

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: VIOXX PRODUCTS  
LIABILITY LITIGATION

MDL DOCKET NO. 1657  
NEW ORLEANS, LOUISIANA  
FRIDAY, FEBRUARY 26, 2010, 9:00 A.M.

THIS DOCUMENT RELATES TO:  
ALL CASES

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

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**I N D E X**

1		
2		
3	<u>AGENDA ITEMS</u>	<u>PAGE</u>
4		
5	SETTLEMENT AGREEMENT.....	9
6	MR. HERMAN.....	9
7	MS. GREER.....	9
8	THE COURT.....	12
9	MS. GREER.....	12
10	THE COURT.....	14
11	MS. GREER.....	14
12	MR. ATKINSON.....	14
13	THE COURT.....	20
14	LIEN ADMINISTRATOR.....	20
15	MR. GARRETSON.....	20
16	THE COURT.....	22
17	MR. GARRETSON.....	22
18	THE COURT.....	23
19	MR. GARRETSON.....	24
20	THE COURT.....	24
21	MR. GARRETSON.....	24
22	THE COURT.....	26
23	MR. GARRETSON.....	27
24	SPECIAL MASTER AND DEPUTY SPECIAL MASTERS.....	27
25	SPECIAL MASTER JUNEAU.....	28

1	THE COURT.....	30
2	CLASS ACTIONS.....	30
3	MR. HERMAN.....	30
4	MR. BEISNER.....	30
5	THE COURT.....	31
6	MS. CABRASER.....	31
7	THE COURT.....	31
8	STATE/FEDERAL COORDINATION.....	32
9	MS. BARRIOS.....	32
10	PRO SE CLAIMANTS.....	33
11	MR. JOHNSTON.....	33
12	THE COURT.....	33
13	MDL TRIAL PACKAGE.....	34
14	MR. HERMAN.....	34
15	THE COURT.....	35
16	GOVERNMENTAL ACTIONS.....	35
17	MR. HERMAN.....	35
18	MR. DUGAN.....	35
19	MR. ANDERSON.....	36
20	THE COURT.....	37
21	MS. BARRIOS.....	37
22	THE COURT.....	37
23	PENDING PERSONAL INJURY CLAIMS.....	37
24	MR. MARVIN.....	37
25	THE COURT.....	37

1	FEE ALLOCATION.....	38
2	MR. HERMAN.....	38
3	THE COURT.....	38
4	MERCK'S MOTIONS.....	39
5	MR. MARVIN.....	39
6	ATTORNEY'S FEES AND TO ENFORCE ATTORNEY'S LIEN.....	39
7	THE COURT.....	39
8	MERCK'S CHANGE OF NAME.....	40
9	THE NEXT STATUS CONFERENCE IN THE MATTER WILL BE ON	40
10	MARCH 23RD AT 9 O'CLOCK.....	

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

FRIDAY, FEBRUARY 26, 2010

M O R N I N G   S E S S I O N

(IN OPEN COURT)

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7           THE DEPUTY CLERK: Everyone rise.

8           THE COURT: Be seated, please. Good morning, ladies and  
9 gentlemen. Call the case, please.

10           THE DEPUTY CLERK: MDL #1657, *In re: Vioxx*.

11           THE COURT: Would counsel make their appearance for  
12 record.

13           MR. HERMAN: May it please the Court, Judge Fallon, good  
14 morning, Russ Herman for the plaintiffs.

15           MR. MARVIN: Good morning, Your Honor. Douglas Marvin  
16 for Merck.

17           THE COURT: Before we get started, as I mentioned, Jared  
18 has been with us for a while and is going to transition out of  
19 the litigation. Katie, who has been with me also for a year,  
20 will take up the spot. Katie is going to be with the New York's  
21 public defender group, so she already has a position. Jared is  
22 going to be on a lot of interviews, and so he is going to be  
23 transitioning out of this case. If you have any questions, get  
24 to Katie, and she will give you the e-mail address, if you need  
25 it.

1 I've met with the committees this morning. This is our  
2 monthly status conference. I have an agenda. I've discussed  
3 basically the agenda with them. We'll take it in the order  
4 presented.

5 Settlement agreement is first. Anything on that?

6 MR. HERMAN: May it please the Court, under  
7 Items Number 1 and Number 2, the settlement agreement, the Vioxx  
8 settlement program, Lynn Greer is here to make a report and  
9 Mr. Andy Birchfield has a statement to make about the  
10 extraordinary injury fund after Ms. Greer finishes her report.

11 THE COURT: Good. Lynn.

12 MS. GREER: Good morning, Your Honor. I'm Lynn Greer  
13 from BrownGreer, and Orran Brown could not here today, but  
14 Bill Atkinson, who is an attorney with our firm and is one of the  
15 project leaders on the extraordinary injury team, will make a  
16 presentation to apprise the Court where we are on that program.

17 Generally for the claims administration, we are finishing  
18 the points reviews of the stroke claims. We have had a lot of  
19 activity over the last few months as claims have become eligible  
20 or have been issued notices of ineligibility. And I will review  
21 for you the specific status of the claims and then talk a little  
22 bit about the timing of the final stroke payment.

23 As of yesterday, Your Honor, you can see from this slide  
24 that there are no claims left in any of our queues at the claims  
25 administrator level to review for gates. The gate committee has

1 reviewed all of the claims it can. Merck has then reviewed the  
2 claims that we've sent to them, and so where we are today is that  
3 there are 12,429 claimants who have been found eligible for  
4 points. We have issued in the course of this program 5,425  
5 notices of ineligibility. Some of those are final; some of those  
6 are not. There is still time left for folks to either appeal or  
7 to even, in a couple of instances, submit additional  
8 documentation. That tells us that we have processed over 17,000  
9 and, in fact, almost 18,000. 17,854 claims have come in and have  
10 been processed through the gates process.

11 We have this slide that shows us where the points reviews  
12 are, and you can see that we've paid through February and interim  
13 payments were issued just this week. We have paid 7,435 stroke  
14 claims. There are still 2,432 that could be accepted and paid,  
15 and the next payment that we'll make will be the third week of  
16 March. 1,026 will be paid in March.

17 There are another 1,238 that are within their time for  
18 deciding whether to accept or to appeal to the Special Master so  
19 those will probably be paid. We have about a 15 percent appeal  
20 rate in general. Those appeals come to us first. We look at  
21 them again, and then some of those continue on to the  
22 Special Master. And there are currently 168 either on appeal to  
23 the Special Master, and, again, this was yesterday, and I think  
24 they have been active even over the past 24 hours because that  
25 number would be lower today.

1           There are also some that have elected special review. And  
2 those are claims, Your Honor, that have points values of fewer  
3 than two points. And the choice there is to either accept a  
4 \$5,000 fixed payment or to go into special review. At the very  
5 end of the process, the Special Masters receive all of the claims  
6 that are in the special review, and they review them anew and  
7 assign point values of those.

8           Back to our processing world, there are 298 claims that are  
9 ready to go, but there is some administrative issue holding up  
10 our being able to issue the notice. Those reasons typically are  
11 that liens need to be finalized. Some have been flagged for an  
12 audit review, but those move very quickly usually. This is just  
13 a snapshot, again, of yesterday. Those typically get resolved  
14 within a number of days so that notices can be issued.

15           There are 89 that have completed most of our review. We  
16 just need to review them one final time before the notice goes  
17 out. There are 345 that are currently incomplete. We've  
18 mentioned this before, Your Honor. The stroke claims are more  
19 incomplete than we found with the heart attack claims. Our  
20 incomplete rate for heart attack claims was about 15 percent.  
21 The strokes are running at about 27 percent incomplete. It's  
22 somewhat understandable because the stroke claims themselves are  
23 more difficult to package and to submit. There are more records.  
24 We've worked with firms to try to help them, but this is a reason  
25 that these reviews are typically on a claim-to-claim review going

1 a little bit more slowly. Firms are responsive when we send them  
2 notices, but it is over a quarter of the claims that we have to  
3 stop on and wait for notices to be issued and documents to be  
4 submitted.

5 THE COURT: I remind counsel that it's not a question of  
6 whether or not the case is settled. They have certain  
7 responsibilities after the case has been resolved to get through  
8 the process, and they can't let up on their work at this time. I  
9 understand that there is a lot more that they have to do in  
10 stroke cases, but they have to do it, and if they don't do it,  
11 then the case will eventually be dismissed, and it will be on  
12 their back and their responsibility that that case was dismissed  
13 because they didn't comply with the settlement terms that they  
14 have agreed to comply with. So I reinforce the view that they  
15 have to use extraordinary efforts to get the extraordinary  
16 documents that are required in stroke cases.

17 MS. GREER: Your Honor, firms have become quite  
18 accustomed to the portal, but we would continue to encourage  
19 firms to check on a daily basis because if we find a claims  
20 package to be incomplete, we will send a notice immediately.  
21 They have only 14 days to submit those records, and we are simply  
22 unable to extend that. If a claim package is incomplete it  
23 builds in about a two- to three-week delay of that claim, and we  
24 just can't delay that any further.

25 The next row shows us there are 62 claims that we are

1 currently reviewing. And then there are 1,768 in our queue for  
2 review. There were about 3,000 stroke claims that became  
3 eligible at the first of the year, and that bubble has resulted,  
4 obviously, in a lot of work by a lot of people, and we feel  
5 confident that those 1,768 will be moving into our process and  
6 have notices issued in short order.

7       This slide shows the average points by injury level for the  
8 stroke claims. Again, I won't read this into the record. These  
9 slides, again, can be found on our web site this afternoon. Over  
10 on the left-hand side, if folks listening on the phone wish to  
11 log on and see, it's under the button *MDL Status Conference*  
12 *Reports*, but this basically shows across all of our stroke  
13 reviews what the points awards are by levels. So if someone is  
14 curious as to how they stand against the average, this slide is  
15 informative on that.

16       And finally, Your Honor, this slide shows the dollars  
17 associated with the claims that have been paid so far. For the  
18 7,435 claimants that have been paid, there's been over  
19 \$214 million of interim payments issued. The claims that are in  
20 line to be paid in March, the 1,026, that's for about 26 million.  
21 The potential March payments, which are ones that are still  
22 within their time to decide whether to accept, another  
23 27 million, and so through March, if all of those were to accept,  
24 we would be at an interim payment amount of over \$267 million.

25       Your Honor, before Bill talks about the extraordinary injury

1 program, I want to tell the Court we feel like we're on track to  
2 issue the stroke final payments in the second quarter of this  
3 year. We will continue to make interim payments again in March  
4 and any other month between now and the final payments. The  
5 money will continue to flow, but as I've explained with the  
6 timeline that we need to give people to complete their claims  
7 packages on appeal, we feel confident that we're still on track  
8 to make the payments in the second quarter.

9 THE COURT: Okay.

10 MS. GREER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 Lynn, before you leave, The Tulane Law Clinic did  
13 some work in a particular case that now has been resolved, and I  
14 issued an order that they be paid out of the funds designated for  
15 that case. Has that been done?

16 MS. GREER: Yes, it has. The check has been issued. We  
17 called them yesterday. They had not received the check, but we  
18 expect they will receive it today. We told them to call us if  
19 they had any problems getting that.

20 THE COURT: Thank you.

21 MS. GREER: Thank you.

22 MR. ATKINSON: Good morning, Your Honor. I'm  
23 Bill Atkinson with the claims administrator's office, and I would  
24 just like to take a brief moment to update you on the status of  
25 the extraordinary injury program.

1 THE COURT: Tell us again just what the extraordinary  
2 injury program seeks to do.

3 MR. ATKINSON: The extraordinary injury program,  
4 Your Honor, seeks to award additional compensation on top of the  
5 underlying award that's already been granted to a claimant for  
6 those very, very extreme, unusual, atypical, extraordinary  
7 injuries, either additional medical injuries or physical  
8 injuries; in addition to that, there is also the possibility for  
9 additional compensation for out-of-pocket medical expenses or  
10 lost wages and income.

11 THE COURT: Okay. The important thing is that this is  
12 not a second bite at the apple. This is an whole new situation.

13 MR. ATKINSON: Absolutely. Your Honor.

14 As you see from this slide, Your Honor, we've had 2,652  
15 claimants who started the extraordinary injury submission  
16 process; 43 of those claimants did not submit, did not complete  
17 that process because they never submitted the claim form, so they  
18 don't constitute extraordinary injury claims, so the resulting  
19 number is 2,609 claimants who have E. I. claims that we will be  
20 evaluating.

21 Of the 2,609 claimants, Your Honor, two have since withdrawn  
22 their claim, and we've issued 257 notices of ineligibility for  
23 reasons such as the claimant's underlying claim failed out of the  
24 program or the claimant became a special marker claimant who were  
25 not eligible for the E. I. program. That results in 2,350 E. I.

1 claims that are eligible for the program and eligible for  
2 processing that we will be evaluating and issuing notices on.

3 Of the E. I. claims submitted, Your Honor, as you asked  
4 earlier about the different types of claims in the E. I. program,  
5 this slide breaks down for you exactly what types of claims have  
6 been made. Line one shows that there have been 303 claimants who  
7 made claims for past medical expenses, and we added some  
8 information on here to show Your Honor that of those 303  
9 claimants, they've submitted 3,652 individual records for  
10 reimbursement.

11 There are 856 claimants who made claims for lost wages or  
12 income. Those 856 claimants submitted 7,254 different sources of  
13 income that have to be evaluated before we can determine the  
14 nature of their claim.

15 There are 1,684 claimants who requested to be part of the  
16 special medical injury portion of the E. I. program, and those  
17 claimants alleged 5,325 special medical injuries, unique  
18 injuries.

19 The A. E. D. portion of the program, Your Honor, is for  
20 additional extraordinary damages for both medical expenses and  
21 lost wages. They also, there were 81 A. E. D. medical expenses  
22 and 429 A. E. D. lost wages claimants. So for the 2,350 unique  
23 claimants in the program, because they could make claims to  
24 several different components to the E. I. program there are  
25 actually 3,353 claims resulting in 17,000 unique submissions that

1 we have to evaluate before we can issue our notices of  
2 assessment.

3 To give you a little bit of information, Your Honor, on the  
4 status of the notices that are being issued in the E. I. program,  
5 I'll start with the medical expenses program and the A. E. D.  
6 medical expense claims. There are 303 past medical expense  
7 claims and 81 A. E. D. medical expense claims. The portion in  
8 blue, Your Honor, the blue box, shows the notices that we have  
9 issued, the notices of E. I. assessment and shows what has become  
10 of those notices.

11 We have issued 140 notices on the med claims. 23 claimants  
12 have not decided whether to accept the notice of E. I. assessment  
13 or whether to request second review. 91 claimants have accepted  
14 the notice of E. I. assessment, and 26 claimants have requested  
15 second review of the notice of E. I. assessment.

16 The numbers in green at the bottom of the slide show the  
17 claims that are still in the review process, so we have not sent  
18 the notice of E. I. assessment. You will notice there that there  
19 are 162 medical claimants who are still -- who have had our  
20 initial review completed but they are in QC. Your Honor, those  
21 notices are ready to be issued, but we are still waiting to  
22 finally resolve underlying lien issues. The liens for these  
23 claimants are compensable in the E. I. program if they meet the  
24 thresholds, and so we have to wait until all of the liens are  
25 resolved so we can issue those notices.

1 This slide shows you the same information for the lost wages  
2 and income claimants. There are 856 claimants who made past L.  
3 W. I. claims. We have issued 743 notices of E. I. assessment for  
4 those claimants, and that number is shown in blue.

5 What has become of those 743 notices as shown is that the  
6 claimant has not made a decision yet on 81 those, so we don't  
7 know whether they will accept or request second review. 294  
8 claimants have accepted their notice of E. I. assessment, and 368  
9 claimants have requested second review.

10 The information in green again shows you claims where we  
11 have not issued a notice of E. I. assessment. The top two  
12 numbers, the 85 that are initial review complete and QC complete  
13 and the 18 where initial review is complete and they are in QC,  
14 those claims, Your Honor, are claims where we are waiting on the  
15 underlying claim to be resolved, the points award notice or the  
16 notice of ineligibility because that directly affects the notice  
17 of E. I. assessment that would be issued. So as soon as the  
18 underlying claim becomes resolved, we can immediately start  
19 issuing the notice on E. I. component.

20 This slide shows the similar information for the special  
21 medical injuries. Of the 1,684 claimants who made an S. M. I.  
22 claim, we have issued notice of E. I. assessment on 1,556 of  
23 those, Your Honor. 84 of those claimants have not decided  
24 whether to accept that notice. 834 have accepted the notice, and  
25 638 have requested a second review of their claim.

1           The numbers in green at the bottom are the numbers where  
2 notices have not been issued, and the 123 there, Your Honor,  
3 where initial review is complete and QC is complete, are also  
4 awaiting for the liens to be finalized so that we can issue those  
5 notices.

