

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	CHINESE-MANUFACTURED	*	09-MD-2047
	DRYWALL PRODUCTS	*	
	LIABILITY LITIGATION	*	Section L
		*	
Relates to:	All Cases	*	May 5, 2016
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HEARING BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Appearances:

- David Durkee, Esq.
- Hugh Lambert, Esq.
- Jacqueline Cucci, Pro Se
- Gary Fredericks, Pro Se
- Michael Ryan, Esq.
- Salvadore Christina, Esq.
- D. Adele Owen, Esq.
- Kasie Braswell, Esq.
- Patrick Montoya, Esq.
- Brandy Hamilton, Esq.
- Donald Reichert, Esq.
- Holly Werkema, Esq.
- Victor Diaz, Esq.
- Domenico Belitti, Pro Se

Appearances:

Leonard A. Davis, Esq.

Rene Marino, Esq.

Dan Balhoff, Esq.

Jake Woody, Esq.

Official Court Reporter: Toni Doyle Tusa, CCR, FCRR
500 Poydras Street, HB-275
New Orleans, Louisiana 70130
(504) 589-7778

Proceedings recorded by mechanical stenography using
computer-aided transcription software.

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1 subsidiary was a Chinese entity. Knauf, through its Chinese
2 entity, manufactured drywall. There were also some Chinese
3 independent entities.

4 First, with the Knauf entity, Knauf is a
5 worldwide corporation based in Germany with various
6 subsidiaries throughout the world. They distribute and
7 manufacture building equipment. One of the pieces of equipment
8 that they manufacture is drywall. They have facilities in
9 China. Their facilities in China manufactured drywall and sent
10 it into the United States.

11 The mines from which they got the basic element
12 of drywall, which is gypsum -- probably, I think it's fair to
13 say, unbeknown to anyone -- contained a large amount of sulfur.
14 The gypsum was placed in drywall, and that's the hard material
15 in between the cardboard that makes up drywall. That gypsum
16 contained a large amount of sulfur. That presented problems
17 particularly in the South, with the humidity, and also on the
18 East Coast and other places.

19 The significance of that is that the two primary
20 metals of all builders -- throughout the world, I might say --
21 are silver and copper. Copper is in the downspouts. Copper is
22 in the refrigerant. They use copper for various purposes in
23 building. Silver is significant because silver is the contact
24 points of all switches.

25 Those two metals are used by builders because

0 9 : 1 2

1 they do not rust, but unfortunately those two metals are very
2 sensitive to sulfur. When they are exposed to sulfur, they
3 become ineffective and they don't work. So refrigerants
4 started malfunctioning, ground wires started malfunctioning,
5 smoke alarms didn't go off, and various things happened in the
6 buildings. In addition, sulfur puts out an odor of rotten
7 eggs, people describe it as, and even worse. That created
8 problems; not only uncomfortable problems, but in some cases it
9 caused physical injuries.

10 In any event, thousands of suits were filed
11 throughout the country, primarily in the Gulf Coast and Eastern
12 Seaboard area. About 30 states were involved in the
13 litigation, thousands of claimants. Unlike most of these types
14 of cases, there were thousands of defendants.

15 The cases were sent to this Court, consolidated
16 in this Court for discovery purposes, and discovery rapidly
17 proceeded. Then we had several bellwether trials to see what
18 the issues were.

19 The trials established basically that liability
20 was present because the product was defective. A manufacturer
21 of a defective product is liable whether or not they knew that
22 the material was problematic. It doesn't matter. If you
23 manufacture something and what you manufacture is defective,
24 you are liable.

25 Not so with builders, not so with contractors,

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1 not so with installers, not so with distributors; there's an
2 element of negligence that has to be proved with regard to
3 those defendants. From the standpoint of a manufacturer, it's
4 what we call strict liability.

5 So Knauf was liable because they manufactured a
6 defective material. The question is: Liable for what? And
7 how do you determine it? Well, the bellwether trials gave us
8 some idea as to what needed to be done from the standpoint of
9 structural repairs.

10 Initially the defendant took the position that
11 they only needed to provide a dehumidifier in the room. We
12 took evidence on that. Eventually that proved to be
13 ineffective, so a protocol was developed as to what needed to
14 be done, and it was evidence-based. All the wiring had to be
15 taken out the house, all the drywall obviously, cleaned, and
16 things of that sort, but a detailed protocol was devised from
17 six or seven cases that were tried. Then Knauf agreed to put
18 that protocol in action and to repair homes using that
19 protocol.

20 Oftentimes when you theoretically develop
21 something, in practice it doesn't work or it's not enough or it
22 needs to be tweaked. Well, 50 or 100 homes were restored with
23 that protocol, and that needed to be corrected and so that was
24 done, and another 100 or 200 homes. In any event, it got to
25 the point where the protocol was working, it was proper, and

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1 repairs and remediation was being done.

2 Then the parties went into discussions whether
3 or not this protocol could be monetized and then enlarged, so
4 to speak, into a potential settlement. After a year or two or
5 three, whatever it was, the parties came up with a settlement
6 program, presented it to the Court, presented it to the
7 plaintiffs, and it was agreed upon and put in writing.

8 The settlement program provided for a certain
9 remediation protocol, and it also provided that certain things
10 were not included in that remediation protocol. It recognized
11 that there were some injuries that were being claimed and what
12 needed to be done to prove those injuries according to the
13 settlement program.

14 Fortunately, to some extent, it wasn't the type
15 of injury that asbestos visited upon our nation. Asbestosis is
16 caused by exposure to asbestos. There was no single injury
17 that was created by this exposure, but there were some issues
18 that were presented. The parties tried to design a program
19 that took into consideration those injuries and also what was
20 required to prove those injuries in accordance with the
21 program.

22 The settlement documents were written and the
23 settlement documents were exposed to the people. They were
24 placed online. They were placed on the Court website. They
25 were sent to individuals to take a look at. It was resolved in

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1 that way.

2 The settlement program also provided a means of
3 evaluating the injuries and the damages and giving an
4 individual claimant an opportunity to present evidence to the
5 special master and to go through a series of appeals and
6 reconsiderations. Eventually the opportunity was presented for
7 those individuals to come to court.

8 We are here today for the last aspect of this
9 program, where the people who have objected to their awards
10 present their argument to the Court. They have to understand,
11 however, that the program is designed so that the Court doesn't
12 review any new material. I'm cabined, so to speak, restricted
13 by the record in the case, the documents that have been
14 presented in the case. There are various levels of appeal, and
15 this is the final level.

16 At this time I will call upon the settlement
17 administrator to give us some background as to that program.

18 **MR. WOODY:** Good morning, Your Honor. My name is
19 Jake Woody from BrownGreer. I'm the settlement administrator.
20 I can give you some background on why we are here today and how
21 the program has led us to this point.

22 At the conclusion of the claims submission
23 deadline, we received 7,987 other loss claims. Other loss
24 claims are claims that deal with losses other than remediation
25 and repair of affected property, things like bodily injury,

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1 alternative living expenses, lost rent, foreclosure/short sale,
2 and miscellaneous claims.

3 We reviewed those 7,987 claims and made offers
4 to eligible claimants. Our review of those claims consisted of
5 reviewing the materials submitted to ensure that they had
6 complied with all of the documentary requirements set forth in
7 the Knauf settlement agreement, which sets out for each claim
8 type a different set of rules as to what kind of documents need
9 to be submitted.

