09:13:52 23 relatively small amount of square footage, so no matter how we
09:13:57 24 rule on that, it won't really affect the payouts too much.

09:14:00 25 I don't see anything in the challenges that will

09:14:02 1 have a significant impact on the estimates that we've already
09:14:04 2 made because when you have this many people and this much
09:14:08 3 money, it takes quite a bit of shifting to really change the
09:14:11 4 dollar values too much, but we are reviewing them and will
09:14:14 5 issue decisions in an updated master spreadsheet by the end of
09:14:19 6 the month.

09:14:19 7 THE COURT: Okay.

09:14:21 8 MR. WOODY: Thank you, Your Honor.

09:14:21 9 THE COURT: All right. Anything further?

09:14:23 10 Richard?

09:14:24 11 MR. SERPE: Good morning, Your Honor. Richard Serpe
09:14:32 12 for the PFC and class counsel.

09:14:35 13 Late last night around 9:00 p.m. I received an
09:14:38 14 e-mail from one of the Virginia class members, Sarah Olson, and
09:14:41 15 she has requested to briefly address the Court this morning.

09:14:44 16 THE COURT: Sure. Ms. Olsen, you're in court? Would
09:14:48 17 you come forward, please, ma'am.

09:14:59 18 Okay. I appreciate you being here. I hope the
09:15:02 19 weather is okay for you to here in New Orleans.

09:15:05 20 MS. OLSON: Much better than Wisconsin. Thank you.

09:15:10 21 THE COURT: Great. Fine. Yes, ma'am.

09:15:14 22 MS. OLSON: I wasn't truly expecting to do this today.
09:15:17 23 I apologize. I'm on vacation.

09:15:17 24 THE COURT: That's alright.

09:15:18 25 MS. OLSON: So when I realized last night that I was in

09:15:21 1 the town where this was at, I felt obligated to at least come
09:15:26 2 and watch.

09:15:26 3 THE COURT: Sure.

09:15:28 4 MS. OLSON: So I apologize, I didn't prepare very well.

09:15:31 5 THE COURT: That's okay. I appreciate you being here.

09:15:36 6 MS. OLSON: In 2010 my husband and I received a letter
09:15:39 7 from our builder telling us that we had Chinese drywall in our
09:15:44 8 house, and he was on deployment at the time. We're both Navy
09:15:47 9 veterans. We graduated from the Naval Academy.

09:15:52 10 I didn't quite appreciate what that meant until I
09:15:54 11 started looking in on it. At the time we had a
09:15:58 12 two-and-a-half-year-old son who was clearly not developing
09:16:01 13 correctly. So for us, this has been a very emotional journey.
09:16:06 14 Since then we've had a third child. We moved out of that house
09:16:09 15 as soon as we could because we were all very ill.

09:16:12 16 We -- I very vividly remember the first time we
09:16:16 17 met with Richard Serpe. My husband had just finished a tour at
09:16:22 18 the Pentagon in a Chinese think tank, and we were sitting at
09:16:25 19 our dining room table, and he looked over at me he says, "We
09:16:29 20 will never see a penny from this case," just from the culture
09:16:33 21 and what he had learned in that job.

09:16:36 22 So we have been trying hard, not always
09:16:41 23 succeeding very well, in moving on for the past 10 years or so,
09:16:45 24 and every once in a while there is something that comes up that
09:16:48 25 reminds us of the emotional part of this. But the rational

09:16:54 1 part of this we've always tried to keep in the back of our mind
09:16:57 2 that if we ever got something, we would be appreciative that
09:17:02 3 there was something versus nothing. I can't imagine being in
09:17:05 4 the class of getting very little.

09:17:07 5 We're very fortunate that the lawyers we had
09:17:10 6 worked to put us in the class where we are. I can't imagine we
09:17:14 7 would ever look at this settlement and think we're whole.
09:17:19 8 There is no way you can take an autistic child and another one
09:17:23 9 with chronic anxiety and say this doesn't affect us every day
09:17:28 10 of our lives. Financially, we lost almost everything we had
09:17:32 11 trying to compensate for this.

09:17:36 12 I wish I could stand here and say there has got
09:17:38 13 to be a better solution. I don't have that -- you know, with
09:17:44 14 all these people. I guess I just want to say that for all of
09:17:50 15 you in this business room, this may not be emotional to you,
09:17:57 16 and there may never be a way to prove what we've had to go
09:18:01 17 through, the emotional, the diagnoses of PTSD, the constant
09:18:07 18 triggers that will follow us through the rest of our life.
09:18:10 19 Every day I wake up and I have to say how am I going to get my
09:18:15 20 son a successful member of society? You may not be able to
09:18:17 21 capture that when you're making these decisions.

09:18:20 22 Please remember that there are real people behind
09:18:22 23 this, and as much as we can all say something is better than
09:18:28 24 nothing, the amount of money and energy we've expended, you can
09:18:33 25 never compensate us enough.

09:18:36 1 I used to look at, you know, people in
09:18:40 2 New Orleans, right, who lived through tragedies such as
09:18:45 3 hurricanes, and we've had houses with trees fall on them in
09:18:47 4 Virginia when we were in the military, there was never really a
09:18:50 5 good solution to this problem. There wasn't an insurance that
09:18:53 6 helped us. You know, this is it. This is all we're going to
09:18:57 7 get.

09:18:58 8 So, I guess what I would say is, yes, more would
09:19:03 9 help, but I appreciate the time and the energy that everybody
09:19:08 10 has put into this, and, frankly, we want to move on with our
09:19:12 11 lives as much as possible.

09:19:15 12 Thank you.

09:19:16 13 THE COURT: Okay. Well, thanks for being here. I
09:19:18 14 appreciate it. I appreciate your comments.

09:19:21 15 MS OLSON: Thank you.

09:19:30 16 THE COURT: Anything further from anyone?

09:19:33 17 Okay. With that, we'll end the conference then
09:19:36 18 and I'll see you all, when is the next one, November 22nd.

09:19:45 19 Okay. Anything further? Thank you all very
09:19:48 20 much. Court will stand in recess.

09:19:50 21 THE DEPUTY CLERK: All rise.

22 (WHEREUPON, at 9:19 a.m., the proceedings were
23 concluded.)