6           THE COURT: The liens that you're talking about are the  
7 Medicare liens?

8           MR. ATKINSON: Yes, sir. The government liens as well.

9           This slide, Your Honor, summarizes the previous  
10 slides it, and it shows for all 2,350 claims what's become of  
11 their notices. 2,123 of them have gotten a decision by having  
12 issued a notice of E. I. assessment. 1,451 of those claimants  
13 have not made a decision. 1,027 have accepted their notice, and  
14 955 have requested an additional review. The numbers in green at  
15 the bottom, again, are notices that can't be issued yet because  
16 we need lien resolution where the underlying claim needs to be  
17 resolved.

18          Finally, Your Honor, just to show you the status of what's  
19 become of the notice of the E. I. assessments, these graphs,  
20 these pie charts just show you the percentages of what's been  
21 accepted where a claimant has made a decision, it shows you how  
22 many have accepted that notice and how many have requested second  
23 review. And it's roughly in the 50 percent range. Overall,  
24 52 percent of claimants are accepting their notices of E. I.  
25 assessment and the numbers vary slightly for M. I. and I. S.

1 48 percent have requested second review.

2 Thank you, Your Honor.

3 THE COURT: The important thing to underscore in the  
4 extraordinary injury fund is that that is a finite fund, and  
5 there is no more money goes into that particular fund. So you  
6 need to get the claims into that fund, and that's where we have  
7 had some problems in the past by reminding people that we can't  
8 extend deadlines because we can't make any payment until that  
9 fund is solidified.

10 MR. ATKINSON: That's correct, Your Honor. In addition  
11 to that, as Ms. Greer pointed out, the E. I. program directly  
12 effects the I. S. payments, and so they both have to be resolved  
13 at roughly the same time.

14 Thank you.

15 THE COURT: Thank you.

16 The lien administrator. Anything?

17 MR. HERMAN: Mr. Garretson is here.

18 MR. GARRETSON: Your Honor, I'm Matt Garretson, and I'm  
19 here to report as the lien resolution administrator. As usual,  
20 the data I'll share day reflects cases that are eligible for  
21 payment as of the 17th of this month. Also, as before, I'm going  
22 to first speak about the governmental liens, and then I'll turn  
23 my attention to the private lien program.

24 With respect to the governmental liens, first of all I want  
25 to just reiterate or share we're aware of the issue with the E.

1 I. claims that BrownGreer just shared. We are doing everything  
2 we can to bring those into the barn as quickly as possible. We  
3 couldn't start those, as we did the other M. I. or I. S. claims,  
4 until we had a good picture of what the E. I. claims were.

5 That said, with respect to Medicare, the lien resolution  
6 administrator has completed resolution for 98.5 percent of the  
7 active cases. There are 315 that remain unfinalized. And the  
8 reason those are unfinalized are either the claimants have sought  
9 a redetermination, which is our word for *appeal* in this process,  
10 or we've had a change of Social Security number recently, and  
11 we've had to start the process yet again. So we're pleased with  
12 those statistics and have just an isolated group that we're still  
13 finalizing.

14 With respect to Medicaid, we're at 98.9 percent of finalized  
15 liens. Those that are unfinalized are because we have hit a cap  
16 under the state protocol where the liens are not to exceed  
17 20 percent. We're now in the process of going back with the  
18 state on a small group of those to confirm the final amount. We  
19 also have the group that have Social Security number changes,  
20 which requires us to start the process again.

21 We are also holding a limited amount of ischemic stroke  
22 cases that are special marker fixed payments because the lien  
23 amounts exceed the expected amount. When we negotiated the  
24 holdbacks and what we negotiated also with Medicare, the  
25 reimbursement amounts, there wasn't enough consideration on our

1 part, in hindsight, for how many of the I. S. claims would be  
2 special marker claims, and so we're trying to get those lien  
3 numbers reduced yet again to reflect the fact that they are in  
4 the special marker category.

5         With respect to other governmental liens, this continues to  
6 be the biggest holdup we're having from our perspective. We have  
7 made good progress over the last several months, but there are  
8 still hundreds of treating facilities that have treated Veterans  
9 or active military personnel that we're trying to get claims  
10 from. That process from the military can take up to 12 months.  
11 We continue to push them. We have, in-house, 1,150 other  
12 governmental claims. Of those 248 of them remain unresolved, and  
13 half of those were with the Department of Veteran Affairs, who  
14 have this issue of having to check every single facility that  
15 these Veterans have treated with. We're hopeful we'll make  
16 considerable progress over the next month. We may get to a point  
17 where we're going to need some help because they may remain  
18 unsatisfied.

19             THE COURT: You have to let me know after you've  
20 exhausted whatever your contacts are, and then let me get  
21 involved in it, and I'll order that the government appear and  
22 explain the position; and if not, the liens will be dismissed,  
23 and I'll default the liens for failure to take action.

24             MR. GARRETSON: Understood and I will keep you informed.  
25             Beyond the issue with the length of time it's taking to pull

1 those claims on some of the VA liens, there are a couple of other  
2 issues that keep us from finalizing a couple hundred governmental  
3 liens. One is, as the Court is aware, we've said all along, we  
4 can't affirmatively determine who has a military lien or other  
5 governmental lien. We need the claimants or the claimants'  
6 counsel to inform us of those.

7 Several attorneys have come forward and notified us, as  
8 other governmental liens, after the disbursement's already  
9 occurred to the claimant. Our hands are tied there. We're not  
10 sure what to do, other than to communicate to those attorneys  
11 that we're happy to resolve those liens, but they have to hold  
12 the funds because we're incapable of controlling the money flow  
13 at this point.

14 So if that becomes an issue, I'll bring it to the Court's  
15 attention. My purpose for bringing it up now is just to remind  
16 counsel who listens to these hearings and also the transcripts  
17 that if they are falling into that category, they must take  
18 action on their own to preserve the government's interest.

19 THE COURT: That's the important thing. With the  
20 government's liens, these are statutory liens. Not only are the  
21 claimants responsible for it but the attorney is responsible for  
22 it, so if the claimant doesn't pay the liens, then the government  
23 has a right to go after the attorney for these particular liens.

24 Because of the opportunities that a global resolution  
25 affords, we have been able to encourage the government, the

1 statutory lien holders, to resolve the liens for less than they  
2 ordinarily would receive because of the opportunities to globally  
3 and have a global point at which to collect all the liens and pay  
4 them, so it's good for the claimant. But if the attorneys don't  
5 take advantage of it, they are going to wind up paying the full  
6 lien from their own pockets. So I do think that there should be  
7 a heads up on that.

8 MR. GARRETSON: Agreed. I think one solution to this  
9 governmental lien problem that I see is the fact that we never  
10 established a deadline by which attorneys or claimants could  
11 bring to us a notification of an other governmental lien, a  
12 military lien that we have to resolve.

13 That said, I think if we could get the Court's support for a  
14 deadline of March 12th to say, we will satisfy anything that  
15 comes in the door by March 12th, that would be helpful because  
16 what I'm discovering are several of the attorneys who have  
17 ischemic stroke cases, for some reason, haven't been sending us  
18 those notices, and we're getting waves of notices today,  
19 two years after we're into the program, and with this one-year  
20 process it takes to get claims -- You can see where I'm going --  
21 this will never shut down if we don't draw a line in the sand.

22 THE COURT: I think that's a fair request. Prepare some  
23 form order for me and I'll consider it.

24 MR. GARRETSON: Yes, sir.

25 Finally, with the private lien program, just a quick review

1 of the statistics. With PTO 48 and 54, we've had some new  
2 activity of claims coming in the door. February 28th is the  
3 deadline the Court established for further claims or further  
4 participants to come in pursuant to PTO 54 and 48. So I would  
5 like to remind counsel of that deadline.

6 As of today, there is 22,119 claimants that have signed  
7 acceptance forms in order to participate in the program. 17,332  
8 of those are active claimants. 12,418 have been matched to a  
9 plan, and we've determined that just slightly less than 9,000  
10 actually have claims histories. So that waterfall effect means  
11 we have 9,000 active claimants participating who actually have  
12 reimbursement requirements.

13 We are 99 percent of the way done auditing the myocardial  
14 infarction cases for those claimants and about 64 percent done  
15 with the ischemic stroke. For obvious reasons we have been  
16 focused on the myocardial infarction cases.

17 3,970 of these liens have been finalized because they were  
18 posted to the claims administrator web portal. Counsel had  
19 10 days to appeal and they weren't appealed so we processed those  
20 payments.

21 The unfinalized myocardial infarction cases relate to cases  
22 where we are still confirming that the lien and the claimant are  
23 in an antisubrogation state. They are related to us educating  
24 the plans that these are wrongful death claims, and pursuant to  
25 state law or the facts as that they may be, there is no

1 reimbursement claim, or there are liens that exceed \$50,000 which  
2 require further audit by our firm, so we are isolating those that  
3 have yet to be resolved and obviously understand the importance  
4 of wrapping those up.

5 I am pleased to say that only 239 claimants of those 9,000  
6 have requested any type of appeal. Having finalized 4,000  
7 claims, to only have 239 that are requesting further audit, I  
8 think, is a good statistic. That's less than 1 percent.

9 I'm sorry, that the -- there is only, I apologize, there was  
10 239 who requested claims so they could determine if they wanted  
11 to appeal. After seeing the claims history from us, only 50  
12 have, in fact, appealed, which is 1 percent, less than 1 percent  
13 of the finalized claimants.

14 With that said, we're continuing to work on the remaining  
15 liens that have been audited, that are in front of the  
16 third-party payors. We are trying to get those back, and they  
17 are working diligently as well so we can sweep the rest of these  
18 out the door.

19 Your Honor, that concludes my report. I will keep you  
20 informed of the issues we've discussed.

21 THE COURT: Fine. I think that basically it's worked.  
22 We found that it worked well with the governmental liens. We  
23 then turned to the nongovernmental liens, the private liens, to  
24 see whether or not we could encourage the lien holders to take  
25 less if they had the opportunity to receive money from one source

1 as opposed to pursuing the multiple sources.

2 The liens represented medical care that was given to the  
3 claimants, so the claimants were duty bound to pay back and the  
4 lien holders had a right to sue the claimants. This gave the  
5 claimants an opportunity to get a substantial discount on their  
6 claims and also to have their claims audited by people who knew  
7 something about and knew a lot about this particular question.  
8 This is sort of the first time it has been done, and overall, I  
9 feel that it's accomplished something for the claimants. What's  
10 your view of it, Matt?

11 MR. GARRETSON: I think it really has, Your Honor. I  
12 think it set a precedent for future cases. I think the plans  
13 are, by and large, pleased as they should be. I think the  
14 claimants are pleased as well by evidence of the less than 50  
15 appeals after people have seen the work product. So I think  
16 there is ways to improve it, but I'm very pleased with where  
17 we're at.

18 THE COURT: I appreciate your work on it. I know you've  
19 done yoman work.

20 The next item is the Special Master and Deputy  
21 Special Masters. In this matter, to give extra attention to the  
22 claimants, to give them an opportunity to appeal on several  
23 occasions, several methods, we have a gate committee. First of  
24 all, the administrator takes another look at it. Then it goes to  
25 the gate committee, and if the individual still wishes to appeal,

1 he or she can go outside the program in a sense to people who are  
2 independent of the program. I've appointed two ex-judges and a  
3 very skilled attorney who is familiar with this type of matter as  
4 the claims Special Master and Deputy Special Masters, so I'll  
5 hear from the Special Master.

6 SPECIAL MASTER JUNEAU: Your Honor, Patrick Juneau,  
7 Special Master in this matter. Judge, I'm very pleased to report  
8 that on the stroke cases, there were actually 4,348 decided, and  
9 there was a last report that left seven undecided. Most of those  
10 may have been decided by now, because there was a gap there of  
11 about 3 days, which would have affected these settlements. So  
12 obviously we're well within the parameters set forth by the Court  
13 in closing this matter.

14 I met with BrownGreer. We anticipate a very small number  
15 left to be decided and allocated amongst the three people that  
16 will not be a problem. We're going to still be on target of  
17 where we are. So from the standpoint of the M. I. cases and the  
18 stroke cases, everything is on target to proceed with the  
19 scheduled distribution that's planned.

20 I would like to make one comment I think would be pertinent,  
21 Your Honor. Once we complete this task, the two big bubbles of  
22 tasks that we had assigned to us will have been completed. That  
23 will then mean it will leave the extraordinary fund to be  
24 considered that I'll have to address, should any appeals come out  
25 of that.

1 I was very interested in the report of where we are today,  
2 but I think it would be prudent or appropriate at this point,  
3 Your Honor, to call to everyone's attention, especially the  
4 attorneys handling these matters -- as the Court said, there is  
5 finite sums involved -- there are very meticulous provisions,  
6 because I've read the provisions in the settlement agreement and  
7 in the guidelines set forth in the processing of all of the  
8 attorneys, of what it takes to qualify for this fund. This is  
9 not just an extra pool of money that people can get a second bite  
10 of the apple. That's not what this program is. It takes very  
11 unique claims and very specific requirements that require that  
12 you fall into that category, and if you fall into that category,  
13 you should be compensated.

14 I think it would be in the interest of anybody who is  
15 processing those claims from a claimant's standpoint, become very  
16 familiar with the language that's contained in the agreement and  
17 in the guidelines that has been established and published long  
18 ago to make sure that we're focused on the true claims that  
19 really should be considered, because I anticipate, Your Honor,  
20 this is going to be a fairly intensive review of these matters,  
21 because you can visualize in wage claims, in economic loss  
22 claims, in medical claims, special injury claims, that can  
23 involve some very meticulous looking at documents.

24 So we want to get focused on those claims that truly should  
25 be considered, and I would discourage those whose claims clearly

1 fall outside of the parameters. Don't tie up the system with  
2 those kind of submissions, because it would just stop the process  
3 and delay what we're trying to do is get the money where the  
4 money should be given.

5 So I think that's consistent with your comments earlier  
6 today, but I thought that would be appropriate to mention that  
7 because it's a matter I anticipate, Your Honor, that probably at  
8 the end of 30 days from now we will be into that aspect of the  
9 case, and we want to get that promptly done, but with all due  
10 prudence and diligence that could be afforded those claims.

11 Thank you very much, Your Honor.

12 THE COURT: I agree with that. The extraordinary injury  
13 is just that, it's an extraordinary injury, not a second bite of  
14 the apple, not additional money. It's extraordinary. As  
15 significant as the strokes are, to have an extraordinary stroke  
16 claim is very, very special, so I would imagine that that would  
17 be even less than the extraordinary M. I. claims, but we'll have  
18 to see.

19 Class actions. Anything on that?

20 MR. HERMAN: May it please the Court, there is the  
21 purchase claims issue, and I understand there is also a  
22 securities issue mixed with that, and Merck will address it.

23 MR. BEISNER: John Beisner for Merck. Your Honor, we  
24 filed a motion this week asking for the adoption of a case  
25 management order with respect to the purchase claim cases. I

1 think as we've now discussed with Your Honor and with  
2 Ms. Cabraser, probably it makes sense to have a status conference  
3 with respect to those scheduling issues.

4 Our basic message to the Court was that the time probably  
5 has come to go ahead and get through the class certification  
6 process in those cases.

7 THE COURT: Right. I put this on the back burner so  
8 that we could get to it at the appropriate time. It seems to me  
9 now the appropriate time, so what I would like to do is have a  
10 status conference, get together with you all and put some  
11 structure into the litigation.

12 Elizabeth, see whether you need some additional people on a  
13 special committee, and we'll try to deal with those issues, but  
14 at that meeting I would like to focus on structure and also on  
15 some case management issues and begin to tee up the motions that  
16 are appropriate in the case.

17 MS. CABRASER: Your Honor, we will do that both with  
18 respect to the appropriate people on the plaintiffs' side meeting  
19 and conferring with Merck to flesh out a schedule and coming to  
20 see Your Honor for scheduling purposes probably in connection  
21 with next month's status conference, if that's all right.

22 THE COURT: That's fine. Let's get together first with  
23 you all and work up some sort of proposal that you need from the  
24 scheduling order that makes sense for these particular claims,  
25 and if you come to me with an agreement, that's significant; if

1 not, then I'll make up something and enforce it.

2 MS. CABRASER: We appreciate that, Your Honor.

3 MR. BEISNER: We'll be happy to do so. Thank you,  
4 Your Honor.

5 THE COURT: State/federal coordination. Anything on  
6 that, Dawn?

7 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios  
8 for the State Liaison Committee. We have had one additional  
9 governmental action case transferred over. It's the State of  
10 South Carolina. There is a yet another governmental action for  
11 the Attorney General for the State of Kentucky that is still in  
12 the transferor court. My understanding from Merck is that the  
13 transferor court has issued a stay of that transfer.

14 With regard to the remands, all of the plaintiffs with  
15 outstanding registration issues that we have been looking at and  
16 working with BrownGreer, particularly Mr. Atkinson, we have sent  
17 all of that material again to him. We have been just culling  
18 those lists down so that we could really just get to the seed of  
19 what Your Honor may have to decide with regard to those remands.  
20 We're also cleaning up our database. I do have the latest  
21 version of all of the remand orders.