10 At the conclusion of our review, we worked with
11 the parties and the Court to draft and issue PT0 29, which sets
12 out the procedure under which we can make offers on eligible
13 claims. PT0 29 authorized us to make set offers that differ
14 per claim type. We did that. PT0 29 also sets forth a
15 procedure for claimants that are dissatisfied with this offer
16 to request that the special master review their claim.

17 Of all the offers we made, 727 claimants
18 requested special master review. Those claims were reviewed by
19 Special Master Dan Balhoff, who is here with us today. PT0 29
20 set forth the procedure for his review. Part of that procedure
21 was that he could make an offer based on his review of the
22 documents, and claimants could accept that offer or request
23 reconsideration from the special master.

24 Of the 727 requests, 366 of those requested
25 reconsideration. Special Master Dan Balhoff reviewed those

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1 reconsideration requests and issued determinations based on the
2 materials submitted in support of those reconsideration
3 requests. Of those 366, 64 claimants have now appealed to the
4 Court. The other 302 claimants have accepted their offer.

5 The appeal right comes from Section 4.6.8 of the
6 Knauf settlement agreement, which I will read into the record
7 with your permission:

8 "Unless otherwise final and binding pursuant to
9 the relevant sections below, decisions of the special master
10 with respect to the other loss fund may be appealed by
11 settlement class counsel, the Knauf defendants, or an affected
12 class member within 15 days of service of the special master's
13 decision by filing an objection with the Court, but only after
14 settlement class counsel, the Knauf defendants, and, if
15 applicable, an affected class member's counsel meet and confer
16 in an attempt to resolve such issue. Unless the Court orders
17 otherwise, appeals will be based on the record and briefing
18 before the special master without further evidentiary
19 submissions, briefing, or argument. Any party may, at its own
20 expense, request that proceedings before the special master be
21 transcribed. The Court's decision on any objections will be
22 final, with no further appeals permitted."

23 The 64 claimants who are here today have
24 appealed pursuant to this section. The Court's order on the
25 appeals today is final, without any further review.

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1 I want to also mention that the 727 claimants
2 who requested special master review have not yet been paid
3 because the payment amount is a pro rata share of the
4 settlement funds, and we cannot determine the pro rata share
5 until all the claims are resolved. These final 64 claims are
6 the last claims that we need resolved so we can perform the
7 pro rata calculations and issue payment to all the claimants
8 who have received an offer from the special master.

9 **THE COURT:** Now, we are talking here today about the
10 other loss fund.

11 **MR. WOODY:** Yes, sir.

12 **THE COURT:** In addition to the other loss fund, the
13 settlement program provided for remediation of the homes. The
14 homes were totally remediated in accordance with the
15 evidence-based program that was designed.

16 **MR. WOODY:** Homes that contained KPT Chinese drywall
17 for the most part have been remediated through separate
18 portions of the settlement agreement. Remediation consists of
19 a full removal of the KPT Chinese drywall and replacement not
20 only of the drywall, but of affected appliances and things of
21 that nature to place the home in a condition that it would have
22 been had there never been KPT drywall in the property.

23 In addition to that, homes that do not contain
24 KPT drywall but contain another type of Chinese drywall were
25 eligible to submit claims against the three different

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1 settlement funds -- the Global, Banner, InEx settlement
2 funds -- for repair and relocation damages. This is not a full
3 remediation but is instead a monetary payment based on the
4 square footage of the home and the settlement eligibility.
5 That, again, is a different set of settlement agreements not at
6 issue today. Those payments have been made, for the most part,
7 over the last few years and are largely complete.

8 Claimants who are eligible for either
9 remediation or Global, Banner, InEx repair and relocations
10 could, in addition, submit these other loss claims that we are
11 here today on. Many of the claimants who have appealed and who
12 have not appealed also received other benefits through either
13 the remediation program or through the Global, Banner, InEx
14 repair and relocation program.

15 **THE COURT:** That's the point I felt we ought to
16 emphasize. The total program took into consideration the
17 complete remediation of the home; and in addition to that, some
18 other damages; and then in addition to that, other loss funds.
19 The other loss fund aspect of the settlement program is what we
20 are here today to deal with.

21 **MR. WOODY:** Yes, sir.

22 **THE COURT:** I think the way of doing this is to take
23 them up in alphabetical order, first the bodily injury claims.
24 I start with the Bourgeois claims. We have five Bourgeois
25 claims, represented by attorney J.E. Cullens. Is anybody here?

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1 Excuse me before I do that.

2 **MR. DAVIS:** Your Honor, Leonard Davis on behalf of
3 plaintiffs' liaison counsel. I just wanted to add a few
4 comments to what's already been presented to the Court.

5 As the Court is well aware, the Knauf settlement
6 program was initially confected after years of discussions and
7 after what we have called the TIP program.

8 The Knauf program is one of multiple
9 settlements. It's an integral part. There's Banner, there's
10 InEx, there's Global, and there are five interrelated
11 settlements that go into the resolution that was ultimately
12 dealt with here. It is a global resolution that dealt with
13 matters, although the plaintiffs' steering committee continues
14 to pursue claims against Taishan. That is still ongoing. I
15 did want to make a few comments, Your Honor, along the lines of
16 what you have heard.

17 The settlement program was an attempt to resolve
18 globally someone's claims. There are a couple components to
19 it. One is, in fact, as you spoke about, the remediation that
20 took place, which was an uncapped fund. So claimants in the
21 program had the opportunity to come in and get their property
22 resolved and remediated.

23 In addition to that, there was the other loss
24 component, which dealt with the items that you spoke about:
25 alternative living, short sale, foreclosure, bodily injury,

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1 miscellaneous. Thousands and thousands of properties have gone
2 through the program. We are at the tail end here, and this is
3 the end.

4 The ones that are remaining today -- which I
5 believe, if my math is correct, are less than 1 percent of
6 what's in the program -- are the final matters to go through
7 the process. They have, in fact, appealed.

8 These individuals have had an opportunity to
9 present their claims, whatever they may be -- bodily injury or
10 foreclosure or whatever -- and they have presented those claims
11 to the special master, and it has worked its way up through the
12 program, which is laid out to give people the opportunity to
13 have their claim presented and to have the evidence to support
14 their claim presented and reviewed by multiple individuals
15 going up the ladder to appeals. Your Honor, this is the last
16 of those appeals. This is the final stopping place because the
17 program has laid out there are no appeals.

18 The other point that I want to make is that
19 attorneys' fees were also dealt with and they are separate.
20 Claimants are not paying attorneys' fees. That was negotiated
21 in the settlement.

22 So the issues that are before the Court are the
23 final issues, and the 7,987 who came into the program are
24 waiting for this day so that they too can be paid. This will
25 enable everyone to have a final resolution of whatever their

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1 claim is on the matters. I just wanted to add those comments,
2 Your Honor.

3 **THE COURT:** Thank you.

4 We will take the Bourgeois matters. Anybody
5 either on the phone or in person? Mr. Cullens, are you there?
6 Hello? Anybody for Bourgeois?

7 The next person is Jackie Cucci, C-U-C-C-I.
8 Anybody for Ms. Cucci?

9 The next one is Nicole Dabalsa, D-A-B-A-L-S-A.

10 **MR. DURKEE:** Yes, Your Honor. This is David Durkee
11 on behalf of Nicole Dabalsa.

12 **THE COURT:** Yes, David. Do you want to tell us what
13 your position is?