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REPORTER'S CERTIFICATE

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

s/Cathy Pepper

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

0	5	agree [1] - 12:6 agreement [2] - 7:12, 7:13 ALEX [1] - 4:7 ALHAMBRA [1] - 2:8 ALL [1] - 1:11 allow [1] - 9:12 allows [1] - 9:12 almost [1] - 15:10 alright [1] - 13:24 ALSO [1] - 4:10 ALSTON [3] - 2:19, 3:13, 3:17 Amorin [1] - 12:16 amount [2] - 12:23, 15:24 AND [6] - 2:3, 2:19, 3:8, 3:12, 4:4, 5:13 answer [3] - 10:5, 10:7, 10:20 answering [1] - 12:1 answers [2] - 10:6, 10:7 anxiety [1] - 15:9 apologize [2] - 13:23, 14:4 appearance [1] - 6:14 APPEARANCES [4] - 1:16, 2:1, 3:1, 4:1 appreciate [6] - 13:18, 14:5, 14:10, 16:9, 16:14 appreciative [1] - 15:2 approval [1] - 11:9 ARATA [1] - 4:5 aspects [1] - 7:17 ATLANTA [2] - 2:21, 3:15 ATLANTIC [2] - 2:20, 3:14 attorney [3] - 9:25, 10:4 attorney's [2] - 8:22, 8:23 autistic [1] - 15:8 AVENUE [4] - 1:20, 3:5, 3:18, 4:7	BERMAN [1] - 1:23 BERNARD [1] - 3:14 best [3] - 7:18, 12:2, 17:8 better [3] - 13:20, 15:13, 15:23 biggest [1] - 12:14 BIRD [3] - 2:19, 3:13, 3:17 bit [1] - 13:3 black [1] - 12:19 BNBM [1] - 6:17 BNMB [1] - 3:7 break [1] - 12:12 briefly [1] - 13:15 Brook [1] - 12:17 brought [1] - 7:22 BrownGreer [2] - 11:7, 11:11 BROWNGREER [2] - 4:10, 5:10 builder [1] - 14:7 BUILDING [2] - 4:3, 4:4 business [1] - 15:15 BY [16] - 1:19, 1:23, 2:4, 2:8, 2:11, 2:15, 2:20, 3:4, 3:9, 3:13, 4:6, 4:17, 4:18, 5:7, 5:10, 5:14	CENTER..... [1] - 5:13 CENTRE [1] - 2:4 CERTIFICATE [1] - 17:1 CERTIFIED [2] - 4:13, 4:14 Certified [3] - 17:3, 17:4, 17:12 certify [1] - 17:7 challenges [4] - 12:10, 12:22, 12:25 change [1] - 13:3 CHARLES [2] - 3:5, 4:7 child [2] - 14:14, 15:8 CHINA [2] - 4:3, 4:4 Chinese [5] - 6:12, 7:4, 7:10, 14:7, 14:18 CHINESE [1] - 1:5 CHINESE-MANUFACTURED [1] - 1:5 ChineseDrywallSettlement.com [1] - 11:16 CHINESEDRYWALL SETTLEMENT.COM [1] - 5:13 CHRISTINA [2] - 2:20, 3:13 chronic [1] - 15:9 CIRCLE [1] - 2:8 CIVIL [1] - 1:7 Civil [1] - 8:10 claim [2] - 12:16, 12:18 claimants [1] - 6:24 CLASS [2] - 5:9, 5:12 class [17] - 7:13, 7:19, 8:9, 8:11, 8:13, 8:17, 8:18, 10:15, 11:6, 11:10, 11:15, 11:22, 11:24, 13:12, 13:14, 15:4, 15:6 class-action [1] - 7:13 clearly [1] - 14:12 CLERK [3] - 6:7, 6:12, 16:21 CNBM [2] - 3:8, 6:17 CO [4] - 2:18, 2:19, 3:12, 3:13 collect [1] - 8:25 COLLECTIVELY [1] - 4:5 COLSON [1] - 2:7 Columbia [1] - 11:20 coming [1] - 10:8 comments [1] - 16:14
09-MD-2047 [1] - 1:7	50 [1] - 11:19 500 [2] - 1:24, 4:14 504 [1] - 4:15 510 [1] - 1:24 580 [1] - 2:16 589-7779 [1] - 4:15	agreed [1] - 12:6 agreement [2] - 7:12, 7:13 ALEX [1] - 4:7 ALHAMBRA [1] - 2:8 ALL [1] - 1:11 allow [1] - 9:12 allows [1] - 9:12 almost [1] - 15:10 alright [1] - 13:24 ALSO [1] - 4:10 ALSTON [3] - 2:19, 3:13, 3:17 Amorin [1] - 12:16 amount [2] - 12:23, 15:24 AND [6] - 2:3, 2:19, 3:8, 3:12, 4:4, 5:13 answer [3] - 10:5, 10:7, 10:20 answering [1] - 12:1 answers [2] - 10:6, 10:7 anxiety [1] - 15:9 apologize [2] - 13:23, 14:4 appearance [1] - 6:14 APPEARANCES [4] - 1:16, 2:1, 3:1, 4:1 appreciate [6] - 13:18, 14:5, 14:10, 16:9, 16:14 appreciative [1] - 15:2 approval [1] - 11:9 ARATA [1] - 4:5 aspects [1] - 