22 THE COURT: Okay. Fine. Thank you very much, Dawn.

23 MS. BARRIOS: Your Honor, I would like to thank Jared  
24 for all of his help. He has been tremendous in answering all of  
25 my questions and in assisting me and I wish him good luck.

1 THE COURT: Thank you very much.

2 Pro se claimants. Bob?

3 MR. JOHNSTON: Your Honor, Bob Johnston, curator for the  
4 pro se claimants. My brief presentation to the Court is to give  
5 you a sense that while there has been a diminishment of the  
6 number of calls that we have been receiving, we still  
7 periodically and fairly regularly will get anywhere from six to  
8 eight calls a day, and as we have always done in the past, we do  
9 the best that we can to communicate to these individuals the  
10 circumstances regarding the claim, the basis for the  
11 determinations that have been made.

12 As the Court, I'm sure, can understand, some individuals  
13 have difficulties understanding the conceptions, and we simply do  
14 the best we can to help them through that. Periodically the  
15 Court has received communications directly from pro se  
16 plaintiffs, and you have entered those communications in the  
17 court record, and, where appropriate, we have dealt with those  
18 individuals as well to try to help them understand the process.

19 Again, as in the past, we have not encountered circumstances  
20 in our dealings with these pro se's that would, in our view,  
21 necessitate any communication with the Court regarding problems.  
22 I think that the circumstances and the process continues to go  
23 well, and we feel good about it.

24 THE COURT: Fine. I know sometimes it's difficult to  
25 handle some of those issues. What we've tried to do in this

1 particular case is to recognize that there are some individuals  
2 who cannot get attorneys or don't want attorneys, but oftentimes  
3 can't get attorneys but they have questions. They want to ask  
4 questions about the program, and they need some help and in  
5 understanding the program and deciding whether or not they have a  
6 claim, don't have a claim or what to do about it if they have a  
7 claim.

8         So we've appointed pro se lawyer for those individuals, and  
9 they are able to contact the pro se attorney and discuss the  
10 issues with them, and the pro se attorney puts them on the right  
11 path. So this is a difficult assignment, but you carried it out  
12 well and need to know the Court appreciates it.

13             MR. JOHNSTON: Thank you, Your Honor.

14             THE COURT: All right. MDL trial package. Anything on  
15 that?

16             MR. HERMAN: I just have one thing to report,  
17 Your Honor. We had requested attorneys who did not participate  
18 in the MDL for any material that should be considered in  
19 connection with the additional trial panel. We received one  
20 expert report. It's been added to the trial package, and the two  
21 individuals that have requested the supplement have received it.

22             We have not had any requests to visit the document  
23 depository now in more than four to six months, but I want to  
24 state on the record, the depository is open. It's available for  
25 any attorney that wishes to review documents.

1           THE COURT: Thank you. That's one of the advantages of  
2 the MDL proceeding. It gives an opportunity for the development  
3 of a trial package by extremely competent attorneys, and this  
4 trial package then is, in effect, put in the can, so to speak.  
5 It's able to be used and able to be transported and able to be  
6 played in other cases, and it's of great assistance to attorneys  
7 who wish to pursue their claims. I've viewed the trial package,  
8 and it's very well done, and it would be very useful to the  
9 attorneys who need it.

10           Governmental actions. Anything on that?

11           MR. HERMAN: Your Honor, with regard to governmental  
12 actions, there are two sections. One relates to the Louisiana  
13 case. Mr. Dugan is present, and Mr. Marvin has advised me to  
14 discuss that with the Court. The second issue relates to the  
15 other governmental actions, and I believe there has been some  
16 very recent discussions about resolving some discovery issues.  
17 Mr. Barnett is here as well as Mr. Dugan as a representative of  
18 the AG.

19           THE COURT: Jim.

20           MR. DUGAN: Good morning, Your Honor. James Dugan on  
21 behalf of the Louisiana Attorney General. As Your Honor is  
22 aware, we're currently set for a trial here April 12th, and it  
23 will be a bench trial. If we have any issues, we'll come back to  
24 Your Honor in between now and then.

25           I do know Ms. Barrios and Mr. Barnett have worked the past

1 couple of days on some governmental action issues. They may have  
2 something to report to you. Do you want to report now? I'm  
3 sorry.

4 MR. ANDERSON: Brian Anderson representing Merck. With  
5 the assistance of Mr. Davis, Ms. Barrios, a group of Merck  
6 attorneys met with a group of attorneys representing the various  
7 attorneys general for a day and a half face to face here in  
8 New Orleans immediately before the status conference. It appears  
9 likely that the State of Pennsylvania will trial its case here in  
10 New Orleans before the Court. Final approvals need to be  
11 obtained from the Pennsylvania Attorney General before that can  
12 be made final.

13 We also spent time discussing the schedule and scope of  
14 discovery that would be taken as to the other government action  
15 cases here in the MDL. Proposals have been exchanged for a  
16 schedule for that discovery and those discussions continue, and  
17 we are hopeful that we will be able to present a schedule to the  
18 Court before the next status conference.

19 Finally, there are a number of discovery issues going in  
20 both directions. The parties generated a list of those issues  
21 and discussed each of those issues over the last 2 days, made  
22 progress on a number of them, discussions continue on others, and  
23 another meeting has been scheduled, so I don't think there are  
24 any issues that need to be presented to the Court.

25 THE COURT: Good.

1 MS. BARRIOS: Thank you, Your Honor.

2 THE COURT: You agree with that, Dawn?

3 MS. BARRIOS: Yes, Your Honor.

4 THE COURT: What we're trying to do with the attorneys  
5 general, as we all know that there are a number of states through  
6 their attorneys general that made claims in this particular  
7 litigation, and we're trying to do some bellwethers on those  
8 particular claims to see whether or not we can afford those  
9 attorneys general in other states an opportunity to evaluate the  
10 case and see, after we get through with that, whether or not  
11 there will be a final opportunity to look at these cases  
12 globally, and hopefully that will give them enough information  
13 and give Merck enough information to try to look at these cases  
14 from a global standpoint.

15 The next item is the pending personal injury claims. What  
16 is that about, Doug? How many cases do you have left?

17 MR. MARVIN: Your Honor, in that category of cases, it  
18 appears as though there are 103 cases. Ms. Oldfather could not  
19 be here today, and so we'll be able to give the Court a more full  
20 report at the next status conference, but I can say in the  
21 meantime that those cases are moving along. Depositions are  
22 being noticed. The case-specific discovery is proceeding.

23 THE COURT: Okay. That's a good percentage. We had  
24 started with about 50,000 claims, and now we're down to just  
25 about a hundred or thereabouts that have not been resolved. So I

1 think we're moving in the right direction. I appreciate it.

2 MR. MARVIN: Thank you, Your Honor.

3 THE COURT: The fee allocation. Anything on that?

4 MR. HERMAN: Your Honor, at page 10, the appeals to the  
5 United States Court of Appeals for the Fifth Circuit were  
6 pending. Docket #32-158 and #32-297 have been dismissed. And at  
7 page 11, on January 27th, Your Honor issued an order directing  
8 representatives of common benefit fee applicants and liaison  
9 counsel to meet and confer on a briefing schedule. A joint  
10 submission was filed on February 19, 2010. I don't know whether  
11 Mr. Stratton is appearing by telephone, but at any rate, that  
12 joint submission was filed with Your Honor, and we were waiting  
13 to have the Court determine what the Court shall direct as to  
14 initial stage of discovery.

15 THE COURT: Yes. There is a dispute as to the nature  
16 and scope of discovery. The plaintiffs' committee feels that it  
17 should be limited to Mr. Stratton on one side and Mr. Herman on  
18 the other side. They seemed to both agree that those two  
19 depositions ought to be taken. Mr. Stratton also wishes to take  
20 the deposition of all of the committee and also some of Merck's,  
21 and that has to be resolved.

22 I'm going to set a status conference on that issue. My  
23 initial thinking is that we go forward with the deposition of  
24 Mr. Herman and Mr. Stratton and see where we go from there. I'll  
25 talk with you all about that at the status conference which I set

1 in the immediate future.

2 MR. HERMAN: Item number 13 on the conference, Merck's  
3 motions. I think Mr. Marvin will address those.

4 MR. MARVIN: Your Honor, we have several motions  
5 relating to the pretrial orders where Merck has moved to dismiss  
6 cases.

7 THE COURT: We'll take those after we finish with this  
8 conference.

9 MR. MARVIN: Thank you, Your Honor.

10 THE COURT: Any other motions? Any appeals?

11 There an issue of attorney's fees and to enforce attorney's  
12 lien.

13 MR. HERMAN: Item number 16.

14 THE COURT: We've had several instances where attorneys  
15 have been retained initially, done work on the case and then have  
16 been substituted by other attorneys, and the first attorney feels  
17 they are entitled to an attorney's lien on the fees. They have  
18 asserted those liens. They have a number of those.

19 What I've done in that situation is to peel off the  
20 litigant's share and distribute that amount to the litigant and  
21 then hold the attorney's fee until we saw how many attorneys  
22 liens were at issue.

23 I'm at the point now where I can focus on that, so I've  
24 asked the claims administrator to give me a report as to the  
25 amount of the numbers and perhaps give me some idea of the nature

1 and extent of the matter so that I can determine whether to have  
2 the Court do it or whether to appoint Special Masters. This is  
3 attorney's fees. I suggest that the attorneys attempt to resolve  
4 these matters. If not, I'll get involved in it or I'll appoint a  
5 Special Master.

6 If I do the latter, any costs will be from those fees. So  
7 depending upon whether the Special Master desires to take any  
8 depositions or retain experts, that will be coming out of that  
9 portion of the lien. So there may not be any left to deal with  
10 because that's very expensive when you get into that. In any  
11 event, if I do it myself, I may also need to appoint some experts  
12 which will come out of the lien. So before those expenses are  
13 extracted from any attorneys liens, we ought to focus on whether  
14 or not they can be resolved. If not, I'll deal with them.

15 Merck's change of name. We've already discussed that.

16 The next status conference in the matter will be on  
17 March 23rd at 9 o'clock. I'll meet with the committees at 8:30,  
18 as I usually do.

19 Okay. We'll stop here, and in 5 minutes I'll come back with  
20 the motions. Court will stand in recess. Thank you very much.

21 THE DEPUTY CLERK: Everyone rise.

22 (WHEREUPON, at 0:03 a.m., the proceedings were  
23 concluded.)

24 \* \* \*

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## REPORTER'S CERTIFICATE

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I, Cathy Pepper, Certified Realtime Reporter, Registered Merit Reporter, Registered Professional Reporter, Certified Court Reporter of 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  
Official Court Reporter  
United States District Court



<p>14:22  <b>ADMINISTRATOR</b>.....  .....  [1] - 5:14  <b>adoption</b> [1] - 30:23  <b>advantage</b> [1] - 24:4  <b>advantages</b> [1] -  34:25  <b>advised</b> [1] - 35:12  <b>Affairs</b> [1] - 22:12  <b>affected</b> [1] - 28:10  <b>affects</b> [1] - 18:15  <b>affirmatively</b> [1] - 23:3  <b>afford</b> [1] - 37:7  <b>afforded</b> [1] - 30:9  <b>affords</b> [1] - 23:24  <b>afternoon</b> [1] - 13:8  <b>AG</b> [1] - 35:17  <b>AGENDA</b> [1] - 5:3  <b>agenda</b> [2] - 9:1, 9:2  <b>ago</b> [1] - 29:17  <b>agree</b> [3] - 30:11,  37:1, 38:17  <b>agreed</b> [2] - 12:13,  24:7  <b>agreement</b> [5] - 9:4,  9:6, 29:5, 29:15,  31:24  <b>AGREEMENT</b>.....  ..... [1] -  5:5  <b>ahead</b> [1] - 31:4  <b>AL</b> [1] - 1:22  <b>ALL</b> [1] - 1:8  <b>alleged</b> [1] - 16:16  <b>ALLEN</b> [1] - 1:19  <b>allocated</b> [1] - 28:14  <b>allocation</b> [1] - 38:2  <b>ALLOCATION</b>.....  ..... [1]  - 7:1  <b>almost</b> [1] - 10:8  <b>amount</b> [6] - 13:23,  21:17, 21:20, 21:22,  39:19, 39:24  <b>amounts</b> [2] - 21:22,  21:24  <b>AND</b> [3] - 2:6, 5:24,  7:6  <b>ANDERSON</b> [1] - 36:3  <b>Anderson</b> [1] - 36:3  <b>ANDERSON</b>.....  ..... [1]  - 6:19  <b>ANDY</b> [1] - 1:20  <b>Andy</b> [1] - 9:8  <b>anew</b> [1] - 11:5  <b>answering</b> [1] - 32:23  <b>anticipate</b> [3] - 28:13,</p>	<p>29:18, 30:6  <b>antisubrogation</b> [1] -  25:22  <b>apologize</b> [1] - 26:8  <b>appeal</b> [11] - 10:5,  10:17, 10:18, 10:21,  14:6, 21:8, 25:18,  26:5, 26:10, 27:21,  27:24  <b>appealed</b> [2] - 25:18,  26:11  <b>Appeals</b> [1] - 38:4  <b>appeals</b> [5] - 10:19,  27:14, 28:23, 38:3,  39:9  <b>appear</b> [1] - 22:20  <b>appearance</b> [1] - 8:11  <b>APPEARANCES</b> [4] -  1:14, 2:1, 3:1, 4:1  <b>appearing</b> [1] - 38:10  <b>apple</b> [3] - 15:11, 29:9,  30:13  <b>applicants</b> [1] - 38:7  <b>appoint</b> [3] - 40:1,  40:3, 40:10  <b>appointed</b> [2] - 28:1,  34:7  <b>appreciate</b> [3] - 27:17,  32:1, 37:25  <b>appreciates</b> [1] -  34:11  <b>apprise</b> [1] - 9:15  <b>appropriate</b> [7] - 29:1,  30:5, 31:7, 31:8,  31:15, 31:17, 33:16  <b>approvals</b> [1] - 36:9  <b>April</b> [1] - 35:21  <b>ARCH</b> [1] - 2:21  <b>ARNOLD</b> [1] - 1:24  <b>aspect</b> [1] - 30:7  <b>asserted</b> [1] - 39:17  <b>assessment</b> [13] -  17:1, 17:8, 17:11,  17:13, 17:14, 17:17,  18:2, 18:7, 18:10,  18:16, 18:21, 19:11,  19:24  <b>assessments</b> [1] -  19:18  <b>assign</b> [1] - 11:6  <b>assigned</b> [1] - 28:21  <b>assignment</b> [1] -  34:10  <b>assistance</b> [2] - 35:5,  36:4  <b>assisting</b> [1] - 32:24  <b>associated</b> [1] - 13:16  <b>AT</b> [1] - 7:10  <b>Atkinson</b> [3] - 9:13,  14:22, 32:15</p>	<p><b>ATKINSON</b> [6] - 3:22,  14:21, 15:2, 15:12,  19:7, 20:9  <b>ATKINSON</b>.....  ..... [1] -  5:12  <b>attack</b> [2] - 11:18,  11:19  <b>attempt</b> [1] - 40:2  <b>attention</b> [4] - 20:22,  23:14, 27:20, 29:2  <b>Attorney</b> [3] - 32:10,  35:20, 36:10  <b>attorney</b> [8] - 9:13,  23:20, 23:22, 28:2,  34:8, 34:9, 34:24,  39:15  <b>ATTORNEY'S</b> [2] - 7:6  <b>attorney's</b> [5] - 39:10,  39:16, 39:20, 40:2  <b>attorneys</b> [25] - 23:6,  23:9, 24:3, 24:9,  24:15, 29:3, 29:7,  34:1, 34:2, 34:16,  35:2, 35:5, 35:8,  36:5, 36:6, 37:3,  37:5, 37:8, 39:13,  39:15, 39:20, 40:2,  40:12  <b>atypical</b> [1] - 15:5  <b>audit</b> [3] - 11:11, 26:1,  26:6  <b>audited</b> [2] - 26:14,  27:5  <b>auditing</b> [1] - 25:12  <b>available</b> [1] - 34:23  <b>AVENUE</b> [1] - 1:17  <b>average</b> [2] - 13:6,  13:13  <b>awaiting</b> [1] - 19:3  <b>award</b> [3] - 15:3, 15:4,  18:14  <b>awards</b> [1] - 13:12  <b>aware</b> [3] - 20:24,  23:2, 35:21</p>	<p><b>BARRIOS</b>.....  ..... [2] -  6:9, 6:21  <b>basic</b> [1] - 31:3  <b>basis</b> [2] - 12:18, 33:9  <b>BATTERY</b> [2] - 3:7,  4:9  <b>BAUM</b> [1] - 2:17  <b>BE</b> [1] - 7:9  <b>BEASLEY</b> [1] - 1:19  <b>became</b> [2] - 13:1,  15:23  <b>become</b> [7] - 9:18,  12:16, 17:8, 18:4,  19:9, 19:18, 29:14  <b>becomes</b> [2] - 18:17,  23:13  <b>BEFORE</b> [1] - 1:11  <b>begin</b> [1] - 31:14  <b>behalf</b> [1] - 35:20  <b>Beisner</b> [1] - 30:22  <b>BEISNER</b> [3] - 2:24,  30:22, 32:2  <b>BEISNER</b>.....  ..... [1] -  6:4  <b>bellwethers</b> [1] - 37:6  <b>bench</b> [1] - 35:22  <b>benefit</b> [1] - 38:7  <b>BENJAMIN</b> [2] - 2:6,  2:20  <b>BERMAN</b> [1] - 1:23  <b>BERNSTEIN</b> [1] - 4:8  <b>best</b> [3] - 33:8, 33:13,  41:8  <b>between</b> [2] - 14:3,  35:23  <b>beyond</b> [1] - 22:24  <b>big</b> [1] - 28:20  <b>biggest</b> [1] - 22:5  <b>Bill</b> [3] - 9:13, 13:24,  14:22  <b>BIRCHFIELD</b> [1] -  1:20  <b>Birchfield</b> [1] - 9:8  <b>bit</b> [3] - 9:21, 11:25,  17:2  <b>bite</b> [3] - 15:11, 29:8,  30:12  <b>blue</b> [3] - 17:7, 18:3  <b>Bob</b> [2] - 33:1, 33:2  <b>bottom</b> [3] - 17:15,  18:25, 19:14  <b>BOTTS</b> [1] - 3:9  <b>bound</b> [1] - 27:2  <b>box</b> [1] - 17:7  <b>BOX</b> [1] - 1:21  <b>breaks</b> [1] - 16:4  <b>BRENNAN</b> [1] - 2:17</p>	<p><b>Brian</b> [1] - 36:3  <b>brief</b> [2] - 14:23, 33:3  <b>briefing</b> [1] - 38:8  <b>bring</b> [3] - 21:1, 23:13,  24:10  <b>bringing</b> [1] - 23:14  <b>Brown</b> [1] - 9:12  <b>BROWN</b> [1] - 3:21  <b>BrownGreer</b> [4] -  9:12, 20:25, 28:13,  32:15  <b>bubble</b> [1] - 13:2  <b>bubbles</b> [1] - 28:20  <b>builds</b> [1] - 12:22  <b>burner</b> [1] - 31:6  <b>button</b> [1] - 13:10  <b>BY</b> [21] - 1:16, 1:20,  1:24, 2:3, 2:7, 2:10,  2:14, 2:17, 2:20,  2:24, 3:3, 3:6, 3:9,  3:14, 3:18, 3:21, 4:4,  4:8, 4:12, 4:21, 4:21</p>
<b>C</b>				
<p><b>CA</b> [1] - 4:10  <b>Cabraser</b> [1] - 31:1  <b>CABRASER</b> [4] - 4:8,  4:8, 31:16, 32:1  <b>CABRASER</b>.....  ..... [1]  - 6:6  <b>cannot</b> [1] - 34:1  <b>cap</b> [1] - 21:14  <b>care</b> [1] - 27:1  <b>Carolina</b> [1] - 32:9  <b>CARONDELET</b> [1] -  3:4  <b>carried</b> [1] - 34:10  <b>case</b> [18] - 8:9, 12:5,  12:6, 12:10, 12:11,  14:12, 14:14, 30:8,  30:23, 31:14, 31:15,  32:8, 33:25, 35:12,  36:8, 37:9, 37:21,  39:14  <b>case-specific</b> [1] -  37:21  <b>cases</b> [25] - 12:9,  12:15, 20:19, 21:6,  21:21, 24:16, 25:13,  25:15, 25:20, 27:11,  28:7, 28:16, 28:17,  30:24, 31:5, 35:5,  36:14, 37:10, 37:12,  37:15, 37:16, 37:17,  37:20, 39:5  <b>CASES</b> [1] - 1:8  <b>CASTIEX</b> [1] - 3:17</p>				
<b>B</b>				
<p><b>B406</b> [1] - 4:18  <b>BAKER</b> [1] - 3:9  <b>barn</b> [1] - 21:1  <b>BARNETT</b> [1] - 2:20  <b>Barnett</b> [2] - 35:16,  35:24  <b>BARRIOS</b> [6] - 3:17,  3:18, 32:6, 32:22,  36:25, 37:2  <b>Barrios</b> [3] - 32:6,  35:24, 36:4</p>				