14 **MR. DURKEE:** I do, Your Honor. At this point we have
15 presented, I believe, substantial competent evidence that
16 should be considered by the Court. I think at this point her
17 final determination for her personal injury claim has been
18 awarded as zero.

19 We believe the evidence that's been proffered in
20 support of this claim has not been laid properly and basically,
21 based on the omnibus responses, has really not been considered
22 based on the case law cited and the federal standards of
23 evidence.

24 We did present competent evidence from a
25 board-certified pediatrician, the pediatrician that knew this

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1 child from birth. She was hospitalized as a result of
2 respiratory complaints on multiple occasions.

3 We are not claiming permanent injury. This is
4 not something that we are claiming that -- although I do think,
5 in this particular case, there may be some actual permanent
6 effects, we are not claiming that. We are claiming the time
7 period that she lived in the home her health was dramatically
8 different than when she moved out of the home.

9 The father was wealthy enough to fix the home,
10 so he did get the family out of the home. So the pediatrician
11 not only had the ability to see the patient prior to moving
12 into the home, he was able to see the patient while living in
13 the home, and then he was able to understand her medical
14 complaints and symptomatology after moving out of the home.

15 I believe the records we submitted, the medical
16 records that we submitted and the affidavit from the
17 board-certified pediatrician here in South Florida, as I said,
18 that treated the patient both before moving in the home, during
19 the time in the home, and after the home allows him to form a
20 competent basis for him to say that she did suffer from
21 temporary severe respiratory and other types of problems while
22 she was living in the home.

23 Now, there is one other aspect of this
24 particular claim that I would like to get into. However, I do
25 believe that that portion of that would be confidential, and I

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1 don't know how to address that in open court today.

2 **THE COURT:** Why don't you do that in writing and send
3 it to me.

4 **MR. DURKEE:** Very good, Your Honor. I will follow
5 the protocol for confidentiality that your district requires,
6 and I will submit that confidentially to you to consider.

7 **THE COURT:** Thank you very much. From that
8 standpoint, the special master indicated that the problem that
9 he had with it was that the medical opinion or expression
10 didn't have any basis for the specific injuries claimed by the
11 individual; that there was no evidence that the type of
12 injuries that she was claiming was directly related to exposure
13 to Chinese drywall. That at least was the basis of it, but I
14 will review the material again. I'm going to be doing this on
15 an expedited basis because everybody else is waiting, of
16 course, with these other loss fund claims, and nobody gets paid
17 until everybody's has been decided.

18 **MR. DAVIS:** Your Honor, is there a time frame for
19 submission?

20 **MR. DURKEE:** Your Honor, I will have all that
21 submitted to -- I will send it overnight for Monday delivery.
22 I will make sure anything else that I ask you to be consider
23 will be delivered on Monday of next week.

24 **THE COURT:** Thank you very much.

25 Patrick Dennis. Mr. Hugh Lambert.

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1 **MR. LAMBERT:** Thank you, Your Honor. Your Honor,
2 first of all, I am well aware, as are my clients, that the
3 Court has done an outstanding job, along with Dan Balhoff, the
4 special master, and the committee set up to handle this massive
5 mass tort. It's been, I think, the Court's priority -- and
6 rightfully -- that in order to remove people from continued
7 exposure in these environments that the priority needed to be
8 the property damage claim, which could be resolved with issues
9 tried in bellwether scenarios, so that these remediations could
10 take place in literally thousands and thousands of homes as
11 quickly as possible to eliminate the continued exposure.

12 I would like to first introduce just for a
13 second my clients. Here is Mr. Donohoe [sic]. He is a doctor.
14 He resides here in New Orleans and was exposed in Slidell to
15 the Chinese drywall. He was Special Forces, a Green Beret. He
16 has a prior clean medical history. He is an individual whose
17 exposure is much like was just indicated, his symptoms
18 temporally related to living in the Chinese drywall.

19 I think that's my point right now, is that we
20 are here at the end of this process. Individual personal
21 injury claims couldn't possibly have been addressed in the
22 manner that accomplished what I believe the Court outstandingly
23 accomplished in getting a handle around the property damage
24 issues, getting people away from this toxic environment,
25 stopping the progression of damages as quickly as possible. It

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1 was done in a bellwether manner. It was done, I think,
2 tremendously expeditiously.

3 The settlement agreements that were confected by
4 the hard work of the committees, both from plaintiff and
5 defendant, got a handle around the damages that were available
6 and associated to this sulfur gas, which, as Your Honor points
7 out, came from the mining operations, we believe. Without
8 handling those property damage claims first, it would have been
9 impossible to get to this stage.

10 This stage is the stage where individuals have
11 medical exposure, and we all know that individuals are
12 different. There are some individuals in particular, just
13 because they are children or because they are young or because
14 they are old or many, many different sort of -- just genes in
15 general. So it makes sense when you look at a standard
16 distribution or any other scientific analysis or statistical
17 analysis that there are just a few. Those few have specific
18 sorts of instances that make them qualified to share, from a
19 medical standpoint, in a bodily injury claim.

20 That doesn't mean that everybody that would have
21 been in that house at that particular moment and during that
22 particular time would suffer the same consequence. It simply
23 means that there is a very small percentage of human beings
24 that would have a physical condition that would be affected by
25 this Chinese drywall.

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1 Now, it's important, I think, in the case of
2 Mr. Donohoe that we look at -- I don't want to go there just
3 yet. I need to mention one or two other points.

4 The special master's award -- with all due
5 respect, Dan Balhoff, you know I think the world of him. He
6 has done one magnificent job. I have been in many matters that
7 he has handled as special master. He is careful and he does
8 everything as properly as he possibly can. At this stage there
9 needs to be individual attention paid to these claims; not a
10 \$1,000 award across the board to get it over with, but
11 specifically look at the issues involving these people and
12 their conditions.

13 Each of our -- and I have three. I want to
14 introduce the other two right quick, Your Honor. It might make
15 more sense, if Your Honor please.

16 **THE COURT:** Yes. You have Dennis, Donohoe, and
17 Tim Holleman.

18 **MR. LAMBERT:** Tim Holleman is here. Tim is a lawyer,
19 Gulfport, Mississippi. His father --

20 **THE COURT:** I remember his dad well.

21 **MR. LAMBERT:** Exactly.

22 Then next to him is Tina Donohoe and her
23 husband, Patrick.

24 **THE COURT:** First, I appreciate all of y'all being
25 here. I know it's difficult time-wise, but I appreciate your

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1 presence.

2 **MR. LAMBERT:** Your Honor, in general, let me just
3 skip through this. I think the issue before Your Honor at this
4 point is 702 and *Daubert*. I think that it's important to point
5 out that in all three of these cases, we have submitted not
6 excerpts from medical records but specific reports. The
7 specific reports are designed to satisfy both general and
8 specific causation from a *Daubert* standpoint.

9 I know Your Honor is familiar with this, but I
10 will just say it for the record. Of course, *Daubert* is a
11 necessary tool that's been used in federal court in the
12 gate-keeping capacity to prevent junk science from interfering
13 with justice and having jurors struggle with unsupported junk
14 science that could confuse the issue and lead to injustice, but
15 that's not what we have here.

16 Here we have physicians who are trained in
17 chemistry, basically, before they ever get to be physicians,
18 not to mention whatever particular specialty they have. In our
19 case we have an eye surgeon, we have a general surgeon, we have
20 another physician who have looked at these issues from a
21 chemistry standpoint.