7:17 ATLANTA [2] - 2:21, 3:15 ATLANTIC [2] - 2:20, 3:14 attorney [3] - 9:25, 10:4 attorney's [2] - 8:22, 8:23 autistic [1] - 15:8 AVENUE [4] - 1:20, 3:5, 3:18, 4:7	BERMAN [1] - 1:23 BERNARD [1] - 3:14 best [3] - 7:18, 12:2, 17:8 better [3] - 13:20, 15:13, 15:23 biggest [1] - 12:14 BIRD [3] - 2:19, 3:13, 3:17 bit [1] - 13:3 black [1] - 12:19 BNBM [1] - 6:17 BNMB [1] - 3:7 break [1] - 12:12 briefly [1] - 13:15 Brook [1] - 12:17 brought [1] - 7:22 BrownGreer [2] - 11:7, 11:11 BROWNGREER [2] - 4:10, 5:10 builder [1] - 14:7 BUILDING [2] - 4:3, 4:4 business [1] - 15:15 BY [16] - 1:19, 1:23, 2:4, 2:8, 2:11, 2:15, 2:20, 3:4, 3:9, 3:13, 4:6, 4:17, 4:18, 5:7, 5:10, 5:14	CENTER..... [1] - 5:13 CENTRE [1] - 2:4 CERTIFICATE [1] - 17:1 CERTIFIED [2] - 4:13, 4:14 Certified [3] - 17:3, 17:4, 17:12 certify [1] - 17:7 challenges [4] - 12:10, 12:22, 12:25 change [1] - 13:3 CHARLES [2] - 3:5, 4:7 child [2] - 14:14, 15:8 CHINA [2] - 4:3, 4:4 Chinese [5] - 6:12, 7:4, 7:10, 14:7, 14:18 CHINESE [1] - 1:5 CHINESE-MANUFACTURED [1] - 1:5 ChineseDrywallSettlement.com [1] - 11:16 CHINESEDRYWALL SETTLEMENT.COM [1] - 5:13 CHRISTINA [2] - 2:20, 3:13 chronic [1] - 15:9 CIRCLE [1] - 2:8 CIVIL [1] - 1:7 Civil [1] - 8:10 claim [2] - 12:16, 12:18 claimants [1] - 6:24 CLASS [2] - 5:9, 5:12 class [17] - 7:13, 7:19, 8:9, 8:11, 8:13, 8:17, 8:18, 10:15, 11:6, 11:10, 11:15, 11:22, 11:24, 13:12, 13:14, 15:4, 15:6 class-action [1] - 7:13 clearly [1] - 14:12 CLERK [3] - 6:7, 6:12, 16:21 CNBM [2] - 3:8, 6:17 CO [4] - 2:18, 2:19, 3:12, 3:13 collect [1] - 8:25 COLLECTIVELY [1] - 4:5 COLSON [1] - 2:7 Columbia [1] - 11:20 coming [1] - 10:8 comments [1] - 16:14
1	7	agreed [1] - 12:6 agreement [2] - 7:12, 7:13 ALEX [1] - 4:7 ALHAMBRA [1] - 2:8 ALL [1] - 1:11 allow [1] - 9:12 allows [1] - 9:12 almost [1] - 15:10 alright [1] - 13:24 ALSO [1] - 4:10 ALSTON [3] - 2:19, 3:13, 3:17 Amorin [1] - 12:16 amount [2] - 12:23, 15:24 AND [6] - 2:3, 2:19, 3:8, 3:12, 4:4, 5:13 answer [3] - 10:5, 10:7, 10:20 answering [1] - 12:1 answers [2] - 10:6, 10:7 anxiety [1] - 15:9 apologize [2] - 13:23, 14:4 appearance [1] - 6:14 APPEARANCES [4] - 1:16, 2:1, 3:1, 4:1 appreciate [6] - 13:18, 14:5, 14:10, 16:9, 16:14 appreciative [1] - 15:2 approval [1] - 11:9 ARATA [1] - 4:5 aspects [1] - 7:17 ATLANTA [2] - 2:21, 3:15 ATLANTIC [2] - 2:20, 3:14 attorney [3] - 9:25, 10:4 attorney's [2] - 8:22, 8:23 autistic [1] - 15:8 AVENUE [4] - 1:20, 3:5, 3:18, 4:7	BERMAN [1] - 1:23 BERNARD [1] - 3:14 best [3] - 7:18, 12:2, 17:8 better [3] - 13:20, 15:13, 15:23 biggest [1] - 12:14 BIRD [3] - 2:19, 3:13, 3:17 bit [1] - 13:3 black [1] - 12:19 BNBM [1] - 6:17 BNMB [1] - 3:7 break [1] - 12:12 briefly [1] - 13:15 Brook [1] - 12:17 brought [1] - 7:22 BrownGreer [2] - 11:7, 11:11 BROWNGREER [2] - 4:10, 5:10 builder [1] - 14:7 BUILDING [2] - 4:3, 4:4 business [1] - 15:15 BY [16] - 1:19, 1:23, 2:4, 2:8, 2:11, 2:15, 2:20, 3:4, 3:9, 3:13, 4:6, 4:17, 4:18, 5:7, 5:10, 5:14	CENTER..... [1] - 5:13 CENTRE [1] - 2:4 CERTIFICATE [1] - 17:1 CERTIFIED [2] - 4:13, 4:14 Certified [3] - 17:3, 17:4, 17:12 certify [1] - 17:7 challenges [4] - 12:10, 12:22, 12:25 change [1] - 13:3 CHARLES [2] - 3:5, 4:7 child [2] - 14:14, 15:8 CHINA [2] - 4:3, 