<p><b>category</b> [5] - 22:3, 23:16, 29:11, 37:16  <b>Cathy</b> [2] - 41:3, 41:13  <b>CATHY</b> [1] - 4:18  <b>CCR</b> [2] - 4:18, 41:13  <b>CENTER</b> [2] - 4:9, 4:13  <b>CENTRE</b> [2] - 2:7, 2:21  <b>certain</b> [1] - 12:5  <b>CERTIFICATE</b> [1] - 41:1  <b>certification</b> [1] - 31:4  <b>Certified</b> [2] - 41:3, 41:4  <b>certify</b> [1] - 41:7  <b>change</b> [2] - 21:9, 40:14  <b>CHANGE</b> [1] - 7:8  <b>changes</b> [1] - 21:18  <b>charts</b> [1] - 19:19  <b>check</b> [4] - 12:18, 14:15, 14:16, 22:13  <b>CHICAGO</b> [1] - 2:18  <b>choice</b> [1] - 11:2  <b>CHRISTOPHER</b> [1] - 2:3  <b>CINCINNATI</b> [1] - 4:5  <b>CIRA</b> [1] - 2:21  <b>Circuit</b> [1] - 38:4  <b>circumstances</b> [3] - 33:9, 33:18, 33:21  <b>claim</b> [20] - 11:24, 12:21, 12:22, 15:16, 15:21, 15:22, 16:13, 18:14, 18:17, 18:21, 18:24, 19:15, 25:25, 30:15, 30:24, 33:9, 34:5, 34:6  <b>claim-to-claim</b> [1] - 11:24  <b>claimant</b> [9] - 15:4, 15:23, 18:5, 19:20, 23:8, 23:21, 24:3, 25:21  <b>claimant's</b> [2] - 15:22, 29:14  <b>claimants</b> [47] - 10:2, 13:17, 15:14, 15:15, 15:18, 15:20, 16:5, 16:8, 16:10, 16:11, 16:14, 16:16, 16:21, 16:22, 17:10, 17:12, 17:13, 17:18, 17:22, 18:1, 18:3, 18:7, 18:8, 18:20, 18:22, 19:11, 19:23, 21:7, 23:4, 23:20, 24:9, 25:5, 25:7, 25:10, 25:13, 26:4, 26:12,</p>	<p>27:2, 27:3, 27:4, 27:8, 27:13, 27:21, 33:1, 33:3  <b>claimants'</b> [1] - 23:4  <b>CLAIMANTS</b>..... [1] - 6:10  <b>CLAIMS</b> [1] - 3:20  <b>claims</b> [86] - 9:16, 9:17, 9:18, 9:20, 9:23, 9:25, 10:1, 10:8, 10:13, 11:1, 11:4, 11:7, 11:17, 11:18, 11:19, 11:21, 12:1, 12:18, 12:24, 13:1, 13:7, 13:16, 13:18, 14:5, 14:22, 15:17, 15:18, 15:25, 16:2, 16:3, 16:4, 16:6, 16:10, 16:22, 16:24, 17:5, 17:6, 17:10, 17:16, 18:2, 18:9, 18:13, 19:9, 20:5, 20:25, 21:2, 21:3, 21:25, 22:1, 22:8, 22:11, 22:25, 24:19, 25:1, 25:2, 25:9, 25:17, 25:23, 26:6, 26:9, 26:10, 27:5, 28:3, 29:10, 29:14, 29:17, 29:20, 29:21, 29:23, 29:24, 30:9, 30:16, 30:20, 31:23, 35:6, 37:5, 37:7, 37:14, 37:23, 39:23  <b>CLAIMS</b>..... [1] - 6:23  <b>CLASS</b> [1] - 6:2  <b>class</b> [2] - 30:18, 31:4  <b>cleaning</b> [1] - 32:19  <b>clearly</b> [1] - 29:24  <b>CLERK</b> [3] - 8:7, 8:10, 40:20  <b>Clinic</b> [1] - 14:11  <b>closing</b> [1] - 28:12  <b>collect</b> [1] - 24:2  <b>coming</b> [3] - 25:1, 31:18, 40:7  <b>comment</b> [1] - 28:19  <b>comments</b> [1] - 30:4  <b>COMMERCE</b> [1] - 1:21  <b>Committee</b> [1] - 32:7  <b>committee</b> [6] - 9:24, 27:22, 27:24, 31:12, 38:15, 38:19  <b>COMMITTEE</b> [1] - 4:8  <b>committees</b> [2] - 8:25, 40:16  <b>common</b> [1] - 38:7</p>	<p><b>communicate</b> [2] - 23:9, 33:8  <b>communication</b> [1] - 33:20  <b>communications</b> [2] - 33:14, 33:15  <b>compensable</b> [1] - 17:22  <b>compensated</b> [1] - 29:12  <b>compensation</b> [2] - 15:3, 15:8  <b>competent</b> [1] - 35:2  <b>complete</b> [8] - 14:5, 15:15, 18:11, 18:12, 19:2, 28:20  <b>completed</b> [4] - 11:14, 17:19, 21:5, 28:21  <b>comply</b> [2] - 12:12, 12:13  <b>component</b> [1] - 18:18  <b>components</b> [1] - 16:23  <b>COMPUTER</b> [1] - 4:21  <b>conceptions</b> [1] - 33:12  <b>concluded</b> [1] - 40:22  <b>concludes</b> [1] - 26:18  <b>confer</b> [1] - 38:8  <b>conference</b> [12] - 9:1, 31:1, 31:9, 31:20, 36:7, 36:17, 37:19, 38:21, 38:24, 39:1, 39:7, 40:15  <b>CONFERENCE</b> [2] - 1:11, 7:9  <b>Conference</b> [1] - 13:10  <b>conferring</b> [1] - 31:18  <b>confident</b> [2] - 13:4, 14:6  <b>confirm</b> [1] - 21:17  <b>confirming</b> [1] - 25:21  <b>connection</b> [2] - 31:19, 34:18  <b>CONNOLLY</b> [1] - 2:14  <b>consider</b> [1] - 24:22  <b>considerable</b> [1] - 22:15  <b>consideration</b> [1] - 21:24  <b>considered</b> [4] - 28:23, 29:18, 29:24, 34:17  <b>consistent</b> [1] - 30:4  <b>constitute</b> [1] - 15:17  <b>contact</b> [1] - 34:8  <b>contacts</b> [1] - 22:19  <b>contained</b> [1] - 29:15  <b>continue</b> [7] - 10:20,</p>	<p>12:17, 14:2, 14:4, 22:10, 36:15, 36:21  <b>CONTINUED</b> [3] - 2:1, 3:1, 4:1  <b>continues</b> [2] - 22:4, 33:21  <b>continuing</b> [1] - 26:13  <b>controlling</b> [1] - 23:11  <b>COOPER</b> [1] - 4:4  <b>coordination</b> [1] - 32:4  <b>COORDINATION</b>..... [1] - 6:8  <b>correct</b> [2] - 20:9, 41:7  <b>costs</b> [1] - 40:5  <b>COTLAR</b> [1] - 1:15  <b>counsel</b> [7] - 8:11, 12:4, 23:5, 23:15, 25:4, 25:17, 38:8  <b>COUNSEL</b> [1] - 3:17  <b>couple</b> [4] - 10:6, 22:25, 23:1, 35:25  <b>course</b> [1] - 10:3  <b>COURT</b> [40] - 1:1, 4:18, 8:4, 8:8, 8:11, 8:17, 9:10, 12:4, 14:8, 14:10, 14:19, 14:25, 15:10, 19:5, 20:2, 20:14, 22:18, 23:18, 24:21, 26:20, 27:17, 30:11, 31:6, 31:21, 32:4, 32:21, 32:25, 33:23, 34:13, 34:25, 35:18, 36:24, 37:1, 37:3, 37:22, 38:2, 38:14, 39:6, 39:9, 39:13  <b>Court</b> [30] - 8:13, 9:5, 9:15, 13:25, 23:2, 25:2, 28:11, 29:3, 30:19, 31:3, 33:3, 33:11, 33:14, 33:20, 34:11, 35:13, 36:9, 36:17, 36:23, 37:18, 38:4, 38:12, 40:1, 40:19, 41:4, 41:5, 41:6, 41:14, 41:15  <b>court</b> [3] - 32:11, 32:12, 33:16  <b>Court's</b> [2] - 23:13, 24:12  <b>COURT</b>..... [17] - 5:8, 5:10, 5:13, 5:16, 5:18, 5:20, 5:22, 6:1, 6:5, 6:7, 6:12, 6:15, 6:20, 6:22, 6:25, 7:3, 7:7  <b>CROW</b> [1] - 1:19</p>	<p><b>CRR</b> [2] - 4:18, 41:13  <b>culling</b> [1] - 32:16  <b>curator</b> [1] - 33:2  <b>curious</b> [1] - 13:13</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>daily</b> [1] - 12:18  <b>damages</b> [1] - 16:19  <b>data</b> [1] - 20:19  <b>database</b> [1] - 32:19  <b>DAVID</b> [2] - 2:6, 4:12  <b>DAVIS</b> [1] - 1:16  <b>Davis</b> [1] - 36:4  <b>DAWN</b> [1] - 3:18  <b>Dawn</b> [4] - 32:5, 32:6, 32:21, 37:1  <b>days</b> [7] - 11:13, 12:20, 25:18, 28:10, 30:7, 35:25, 36:20  <b>DC</b> [2] - 2:15, 2:25  <b>deadline</b> [4] - 24:9, 24:13, 25:2, 25:4  <b>deadlines</b> [1] - 20:7  <b>deal</b> [3] - 31:12, 40:8, 40:13  <b>dealings</b> [1] - 33:19  <b>dealt</b> [1] - 33:16  <b>death</b> [1] - 25:23  <b>DECHERT</b> [1] - 2:20  <b>decide</b> [2] - 13:21, 32:18  <b>decided</b> [5] - 17:11, 18:22, 28:7, 28:9, 28:14  <b>deciding</b> [2] - 10:17, 34:4  <b>decision</b> [4] - 18:5, 19:10, 19:12, 19:20  <b>default</b> [1] - 22:22  <b>DEFENDANT</b> [1] - 2:14  <b>defender</b> [1] - 8:21  <b>delay</b> [3] - 12:22, 12:23, 30:2  <b>Department</b> [1] - 22:12  <b>deposition</b> [2] - 38:19, 38:22  <b>depositions</b> [3] - 37:20, 38:18, 40:7  <b>depository</b> [2] - 34:22, 34:23  <b>Deputy</b> [2] - 27:19, 28:3  <b>DEPUTY</b> [4] - 5:24, 8:7, 8:10, 40:20  <b>designated</b> [1] - 14:13  <b>desires</b> [1] - 40:6</p>
---	--	--	--	--