22 As Your Honor points out and as other experts --
23 who, if Your Honor feels the necessity for a further inquiry
24 into this *Daubert* issue, will testify that the specifics go
25 right back to what was referenced in the very first place, and

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1 that is reduced sulfur compounds. It's well within a
2 physician's tool chest or wheelhouse or whatever phrase we use
3 to look at the chemistry involved in the exposure of these
4 gasses which, with moisture, react.

5 In one case we have a lung reaction, and that's
6 Dr. Donohoe [sic]. In his situation the gasses reacted in his
7 lungs and created the irritation that led to hospitalization,
8 that led to repeated procedures, and caused him all of the
9 symptoms that his physician, Dr. Frank Wilklow, W-I-L-K-L-O-W,
10 said specifically -- and, again, Mr. Balhoff may have missed
11 this, but he said specifically not only what was quoted in the
12 papers submitted by the special master, where he says (as
13 read): "In my opinion, to a reasonable medical probability,
14 exposure to this Chinese-manufactured drywall can cause chronic
15 health conditions" -- he said that.

16 He said the next paragraph, which was left out
17 of Mr. Balhoff's report, and that is (as read): "Due to this
18 opinion and the temporal connection between Dr. Dennis' other
19 inexplicable health problems and his exposure to the toxic
20 compounds emitted by the KPT Knauf Chinese drywall in his home,
21 it is a reasonable medical probability that the KPT drywall to
22 which Dr. Dennis was exposed has substantially caused his
23 health issues." That's specific causation.

24 Going on to the issue of Tim Holleman, Tim lives
25 in Mobile. He lived in a house for a couple of years not

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1 knowing that there was Chinese drywall. He had Lasik surgery.
2 His surgeon submitted a report which clearly links the failed
3 recovery of Tim Holleman's Lasik surgery to his exposure to
4 Chinese drywall reduced sulfur gasses.

5 The reasons are understandable. You have a
6 moisture -- like Dr. Dennis, moist lungs -- reactive sulfur
7 compounds, moist eyeballs, recovering from Lasik surgery, where
8 the doctor has performed these procedures over and over again
9 in many, many people. No medical contraindications for
10 Tim Holleman, and his tear ducts are damaged. They can't
11 create the amount of tears necessary.

12 He has dry eyes. Then he wakes up with gook in
13 his eyes from other parts of his body trying to deal with his
14 reaction. He has to go in for a second surgery because of
15 that. As soon as he moves out of the house, things drastically
16 change and get better.

17 In that situation the surgeon, Dr. Benefield,
18 B-E-N-F-I-E-L-D, in his report states that there is an
19 undoubted connection between the exposure to Chinese drywall.
20 He said (as read): "Unfortunately, Mr. Holleman returned to
21 his home after the second procedure not knowing there was
22 Chinese drywall and again experienced similar irritation, which
23 again affected the healing process after the second surgery.
24 Based upon reasonable medical probabilities, in my opinion this
25 also caused the redevelopment of a haze. After the Chinese

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1 drywall was discovered, he moved, fortunately, which
2 substantially improved his eye irritation in both eyes. While
3 the haze has improved, it still presents, and he has a 1.0
4 Doppler of . . ." whatever. He has a problem. Specific
5 causation, again, very unusual circumstance.

6 Other people may have been able to tolerate,
7 even with Lasik surgery, a recovery even in those bad
8 conditions, but he didn't. His doctor said that it was caused
9 by the relationship with the reduced sulfur gasses, which we
10 know to be a fact.

11 Now, the next is a bit more sensitive. I'm not
12 going to go into detail, but it is Tina Donohoe. She lived for
13 a long period of time in a Chinese drywall home, two years.
14 Hers was Mary Kate Court in Montz, Louisiana. She had a
15 surgical condition which her doctor, who is a general surgeon,
16 submitted a report, which was an exhibit in the matter
17 submitted to Dan Balhoff, and he rules out all kinds of other
18 medical causes for the condition that she suffered.

19 In closing, he says -- and this is Dr. Daniel
20 Bohi, B-O-H-I, a general surgeon (as read): "Given the
21 clinical circumstances, it is my belief that the environmental
22 exposure to Chinese drywall contributed to the multiple
23 perirectal" -- I don't want to foul it up -- "abscesses and
24 developed wounds healing in Ms. Donohoe, which required her to
25 undergo multiple surgeries. If you have any further questions,

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1 please do not hesitate to contact me."

2 The point is there is general and specific
3 causation set forth in each of these medical reports submitted
4 by physicians which truly shouldn't be excluded on a *Daubert*
5 challenge. They are very well-qualified to testify about the
6 chemistry involved and about the resulting effects of the
7 exposure of these reduced sulfur gasses on the moist
8 environments, on these three individuals who were specifically
9 susceptible to this type of injury.

10 Your Honor, there have been submissions, and I
11 won't go into detail. I'm sure you have them. You read
12 everything, so I'm sure you have read that too. They have to
13 do with the damage calculations for each of these individuals.

14 For Dr. Donohoe [sic], his claim is not only a
15 personal injury claim but collateral claims because of the fact
16 that his illness interfered with him taking his boards as a
17 medical doctor. He lost his position as an emergency room
18 physician. Those damages are set forth in our papers as well.

19 Our request, Your Honor, is that we be allowed
20 to rely upon what we have submitted and that Your Honor and/or
21 the special master reconsider these individuals' claims who
22 have specific instances of susceptibility which we believe
23 qualifies them, from a *Daubert* standpoint and from a medical
24 standpoint, to a recovery. Thank you, Your Honor.

25 **THE COURT:** Thank you very much.

0 9 : 5 5

1 Anything from Dan Balhoff?

2 Before you start, let me say that Mr. Lambert
3 has done a great service to all the people in the litigation.
4 He has been there from the very beginning. His scientific
5 background was very helpful in establishing a protocol for
6 repair and remediation of a lot of the homes. I appreciate his
7 service. I know he was very instrumental in working up this
8 whole program. He did a great job on it.

9 **MR. LAMBERT:** Thank you, Your Honor.

10 **THE COURT:** I will take some of the comments that he
11 made, but let me hear from -- thank you very much.

12 **MR. LAMBERT:** Thank you.

13 **THE SPECIAL MASTER:** Your Honor, I concur in
14 Your Honor's comments about Mr. Lambert. That's in part the
15 reason I stand right now.

16 Dan Balhoff, I'm the special master. I did
17 review everything. I took all of this in consideration with
18 respect to not only bodily injury, but all the cases.

19 Right now I would like to address the bodily
20 injury, just to bring focus as we move forward, because I think
21 Mr. Lambert's comments probably represent a lot of the thoughts
22 that we are going to hear from the bodily injury claimants. I
23 just have a few thoughts, again, to try to bring focus as we
24 move forward.

25 Every class settlement -- and I think Mr. Davis

0 9 : 5 7

1 made this point -- involves give and take. There are times in
2 a class settlement, in the remedies, where the burden of proof
3 becomes easier than it would at trial because presumptions are
4 made, and there are times that the burden of proof might become
5 harder, but the class settlements set the rules. We, who
6 administer the class settlements, are bound by those rules.

7 With respect to bodily injury, the rule was not
8 as if we were writing on a clean sheet of paper and what we
9 believe and what we don't believe. The rule really was
10 twofold.