4:4 Chinese [5] - 6:12, 7:4, 7:10, 14:7, 14:18 CHINESE [1] - 1:5 CHINESE-MANUFACTURED [1] - 1:5 ChineseDrywallSettlement.com [1] - 11:16 CHINESEDRYWALL SETTLEMENT.COM [1] - 5:13 CHRISTINA [2] - 2:20, 3:13 chronic [1] - 15:9 CIRCLE [1] - 2:8 CIVIL [1] - 1:7 Civil [1] - 8:10 claim [2] - 12:16, 12:18 claimants [1] - 6:24 CLASS [2] - 5:9, 5:12 class [17] - 7:13, 7:19, 8:9, 8:11, 8:13, 8:17, 8:18, 10:15, 11:6, 11:10, 11:15, 11:22, 11:24, 13:12, 13:14, 15:4, 15:6 class-action [1] - 7:13 clearly [1] - 14:12 CLERK [3] - 6:7, 6:12, 16:21 CNBM [2] - 3:8, 6:17 CO [4] - 2:18, 2:19, 3:12, 3:13 collect [1] - 8:25 COLLECTIVELY [1] - 4:5 COLSON [1] - 2:7 Columbia [1] - 11:20 coming [1] - 10:8 comments [1] - 16:14
10 [2] - 5:5, 14:23 10016 [1] - 3:19 109 [1] - 12:11 11 [4] - 5:7, 5:9, 5:11, 5:13 1100 [1] - 2:5 11th [2] - 10:13 11TH [1] - 5:5 12 [3] - 9:5, 9:9 1201 [2] - 2:21, 3:15 13 [1] - 5:14 15TH [1] - 3:18 16 [1] - 5:15 19106 [1] - 1:24	8	agreed [1] - 12:6 agreement [2] - 7:12, 7:13 ALEX [1] - 4:7 ALHAMBRA [1] - 2:8 ALL [1] - 1:11 allow [1] - 9:12 allows [1] - 9:12 almost [1] - 15:10 alright [1] - 13:24 ALSO [1] - 4:10 ALSTON [3] - 2:19, 3:13, 3:17 Amorin [1] - 12:16 amount [2] - 12:23, 15:24 AND [6] - 2:3, 2:19, 3:8, 3:12, 4:4, 5:13 answer [3] - 10:5, 10:7, 10:20 answering [1] - 12:1 answers [2] - 10:6, 10:7 anxiety [1] - 15:9 apologize [2] - 13:23, 14:4 appearance [1] - 6:14 APPEARANCES [4] - 1:16, 2:1, 3:1, 4:1 appreciate [6] - 13:18, 14:5, 14:10, 16:9, 16:14 appreciative [1] - 15:2 approval [1] - 11:9 ARATA [1] - 4:5 aspects [1] - 7:17 ATLANTA [2] - 2:21, 3:15 ATLANTIC [2] - 2:20, 3:14 attorney [3] - 9:25, 10:4 attorney's [2] - 8:22, 8:23 autistic [1] - 15:8 AVENUE [4] - 1:20, 3:5, 3:18, 4:7	BERMAN [1] - 1:23 BERNARD [1] - 3:14 best [3] - 7:18, 12:2, 17:8 better [3] - 13:20, 15:13, 15:23 biggest [1] - 12:14 BIRD [3] - 2:19, 3:13, 3:17 bit [1] - 13:3 black [1] - 12:19 BNBM [1] - 6:17 BNMB [1] - 3:7 break [1] - 12:12 briefly [1] - 13:15 Brook [1] - 12:17 brought [1] - 7:22 BrownGreer [2] - 11:7, 11:11 BROWNGREER [2] - 4:10, 5:10 builder [1] - 14:7 BUILDING [2] - 4:3, 4:4 business [1] - 15:15 BY [16] - 1:19, 1:23, 2:4, 2:8, 2:11, 2:15, 2:20, 3:4, 3:9, 3:13, 4:6, 4:17, 4:18, 5:7, 5:10, 5:14	CENTER..... [1] - 5:13 CENTRE [1] - 2:4 CERTIFICATE [1] - 17:1 CERTIFIED [2] - 4:13, 4:14 Certified [3] - 17:3, 17:4, 17:12 certify [1] - 17:7 challenges [4] - 12:10, 12:22, 12:25 change [1] - 13:3 CHARLES [2] - 3:5, 4:7 child [2] - 14:14, 15:8 CHINA [2] - 4:3, 4:4 Chinese [5] - 6:12, 7:4, 7:10, 14:7, 14:18 CHINESE [1] - 1:5 CHINESE-MANUFACTURED [1] - 1:5 ChineseDrywallSettlement.com [1] - 11:16 CHINESEDRYWALL SETTLEMENT.COM [1] - 5:13 CHRISTINA [2] - 2:20, 3:13 chronic [1] - 15:9 CIRCLE [1] - 2:8 CIVIL [1] - 1:7 Civil [1] - 8:10 claim [2] - 12:16, 12:18 claimants [1] - 6:24 CLASS [2] - 5:9, 5:12 class [17] - 7:13, 7:19, 8:9, 8:11, 8:13, 8:17, 8:18, 10:15, 11:6, 11:10, 11:15, 11:22, 11:24, 13:12, 13:14, 15:4, 15:6 class-action [1] - 7:13 clearly [1] - 14:12 CLERK [3] - 6:7, 6:12, 16:21 CNBM [2] - 3:8, 6:17 CO [4] - 2:18, 2:19, 3:12, 3:13 collect [1] - 8:25 COLLECTIVELY [1] - 4:5 COLSON [1] - 2:7 Columbia [1] - 11:20 coming [1] - 10:8 comments [1] - 16:14