<p><b>determinations</b> [1] - 33:10</p> <p><b>determine</b> [5] - 16:12, 23:3, 26:9, 38:12, 39:25</p> <p><b>determined</b> [1] - 25:8</p> <p><b>development</b> [1] - 35:1</p> <p><b>different</b> [3] - 16:3, 16:11, 16:23</p> <p><b>difficult</b> [3] - 11:22, 33:23, 34:10</p> <p><b>difficulties</b> [1] - 33:12</p> <p><b>diligence</b> [1] - 30:9</p> <p><b>diligently</b> [1] - 26:16</p> <p><b>diminishment</b> [1] - 33:4</p> <p><b>direct</b> [1] - 38:12</p> <p><b>directing</b> [1] - 38:6</p> <p><b>direction</b> [1] - 37:25</p> <p><b>directions</b> [1] - 36:19</p> <p><b>directly</b> [3] - 18:15, 20:10, 33:14</p> <p><b>disbursement's</b> [1] - 23:7</p> <p><b>discount</b> [1] - 27:4</p> <p><b>discourage</b> [1] - 29:24</p> <p><b>discovering</b> [1] - 24:15</p> <p><b>discovery</b> [7] - 35:15, 36:13, 36:15, 36:18, 37:21, 38:13, 38:15</p> <p><b>discuss</b> [2] - 34:8, 35:13</p> <p><b>discussed</b> [5] - 9:1, 26:19, 30:25, 36:20, 40:14</p> <p><b>discussing</b> [1] - 36:12</p> <p><b>discussions</b> [3] - 35:15, 36:15, 36:21</p> <p><b>dismiss</b> [1] - 39:4</p> <p><b>dismissed</b> [4] - 12:10, 12:11, 22:21, 38:5</p> <p><b>dispute</b> [1] - 38:14</p> <p><b>distribute</b> [1] - 39:19</p> <p><b>distribution</b> [1] - 28:18</p> <p><b>District</b> [3] - 41:6, 41:15</p> <p><b>DISTRICT</b> [3] - 1:1, 1:2, 1:12</p> <p><b>Docket</b> [1] - 38:5</p> <p><b>DOCKET</b> [1] - 1:6</p> <p><b>document</b> [1] - 34:21</p> <p><b>DOCUMENT</b> [1] - 1:7</p> <p><b>documentation</b> [1] - 10:7</p> <p><b>documents</b> [4] - 12:2, 12:15, 29:22, 34:24</p> <p><b>dollars</b> [1] - 13:15</p>	<p><b>done</b> [10] - 14:14, 25:12, 25:13, 27:7, 27:18, 30:8, 33:7, 35:7, 39:14, 39:18</p> <p><b>door</b> [3] - 24:14, 25:1, 26:17</p> <p><b>DOROTHY</b> [1] - 3:3</p> <p><b>Doug</b> [1] - 37:15</p> <p><b>Douglas</b> [1] - 8:15</p> <p><b>DOUGLAS</b> [2] - 2:14, 3:14</p> <p><b>down</b> [4] - 16:4, 24:20, 32:17, 37:23</p> <p><b>draw</b> [1] - 24:20</p> <p><b>DRAWER</b> [1] - 4:14</p> <p><b>due</b> [1] - 30:8</p> <p><b>Dugan</b> [3] - 35:12, 35:16, 35:19</p> <p><b>DUGAN</b> [2] - 3:14, 35:19</p> <p><b>DUGAN.....</b> ..... [1] - 6:18</p> <p><b>duty</b> [1] - 27:2</p>	<p>41:9</p> <p><b>especially</b> [1] - 29:2</p> <p><b>ESQUIRE</b> [22] - 1:16, 1:16, 1:20, 1:20, 1:24, 2:3, 2:7, 2:14, 2:17, 2:20, 2:24, 3:3, 3:6, 3:9, 3:14, 3:14, 3:18, 3:21, 3:22, 4:4, 4:8, 4:12</p> <p><b>established</b> [3] - 24:9, 25:2, 29:16</p> <p><b>evaluate</b> [2] - 16:25, 37:8</p> <p><b>evaluated</b> [1] - 16:12</p> <p><b>evaluating</b> [2] - 15:19, 16:1</p> <p><b>event</b> [1] - 40:10</p> <p><b>eventually</b> [1] - 12:10</p> <p><b>evidence</b> [1] - 27:13</p> <p><b>ex</b> [1] - 28:1</p> <p><b>ex-judges</b> [1] - 28:1</p> <p><b>exactly</b> [1] - 16:4</p> <p><b>exceed</b> [3] - 21:15, 21:22, 25:25</p> <p><b>exchanged</b> [1] - 36:14</p> <p><b>EXECUTIVE</b> [1] - 4:7</p> <p><b>exhausted</b> [1] - 22:19</p> <p><b>expect</b> [1] - 14:17</p> <p><b>expected</b> [1] - 21:22</p> <p><b>expense</b> [3] - 17:5, 17:6</p> <p><b>expenses</b> [6] - 15:8, 16:6, 16:19, 16:20, 17:4, 40:11</p> <p><b>expensive</b> [1] - 40:9</p> <p><b>expert</b> [1] - 34:19</p> <p><b>experts</b> [2] - 40:7, 40:10</p> <p><b>explain</b> [1] - 22:21</p> <p><b>explained</b> [1] - 14:4</p> <p><b>extend</b> [2] - 12:21, 20:7</p> <p><b>extent</b> [1] - 39:25</p> <p><b>extra</b> [2] - 27:20, 29:8</p> <p><b>extracted</b> [1] - 40:12</p> <p><b>extraordinary</b> [19] - 9:9, 9:14, 12:14, 13:24, 14:24, 14:25, 15:2, 15:5, 15:14, 15:17, 16:19, 20:3, 28:22, 30:11, 30:12, 30:13, 30:14, 30:16</p> <p><b>extreme</b> [1] - 15:5</p> <p><b>extremely</b> [1] - 35:2</p> <p><b>EYE</b> [1] - 2:24</p>	<p><b>facilities</b> [1] - 22:7</p> <p><b>facility</b> [1] - 22:13</p> <p><b>fact</b> [4] - 10:8, 22:2, 24:8, 26:11</p> <p><b>facts</b> [1] - 25:24</p> <p><b>failed</b> [1] - 15:22</p> <p><b>failure</b> [1] - 22:22</p> <p><b>fair</b> [1] - 24:21</p> <p><b>fairly</b> [2] - 29:19, 33:6</p> <p><b>fall</b> [3] - 29:11, 29:25</p> <p><b>falling</b> [1] - 23:16</p> <p><b>Fallon</b> [1] - 8:13</p> <p><b>FALLON</b> [1] - 1:11</p> <p><b>familiar</b> [2] - 28:2, 29:15</p> <p><b>far</b> [1] - 13:16</p> <p><b>FEBRUARY</b> [2] - 1:7, 8:2</p> <p><b>February</b> [3] - 10:11, 25:1, 38:9</p> <p><b>fee</b> [3] - 38:2, 38:7, 39:20</p> <p><b>FEE</b> [1] - 7:1</p> <p><b>fees</b> [4] - 39:10, 39:16, 40:2, 40:5</p> <p><b>FEES</b> [1] - 7:6</p> <p><b>few</b> [1] - 9:18</p> <p><b>fewer</b> [1] - 11:1</p> <p><b>Fifth</b> [1] - 38:4</p> <p><b>filed</b> [3] - 30:23, 38:9, 38:11</p> <p><b>final</b> [9] - 9:21, 10:4, 11:15, 14:1, 14:3, 21:17, 36:9, 36:11, 37:10</p> <p><b>finalized</b> [6] - 11:10, 19:3, 21:13, 25:16, 26:5, 26:12</p> <p><b>finalizing</b> [2] - 21:12, 23:1</p> <p><b>finally</b> [5] - 13:15, 17:21, 19:17, 24:24, 36:18</p> <p><b>fine</b> [4] - 26:20, 31:21, 32:21, 33:23</p> <p><b>finish</b> [1] - 39:6</p> <p><b>finishes</b> [1] - 9:9</p> <p><b>finishing</b> [1] - 9:16</p> <p><b>finite</b> [2] - 20:3, 29:4</p> <p><b>FIRM</b> [2] - 3:13, 4:3</p> <p><b>firm</b> [2] - 9:13, 26:1</p> <p><b>firms</b> [4] - 11:23, 11:25, 12:16, 12:18</p> <p><b>first</b> [9] - 9:4, 10:19, 13:2, 20:21, 20:23, 27:7, 27:22, 31:21, 39:15</p> <p><b>FISHBEIN</b> [1] - 1:23</p> <p><b>fixed</b> [2] - 11:3, 21:21</p> <p><b>flagged</b> [1] - 11:10</p>	<p><b>flesh</b> [1] - 31:18</p> <p><b>flow</b> [2] - 14:4, 23:11</p> <p><b>focus</b> [3] - 31:13, 39:22, 40:12</p> <p><b>focused</b> [3] - 25:15, 29:17, 29:23</p> <p><b>folks</b> [2] - 10:5, 13:9</p> <p><b>FOR</b> [5] - 1:15, 2:14, 3:20, 4:3, 4:7</p> <p><b>foregoing</b> [1] - 41:7</p> <p><b>form</b> [2] - 15:16, 24:22</p> <p><b>forms</b> [1] - 25:6</p> <p><b>forth</b> [2] - 28:11, 29:6</p> <p><b>forward</b> [2] - 23:6, 38:22</p> <p><b>four</b> [1] - 34:22</p> <p><b>FRANCISCO</b> [1] - 4:10</p> <p><b>FRANKLIN</b> [1] - 2:18</p> <p><b>FRIDAY</b> [2] - 1:7, 8:2</p> <p><b>front</b> [1] - 26:14</p> <p><b>full</b> [2] - 24:4, 37:18</p> <p><b>fund</b> [8] - 9:9, 20:3, 20:4, 20:5, 20:8, 28:22, 29:7</p> <p><b>funds</b> [2] - 14:13, 23:11</p> <p><b>future</b> [2] - 27:11, 38:25</p>
	<b>E</b>			<b>G</b>
<p><b>e-mail</b> [1] - 8:24</p> <p><b>EASTERN</b> [1] - 1:2</p> <p><b>Eastern</b> [1] - 41:6</p> <p><b>economic</b> [1] - 29:20</p> <p><b>educating</b> [1] - 25:22</p> <p><b>effect</b> [2] - 25:9, 35:3</p> <p><b>effects</b> [1] - 20:11</p> <p><b>efforts</b> [1] - 12:14</p> <p><b>eight</b> [1] - 33:7</p> <p><b>either</b> [5] - 10:5, 10:21, 11:2, 15:6, 21:7</p> <p><b>ELDON</b> [1] - 1:11</p> <p><b>elected</b> [1] - 10:25</p> <p><b>eligible</b> [7] - 9:18, 10:2, 13:2, 15:24, 15:25, 20:19</p> <p><b>ELIZABETH</b> [1] - 4:8</p> <p><b>Elizabeth</b> [1] - 31:11</p> <p><b>EMBARCADERO</b> [1] - 4:9</p> <p><b>encountered</b> [1] - 33:18</p> <p><b>encourage</b> [3] - 12:17, 23:24, 26:23</p> <p><b>end</b> [2] - 11:4, 30:7</p> <p><b>ENERGY</b> [1] - 2:7</p> <p><b>enforce</b> [2] - 31:25, 39:10</p> <p><b>ENFORCE</b> [1] - 7:6</p> <p><b>entered</b> [1] - 33:15</p> <p><b>entitled</b> [2] - 39:16,</p>				<p><b>GAINSBURGH</b> [1] - 2:6</p> <p><b>gap</b> [1] - 28:9</p> <p><b>GARRETSON</b> [7] - 4:3, 4:4, 20:17, 22:23, 24:7, 24:23, 27:10</p> <p><b>Garretson</b> [2] - 20:16, 20:17</p> <p><b>GARRETSON.....</b> ..... [5] - 5:15, 5:17, 5:19, 5:21, 5:23</p> <p><b>gate</b> [3] - 9:24, 27:22, 27:24</p> <p><b>gates</b> [2] - 9:24, 10:9</p> <p><b>General</b> [3] - 32:10, 35:20, 36:10</p> <p><b>general</b> [5] - 10:19, 36:6, 37:4, 37:5, 37:8</p> <p><b>generally</b> [1] - 9:16</p> <p><b>generated</b> [1] - 36:19</p> <p><b>gentlemen</b> [1] - 8:9</p> <p><b>GERALD</b> [1] - 2:7</p> <p><b>given</b> [2] - 27:1, 30:3</p> <p><b>global</b> [3] - 23:23, 24:2, 37:13</p>
		<b>F</b>		

<p><b>globally</b> [2] - 24:1, 37:11</p> <p><b>GOLDMAN</b> [1] - 2:17</p> <p><b>government</b> [5] - 19:7, 22:20, 23:21, 23:24, 36:13</p> <p><b>GOVERNMENT</b> [1] - 4:7</p> <p><b>government's</b> [2] - 23:17, 23:19</p> <p><b>governmental</b> [16] - 20:21, 20:23, 22:4, 22:11, 23:1, 23:4, 23:7, 24:8, 24:10, 26:21, 32:8, 32:9, 35:9, 35:10, 35:14, 35:25</p> <p><b>GOVERNMENTAL</b> [1] - 6:16</p> <p><b>granted</b> [1] - 15:4</p> <p><b>graphs</b> [1] - 19:18</p> <p><b>great</b> [1] - 35:5</p> <p><b>green</b> [4] - 17:15, 18:9, 18:25, 19:13</p> <p><b>Greer</b> [4] - 9:7, 9:9, 9:11, 20:10</p> <p><b>GREER</b> [7] - 3:21, 3:21, 9:11, 12:16, 14:9, 14:15, 14:20</p> <p><b>GREER</b>..... [3] - 5:7, 5:9, 5:11</p> <p><b>group</b> [6] - 8:21, 21:11, 21:17, 21:18, 36:4, 36:5</p> <p><b>guidelines</b> [2] - 29:6, 29:16</p>	<p><b>hereby</b> [1] - 41:7</p> <p><b>HERMAN</b> [12] - 1:15, 1:16, 8:13, 9:5, 20:16, 30:19, 34:15, 35:10, 38:3, 39:1, 39:12</p> <p><b>Herman</b> [3] - 8:14, 38:16, 38:23</p> <p><b>HERMAN</b>..... [5] - 5:6, 6:3, 6:14, 6:17, 7:2</p> <p><b>hindsight</b> [1] - 21:25</p> <p><b>histories</b> [1] - 25:9</p> <p><b>history</b> [1] - 26:10</p> <p><b>hit</b> [1] - 21:14</p> <p><b>hold</b> [2] - 23:10, 39:20</p> <p><b>holdbacks</b> [1] - 21:23</p> <p><b>holders</b> [3] - 23:25, 26:23, 27:3</p> <p><b>holding</b> [2] - 11:8, 21:20</p> <p><b>holdup</b> [1] - 22:5</p> <p><b>Honor</b> [61] - 8:15, 9:11, 9:22, 11:1, 11:17, 12:16, 13:15, 13:24, 14:9, 14:21, 15:3, 15:12, 15:13, 15:20, 16:2, 16:7, 16:18, 17:2, 17:7, 17:19, 18:13, 18:22, 19:1, 19:8, 19:17, 20:1, 20:9, 20:17, 26:18, 27:10, 28:5, 28:20, 29:2, 29:18, 30:6, 30:10, 30:22, 30:25, 31:16, 31:19, 32:1, 32:3, 32:6, 32:18, 32:22, 33:2, 34:12, 34:16, 35:10, 35:19, 35:20, 35:23, 36:25, 37:2, 37:16, 38:1, 38:3, 38:6, 38:11, 39:3, 39:8</p> <p><b>HONORABLE</b> [1] - 1:11</p> <p><b>hopeful</b> [2] - 22:14, 36:16</p> <p><b>hopefully</b> [1] - 37:11</p> <p><b>hours</b> [1] - 10:23</p> <p><b>house</b> [1] - 22:10</p> <p><b>HOUSTON</b> [1] - 3:11</p> <p><b>HUBBARD</b> [1] - 3:6</p> <p><b>HUGHES</b> [1] - 3:6</p> <p><b>hundred</b> [2] - 23:1, 37:24</p> <p><b>hundreds</b> [1] - 22:7</p>	<p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [1] - 39:24</p> <p><b>II</b> [1] - 3:14</p> <p><b>IL</b> [1] - 2:18</p> <p><b>imagine</b> [1] - 30:15</p> <p><b>immediate</b> [1] - 38:25</p> <p><b>immediately</b> [3] - 12:19, 18:17, 36:7</p> <p><b>importance</b> [1] - 26:2</p> <p><b>important</b> [3] - 15:10, 20:2, 23:18</p> <p><b>improve</b> [1] - 27:15</p> <p><b>IN</b> [3] - 1:5, 7:9, 8:4</p> <p><b>in-house</b> [1] - 22:10</p> <p><b>incapable</b> [1] - 23:11</p> <p><b>income</b> [4] - 15:9, 16:11, 16:12, 18:1</p> <p><b>incomplete</b> [6] - 11:16, 11:18, 11:19, 11:20, 12:19, 12:21</p> <p><b>independent</b> [1] - 28:1</p> <p><b>individual</b> [2] - 16:8, 27:24</p> <p><b>individuals</b> [6] - 33:8, 33:11, 33:17, 33:25, 34:7, 34:20</p> <p><b>ineligibility</b> [4] - 9:19, 10:4, 15:21, 18:15</p> <p><b>infarction</b> [3] - 25:13, 25:15, 25:20</p> <p><b>inform</b> [1] - 23:5</p> <p><b>information</b> [7] - 16:7, 17:2, 17:25, 18:9, 18:19, 37:11, 37:12</p> <p><b>informative</b> [1] - 13:14</p> <p><b>informed</b> [2] - 22:23, 26:19</p> <p><b>initial</b> [6] - 17:19, 18:11, 18:12, 19:2, 38:13, 38:22</p> <p><b>injuries</b> [6] - 15:6, 15:7, 16:16, 16:17, 18:20</p> <p><b>injury</b> [15] - 9:9, 9:14, 13:6, 13:24, 14:24, 15:1, 15:2, 15:14, 15:17, 16:15, 20:3, 29:21, 30:11, 30:12, 37:14</p> <p><b>INJURY</b> [1] - 6:23</p> <p><b>instances</b> [2] - 10:6, 39:13</p> <p><b>intensive</b> [1] - 29:19</p> <p><b>interest</b> [2] - 23:17, 29:13</p> <p><b>interested</b> [1] - 28:25</p> <p><b>interim</b> [4] - 10:11, 13:18, 13:23, 14:2</p>	<p><b>interviews</b> [1] - 8:22</p> <p><b>involve</b> [1] - 29:22</p> <p><b>involved</b> [3] - 22:20, 29:4, 40:3</p> <p><b>ischemic</b> [3] - 21:20, 24:16, 25:14</p> <p><b>ISMAIL</b> [2] - 2:17, 2:17</p> <p><b>isolated</b> [1] - 21:11</p> <p><b>isolating</b> [1] - 26:1</p> <p><b>issue</b> [16] - 11:8, 11:9, 14:1, 16:25, 17:24, 19:3, 20:24, 22:13, 22:24, 23:13, 30:20, 30:21, 35:13, 38:21, 39:10, 39:21</p> <p><b>issued</b> [23] - 9:19, 10:3, 10:12, 11:13, 12:2, 13:5, 13:18, 14:13, 14:15, 15:21, 17:3, 17:8, 17:10, 17:20, 18:2, 18:10, 18:16, 18:21, 19:1, 19:11, 19:14, 32:12, 38:6</p> <p><b>issues</b> [16] - 17:21, 23:1, 26:19, 31:2, 31:12, 31:14, 32:14, 33:24, 34:9, 35:15, 35:22, 35:25, 36:18, 36:19, 36:20, 36:23</p> <p><b>issuing</b> [2] - 16:1, 18:18</p> <p><b>item</b> [4] - 27:19, 37:14, 39:1, 39:12</p> <p><b>Items</b> [1] - 9:6</p> <p><b>ITEMS</b> [1] - 5:3</p>	<p>4:12, 28:5</p> <p><b>Juneau</b> [1] - 28:5</p> <p><b>JUNEAU</b>..... [1] - 5:25</p>
<b>H</b>			<b>J</b>	<b>K</b>
<p><b>half</b> [2] - 22:12, 36:6</p> <p><b>hand</b> [1] - 13:9</p> <p><b>handle</b> [1] - 33:24</p> <p><b>handling</b> [1] - 29:3</p> <p><b>hands</b> [1] - 23:8</p> <p><b>happy</b> [2] - 23:10, 32:2</p> <p><b>HARDING</b> [2] - 4:13, 4:13</p> <p><b>heads</b> [1] - 24:6</p> <p><b>hear</b> [1] - 28:4</p> <p><b>HEARD</b> [1] - 1:11</p> <p><b>hearings</b> [1] - 23:15</p> <p><b>heart</b> [2] - 11:18, 11:19</p> <p><b>HEIMANN</b> [1] - 4:8</p> <p><b>help</b> [6] - 11:23, 22:16, 32:23, 33:13, 33:17, 34:3</p> <p><b>helpful</b> [1] - 24:14</p>			<p><b>JAMES</b> [1] - 3:14</p> <p><b>James</b> [1] - 35:19</p> <p><b>January</b> [1] - 38:6</p> <p><b>Jared</b> [3] - 8:17, 8:21, 32:22</p> <p><b>Jim</b> [1] - 35:18</p> <p><b>John</b> [1] - 30:22</p> <p><b>JOHN</b> [1] - 2:24</p> <p><b>Johnston</b> [1] - 33:2</p> <p><b>JOHNSTON</b> [4] - 2:10, 2:10, 33:2, 34:12</p> <p><b>JOHNSTON</b>..... [1] - 6:11</p> <p><b>joint</b> [2] - 38:8, 38:11</p> <p><b>JR</b> [1] - 1:20</p> <p><b>JUDGE</b> [1] - 1:12</p> <p><b>Judge</b> [2] - 8:13, 28:6</p> <p><b>judges</b> [1] - 28:1</p> <p><b>JUNEAU</b> [3] - 4:12,</p>	<p><b>Katie</b> [3] - 8:19, 8:20, 8:24</p> <p><b>KATZ</b> [1] - 1:15</p> <p><b>keep</b> [3] - 22:23, 23:1, 26:18</p> <p><b>Kentucky</b> [1] - 32:10</p> <p><b>kind</b> [1] - 30:1</p> <p><b>KINGSDORF</b> [1] - 3:17</p>
<b>H</b>			<b>L</b>	
				<p><b>LA</b> [7] - 1:17, 2:8, 2:11, 3:4, 3:15, 3:19, 4:14</p> <p><b>ladies</b> [1] - 8:8</p> <p><b>LAFAYETTE</b> [1] - 4:14</p> <p><b>language</b> [1] - 29:15</p> <p><b>large</b> [1] - 27:12</p> <p><b>last</b> [4] - 9:18, 22:6, 28:8, 36:20</p> <p><b>latest</b> [1] - 32:19</p> <p><b>latter</b> [1] - 40:5</p> <p><b>Law</b> [1] - 14:11</p> <p><b>LAW</b> [3] - 2:10, 3:13, 4:3</p> <p><b>law</b> [1] - 25:24</p> <p><b>lawyer</b> [1] - 34:7</p> <p><b>leaders</b> [1] - 9:14</p> <p><b>leave</b> [2] - 14:11, 28:22</p> <p><b>left</b> [7] - 9:23, 10:5, 13:9, 28:8, 28:14, 37:15, 40:8</p> <p><b>left-hand</b> [1] - 13:9</p> <p><b>LEIGH</b> [1] - 1:20</p> <p><b>length</b> [1] - 22:24</p> <p><b>LEONARD</b> [1] - 1:16</p> <p><b>less</b> [7] - 23:25, 25:8, 26:7, 26:11, 26:24, 27:13, 30:16</p> <p><b>level</b> [2] - 9:24, 13:6</p> <p><b>levels</b> [1] - 13:12</p> <p><b>LEVIN</b> [2] - 1:23, 1:24</p> <p><b>LIABILITY</b> [1] - 1:5</p> <p><b>Liaison</b> [1] - 32:7</p> <p><b>liaison</b> [1] - 38:7</p> <p><b>LIAISON</b> [1] - 3:17</p> <p><b>LIEFF</b> [1] - 4:8</p> <p><b>lien</b> [23] - 17:21, 19:15, 20:15, 20:18,</p>