11 Element one was: Did a doctor say more probably
12 than not that this person had some injury that was caused by
13 Chinese drywall exposure? That's the first element. The
14 second is even beyond that, even if you have that doctor's
15 opinion: Can you satisfy what we call the *Daubert* standard in
16 court?

17 I know a lot of the folks listening are not
18 lawyers, but what that says is: If the doctor says Chinese
19 drywall causes your problem, is there medical literature that
20 has been peer-reviewed, reviewed by other people in the field,
21 that says this, in fact, could cause your problem?

22 There are many, many doctors that believe,
23 honestly, that Chinese drywall or some other chemical might
24 cause a problem. There can be a dispute in the field about
25 whether that's true or not. What federal courts require

0 9 : 5 8

1 typically, under the *Daubert* case from the U.S. Supreme Court,
2 is that the methodology of the doctors be peer-reviewed such
3 that the Court can have confidence that Chinese drywall caused
4 this problem.

5 Now, that is a general rule that federal courts
6 follow. Moreover, in this case it was actually specifically
7 stated and adopted, folded into the settlement agreement. The
8 settlement agreement gave direction to the claims administrator
9 and myself that we had to follow that.

10 So in every one of these cases, I think what we
11 see over and over and over again -- including some of the cases
12 that have accepted the offer of \$1,000. In every one of these
13 cases, you will have a doctor say more probably than not
14 Chinese drywall caused this problem. But what you don't have
15 is *Daubert*-type evidence, where there's a peer-reviewed record
16 that said Chinese drywall, in fact, could cause this kind of a
17 problem.

18 The problem is at this point not whether I
19 believe the doctor or not, not whether the doctor is qualified
20 or not. It could be the best doctor in the world. *Daubert* is
21 not about qualification. It's about something more. As the
22 Court knows and as I'm trying to convey to everyone that is
23 listening to my voice right now, *Daubert* requires a report that
24 I just didn't see.

25 So the only reason I stand up right now is not

10:00
1 so much in response to what Mr. Lambert says, because I think
2 he well-framed the issue for many people that are going to get
3 up from now on. So the question isn't -- and, again, this is
4 the last thing I will say. You can say -- and it's true in
5 many cases -- a doctor said or several doctors said my problem
6 was caused by Chinese drywall. You need more under the
7 settlement agreement. Otherwise, we can't just give you the
8 kind of award that you are looking for.

9 The reason that we gave the \$1,000 initially is
10 that it's kind of a common denominator, irritation sort of an
11 award for people who are exposed to Chinese drywall. But to
12 say that this problem is different than the other problem is
13 different than this person's problem and, therefore, I deserve
14 more, you have to prove it under the settlement agreement.

15 **THE COURT:** Okay.

16 **THE SPECIAL MASTER:** Thank you, Your Honor.

17 **THE COURT:** Just to reinforce that, the problem to
18 some extent, in ferreting out the personal injuries, is that
19 it's not a defined injury. As I said, with asbestosis there is
20 no question. The literature is legion that asbestosis is a
21 disease caused by exposure to asbestos. It is a disease and
22 it's related directly to asbestos. A lot of science has gone
23 into it. A lot of writing has gone into it.

24 There are also some indications sometimes where
25 there's no question that the taking of a drug can cause a heart

1 attack. People have gone into that, experimented with it,
2 proved it beyond a reasonable doubt, and the issue in the case
3 is whether this person's heart attack was caused by ingestion
4 of this drug or that drug or something of that sort.

5 The difficulty in a case of this sort is that
6 the medical literature is oftentimes lacking in discussing what
7 exposure to something is, such as exposure to Chinese drywall,
8 where the exposure can be limited or extended. Different
9 people come at it from different ages, smokers and nonsmokers,
10 and the question is whether or not something else really caused
11 it and this irritated it or something of that sort.

12 Mr. Lambert, you wanted to say something?

13 **MR. LAMBERT:** Yes, please, Your Honor.

14 Again, I have to start by saying that I not only
15 respect the settlement agreement and all that went into it, but
16 I don't envy at all Mr. Balhoff's position in terms of trying
17 to respond, as a special master, to these specific instances.
18 Your Honor is far more adept and capable of figuring out how to
19 evaluate the claims of these individuals and whether or not
20 they passed *Daubert*.

21 In my view, the reports that we have submitted
22 definitely do that. As I pointed out in the beginning, my
23 thought of *Daubert* is not that it is supposed to be used to
24 prevent a physician, for example in this case, from testimony
25 being considered because there's not a specific reference to a

1 reactive sulfur gas causing tissue damage, though I think there
2 may be in some of our reports.

3 As far as how to evaluate it goes, my suggestion
4 would be something along the lines of what sort of medical
5 expenses did these people incur in terms of their complications
6 with their exposure to Chinese drywall. I'm sure Your Honor
7 can think of a lot of ways since you have, over the past
8 several years, dealt with literally thousands, if not tens of
9 thousands of issues that are complicated this way.

10 It seems to me like if *Daubert* is interpreted as
11 preventing a doctor from testifying that his client or his
12 patient is damaged by what has been described to me by other
13 experts as a basic chemical reaction of reactive gasses to a
14 wet surface, not just silver and copper but also human
15 beings -- we know the irritant was there. We know some people
16 felt it more than others. Some smelled it; some didn't.

17 So the idea is there must be a way to fairly
18 evaluate these few claims that are left -- I think I heard
19 64 -- so that there could be a distribution of what is a capped
20 fund so there's no threat to the settlement in this case, and
21 there shouldn't be, but in a way to distribute what remains
22 amongst those 64 people in a fair way. I'm sure Your Honor
23 will figure that out.

24 **THE COURT:** Fine. Thanks very much.

25 **MR. LAMBERT:** Thank you, Your Honor.

10:06
1 **THE COURT:** The next one is Diaz, Jaesiel and Luis.
2 Anybody?

3 **MS. CUCCI:** Good morning. My name is --

4 **THE COURT:** Hello? Wait one moment. What is your
5 name, ma'am?

6 **MS. CUCCI:** Jacqueline Cucci.

7 **THE COURT:** Ms. Cucci, do you want to tell us your
8 situation.

9 **MS. CUCCI:** Okay, Your Honor. I'm appearing *pro se*
10 on this matter. I am here appealing the decision made by the
11 special masters regarding my bodily injury claim. They
12 rewarded me zero, Your Honor, and I don't agree with this
13 decision. If I may, I would like to briefly explain why.

14 I have complied with all the requirements in the
15 settlement agreement. All the required documentation has been
16 uploaded to the settlement administrator's website.
17 Your Honor, I have provided an expert report pursuant to
18 Federal Rule of Civil Procedure 26(a)(2). I have provided
19 medical records documenting my bodily injury as it relates to
20 the Chinese drywall. I have submitted certification attesting
21 that I have provided all medical and pharmacy records as
22 required in the settlement agreement.

23 I have a doctor, Dr. Kaye Kilburn, who
24 substantially related the Chinese drywall to my bodily
25 injuries. Specifically, he rendered an opinion that the

10:08
1 evidence supports the Chinese drywall as the cause of my
2 symptoms and manifestations. Additionally, he diagnosed
3 chemical encephalopathy, intolerance to chemicals, autonomic
4 dysfunction, peripheral neuropathy due to exposure of toxic
5 chemicals found in Chinese drywall.