2	9	agreed [1] - 12:6 agreement [2] - 7:12, 7:13 ALEX [1] - 4:7 ALHAMBRA [1] - 2:8 ALL [1] - 1:11 allow [1] - 9:12 allows [1] - 9:12 almost [1] - 15:10 alright [1] - 13:24 ALSO [1] - 4:10 ALSTON [3] - 2:19, 3:13, 3:17 Amorin [1] - 12:16 amount [2] - 12:23, 15:24 AND [6] - 2:3, 2:19, 3:8, 3:12, 4:4, 5:13 answer [3] - 10:5, 10:7, 10:20 answering [1] - 12:1 answers [2] - 10:6, 10:7 anxiety [1] - 15:9 apologize [2] - 13:23, 14:4 appearance [1] - 6:14 APPEARANCES [4] - 1:16, 2:1, 3:1, 4:1 appreciate [6] - 13:18, 14:5, 14:10, 16:9, 16:14 appreciative [1] - 15:2 approval [1] - 11:9 ARATA [1] - 4:5 aspects [1] - 7:17 ATLANTA [2] - 2:21, 3:15 ATLANTIC [2] - 2:20, 3:14 attorney [3] - 9:25, 10:4 attorney's [2] - 8:22, 8:23 autistic [1] - 15:8 AVENUE [4] - 1:20, 3:5, 3:18, 4:7	BERMAN [1] - 1:23 BERNARD [1] - 3:14 best [3] - 7:18, 12:2, 17:8 better [3] - 13:20, 15:13, 15:23 biggest [1] - 12:14 BIRD [3] - 2:19, 3:13, 3:17 bit [1] - 13:3 black [1] - 12:19 BNBM [1] - 6:17 BNMB [1] - 3:7 break [1] - 12:12 briefly [1] - 13:15 Brook [1] - 12:17 brought [1] - 7:22 BrownGreer [2] - 11:7, 11:11 BROWNGREER [2] - 4:10, 5:10 builder [1] - 14:7 BUILDING [2] - 4:3, 4:4 business [1] - 15:15 BY [16] - 1:19, 1:23, 2:4, 2:8, 2:11, 2:15, 2:20, 3:4, 3:9, 3:13, 4:6, 4:17, 4:18, 5:7, 5:10, 5:14	CENTER..... [1] - 5:13 CENTRE [1] - 2:4 CERTIFICATE [1] - 17:1 CERTIFIED [2] - 4:13, 4:14 Certified [3] - 17:3, 17:4, 17:12 certify [1] - 17:7 challenges [4] - 12:10, 12:22, 12:25 change [1] - 13:3 CHARLES [2] - 3:5, 4:7 child [2] - 14:14, 15:8 CHINA [2] - 4:3, 4:4 Chinese [5] - 6:12, 7:4, 7:10, 14:7, 14:18 CHINESE [1] - 1:5 CHINESE-MANUFACTURED [1] - 1:5 ChineseDrywallSettlement.com [1] - 11:16 CHINESEDRYWALL SETTLEMENT.COM [1] - 5:13 CHRISTINA [2] - 2:20, 3:13 chronic [1] - 15:9 CIRCLE [1] - 2:8 CIVIL [1] - 1:7 Civil [1] - 8:10 claim [2] - 12:16, 12:18 claimants [1] - 6:24 CLASS [2] - 5:9, 5:12 class [17] - 7:13, 7:19, 8:9, 8:11, 8:13, 8:17, 8:18, 10:15, 11:6, 11:10, 11:15, 11:22, 11:24, 13:12, 13:14, 15:4, 15:6 class-action [1] - 7:13 clearly [1] - 14:12 CLERK [3] - 6:7, 6:12, 16:21 CNBM [2] - 3:8, 6:17 CO [4] - 2:18, 2:19, 3:12, 3:13 collect [1] - 8:25 COLLECTIVELY [1] - 4:5 COLSON [1] - 2:7 Columbia [1] - 11:20 coming [1] - 10:8 comments [1] - 16:14
20,000 [2] - 6:23, 8:3 200 [1] - 11:21 2000 [1] - 3:9 201 [2] - 3:5, 4:7 2010 [1] - 14:6 2019 [3] - 1:8, 5:15, 6:2 2019..... [1] - 5:5 2047 [1] - 6:12 21 [1] - 11:24 225 [1] - 2:8 22nd [1] - 16:18 22ND [1] - 5:15 23 [3] - 1:8, 6:2, 8:11 23510 [1] - 2:16 2800 [2] - 2:4, 2:5	A	agreed [1] - 12:6 agreement [2] - 7:12, 7:13 ALEX [1] - 4:7 ALHAMBRA [1] - 2:8 ALL [1] - 1:11 allow [1] - 9:12 allows [1] - 9:12 almost [1] - 15:10 alright [1] - 13:24 ALSO [1] - 4:10 ALSTON [3] - 2:19, 3:13, 3:17 Amorin [1] - 12:16 amount [2] - 12:23, 15:24 AND [6] - 2:3, 2:19, 3:8, 3:12, 4:4, 5:13 answer [3] - 10:5, 10:7, 10:20 answering [1] - 12:1 answers [2] - 10:6, 10:7 anxiety [1] - 15:9 apologize [2] - 13:23, 14:4 appearance [1] - 6:14 APPEARANCES [4] - 1:16, 2:1, 3:1, 4:1 appreciate [6] - 13:18, 14:5, 14:10, 16:9, 16:14 appreciative [1] - 15:2 approval [1] - 11:9 ARATA [1] - 4:5 aspects [1] - 7:17 ATLANTA [2] - 2:21, 3:15 ATLANTIC [