<p>20:22, 21:4, 21:21, 22:1, 23:3, 23:4, 23:25, 24:5, 24:8, 24:10, 24:11, 24:24, 25:21, 26:23, 27:3, 39:11, 39:16, 40:8, 40:11</p> <p><b>LIEN</b> [2] - 4:3, 5:14</p> <p><b>LIEN</b>..... [1] - 7:6</p> <p><b>liens</b> [34] - 11:10, 17:21, 17:23, 19:3, 19:5, 19:6, 19:7, 20:21, 20:23, 21:14, 21:15, 22:4, 22:21, 22:22, 22:25, 23:2, 23:7, 23:10, 23:19, 23:21, 23:22, 23:25, 24:2, 25:16, 25:25, 26:14, 26:21, 26:22, 27:1, 39:17, 39:21, 40:12</p> <p><b>likely</b> [1] - 36:8</p> <p><b>limited</b> [2] - 21:20, 38:16</p> <p><b>line</b> [3] - 13:19, 16:5, 24:20</p> <p><b>list</b> [1] - 36:19</p> <p><b>listening</b> [1] - 13:9</p> <p><b>listens</b> [1] - 23:15</p> <p><b>lists</b> [1] - 32:17</p> <p><b>litigant</b> [1] - 39:19</p> <p><b>litigant's</b> [1] - 39:19</p> <p><b>LITIGATION</b> [1] - 1:5</p> <p><b>litigation</b> [3] - 8:19, 31:10, 37:6</p> <p><b>LLC</b> [2] - 2:6, 3:3</p> <p><b>log</b> [1] - 13:10</p> <p><b>look</b> [4] - 10:19, 27:23, 37:10, 37:12</p> <p><b>looking</b> [2] - 29:22, 32:14</p> <p><b>loss</b> [1] - 29:20</p> <p><b>lost</b> [5] - 15:9, 16:10, 16:20, 16:21, 17:25</p> <p><b>LOUISIANA</b> [5] - 1:2, 1:6, 3:10, 3:13, 4:19</p> <p><b>Louisiana</b> [4] - 35:11, 35:20, 41:5, 41:6</p> <p><b>lower</b> [1] - 10:24</p> <p><b>luck</b> [1] - 32:24</p> <p><b>LYNN</b> [1] - 3:21</p> <p><b>Lynn</b> [4] - 9:7, 9:10, 9:11, 14:11</p>	<p><b>MARCH</b> [1] - 7:10</p> <p><b>March</b> [9] - 10:15, 13:19, 13:20, 13:22, 14:2, 24:13, 24:14, 40:16</p> <p><b>marker</b> [4] - 15:23, 21:21, 22:1, 22:3</p> <p><b>Marvin</b> [3] - 8:15, 35:12, 39:2</p> <p><b>MARVIN</b> [6] - 2:14, 8:15, 37:16, 38:1, 39:3, 39:8</p> <p><b>MARVIN</b>..... [2] - 6:24, 7:5</p> <p><b>MASTER</b> [4] - 4:12, 5:24, 5:25, 28:5</p> <p><b>Master</b> [9] - 10:17, 10:21, 10:22, 27:19, 28:3, 28:4, 28:6, 40:4, 40:6</p> <p><b>Masters</b> [4] - 11:4, 27:20, 28:3, 40:1</p> <p><b>MASTERS</b>..... [1] - 5:24</p> <p><b>matched</b> [1] - 25:7</p> <p><b>material</b> [2] - 32:16, 34:17</p> <p><b>Matt</b> [1] - 20:17</p> <p><b>MATT</b> [1] - 4:4</p> <p><b>MATTER</b> [1] - 7:9</p> <p><b>matter</b> [8] - 27:20, 28:2, 28:6, 28:12, 30:6, 39:25, 40:15, 41:10</p> <p><b>matters</b> [3] - 29:3, 29:19, 40:3</p> <p><b>Matthew</b> [1] - 27:9</p> <p><b>MAYER</b> [1] - 3:6</p> <p><b>MDL</b> [8] - 1:6, 6:13, 8:10, 13:10, 34:13, 34:17, 35:1, 36:14</p> <p><b>mean</b> [1] - 28:22</p> <p><b>means</b> [1] - 25:9</p> <p><b>meantime</b> [1] - 37:20</p> <p><b>MECHANICAL</b> [1] - 4:21</p> <p><b>med</b> [1] - 17:10</p> <p><b>Medicaid</b> [1] - 21:13</p> <p><b>medical</b> [15] - 15:6, 15:8, 16:6, 16:15, 16:16, 16:19, 16:20, 17:4, 17:5, 17:6, 17:18, 18:20, 27:1, 29:21</p> <p><b>Medicare</b> [3] - 19:6, 21:4, 21:23</p> <p><b>meet</b> [3] - 17:22, 38:8, 40:16</p> <p><b>meeting</b> [3] - 31:13,</p>	<p>31:17, 36:22</p> <p><b>mention</b> [1] - 30:5</p> <p><b>mentioned</b> [2] - 8:17, 11:17</p> <p><b>Merck</b> [10] - 8:16, 9:25, 30:21, 30:22, 31:18, 32:11, 36:3, 36:4, 37:12, 39:4</p> <p><b>Merck's</b> [3] - 38:19, 39:1, 40:14</p> <p><b>MERCK'S</b> [2] - 7:4, 7:8</p> <p><b>Merit</b> [1] - 41:4</p> <p><b>message</b> [1] - 31:3</p> <p><b>met</b> [3] - 8:25, 28:13, 36:5</p> <p><b>methods</b> [1] - 27:22</p> <p><b>METHVIN</b> [1] - 1:19</p> <p><b>meticulous</b> [2] - 29:4, 29:22</p> <p><b>MEUNIER</b> [2] - 2:6, 2:7</p> <p><b>MILES</b> [1] - 1:19</p> <p><b>military</b> [4] - 22:8, 22:9, 23:3, 24:11</p> <p><b>million</b> [4] - 13:18, 13:19, 13:22, 13:23</p> <p><b>minutes</b> [1] - 40:18</p> <p><b>mixed</b> [1] - 30:21</p> <p><b>moment</b> [1] - 14:23</p> <p><b>money</b> [8] - 14:4, 20:4, 23:11, 26:24, 29:8, 30:2, 30:3, 30:13</p> <p><b>MONTGOMERY</b> [1] - 1:22</p> <p><b>month</b> [3] - 14:3, 20:20, 22:15</p> <p><b>month's</b> [1] - 31:20</p> <p><b>monthly</b> [1] - 9:1</p> <p><b>months</b> [4] - 9:18, 22:6, 22:9, 34:22</p> <p><b>morning</b> [8] - 8:8, 8:14, 8:15, 8:25, 9:11, 14:21, 32:6, 35:19</p> <p><b>most</b> [2] - 11:14, 28:8</p> <p><b>motion</b> [1] - 30:23</p> <p><b>motions</b> [5] - 31:14, 39:2, 39:3, 39:9, 40:19</p> <p><b>MOTIONS</b>..... [1] - 7:4</p> <p><b>move</b> [1] - 11:11</p> <p><b>moved</b> [1] - 39:4</p> <p><b>moving</b> [3] - 13:4, 37:20, 37:25</p> <p><b>MR</b> [47] - 5:6, 5:12, 5:15, 5:17, 5:19, 5:21, 5:23, 6:3, 6:4, 6:11, 6:14, 6:17,</p>	<p>6:18, 6:19, 6:24, 7:2, 7:5, 8:13, 8:15, 9:5, 14:21, 15:2, 15:12, 19:7, 20:9, 20:16, 20:17, 22:23, 24:7, 24:23, 27:10, 30:19, 30:22, 32:2, 33:2, 34:12, 34:15, 35:10, 35:19, 36:3, 37:16, 38:1, 38:3, 39:1, 39:3, 39:8, 39:12</p> <p><b>MS</b> [17] - 5:7, 5:9, 5:11, 6:6, 6:9, 6:21, 9:11, 12:16, 14:9, 14:15, 14:20, 31:16, 32:1, 32:6, 32:22, 36:25, 37:2</p> <p><b>multiple</b> [1] - 26:25</p> <p><b>MURRAY</b> [1] - 3:13</p> <p><b>must</b> [1] - 23:16</p> <p><b>MYERS</b> [1] - 2:23</p> <p><b>myocardial</b> [3] - 25:12, 25:15, 25:20</p>	<p><b>notice</b> [21] - 11:9, 11:15, 12:19, 17:11, 17:13, 17:14, 17:17, 18:7, 18:10, 18:14, 18:15, 18:18, 18:21, 18:23, 19:11, 19:12, 19:18, 19:21</p> <p><b>noticed</b> [1] - 37:21</p> <p><b>notices</b> [25] - 9:19, 10:4, 11:13, 12:1, 12:2, 13:5, 15:21, 16:1, 16:25, 17:3, 17:7, 17:8, 17:9, 17:10, 17:20, 17:24, 18:2, 18:4, 19:1, 19:4, 19:10, 19:14, 19:23, 24:17</p> <p><b>notification</b> [1] - 24:10</p> <p><b>notified</b> [1] - 23:6</p> <p><b>number</b> [14] - 10:24, 11:13, 15:18, 18:3, 21:9, 21:18, 28:13, 33:5, 36:18, 36:21, 37:4, 39:1, 39:12, 39:17</p> <p><b>Number</b> [2] - 9:6</p> <p><b>numbered</b> [1] - 41:9</p> <p><b>numbers</b> [8] - 17:15, 18:11, 18:25, 19:13, 19:24, 22:2, 39:24</p> <p><b>NY</b> [2] - 2:4, 3:7</p>
<b>M</b>			<b>N</b>	
<p><b>mail</b> [1] - 8:24</p> <p><b>management</b> [2] - 30:24, 31:14</p>			<p><b>N.W</b> [1] - 2:15</p> <p><b>name</b> [1] - 40:14</p> <p><b>NAME</b>..... [1] - 7:8</p> <p><b>nature</b> [3] - 16:13, 38:14, 39:24</p> <p><b>necessitate</b> [1] - 33:20</p> <p><b>need</b> [16] - 8:24, 11:10, 11:15, 14:5, 19:15, 20:5, 22:16, 23:4, 31:11, 31:22, 34:3, 34:11, 35:8, 36:9, 36:23, 40:10</p> <p><b>needs</b> [1] - 19:15</p> <p><b>negotiated</b> [2] - 21:22, 21:23</p> <p><b>never</b> [3] - 15:16, 24:8, 24:20</p> <p><b>NEW</b> [10] - 1:6, 1:17, 2:4, 2:8, 2:11, 3:4, 3:7, 3:15, 3:19, 4:19</p> <p><b>New</b> [3] - 8:20, 36:7, 36:9</p> <p><b>new</b> [2] - 15:11, 24:25</p> <p><b>next</b> [9] - 10:14, 12:24, 22:15, 27:19, 31:20, 36:17, 37:14, 37:19, 40:15</p> <p><b>NEXT</b> [1] - 7:9</p> <p><b>NO</b> [1] - 1:6</p> <p><b>nongovernmental</b> [1] - 26:22</p> <p><b>NORTH</b> [1] - 2:18</p>	<b>O</b>
				<p><b>o'clock</b> [1] - 40:16</p> <p><b>O'CLOCK</b>..... [1] - 7:10</p> <p><b>O'DELL</b> [1] - 1:20</p> <p><b>O'KEEFE</b> [1] - 1:17</p> <p><b>O'MELVENY</b> [1] - 2:23</p> <p><b>obtained</b> [1] - 36:10</p> <p><b>obvious</b> [1] - 25:14</p> <p><b>obviously</b> [3] - 13:3, 26:2, 28:11</p> <p><b>occasions</b> [1] - 27:22</p> <p><b>occurred</b> [1] - 23:8</p> <p><b>OF</b> [5] - 1:2, 1:11, 2:10, 3:13, 7:8</p> <p><b>office</b> [1] - 14:22</p> <p><b>OFFICE</b> [1] - 1:21</p> <p><b>OFFICES</b> [1] - 2:10</p> <p><b>OFFICIAL</b> [1] - 4:18</p> <p><b>Official</b> [2] - 41:5, 41:14</p> <p><b>oftentimes</b> [1] - 34:1</p> <p><b>OH</b> [1] - 4:5</p> <p><b>Oldfather</b> [1] - 37:17</p> <p><b>ON</b> [1] - 7:9</p> <p><b>once</b> [1] - 28:20</p>