6 Your Honor, since I have lived in that house
7 with Chinese drywall, I suffer from debilitating headaches due
8 to the brain lesions from all the nosebleeds I suffered. I
9 have no sense of smell. I will have to take medication for
10 asthma for the rest of my life. The only way that they could
11 fix my lesions would be to have stem cell surgery, and my lungs
12 will never be the same.

13 I provided the documents that support these
14 facts. So, in fairness, I ask Your Honor to award me an award
15 based off the documentation I have provided and based off the
16 serious illness I have suffered and continue to suffer. My
17 medical bills and expenses alone have exceeded over \$2,000.
18 That does not include the expert fee that I paid to Dr. Kilburn
19 in the amount of \$1,500, and that does not include the future
20 medical bills that have been recommended and that I will need.
21 It does not include the pain and suffering that I have suffered
22 from the Chinese drywall.

23 I appreciate your time, Your Honor, and I thank
24 you for hearing me this morning.

25 **THE COURT:** Thank you, Ms. Cucci. I'm sorry for your

1 malady, and I wish you well.

2 MS. CUCCI: Thank you.

3 THE COURT: Anybody for Mr. Diaz?

4 Dailyn Martinez?

5 Elouise Fredericks?

6 MR. FREDERICKS: Your Honor, this is Gary Fredericks
7 on the phone, representing Elouise Fredericks.

8 THE COURT: Okay, Mr. Fredericks.

9 MR. FREDERICKS: Yes. Okay. I will go forward.

10 THE COURT: Okay.

11 MR. FREDERICKS: Your Honor, I want the Court and you
12 to seriously review the extended medical records regarding my
13 mother's illness. We cannot appear in court today.

14 My mother is diagnosed with cancer. She almost
15 died twice, in the medical records. The history of the medical
16 records show that she was in excellent health prior to the
17 Chinese drywall. When she moved out of the home, her health
18 condition improved.

19 You can follow the records, the extended
20 records, over 100 to 200 pages of medical prescriptions,
21 assessments, hospital visits. On two occasions my mother was
22 sent to the emergency room comatose and as a result of this
23 exposure.

24 The second time she was recommended, due to the
25 substantial illness, to try stem cell surgery. Her condition

1 did not even allow her to sustain that, which is recorded in
2 documentation. She went into a second comatose state for over
3 three weeks. Again, the second time she almost died.

4 Prior to the Chinese drywall, my mother was in
5 excellent health as an educator. As a result of the condition
6 and the toxic environmental exposure, she has received a
7 reduced quality of life. It's a matter of medical records that
8 her life expectancy has been reduced.

9 We have sent in documentation from
10 board-certified physicians, government research, physicians'
11 research, EPA medical research in cases of exposure to the
12 sulfur gasses. We have asked extensively, on behalf of my
13 mother, what additional information is required for the special
14 masters, without a clear response. We have extensively
15 submitted her complete health history prior to the Chinese
16 drywall, her encounter with her cancer on both occasions when
17 she was hospitalized, and medical research, which is extended
18 records for your review and evaluation.

19 Additionally, you can follow the medical records
20 to see after the second time when she was comatose and
21 hospitalized, when the doctor recommended, due to exposure,
22 that she move out of the household, her blood counts
23 drastically increased.

24 In the records it shows that she has medical
25 bills from the exposure and from the hospitalizations and the

1 treatment, over a half million dollars in fees. She has been
2 treated for asthma, headaches, extensive pain shots, and
3 currently she has a reduced mobility and quality of life as a
4 result from the circumstances, exposure to this Chinese
5 drywall. I would ask the Court to seriously consider all of
6 the extended documentation which we have provided.

7 Your Honor, if there is something additional
8 that we are missing, please give us the opportunity to provide
9 you with that information so that we can give it clarity and
10 action regarding this claim. Thank you.

11 **THE COURT:** Okay, Mr. Fredericks. Thank you very
12 much.

13 The problem that I'm faced with is that the
14 medical literature doesn't support a connection between any
15 exposure and cancer. It's not one of those things that is
16 tested, written about. There's no question your mother has
17 cancer. I see that in the records, and it's very large. I'm
18 troubled that she is in such pain and discomfort, no question
19 about that.

20 The problem that I'm having -- and I will look
21 at it again for you because I know you feel strongly about it,
22 and I take that into consideration. But you also have to
23 recognize that the study in this area and the literature in
24 this area and the writing in this area hasn't been able to
25 define a relationship between cancer and exposure to sulfur

1 gasses. I will look at the material again with your comments
2 in mind, and I appreciate your patience.

3 **MR. FREDERICKS:** Yes, sir. Your Honor, if I may, in
4 closing, also make note that the experts in this field are
5 willing to testify to causation contributing to this illness or
6 associated with the Chinese drywall.

7 **THE COURT:** Thanks so much.

8 Mr. Fredericks on behalf of Emmanuel Bentley?

9 Mr. Cullens for David Holder? Jill Holder?

10 I received extensive writing from Mr. Cullens.
11 It was very helpful in understanding his position. I will take
12 all of that into consideration.

13 **MR. FREDERICKS:** The last thing, sir, in those
14 records, also I'm representing the minor child, Emmanuel
15 Bentley. So I don't know if you want to do that separate, when
16 you called upon that name, or discuss that.

17 **THE COURT:** Yes. Right. I did, but I understand
18 your position. It's the same as what you just told me.

19 **MR. FREDERICKS:** Yes, sir.

20 **THE COURT:** Thank you very much.

21 **MR. FREDERICKS:** Thank you, Your Honor.

22 **THE COURT:** It was very articulately presented,
23 Mr. Fredericks. I appreciate it.

24 Evelyn Howard?

25 **MR. RYAN:** Good morning, Judge. This is Mike Ryan

1 from Fort Lauderdale.

2 **THE COURT:** Yes, Mike.

3 **MR. RYAN:** Judge, I have three on your agenda today.
4 If the Court would oblige me, I would like to first begin with
5 a bit of an introduction that applies to all three so I don't
6 have to repeat myself. Then I will work toward Ms. Howard's
7 claim, if that's okay with the Court.

8 **THE COURT:** Certainly. Go ahead, Mike.

9 **MR. RYAN:** Judge, I represent hundreds of homeowners
10 who were devastated by the Chinese drywall storm, and very few
11 of those actually filed bodily injury claims. As prior counsel
12 have indicated -- I think Mr. Lambert had indicated that it is
13 true that some people were affected more gravely than others.
14 The ones here this morning are those who have put forward
15 substantial records and, as Mr. Durkee said, I believe
16 substantial competent evidence of the direct link in causation
17 between Chinese drywall and their particular symptomatology and
18 complaints.

19 I will give you a sense, from a personal level,
20 where I come from. I spent a lot of time in these homes. In
21 the early stages, when I was meeting with four, five clients a
22 day in neighborhoods that Your Honor is familiar with,
23 eventually I stopped going into homes myself because -- I was a
24 runner at the time, but I started to feel lung compromised. I
25 started to have nosebleeds at night. I just simply refused to

1 go further. Now, fortunately I don't carry any of the burdens,
2 to my knowledge, of that, but I appreciate the comments and
3 symptomatology that these folks have complained about
4 throughout all of the arguments that you hear.

5 One of the challenges we have -- and Your Honor
6 has already noted this in terms of some disease processes. The
7 situation for these folks is that they all presumptively were
8 eligible. They took an appeal because they felt theirs was
9 more substantial than the \$1,000 recognized, and in response
10 the special master has come back and said they have not met the
11 expert report or *Daubert* standard.