<p>Committee [1] - 6:19 COMMITTEE [1] - 2:15 common [2] - 7:23, 8:24 common-law [1] - 7:23 commonalities [1] - 8:16 commonality [2] - 8:14, 8:15 communication [1] - 7:21 COMPANY [1] - 4:4 compensate [2] - 15:11, 15:25 complexity [1] - 7:20 compromise [1] - 9:7 COMPUTER [1] - 4:18 concept [1] - 7:18 concern [2] - 12:13, 12:14 concluded [1] - 16:23 CONFERENCE [2] - 1:13, 5:15 conference [3] - 6:21, 10:23, 16:17 constant [1] - 15:17 CONTINUED [3] - 2:1, 3:1, 4:1 COORDINATION [1] - 2:15 CORAL [1] - 2:9 CORPORATION [1] - 4:3 correct [1] - 17:7 correctly [1] - 14:13 costly [1] - 10:14 costs [3] - 8:21, 8:22 counsel [7] - 6:14, 6:17, 10:15, 11:15, 11:22, 12:3, 13:12 COUNSEL [4] - 1:19, 3:3, 3:8, 5:12 court [3] - 11:5, 13:16, 16:20 Court [6] - 13:15, 17:4, 17:5, 17:6, 17:13, 17:14 COURT [20] - 1:1, 4:13, 6:4, 6:8, 6:11, 6:14, 6:20, 12:3, 12:7, 12:13, 12:20, 13:7, 13:9, 13:16, 13:21, 13:24, 14:3, 14:5, 16:13, 16:16 Court's [1] - 11:9 create [1] - 8:11 created [2] - 8:9, 8:11 CRR [2] - 4:13, 17:12</p>	<p>culture [1] - 14:20 CURRAULT [1] - 4:6</p> <p style="text-align: center;">D</p> <p>DAVID [2] - 2:3, 3:18 DAVIS [2] - 1:19, 6:18 Davis [1] - 6:18 deal [2] - 8:2, 12:19 dealing [2] - 8:8, 8:12 DECEMBER [1] - 5:5 December [2] - 10:13 decisions [2] - 13:5, 15:21 defendant [3] - 7:24, 8:6, 8:7 defendants [5] - 6:22, 6:25, 7:2, 7:10, 7:25 defense [1] - 12:3 deployment [1] - 14:8 DEPUTY [3] - 6:7, 6:12, 16:21 developing [1] - 14:12 diagnoses [1] - 15:17 different [1] - 11:24 dining [1] - 14:19 dinner [3] - 9:17, 10:8, 10:10 disadvantage [1] - 9:9 disadvantages [5] - 9:3, 9:4, 9:10, 9:16, 10:20 dispute [1] - 11:10 disputes [1] - 11:12 DISTRICT [3] - 1:1, 1:2, 1:14 District [4] - 11:20, 17:6, 17:14 DOCKET [1] - 1:7 docket [1] - 11:14 DOCUMENT [1] - 1:10 dollar [2] - 12:15, 13:4 DONELSON [1] - 3:3 DONNA [1] - 4:6 down [1] - 12:12 drumstick [3] - 9:6, 9:7, 9:8 drumsticks [2] - 9:6, 9:9 Drywall [1] - 6:13 DRYWALL [1] - 1:5 drywall [1] - 14:7 Dugan [1] - 12:11 DUGGAN [2] - 1:23, 11:1 Duggan [2] - 11:1, 12:5 DUNBAR [1] - 3:8 DUPLANTIS [1] - 4:5</p>	<p>duty [1] - 10:15</p> <p style="text-align: center;">E</p> <p>e-mail [1] - 13:14 EAGAN [2] - 4:5, 4:6 easily [2] - 9:1 EAST [1] - 2:16 Eastern [1] - 17:6 EASTERN [1] - 1:2 EIDSON [1] - 2:7 EIKHOFF [3] - 2:20, 3:13, 12:4 ELDON [1] - 1:14 emails [1] - 11:23 emotional [4] - 14:13, 14:25, 15:15, 15:17 END [1] - 5:14 end [3] - 11:13, 13:5, 16:17 endeavored [1] - 10:4 energy [2] - 15:24, 16:9 ENERGY [1] - 2:4 enforced [1] - 8:1 ENTITIES [2] - 3:8 entitled [1] - 17:9 ESQUIRE [16] - 1:19, 1:20, 1:23, 2:4, 2:8, 2:11, 2:15, 2:20, 3:4, 3:9, 3:13, 3:14, 3:18, 4:6, 4:6, 4:7 established [1] - 8:1 ESTIMATE [1] - 5:10 estimate [1] - 11:6 estimates [1] - 13:1 event [1] - 7:2 EVERY [2] - 5:8, 5:10 EWELL [1] - 4:6 exceptions [1] - 7:7 expecting [1] - 13:22 expended [1] - 15:24 explain [1] - 10:19 extended [1] - 10:15</p> <p style="text-align: center;">F</p> <p>fact [1] - 8:15 factor [1] - 6:22 facts [1] - 10:19 fair [2] - 10:17, 12:6 fairly [1] - 12:19 Dugan [1] - 12:11 FAIRNESS [1] - 5:5 fairness [1] - 10:12 fall [1] - 16:3 FALLON [1] - 1:14 Fallon [1] - 6:16 family [1] - 9:4</p>	<p>federal [1] - 7:11 Federal [1] - 8:10 fees [2] - 8:22, 8:23 felt [1] - 14:1 filing [1] - 8:4 financially [1] - 15:10 fine [1] - 13:21 finished [1] - 14:17 first [2] - 7:6, 14:16 FISHBEIN [1] - 1:23 five [1] - 10:3 FL [1] - 2:9 FLOOR [2] - 3:18, 4:7 folks [1] - 10:8 follow [1] - 15:18 footage [3] - 12:20, 12:21, 12:23 FOR [6] - 1:18, 2:14, 2:18, 3:3, 3:7, 3:12 foregoing [1] - 17:7 form [1] - 11:5 FORM [1] - 5:8 forth [1] - 7:11 fortunate [1] - 15:5 forward [1] - 13:17 frankly [1] - 16:10 front [1] - 8:23 fully [1] - 11:4 FULLY [1] - 5:6 functioning [1] - 11:17</p> <p style="text-align: center;">G</p> <p>GA [2] - 2:21, 3:15 GABLES [1] - 2:9 GAINSBURGH [1] - 2:3 gentlemen [1] - 6:9 GERALD [1] - 2:4 German [2] - 7:4, 7:5 goods [1] - 7:20 GORDON [1] - 4:5 graduated [1] - 14:9 great [1] - 13:21 group [1] - 8:22 GROUP [1] - 4:3 grouped [1] - 7:4 guess [2] - 15:14, 16:8 GYPSUM [2] - 2:18, 3:12</p> <p style="text-align: center;">H</p> <p>half [1] - 14:12 handled [1] - 8:7 hard [1] - 14:22 Harry [1] - 6:17</p>	<p>HARRY [1] - 3:9 HAS [2] - 5:6, 5:12 hear [1] - 10:24 HEARD [1] - 1:14 HEARING [1] - 5:5 hearing [2] - 10:12, 10:22 held [1] - 11:4 help [1] - 16:9 helped [1] - 16:6 hereby [1] - 17:6 HERMAN [3] - 1:19, 1:20 HICKS [1] - 2:7 Honor [5] - 6:18, 11:1, 11:2, 13:8, 13:11 HONORABLE [1] - 1:14 hope [1] - 13:18 house [3] - 9:1, 14:8, 14:14 houses [1] - 16:3 hurricanes [1] - 16:3 husband [2] - 14:6, 14:17</p> <p style="text-align: center;">I</p> <p>ill [1] - 14:15 imagine [2] - 15:3, 15:6 impact [1] - 13:1 IN [1] - 1:5 individual [4] - 6:23, 7:8, 7:16, 8:3 individuals [1] - 7:16 information [3] - 8:25, 9:1, 11:11 initial [1] - 11:3 INITIAL [1] - 5:6 inquiries [1] - 11:23 instantaneous [1] - 7:21 insurance [1] - 16:5 involved [2] - 7:3, 8:12 IS [1] - 5:15 issue [2] - 12:20, 13:5 itself [1] - 11:18</p> <p style="text-align: center;">J</p> <p>JACOB [1] - 4:10 Jake [1] - 12:8 job [1] - 14:21 join [2] - 8:17, 8:20 journey [1] - 14:13 JR [1] - 4:6 Judge [3] - 6:10, 6:16,</p>
---	--	---	---	--