<p><b>ONE</b> [3] - 2:4, 3:7, 3:10  <b>one</b> [14] - 9:13, 11:15, 16:5, 23:2, 24:7, 24:18, 26:24, 28:19, 32:7, 34:15, 34:18, 34:25, 35:11, 38:16  <b>one-year</b> [1] - 24:18  <b>ones</b> [1] - 13:20  <b>OPEN</b> [1] - 8:4  <b>open</b> [1] - 34:23  <b>opportunities</b> [2] - 23:23, 24:1  <b>opportunity</b> [6] - 26:24, 27:4, 27:21, 35:1, 37:8, 37:10  <b>opposed</b> [1] - 26:25  <b>order</b> [9] - 9:2, 13:5, 14:13, 22:20, 24:22, 25:6, 30:24, 31:23, 38:6  <b>orders</b> [2] - 32:20, 39:4  <b>ordinarily</b> [1] - 24:1  <b>Orleans</b> [2] - 36:7, 36:9  <b>ORLEANS</b> [8] - 1:6, 1:17, 2:8, 2:11, 3:4, 3:15, 3:19, 4:19  <b>Orran</b> [1] - 9:12  <b>ought</b> [2] - 38:18, 40:12  <b>out-of-pocket</b> [1] - 15:8  <b>outside</b> [2] - 27:25, 29:25  <b>outstanding</b> [1] - 32:14  <b>overall</b> [2] - 19:22, 27:7  <b>own</b> [2] - 23:17, 24:5</p>	<p>14:13  <b>panel</b> [1] - 34:18  <b>parameters</b> [2] - 28:11, 29:25  <b>PARK</b> [1] - 3:7  <b>part</b> [2] - 16:14, 21:25  <b>participants</b> [1] - 25:3  <b>participate</b> [2] - 25:6, 34:16  <b>participating</b> [1] - 25:10  <b>particular</b> [8] - 14:12, 20:4, 23:22, 27:6, 31:23, 33:25, 37:5, 37:7  <b>particularly</b> [1] - 32:15  <b>parties</b> [1] - 36:19  <b>party</b> [1] - 26:15  <b>past</b> [8] - 10:23, 16:6, 17:5, 18:1, 20:6, 33:7, 33:18, 35:24  <b>path</b> [1] - 34:10  <b>Patrick</b> [1] - 28:5  <b>PATRICK</b> [1] - 4:12  <b>pay</b> [3] - 23:21, 24:2, 27:2  <b>paying</b> [1] - 24:4  <b>payment</b> [6] - 9:21, 10:14, 11:3, 13:23, 20:7, 20:20  <b>payments</b> [10] - 10:12, 13:18, 13:20, 14:1, 14:2, 14:3, 14:7, 20:11, 21:21, 25:19  <b>payors</b> [1] - 26:15  <b>peel</b> [1] - 39:18  <b>pending</b> [2] - 37:14, 38:5  <b>PENDING</b> [1] - 6:23  <b>Pennsylvania</b> [2] - 36:8, 36:10  <b>people</b> [10] - 13:3, 14:5, 20:6, 27:5, 27:14, 27:25, 28:14, 29:8, 31:11, 31:17  <b>Pepper</b> [3] - 41:3, 41:12, 41:13  <b>PEPPER</b> [1] - 4:18  <b>percent</b> [14] - 10:18, 11:19, 11:20, 19:22, 19:23, 19:25, 21:5, 21:13, 21:16, 25:12, 25:13, 26:7, 26:11  <b>percentage</b> [1] - 37:22  <b>percentages</b> [1] - 19:19  <b>perhaps</b> [1] - 39:24  <b>periodically</b> [2] - 33:6, 33:13  <b>personal</b> [1] - 37:14</p>	<p><b>PERSONAL</b> [1] - 6:23  <b>personnel</b> [1] - 22:8  <b>perspective</b> [1] - 22:5  <b>pertinent</b> [1] - 28:19  <b>PHILADELPHIA</b> [2] - 1:25, 2:22  <b>phone</b> [1] - 13:9  <b>physical</b> [1] - 15:6  <b>picture</b> [1] - 21:3  <b>pie</b> [1] - 19:19  <b>PIGMAN</b> [1] - 3:3  <b>PLAINTIFFS</b> [1] - 1:15  <b>plaintiffs</b> [3] - 8:14, 32:13, 33:15  <b>plaintiffs'</b> [2] - 31:17, 38:15  <b>plan</b> [1] - 25:8  <b>planned</b> [1] - 28:18  <b>plans</b> [2] - 25:23, 27:11  <b>played</b> [1] - 35:5  <b>PLAZA</b> [2] - 3:7, 3:10  <b>pleased</b> [6] - 21:10, 26:4, 27:12, 27:13, 27:15, 28:6  <b>PLYMALE</b> [1] - 3:14  <b>pocket</b> [1] - 15:8  <b>pockets</b> [1] - 24:5  <b>point</b> [6] - 11:6, 22:15, 23:12, 24:2, 29:1, 39:22  <b>pointed</b> [1] - 20:10  <b>points</b> [8] - 9:17, 10:3, 10:10, 11:1, 11:2, 13:6, 13:12, 18:14  <b>pool</b> [1] - 29:8  <b>portal</b> [2] - 12:17, 25:17  <b>portion</b> [4] - 16:15, 16:18, 17:6, 40:8  <b>PORTIS</b> [1] - 1:19  <b>position</b> [2] - 8:21, 22:21  <b>possibility</b> [1] - 15:7  <b>possible</b> [1] - 21:1  <b>POST</b> [1] - 1:21  <b>posted</b> [1] - 25:17  <b>potential</b> [1] - 13:20  <b>POYDRAS</b> [5] - 2:8, 2:11, 3:15, 3:18, 4:18  <b>precedent</b> [1] - 27:11  <b>prepare</b> [1] - 24:21  <b>present</b> [2] - 35:12, 36:16  <b>presentation</b> [2] - 9:15, 33:3  <b>presented</b> [2] - 9:3, 36:23</p>	<p><b>preserve</b> [1] - 23:17  <b>pretrial</b> [1] - 39:4  <b>previous</b> [1] - 19:8  <b>private</b> [3] - 20:22, 24:24, 26:22  <b>PRO</b> [1] - 6:10  <b>pro</b> [7] - 33:1, 33:3, 33:14, 33:19, 34:7, 34:8, 34:9  <b>problem</b> [2] - 24:8, 28:15  <b>problems</b> [3] - 14:18, 20:6, 33:20  <b>proceed</b> [1] - 28:17  <b>proceeding</b> [2] - 35:1, 37:21  <b>proceedings</b> [2] - 40:21, 41:9  <b>PROCEEDINGS</b> [3] - 1:11, 4:21, 8:1  <b>process</b> [17] - 10:9, 11:4, 12:7, 13:4, 15:15, 15:16, 17:16, 21:8, 21:10, 21:16, 21:19, 22:9, 24:19, 30:1, 31:5, 33:17, 33:21  <b>processed</b> [3] - 10:7, 10:9, 25:18  <b>processing</b> [4] - 11:7, 16:1, 29:6, 29:14  <b>PRODUCED</b> [1] - 4:21  <b>product</b> [1] - 27:14  <b>PRODUCTS</b> [1] - 1:5  <b>Professional</b> [1] - 41:4  <b>program</b> [28] - 9:7, 9:15, 10:3, 13:25, 14:24, 15:1, 15:2, 15:23, 15:24, 15:25, 16:3, 16:15, 16:18, 16:22, 16:23, 17:3, 17:4, 17:22, 20:10, 20:22, 24:18, 24:24, 25:6, 27:25, 28:1, 29:9, 34:3, 34:4  <b>progress</b> [3] - 22:6, 22:15, 36:21  <b>project</b> [1] - 9:14  <b>promptly</b> [1] - 30:8  <b>proposal</b> [1] - 31:22  <b>proposals</b> [1] - 36:14  <b>protocol</b> [1] - 21:15  <b>provisions</b> [2] - 29:4, 29:5  <b>prudence</b> [1] - 30:9  <b>prudent</b> [1] - 29:1  <b>PTO</b> [2] - 24:25, 25:3  <b>public</b> [1] - 8:21  <b>published</b> [1] - 29:16</p>	<p><b>pull</b> [1] - 22:24  <b>purchase</b> [2] - 30:20, 30:24  <b>purpose</b> [1] - 23:14  <b>purposes</b> [1] - 31:19  <b>pursuant</b> [2] - 25:3, 25:23  <b>pursue</b> [1] - 35:6  <b>pursuing</b> [1] - 26:25  <b>push</b> [1] - 22:10  <b>put</b> [3] - 31:6, 31:9, 35:3  <b>puts</b> [1] - 34:9</p>
<b>Q</b>				
<p><b>QC</b> [4] - 17:19, 18:11, 18:12, 19:2  <b>qualify</b> [1] - 29:7  <b>quarter</b> [3] - 12:1, 14:1, 14:7  <b>questions</b> [4] - 8:23, 32:24, 34:2, 34:3  <b>queue</b> [1] - 12:25  <b>queues</b> [1] - 9:23  <b>quick</b> [1] - 24:24  <b>quickly</b> [2] - 11:11, 21:1  <b>quite</b> [1] - 12:16</p>				
<b>R</b>				
<p><b>range</b> [1] - 19:22  <b>rate</b> [3] - 10:19, 11:19, 38:10  <b>RE</b> [1] - 1:5  <b>re</b> [1] - 8:10  <b>read</b> [2] - 13:7, 29:5  <b>ready</b> [2] - 11:8, 17:20  <b>really</b> [3] - 27:10, 29:18, 32:17  <b>Realtime</b> [1] - 41:3  <b>reason</b> [3] - 11:23, 21:7, 24:16  <b>reasons</b> [3] - 11:9, 15:22, 25:14  <b>receive</b> [4] - 11:4, 14:17, 24:1, 26:24  <b>received</b> [4] - 14:16, 33:14, 34:18, 34:20  <b>receiving</b> [1] - 33:5  <b>recent</b> [1] - 35:15  <b>recently</b> [1] - 21:9  <b>recess</b> [1] - 40:19  <b>recognize</b> [1] - 33:25  <b>record</b> [5] - 8:12, 13:7, 33:16, 34:23, 41:9  <b>RECORDED</b> [1] - 4:21</p>				
<b>P</b>				
<p><b>P.O</b> [1] - 4:14  <b>PA</b> [2] - 1:25, 2:22  <b>package</b> [8] - 11:22, 12:19, 12:21, 34:13, 34:19, 35:2, 35:3, 35:6  <b>PACKAGE</b>.....  ..... [1] - 6:13  <b>packages</b> [1] - 14:6  <b>page</b> [2] - 38:3, 38:6  <b>PAGE</b> [1] - 5:3  <b>paid</b> [9] - 10:11, 10:12, 10:13, 10:15, 10:18, 13:16, 13:17, 13:19,</p>				