12 If we are to be honest about this, it's highly
13 unlikely any claimant could meet *Daubert*. As Your Honor has
14 noted, there's no real epidemiology, there's no medical trials,
15 there's no literature dose-response that teases out at what
16 level some people may have reactions, but all the claimants
17 have had similar complaints. Through the process of the claims
18 being submitted, there was a recognition that all of these
19 people met at least the first hurdle and they established a
20 link.

21 In the case of Ms. Howard -- and she has
22 provided substantial records. I'm in a bit of a position like
23 Mr. Durkee. I hesitate to go into some of this publicly. What
24 was submitted certainly -- we would be happy to provide the
25 additional records under seal if that process for Mr. Durkee is

1 also acceptable for these clients.

2 In short, there's a substantial medical record
3 that outlines persistent coughing, bronchitis, recurrent
4 headaches, irritated eyes, respiratory difficulties, and even
5 developing COPD, which is not a long extension from the
6 respiratory impacts that we all recognize were occurring and
7 have been complained of continuously.

8 Now, in the case of Ms. Howard, long before we
9 knew there was going to be a claims process and long before her
10 home was remediated, her physician actually wrote a letter --
11 and it's part of the record -- that her exposure to the Chinese
12 drywall will exacerbate any of her underlying conditions. He
13 was direct in it in that he referred to the toxins in the
14 drywall. As a result she moved forward in the remediation
15 program. She tried to move out.

16 So in this situation -- and the others are
17 similar, with substantial records -- there was an absolute
18 timely link in 2009 between this symptomatology and a physician
19 who related it and, frankly, issued a medical order that she
20 not be exposed any further to it. So we believe that this is
21 one that does merit additional consideration. We do not
22 believe that this is, frankly, any different than the claims
23 that have been determined eligible and, frankly, paid to this
24 point.

25 And having had the opportunity across at least

1 my client base to review, the suggestion that this presentation
2 is less substantial than what has already been determined to be
3 eligible and met the minimum standards of having substantial
4 competent evidence and having met at least the physician report
5 element, this should not be excluded and provided zero. We can
6 discuss or even debate the level of compensation that may be
7 required, but none of these are in that category where there
8 should be no consideration.

9 That's all I have on Ms. Howard, Your Honor.

10 **THE COURT:** Thank you. Do you have anything on
11 Philomin Josephson and Laurel Ruggiano?

12 **MR. RYAN:** Yes. Yes, Judge. Consistent with your
13 agenda, I'm happy to move to those now.

14 **THE COURT:** Yes.

15 **MR. RYAN:** Judge, I will go to Ruggiano because I
16 think this is one of the classic cases of an inconsistent
17 treatment across the analysis both preappeal and now.
18 Ms. Ruggiano has a substantial medical record base here. She
19 has been seen by three separate pulmonologists. There's
20 substantial compromise of lung function, and the records bear
21 that out.

22 Importantly, there's no prior history, and all
23 of the physicians have indicated there's no prior history. In
24 fact, consistently through the records there's references to
25 the Chinese drywall.

1 In the end, Ms. Ruggiano submitted not only the
2 outline of what impact this has had financially, but she
3 submitted an affidavit of her treating physician. It's
4 important because I believe it undermines the complete attack
5 that's occurred across at least my client base. Because it's
6 been blacked out as to the other claimants, I assume that there
7 are similar arguments that they haven't met the *Daubert*
8 standard.

9 In this case the doctor provided sworn testimony
10 through the affidavit that Ms. Ruggiano's symptoms were caused
11 by her exposure to Chinese drywall and makes reference to the
12 fact that he reviewed her medical records, he reviewed what
13 relevant medical literature there was, and gave an opinion to a
14 reasonable degree of medical probability that her respiratory
15 problems and her persistent coughing, her compromise, was
16 substantially caused by the presence and exposure of Chinese
17 drywall.

18 If this cannot meet, then none can meet. If
19 this is not worthy of consideration as opposed to zero, then
20 none of the claims that probably were submitted were ever --
21 and I take great risk in saying this, but then none of the
22 claims probably met.

23 We believe based on not only the records that
24 are provided -- and I have some additional records we would
25 like to submit -- that this is one, given the financial impact,

1 the medical testimony, the substantial medical records that are
2 spontaneous, the lack of prior history, and the consistency
3 with the types of symptomatology Your Honor has heard about
4 since 2009 on a monthly basis almost as to what these folks
5 would be exposed to, she is absolutely entitled to an award.
6 Zero is not appropriate. If we are to arc towards consistency
7 in meting justice across these bodily injury claims, she
8 clearly has met and exceeded what others have submitted, and
9 has put for a strong, competent, substantial medical basis for
10 that.

11 **THE COURT:** All right.

12 **MR. RYAN:** With respect to Ms. Josephson, again, this
13 is, like Ms. Howard, a woman who is senior. She is 66 now.
14 Since 2009 she has been seen by a team of doctors. The medical
15 records are filled with references to Chinese drywall going
16 back into 2009, not created at a time when there was a claim.
17 This was part of the treatment process.

18 What the medical records show are the classic
19 ailments, albeit not a medical marker. We don't have that type
20 of situation like you see in asbestos or other types of
21 exposure cases where you get a particular marker, but it's the
22 continuum of ailments that Your Honor has seen: respiratory,
23 cough, irritation, sinus headaches, watery eyes -- with, again,
24 no history of pulmonary compromise -- and a developed chemical
25 sensitivity. The pulmonologist in the records gave a

1 differential diagnosis that related to Chinese drywall, and
2 these were in the records that were provided.

3 She has been seen by: a general practitioner;
4 an allergist who put her through a battery of tests as they
5 were trying to understand why it is that Ms. Josephson was now
6 having the new onset of problems that she did not have before;
7 by cardiologists; by pulmonologists.

8 As we put forward, she has \$28,000 of in- and
9 out-of-pocket expenses. This is not something that was
10 manufactured. To use a bad pun, it was not manufactured by
11 Ms. Josephson. This was an attempt by her physicians across
12 that continuum trying to understand why it was that
13 Ms. Josephson had suddenly developed these complaints and the
14 persistent complaints. In this case and Ms. Ruggiano and
15 Ms. Howard, each of these are absolutely based upon medical
16 evidence. But more importantly, they have shown they were
17 pursuing a medical mystery not for a claim, but to try to get
18 better.

19 The doctors along the way have been indicating
20 that this was due to Chinese drywall as they begin, in their
21 differential diagnosis, to exclude allergies and other things.
22 Again, Ms. Josephson presented as somebody who had substantial
23 competent evidence. In her case and Ms. Ruggiano's, they both
24 have demanded \$100,000. They have shown out-of-pocket
25 expenses. And we believe they have established as well as

1 anybody can given, as Your Honor noted earlier, there's no
2 clinical trials that have been done, it would be inhumane to go
3 back and try to expose, the epidemiology hasn't been
4 developed -- for whatever reason, there hasn't been academic
5 interest in doing so. But they should not be held to that
6 standard when we know, across the spectrum of claimants, they
7 have met at least the minimum and many times exceeded it.

8 Thank you, Your Honor, for allowing me to attend
9 by phone for these three and taking the time to hear all of
10 these appeals.

11 **THE COURT:** Thank you very much for your comments.