<p>12:10 JUDGE [1] - 1:14 judicially [1] - 8:1</p>	<p>lives [2] - 15:10, 16:11 LONG [1] - 5:8 look [2] - 15:7, 16:1 looked [1] - 14:19 looking [1] - 14:11 lost [1] - 15:10 Louisiana [2] - 17:5, 17:6 LOUISIANA [2] - 1:2, 1:8 LTD [4] - 2:19, 2:19, 3:12, 3:13</p>	<p>MILLER [1] - 3:4 mind [1] - 15:1 money [2] - 13:3, 15:24 monies [1] - 11:4 month [2] - 11:13, 13:6 MONTH.. [1] - 5:14 MONTHLY [1] - 1:13 monthly [1] - 6:20 MONTOYA [1] - 2:8 moody [1] - 10:2 morning [7] - 6:8, 6:10, 6:16, 6:18, 11:1, 13:11, 13:15 morphed [1] - 7:24 most [3] - 12:15, 12:18, 12:22 move [1] - 16:10 moved [1] - 14:14 moving [1] - 14:23 MR [7] - 6:16, 6:18, 12:10, 12:14, 12:21, 13:8, 13:11 MS [8] - 11:1, 12:4, 13:20, 13:22, 13:25, 14:4, 14:6, 16:15 multiple [2] - 8:2, 8:12</p>	<p>notified [4] - 9:16, 9:17, 9:23, 10:14 notify [1] - 10:14 November [1] - 16:18 NOVEMBER [1] - 5:15 number [2] - 7:15, 10:3 numbered [1] - 17:9 numbers [4] - 6:21, 6:22, 7:24, 7:25 NY [1] - 3:19</p>	<p>P</p>
<p>K</p>	<p>M</p>	<p>ma'am [2] - 13:17, 13:21 MADE [1] - 5:7 MAGAZINE [1] - 2:12 mail [1] - 13:14 MAILED [1] - 5:8 mailed [1] - 11:6 MAIN [1] - 2:16 major [1] - 12:13 MANUFACTURED [1] - 1:5 Manufactured [1] - 6:13 manufacturers [4] - 7:3, 7:4, 7:5, 7:6 master [4] - 11:7, 11:11, 11:12, 13:5 MASTER [2] - 5:11, 5:14 material [1] - 7:21 MATERIALS [2] - 4:3, 4:4 matter [2] - 12:23, 17:9 MCCOLLAM [1] - 4:5 MDL [1] - 6:12 means [1] - 9:14 meant [1] - 14:10 MECHANICAL [1] - 4:17 member [2] - 11:6, 15:20 MEMBER..... [1] - 5:9 members [3] - 11:10, 11:24, 13:14 MERIT [1] - 4:14 Merit [2] - 17:4, 17:13 met [2] - 10:3, 14:17 method [3] - 8:5, 8:8, 8:11 MEUNIER [2] - 2:3, 2:4 military [1] - 16:4</p>	<p>O</p>	<p>p.m [1] - 13:13 PA [1] - 1:24 PAGE [1] - 5:3 PARK [1] - 3:18 part [2] - 14:25, 15:1 particular [3] - 6:23, 6:25, 7:14 parties [3] - 7:12, 8:12, 10:25 past [1] - 14:23 PATRICK [1] - 2:8 paying [1] - 8:21 payment [1] - 11:3 PAYMENT [1] - 5:6 payouts [1] - 12:24 pays [2] - 8:22 PEACHTREE [2] - 2:21, 3:15 penny [1] - 14:20 Pentagon [1] - 14:18 PENTHOUSE [1] - 2:8 people [9] - 7:16, 9:19, 10:21, 11:25, 12:15, 13:2, 15:14, 15:22, 16:1 PEPPER [1] - 4:13 Pepper [3] - 17:3, 17:11, 17:12 perhaps [2] - 7:17, 7:21 person [1] - 8:21 PETERSON [1] - 2:11 PFC [1] - 13:12 PHELPS [1] - 3:8 PHILADELPHIA [1] - 1:24 phone [1] - 11:22 piece [1] - 9:8 place [1] - 10:9 plaintiff [4] - 7:24, 8:5, 8:6, 11:7 PLAINTIFF [2] - 4:10, 5:11 plaintiffs [5] - 6:22, 7:24, 8:2, 8:3, 11:2 Plaintiffs' [1] - 6:19 PLAINTIFFS' [1] - 1:18 plaintiffs' [1] - 8:19 PLASTERBOARD [2] - 2:19, 3:13 plus [1] - 11:20 point [1] - 7:14 pool [2] - 8:20, 8:24 possible [1] - 16:11 potential [1] - 7:7 POYDRAS [2] - 2:5, 4:14</p>
<p>L</p>	<p>N</p>	<p>O'KEEFE [1] - 1:20 obligated [1] - 14:1 obtain [1] - 10:10 October [1] - 11:10 OCTOBER [2] - 1:8, 6:2 OF [4] - 1:2, 1:13, 2:15, 5:14 OFFICES [1] - 2:15 OFFICIAL [1] - 4:13 Official [2] - 17:5, 17:13 old [1] - 14:12 Olsen [1] - 13:16 OLSON [7] - 4:10, 13:20, 13:22, 13:25, 14:4, 14:6, 16:15 Olson [1] - 13:14 ON [2] - 5:5, 5:11 once [1] - 14:24 one [14] - 7:8, 7:23, 7:24, 8:5, 8:6, 8:13, 8:21, 12:14, 12:18, 13:14, 15:8, 16:18 ONE [2] - 2:20, 3:14 operators [1] - 10:19 opportunities [2] - 7:20, 10:20 opportunity [6] - 8:17, 9:22, 9:24, 10:1, 10:8, 10:21 opt [1] - 9:14 opt-out [1] - 9:14 opting [1] - 9:21 ORDER [1] - 6:4 order [2] - 8:13, 8:16 ORLEANS [8] - 1:8, 1:21, 2:5, 2:12, 3:5, 3:10, 4:8, 4:15 Orleans [2] - 13:19, 16:2 outweigh [1] - 9:10 own [3] - 9:13, 10:9</p>	<p>NATIONAL [2] - 4:3, 4:4 nationwide [1] - 7:20 Naval [1] - 14:9 Navy [1] - 14:8 necessarily [1] - 6:24 NELSON [1] - 2:11 never [4] - 14:20, 15:16, 15:25, 16:4 new [1] - 11:19 New [2] - 13:19, 16:2 NEW [9] - 1:8, 1:21, 2:5, 2:12, 3:5, 3:10, 3:19, 4:8, 4:15 NEXT [1] - 5:15 next [1] - 16:18 night [2] - 13:13, 13:25 NO [1] - 1:7 NORFOLK [1] - 2:16 nothing [2] - 15:3, 15:24 notice [9] - 9:23, 10:11, 10:17, 10:18, 11:5, 11:10, 11:25, 12:5 NOTICE [1] - 5:8 noticed [1] - 10:16</p>	