<p><b>records</b> [3] - 11:22, 12:20, 16:8</p> <p><b>redetermination</b> [1] - 21:8</p> <p><b>reduced</b> [1] - 22:2</p> <p><b>REED</b> [1] - 3:6</p> <p><b>reflect</b> [1] - 22:2</p> <p><b>reflects</b> [1] - 20:19</p> <p><b>regard</b> [3] - 32:13, 32:18, 35:10</p> <p><b>regarding</b> [2] - 33:9, 33:20</p> <p><b>Registered</b> [2] - 41:3, 41:4</p> <p><b>registration</b> [1] - 32:14</p> <p><b>regularly</b> [1] - 33:6</p> <p><b>reimbursement</b> [4] - 16:9, 21:24, 25:11, 25:25</p> <p><b>reinforce</b> [1] - 12:13</p> <p><b>reiterate</b> [1] - 20:24</p> <p><b>relate</b> [1] - 25:20</p> <p><b>related</b> [1] - 25:22</p> <p><b>RELATES</b> [1] - 1:7</p> <p><b>relates</b> [2] - 35:11, 35:13</p> <p><b>relating</b> [1] - 39:4</p> <p><b>remain</b> [3] - 21:6, 22:11, 22:16</p> <p><b>remaining</b> [1] - 26:13</p> <p><b>remand</b> [1] - 32:20</p> <p><b>remands</b> [2] - 32:13, 32:18</p> <p><b>remind</b> [3] - 12:4, 23:14, 25:4</p> <p><b>reminding</b> [1] - 20:6</p> <p><b>report</b> [13] - 9:7, 9:9, 20:18, 26:18, 28:6, 28:8, 28:25, 34:15, 34:19, 36:1, 37:19, 39:23</p> <p><b>Reporter</b> [6] - 41:3, 41:4, 41:5, 41:14</p> <p><b>REPORTER</b> [1] - 4:18</p> <p><b>REPORTER'S</b> [1] - 41:1</p> <p><b>Reports</b> [1] - 13:11</p> <p><b>representative</b> [1] - 35:16</p> <p><b>representatives</b> [1] - 38:7</p> <p><b>represented</b> [1] - 27:1</p> <p><b>REPRESENTING</b> [1] - 3:13</p> <p><b>representing</b> [2] - 36:3, 36:5</p> <p><b>request</b> [3] - 17:12, 18:6, 24:21</p> <p><b>requested</b> [1] -</p>	<p>16:14, 17:13, 18:8, 18:24, 19:13, 19:21, 19:25, 26:5, 26:9, 34:16, 34:20</p> <p><b>requesting</b> [1] - 26:6</p> <p><b>requests</b> [1] - 34:21</p> <p><b>require</b> [2] - 26:1, 29:10</p> <p><b>required</b> [1] - 12:15</p> <p><b>requirements</b> [2] - 25:11, 29:10</p> <p><b>requires</b> [1] - 21:19</p> <p><b>resolution</b> [5] - 19:15, 20:18, 21:4, 21:5, 23:23</p> <p><b>RESOLUTION</b> [1] - 4:3</p> <p><b>resolve</b> [5] - 17:21, 23:10, 23:25, 24:11, 40:2</p> <p><b>resolved</b> [12] - 11:12, 12:6, 14:12, 17:24, 18:14, 18:17, 19:16, 20:11, 26:2, 37:24, 38:20, 40:13</p> <p><b>resolving</b> [1] - 35:15</p> <p><b>respect</b> [7] - 20:23, 21:4, 21:13, 22:4, 30:24, 31:2, 31:17</p> <p><b>responsibilities</b> [1] - 12:6</p> <p><b>responsibility</b> [1] - 12:11</p> <p><b>responsible</b> [2] - 23:20</p> <p><b>responsive</b> [1] - 11:25</p> <p><b>rest</b> [1] - 26:16</p> <p><b>resulted</b> [1] - 13:2</p> <p><b>resulting</b> [2] - 15:17, 16:24</p> <p><b>results</b> [1] - 15:24</p> <p><b>retain</b> [1] - 40:7</p> <p><b>retained</b> [1] - 39:14</p> <p><b>review</b> [27] - 9:19, 9:24, 10:25, 11:3, 11:5, 11:11, 11:14, 11:15, 11:24, 13:1, 17:12, 17:14, 17:16, 17:19, 18:6, 18:8, 18:11, 18:12, 18:24, 19:2, 19:13, 19:22, 19:25, 24:24, 29:19, 34:24</p> <p><b>reviewed</b> [2] - 9:25</p> <p><b>reviewing</b> [1] - 12:25</p> <p><b>reviews</b> [4] - 9:17, 10:10, 11:24, 13:12</p> <p><b>RICHMOND</b> [1] - 3:23</p> <p><b>rise</b> [2] - 8:7, 40:20</p> <p><b>RMR</b> [1] - 41:13</p>	<p><b>ROAD</b> [1] - 4:4</p> <p><b>ROBERT</b> [2] - 2:10, 2:10</p> <p><b>ROOM</b> [1] - 4:18</p> <p><b>roughly</b> [2] - 19:22, 20:12</p> <p><b>row</b> [1] - 12:24</p> <p><b>RPR</b> [1] - 4:18</p> <p><b>running</b> [1] - 11:20</p> <p><b>RUSS</b> [1] - 1:16</p> <p><b>Russ</b> [1] - 8:14</p>	<p>32:15</p> <p><b>set</b> [6] - 27:11, 28:11, 29:6, 35:21, 38:21, 38:24</p> <p><b>settled</b> [1] - 12:5</p> <p><b>SETTLEMENT</b> [1] - 5:5</p> <p><b>settlement</b> [5] - 9:4, 9:6, 9:7, 12:12, 29:5</p> <p><b>settlements</b> [1] - 28:10</p> <p><b>seven</b> [1] - 28:8</p> <p><b>several</b> [8] - 16:23, 22:6, 23:6, 24:15, 27:21, 27:22, 39:3, 39:13</p> <p><b>shall</b> [1] - 38:12</p> <p><b>share</b> [3] - 20:19, 20:24, 39:19</p> <p><b>shared</b> [1] - 20:25</p> <p><b>SHELL</b> [1] - 3:10</p> <p><b>short</b> [1] - 13:5</p> <p><b>show</b> [4] - 16:7, 17:15, 19:17, 19:19</p> <p><b>shown</b> [2] - 18:3, 18:4</p> <p><b>shows</b> [13] - 10:10, 12:24, 13:6, 13:11, 13:15, 16:5, 17:7, 17:8, 17:25, 18:9, 18:19, 19:9, 19:20</p> <p><b>shut</b> [1] - 24:20</p> <p><b>side</b> [4] - 13:9, 31:17, 38:16, 38:17</p> <p><b>signed</b> [1] - 25:5</p> <p><b>significant</b> [2] - 30:14, 31:24</p> <p><b>similar</b> [1] - 18:19</p> <p><b>simply</b> [2] - 12:20, 33:12</p> <p><b>single</b> [1] - 22:13</p> <p><b>site</b> [1] - 13:8</p> <p><b>situation</b> [2] - 15:11, 39:18</p> <p><b>six</b> [2] - 33:6, 34:22</p> <p><b>skilled</b> [1] - 28:2</p> <p><b>slide</b> [1] - 9:22, 10:10, 13:6, 13:13, 13:15, 15:13, 16:4, 17:15, 17:25, 18:19, 19:8</p> <p><b>slides</b> [2] - 13:8, 19:9</p> <p><b>slightly</b> [2] - 19:24, 25:8</p> <p><b>slowly</b> [1] - 11:25</p> <p><b>small</b> [2] - 21:17, 28:13</p> <p><b>snapshot</b> [1] - 11:12</p> <p><b>Social</b> [2] - 21:9, 21:18</p> <p><b>solidified</b> [1] - 20:8</p>	<p><b>solution</b> [1] - 24:7</p> <p><b>someone</b> [1] - 13:12</p> <p><b>sometimes</b> [1] - 33:23</p> <p><b>somewhat</b> [1] - 11:21</p> <p><b>soon</b> [1] - 18:16</p> <p><b>sorry</b> [2] - 26:8, 36:2</p> <p><b>sort</b> [2] - 27:7, 31:22</p> <p><b>sought</b> [1] - 21:7</p> <p><b>source</b> [1] - 26:24</p> <p><b>sources</b> [2] - 16:11, 26:25</p> <p><b>South</b> [1] - 32:9</p> <p><b>SOUTH</b> [1] - 3:22</p> <p><b>Special</b> [13] - 10:17, 10:21, 10:22, 11:4, 27:19, 27:20, 28:3, 28:4, 28:6, 40:1, 40:4, 40:6</p> <p><b>special</b> [13] - 10:25, 11:3, 11:5, 15:23, 16:15, 16:16, 18:19, 21:21, 22:1, 22:3, 29:21, 30:15, 31:12</p> <p><b>SPECIAL</b> [5] - 4:12, 5:24, 5:25, 28:5</p> <p><b>specific</b> [3] - 9:20, 29:10, 37:21</p> <p><b>spent</b> [1] - 36:12</p> <p><b>spot</b> [1] - 8:20</p> <p><b>ST</b> [1] - 2:15</p> <p><b>stage</b> [1] - 38:13</p> <p><b>stand</b> [2] - 13:13, 40:19</p> <p><b>standpoint</b> [3] - 28:16, 29:14, 37:13</p> <p><b>start</b> [5] - 17:4, 18:17, 21:2, 21:10, 21:19</p> <p><b>started</b> [3] - 8:17, 15:14, 37:23</p> <p><b>state</b> [5] - 21:15, 21:17, 25:22, 25:24, 34:23</p> <p><b>STATE</b> [2] - 3:13, 3:17</p> <p><b>State</b> [5] - 32:7, 32:8, 32:10, 36:8, 41:5</p> <p><b>STATE/FEDERAL</b> [1] - 6:8</p> <p><b>state/federal</b> [1] - 32:4</p> <p><b>statement</b> [1] - 9:8</p> <p><b>STATES</b> [2] - 1:1, 1:12</p> <p><b>states</b> [2] - 37:4, 37:8</p> <p><b>States</b> [3] - 38:4, 41:6, 41:15</p> <p><b>statistic</b> [1] - 26:7</p> <p><b>statistics</b> [2] - 21:11, 24:25</p> <p><b>status</b> [14] - 9:1, 9:20, 14:23, 17:3, 19:17, 31:1, 31:9, 31:20, 36:7, 36:17, 37:19,</p>
<b>S</b>				
<p><b>s/Cathy</b> [1] - 41:12</p> <p><b>SALES</b> [1] - 3:9</p> <p><b>SAN</b> [1] - 4:10</p> <p><b>sand</b> [1] - 24:20</p> <p><b>satisfy</b> [1] - 24:13</p> <p><b>saw</b> [1] - 39:20</p> <p><b>schedule</b> [5] - 31:18, 36:12, 36:15, 36:16, 38:8</p> <p><b>scheduled</b> [2] - 28:18, 36:22</p> <p><b>scheduling</b> [3] - 31:2, 31:19, 31:23</p> <p><b>scope</b> [2] - 36:12, 38:15</p> <p><b>SE</b> [1] - 6:10</p> <p><b>se</b> [6] - 33:1, 33:3, 33:14, 34:7, 34:8, 34:9</p> <p><b>se's</b> [1] - 33:19</p> <p><b>seated</b> [1] - 8:8</p> <p><b>second</b> [13] - 14:1, 14:7, 15:11, 17:12, 17:14, 18:6, 18:8, 18:24, 19:21, 19:25, 29:8, 30:12, 35:13</p> <p><b>sections</b> [1] - 35:11</p> <p><b>securities</b> [1] - 30:21</p> <p><b>Security</b> [2] - 21:9, 21:18</p> <p><b>SEDRAN</b> [1] - 1:23</p> <p><b>see</b> [13] - 9:22, 10:11, 13:10, 15:13, 24:8, 24:19, 26:23, 30:17, 31:11, 31:19, 37:7, 37:9, 38:23</p> <p><b>seed</b> [1] - 32:17</p> <p><b>SEEGER</b> [2] - 2:3, 2:3</p> <p><b>seeing</b> [1] - 26:10</p> <p><b>seeks</b> [2] - 15:1, 15:3</p> <p><b>send</b> [2] - 11:25, 12:19</p> <p><b>sending</b> [1] - 24:16</p> <p><b>sense</b> [4] - 27:25, 31:1, 31:23, 33:4</p> <p><b>sent</b> [3] - 10:1, 17:16,</p>				

<p>38:21, 38:24, 40:15  <b>Status</b> [1] - 13:10  <b>STATUS</b> [2] - 1:11, 7:9  <b>statutory</b> [2] - 23:19, 23:25  <b>stay</b> [1] - 32:12  <b>STENOGRAPHY</b> [1] - 4:21  <b>still</b> [14] - 10:5, 10:13, 13:20, 14:6, 17:16, 17:18, 17:20, 21:11, 22:7, 25:21, 27:24, 28:15, 32:10, 33:5  <b>STONE</b> [1] - 3:3  <b>stop</b> [3] - 12:2, 30:1, 40:18  <b>Stratton</b> [4] - 38:10, 38:16, 38:18, 38:23  <b>STREET</b> [15] - 1:21, 1:24, 2:4, 2:8, 2:11, 2:21, 2:24, 3:4, 3:10, 3:15, 3:18, 3:22, 4:9, 4:13, 4:18  <b>stroke</b> [17] - 9:17, 9:21, 10:12, 11:17, 11:21, 12:9, 12:15, 13:1, 13:7, 13:11, 14:1, 21:20, 24:16, 25:14, 28:7, 28:17, 30:14  <b>strokes</b> [2] - 11:20, 30:14  <b>structure</b> [2] - 31:10, 31:13  <b>submission</b> [3] - 15:14, 38:9, 38:11  <b>submissions</b> [2] - 16:24, 30:1  <b>submit</b> [4] - 10:6, 11:22, 12:20, 15:15  <b>submitted</b> [5] - 12:3, 15:16, 16:2, 16:8, 16:11  <b>substantial</b> [1] - 27:4  <b>substituted</b> [1] - 39:15  <b>sue</b> [1] - 27:3  <b>suggest</b> [1] - 40:2  <b>SUITE</b> [9] - 1:24, 2:8, 2:11, 2:18, 3:15, 3:18, 3:23, 4:9, 4:13  <b>summarizes</b> [1] - 19:8  <b>sums</b> [1] - 29:4  <b>supplement</b> [1] - 34:20  <b>support</b> [1] - 24:12  <b>sweep</b> [1] - 26:16  <b>system</b> [1] - 29:25</p>	<p style="text-align: center;"><b>T</b></p> <p><b>talks</b> [1] - 13:24  <b>TAREK</b> [1] - 2:17  <b>target</b> [2] - 28:15, 28:17  <b>task</b> [1] - 28:20  <b>tasks</b> [1] - 28:21  <b>team</b> [1] - 9:14  <b>tee</b> [1] - 31:14  <b>telephone</b> [1] - 38:10  <b>terms</b> [1] - 12:12  <b>THE</b> [68] - 1:11, 1:15, 2:14, 3:13, 3:20, 4:3, 4:3, 4:7, 4:13, 5:8, 5:10, 5:13, 5:16, 5:18, 5:20, 5:22, 6:1, 6:5, 6:7, 6:12, 6:15, 6:20, 6:22, 6:25, 7:3, 7:7, 7:9, 8:7, 8:8, 8:10, 8:11, 8:17, 9:10, 12:4, 14:8, 14:10, 14:19, 14:25, 15:10, 19:5, 20:2, 20:14, 22:18, 23:18, 24:21, 26:20, 27:17, 30:11, 31:6, 31:21, 32:4, 32:21, 32:25, 33:23, 34:13, 34:25, 35:18, 36:24, 37:1, 37:3, 37:22, 38:2, 38:14, 39:6, 39:9, 39:13, 40:20  <b>themselves</b> [1] - 11:21  <b>THEODORE</b> [1] - 3:6  <b>thereabouts</b> [1] - 37:24  <b>they've</b> [1] - 16:8  <b>thinking</b> [1] - 38:22  <b>third</b> [2] - 10:14, 26:15  <b>third-party</b> [1] - 26:15  <b>THIS</b> [1] - 1:7  <b>three</b> [2] - 12:22, 28:14  <b>three-week</b> [1] - 12:22  <b>thresholds</b> [1] - 17:23  <b>tie</b> [1] - 29:25  <b>tied</b> [1] - 23:8  <b>timeline</b> [1] - 14:5  <b>timing</b> [1] - 9:21  <b>TO</b> [2] - 1:7, 7:6  <b>today</b> [9] - 9:12, 10:1, 10:24, 14:17, 24:17, 25:5, 28:25, 30:5, 37:18  <b>together</b> [2] - 31:9, 31:21  <b>TOMASELLI</b> [1] - 2:17  <b>top</b> [2] - 15:3, 18:10</p>	<p><b>track</b> [2] - 13:25, 14:6  <b>TRANSCRIPT</b> [2] - 1:11, 4:21  <b>transcript</b> [1] - 41:8  <b>transcripts</b> [1] - 23:15  <b>transfer</b> [1] - 32:12  <b>transferor</b> [2] - 32:11, 32:12  <b>transferred</b> [1] - 32:8  <b>transition</b> [1] - 8:18  <b>transitioning</b> [1] - 8:23  <b>transported</b> [1] - 35:4  <b>TRAVIS</b> [1] - 3:9  <b>treated</b> [2] - 22:7, 22:14  <b>treating</b> [1] - 22:7  <b>tremendous</b> [1] - 32:23  <b>trial</b> [9] - 34:13, 34:18, 34:19, 35:2, 35:3, 35:6, 35:21, 35:22, 36:8  <b>TRIAL</b> [1] - 6:13  <b>tried</b> [1] - 33:24  <b>true</b> [2] - 29:17, 41:7  <b>truly</b> [1] - 29:23  <b>try</b> [4] - 11:23, 31:12, 33:17, 37:12  <b>trying</b> [6] - 22:1, 22:8, 26:15, 30:2, 37:3, 37:6  <b>Tulane</b> [1] - 14:11  <b>turn</b> [1] - 20:21  <b>turned</b> [1] - 26:22  <b>TWELFTH</b> [1] - 2:15  <b>two</b> [10] - 11:2, 12:22, 15:20, 18:10, 24:18, 28:1, 28:20, 34:19, 35:11, 38:17  <b>TX</b> [1] - 3:11  <b>type</b> [2] - 26:5, 28:2  <b>types</b> [2] - 16:3, 16:4  <b>typically</b> [3] - 11:9, 11:12, 11:24</p> <p style="text-align: center;"><b>U</b></p> <p><b>unable</b> [1] - 12:21  <b>undecided</b> [1] - 28:8  <b>under</b> [3] - 9:5, 13:10, 21:15  <b>underlying</b> [6] - 15:4, 15:22, 17:21, 18:14, 18:17, 19:15  <b>underscore</b> [1] - 20:2  <b>understandable</b> [1] - 11:21  <b>understood</b> [1] -</p>	<p>22:23  <b>unfinalized</b> [4] - 21:6, 21:7, 21:14, 25:20  <b>unique</b> [4] - 16:16, 16:21, 16:24, 29:10  <b>UNITED</b> [2] - 1:1, 1:12  <b>United</b> [3] - 38:4, 41:6, 41:15  <b>unresolved</b> [1] - 22:11  <b>unsatisfied</b> [1] - 22:17  <b>unusual</b> [1] - 15:5  <b>up</b> [13] - 8:20, 11:8, 12:7, 22:9, 23:14, 24:4, 24:6, 26:3, 29:25, 31:14, 31:22, 31:25, 32:19  <b>update</b> [1] - 14:23  <b>useful</b> [1] - 35:7  <b>usual</b> [1] - 20:18</p> <p style="text-align: center;"><b>V</b></p> <p><b>VA</b> [2] - 3:23, 22:25  <b>values</b> [2] - 11:1, 11:6  <b>various</b> [1] - 36:5  <b>vary</b> [1] - 19:24  <b>version</b> [1] - 32:20  <b>Veteran</b> [1] - 22:12  <b>Veterans</b> [2] - 22:7, 22:14  <b>view</b> [3] - 12:13, 27:9, 33:19  <b>viewed</b> [1] - 35:6  <b>Vioxx</b> [2] - 8:10, 9:6  <b>VIOXX</b> [1] - 1:5  <b>visit</b> [1] - 34:21  <b>visualize</b> [1] - 29:20</p> <p style="text-align: center;"><b>W</b></p> <p><b>wage</b> [1] - 29:20  <b>wages</b> [5] - 15:9, 16:10, 16:20, 16:21, 17:25  <b>wait</b> [2] - 12:2, 17:23  <b>waiting</b> [3] - 17:20, 18:13, 38:11  <b>WALNUT</b> [1] - 1:24  <b>WALTHER</b> [1] - 3:3  <b>WARSHAUER</b> [1] - 2:6  <b>WASHINGTON</b> [2] - 2:15, 2:25  <b>waterfall</b> [1] - 25:9  <b>waves</b> [1] - 24:17  <b>ways</b> [1] - 27:15  <b>web</b> [2] - 13:8, 25:17  <b>week</b> [4] - 10:12,</p>	<p>10:14, 12:22, 30:23  <b>WEISS</b> [1] - 2:3  <b>WEST</b> [1] - 4:9  <b>WHEREUPON</b> [1] - 40:21  <b>whole</b> [1] - 15:11  <b>WILL</b> [1] - 7:9  <b>WILLIAM</b> [2] - 2:4, 3:22  <b>WILLIAMS</b> [1] - 2:14  <b>WIMBERLY</b> [1] - 3:3  <b>wind</b> [1] - 24:4  <b>wish</b> [3] - 13:9, 32:24, 35:6  <b>wishes</b> [3] - 27:24, 34:24, 38:18  <b>withdrawn</b> [1] - 15:20  <b>WITTMANN</b> [1] - 3:3  <b>word</b> [1] - 21:8  <b>world</b> [1] - 11:7  <b>wrapping</b> [1] - 26:3  <b>wrongful</b> [1] - 25:23</p> <p style="text-align: center;"><b>Y</b></p> <p><b>year</b> [4] - 8:19, 13:2, 14:2, 24:18  <b>years</b> [1] - 24:18  <b>yesterday</b> [4] - 9:22, 10:22, 11:12, 14:16  <b>yoman</b> [1] - 27:18  <b>YORK</b> [2] - 2:4, 3:7  <b>York's</b> [1] - 8:20</p>
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