<p>prepare [1] - 14:4 preponderate [1] - 8:16 PRESENT [1] - 4:10 problem [1] - 16:5 Proceeded [1] - 8:11 proceeded [3] - 7:5, 7:9, 7:10 proceedings [2] - 16:22, 17:9 PROCEEDINGS [3] - 1:13, 4:17, 6:1 PRODUCED [1] - 4:18 Products [1] - 6:13 PRODUCTS [1] - 1:5 prove [1] - 15:16 PTSD [1] - 15:17 publishing [1] - 11:12 put [2] - 15:6, 16:10</p>	<p>remember [2] - 14:16, 15:22 reminds [1] - 14:25 report [2] - 11:3, 12:4 Reporter [7] - 17:3, 17:4, 17:5, 17:12, 17:13, 17:13 REPORTER [3] - 4:13, 4:13, 4:14 REPORTER'S [1] - 17:1 representation [1] - 8:25 requested [1] - 13:15 resolved [1] - 7:6 resources [2] - 8:24, 10:16 responding [1] - 11:23 response [1] - 10:24 rest [1] - 15:18 returning [1] - 11:22 reviewing [1] - 13:4 revised [1] - 11:12 RICHARD [2] - 2:15, 2:15 Richard [3] - 13:10, 13:11, 14:17 rise [2] - 6:7, 16:21 RMR [2] - 4:13, 17:12 room [2] - 14:19, 15:15 ROOM [1] - 4:14 ROSENBERG [2] - 3:9, 6:16 Rosenberg [1] - 6:17 ROTHENBERG [1] - 4:7 rule [1] - 12:24 Rules [1] - 8:10</p>	<p>Serpe [2] - 13:11, 14:17 SERPE [3] - 2:15, 2:15, 13:11 set [2] - 9:20, 11:15 SET [1] - 5:12 settled [1] - 7:6 SETTLEMENT [2] - 5:6, 5:12 settlement [5] - 7:13, 11:3, 11:9, 11:15, 15:7 seven [1] - 10:4 shifting [1] - 13:3 side [1] - 8:13 significant [1] - 13:1 single [1] - 11:6 SINGLE [1] - 5:8 sitting [1] - 14:18 situation [4] - 7:22, 8:2, 9:4, 9:11 six [1] - 10:3 small [1] - 12:23 society [2] - 7:20, 15:20 solution [2] - 15:13, 16:5 sometimes [3] - 7:25, 9:10, 10:6 son [2] - 14:12, 15:20 soon [1] - 14:15 sort [1] - 9:4 SPREADSHEET [1] - 5:14 spreadsheet [4] - 11:8, 11:11, 11:13, 13:5 SPREADSHEET..... [1] - 5:11 square [3] - 12:20, 12:21, 12:23 SR [1] - 3:14 ST [2] - 3:5, 4:7 stand [2] - 15:12, 16:20 standpoint [2] - 8:19, 8:20 started [2] - 6:21, 14:11 State [1] - 17:4 state [1] - 7:11 STATE/FEDERAL [1] - 2:14 States [2] - 17:5, 17:14 STATES [2] - 1:1, 1:14 states [2] - 11:19, 11:24 status [2] - 6:20, 10:23</p>	<p>STATUS [1] - 1:13 Steering [1] - 6:19 STENOGRAPHY [1] - 4:17 STEPHEN [1] - 1:20 STREET [8] - 1:24, 2:5, 2:12, 2:16, 2:21, 3:9, 3:15, 4:14 succeeding [1] - 14:23 successful [1] - 15:20 suit [1] - 8:4 SUITE [5] - 1:24, 2:5, 2:16, 3:5, 3:9 switch [1] - 12:16</p>	<p>TRANSCRIPT [2] - 1:13, 4:17 trees [1] - 16:3 trials [1] - 7:11 tried [1] - 15:1 triggers [1] - 15:18 true [1] - 17:7 truly [1] - 13:22 trying [2] - 14:22, 15:11 turkey [3] - 9:5, 9:9, 9:13 two [5] - 7:2, 7:8, 9:6, 14:12 two-and-a-half-year-old [1] - 14:12 type [3] - 7:1, 8:8, 9:14 types [1] - 7:2</p>
Q			T	U
<p>qualify [1] - 8:13 questioning [1] - 7:16 questions [6] - 9:24, 10:3, 10:5, 10:21, 12:1 quite [2] - 13:3, 14:10</p>			<p>table [7] - 9:5, 9:13, 9:17, 9:18, 9:19, 9:21, 14:19 TAIAN [2] - 2:19, 3:12 TAISHAN [5] - 2:18, 2:19, 3:7, 3:12, 3:12 Taishan [3] - 6:17, 7:10, 11:4 TAISHAN..... [1] - 5:7 tank [1] - 14:18 TAYLOR [1] - 3:14 THE [29] - 1:14, 1:18, 2:14, 3:3, 3:7, 5:6, 5:11, 5:14, 6:7, 6:8, 6:11, 6:12, 6:14, 6:20, 12:3, 12:7, 12:13, 12:20, 13:7, 13:9, 13:16, 13:21, 13:24, 14:3, 14:5, 16:13, 16:16, 16:21 thereabouts [1] - 8:4 therefore [2] - 7:25, 8:8 they've [1] - 10:15 third [1] - 14:14 THIS [1] - 1:10 thousand [2] - 6:25, 8:3 TO [4] - 1:10, 5:8, 5:10, 6:4 today [3] - 6:20, 10:23, 13:22 together [2] - 8:17, 8:20 tour [1] - 14:17 town [1] - 14:1 traditional [3] - 7:23, 8:5 tragedies [1] - 16:2 transcript [1] - 17:7</p>	<p>UNDER [1] - 5:6 under [2] - 11:3, 11:9 United [2] - 17:5, 17:14 UNITED [2] - 1:1, 1:14 unusual [3] - 6:22, 6:24, 7:1 unwieldy [1] - 6:24 UP [1] - 5:12 up [4] - 8:23, 11:15, 14:24, 15:19 updated [1] - 13:5 UPDATED [1] - 5:14 users [1] - 11:19</p>
R	S		V	
<p>rational [1] - 14:25 RE [1] - 1:5 re [1] - 6:12 reached [1] - 7:12 real [1] - 15:22 realized [1] - 13:25 really [3] - 12:24, 13:3, 16:4 REALTIME [1] - 4:13 Realtime [2] - 17:3, 17:12 receive [2] - 12:10, 12:21 received [6] - 7:15, 10:2, 11:11, 12:11, 13:13, 14:6 recess [1] - 16:20 record [2] - 6:15, 17:8 RECORDED [1] - 4:17 referred [1] - 12:11 regarding [1] - 11:21 Registered [1] - 17:3 registered [1] - 17:13 registry [1] - 11:5 reiterate [1] - 12:4 RELATES [1] - 1:10 relatively [1] - 12:23</p>	<p>s/Cathy [1] - 17:11 safely [1] - 11:4 sales [1] - 7:20 SANDRA [1] - 1:23 Sandra [1] - 11:1 Sarah [1] - 13:14 SARAH [1] - 4:10 satisfactory [1] - 10:6 seated [1] - 6:8 SEDNAN [1] - 1:23 see [4] - 11:14, 12:25, 14:20, 16:18 seek [1] - 10:10 sense [1] - 8:22 SENT [1] - 5:10 sent [1] - 11:7</p>		<p>VA [1] - 2:16 vacation [1] - 13:23 values [3] - 12:15, 12:18, 13:4 various [2] - 7:17, 12:12 vehicle [2] - 7:25, 8:7 VENDERBUSH [1] - 3:18 versus [1] - 15:3 veterans [1] - 14:9 views [1] - 11:18 vigor [1] - 7:9 Virginia [2] - 13:14, 16:4 visually [1] - 14:16 VOICES [1] - 6:10</p>	

W
wake [1] - 15:19 WALNUT [1] - 1:24 wants [1] - 9:7 WARSHAUER [1] - 2:3 WAS [1] - 5:8 watch [1] - 14:2 weather [1] - 13:19 website [2] - 11:15, 11:18 WEBSITE [1] - 5:12 WEDNESDAY [2] - 1:8, 6:2 WERE [1] - 5:10 WEST [2] - 2:21, 3:15 WHEREUPON [1] - 16:22 white [1] - 12:19 whole [2] - 9:8, 15:7 Wisconsin [1] - 13:20 wish [1] - 15:12 WOODY [5] - 4:10, 12:10, 12:14, 12:21, 13:8 word [1] - 7:19
Y
year [1] - 14:12 years [1] - 14:23 YORK [1] - 3:19
“
“CNBM” [1] - 4:5