12 As all of you know, on the phone as well as in
13 the courtroom, the problem in a case of this sort is that a
14 witness has to not only say something, give their opinion on
15 it, but their opinion has to be based on something. Everybody
16 can have an opinion about anything. It has to be based on some
17 literature, some scientific test, some document, some
18 experiment, something other than "in my opinion, this caused
19 this." More is required, and particularly in a settlement
20 program where the specific terms are that this is required.

21 I had some reports from various doctors saying
22 "this could," "this might," and some of them say "this is," but
23 the difficulty is oftentimes in saying, "Well, what do you base
24 that on," they base it on, "Well, they didn't have it before.
25 Now they have it. They were exposed. Therefore, it was caused

10 : 3 1
1 by it."

2 That is a little more difficult to prove in that
3 type situation. It's like the person who says, "I'm going
4 fishing," and it rains. When he doesn't say, "I'm going
5 fishing," it doesn't rain. So he thinks saying, "I'm going
6 fishing," causes the rain. There's no question he said it.
7 There's no question it rained. The question is: Was it caused
8 by it? And if it was, what's his documentation of it? That's
9 where I'm struggling, to try to help the individuals, to see
10 what I can do to assist them, but I'm confined to a great
11 extent by evidence and by the requirements of the rules.

12 Mr. Elvin Sterling.

13 **MR. CHRISTINA:** Yes, Your Honor. Salvadore Christina
14 with the Becnel Law Firm, Your Honor, for Mr. Sterling.

15 Your Honor, Mr. Sterling is pretty much in the
16 same boat as everyone else we have heard from this morning.
17 Just to keep it kind of short for you, the one thing I would
18 like to point out is the letter his doctor wrote on his behalf,
19 in which he says based on his knowledge of his client's medical
20 history as well as his exposure to Chinese drywall and the
21 research that he conducted, he believes that his respiratory
22 symptoms were caused by the Chinese drywall.

23 The side effect of his medical conditions, the
24 other effect that it had was he is divorced, and he has
25 visitation with his child every other weekend. His doctor goes

1 on to further advise him not to bring the child in the house.
2 So not only is his health affected by this, he is not able to
3 spend time with his son and do the things that you are just
4 going to lose out on based on the Chinese drywall being in the
5 home. We would ask that Your Honor review the documents we
6 have already turned in to you and grant your award.

7 **THE COURT:** I certainly will do that. Just a word.
8 The Becnel firm has been very helpful in this matter, and
9 particularly Mr. Christina. He has been very helpful and
10 worked very hard in this case. You need to know the Court
11 appreciates what he has done for his clients.

12 **MR. CHRISTINA:** Thank you, Your Honor.

13 **THE COURT:** Ms. Waguespack? Anything from
14 Ms. Waguespack?

15 **MS. OWEN:** Good morning, Your Honor.

16 **THE COURT:** Good morning.

17 **MS. OWEN:** Adele Owen on behalf of Nicole Waguespack
18 and Jacques Waguespack.

19 Ms. Waguespack, as you know, has some pulmonary
20 problems. The big long word for the diagnosis is
21 lymphangioliomyomatosis. The short version, for the court
22 reporter, is LAM, L-A-M.

23 That particular pulmonary condition, Your Honor,
24 was not caused itself by the exposure to the sulfur compound.
25 It was a latent condition that was diagnosed subsequent to

1 Ms. Waguespack being exposed to these sulfur compounds.

2 2009, that was when the initial diagnosis was
3 made, because she had been having problems for the three years
4 prior. They had moved into the house in 2006. 2009, this
5 disease is discovered because she is having all these pulmonary
6 problems, and they recommended that she move out of the house.
7 They have a baseline spirometric analysis, which they have
8 followed ever since then, and it has currently stabilized.

9 What these compounds did is, when mixed with
10 water in the human body, turned into -- well, for example,
11 hydrogen sulfide will turn into sulfuric acid. I don't think
12 there's any big squabble about that chemistry. I think that's
13 fairly well-known.

14 So there's a baseline that establishes where she
15 was in 2009 when she was in the home, was asked to vacate for
16 her health, and they did. They have monitored it. It has now
17 come down. She is not ever going to be 100 percent because of
18 the underlying problem, but it is stable at this point in time.

19 **THE COURT:** How old is she?

20 **MS. OWEN:** She is 41 today.

21 Now, back in 2009, this company Rimkus went to
22 the home and they checked the indoor air. They monitored to
23 see what was actually in the air, were there off-gassing of
24 these sulfur contaminants, and there absolutely was. That's
25 documented. The report is in the record. In fact, that report

1 and the medical records we have submitted under seal to
2 Your Honor for further review.

3 I really can't do a better job than Mr. Lambert
4 did on the general and specific causation and setting that out,
5 but the Rimkus report in this case, in the Waguespack
6 situation, sets forth the fact that the contaminants are in the
7 house. It sets forth three years of wires, air conditioner
8 coils, doorknobs, every piece of metal in the house,
9 Your Honor, is basically destroyed by these off-gassing sulfur
10 compounds in the presence of moisture.

11 If for three years that's what these compounds,
12 in the presence of moisture, will do to metal, I don't think
13 that it is a big leap to understand what that will do to a
14 person's lungs, especially a person with an underlying latent
15 medical condition, had never been diagnosed. She had never had
16 these problems. She has lived in this house for three years,
17 and now she can hardly breathe by the time she gets to the
18 doctor.

19 I understand the *Daubert* situation. I
20 understand that that's a part of the settlement agreement. For
21 these specific cases that we are talking about today, certainly
22 for Ms. Waguespack, I don't think it's a huge leap for the
23 Court to see that if these compounds -- in the presence of
24 moisture, what they will do to metal, that they will in some
25 people cause these sorts of pulmonary problems like

1 Ms. Waguespack has experienced. So I don't think that the
2 hurdle, at least in her case, is something that we haven't
3 shown.

4 There's four experts in the medical records that
5 we have submitted. One is a critical care pulmonologist in
6 Baton Rouge. There's a toxicologist. They have talked about
7 all the things that I'm telling Your Honor this morning. They
8 have set those things out in the medical records.

9 The claims were timely done. The diagnosis was
10 contemporary with the medical treatment, which was before the
11 execution date. All of those things have been met. So we have
12 a situation, I think, that you have got the timeline. All of
13 the things dovetail. I believe that this case certainly
14 warrants further consideration for an additional allocation --
15 well, certainly upwards from the zero allocation that we have
16 currently -- and we would ask that Your Honor take those things
17 into consideration and increase the award to Ms. Waguespack.
18 Thank you.

19 **THE COURT:** Thanks for being here. I appreciate your
20 comments.

21 That ends the personal injury cases. The
22 miscellaneous, let's see if we can group those, and maybe the
23 special master can deal with those.

24 There are 10 claimants dealing with the
25 miscellaneous awards, primarily rent. There's some

1 compensation for interest or carrying costs. Do you want to
2 explain that for us, Jake?

3 **MR. WOODY:** Yes, sir. Miscellaneous claims flow from
4 Section 4.7.3.1 of the Knauf agreement that allows the special
5 master and the Court, in their discretion, to consider and
6 allow claims that are not provided for in other parts of the
7 agreement.

8 There are some specific exclusions, including
9 things that are already provided for in other claim types such
10 as lost rent, where there's a lost rent claim type. There are
11 some things like stigma and things like that that are excluded.

12 **THE COURT:** Right. The problem with the
13 miscellaneous claims is that Section 4.7.3.1 specifically
14 excludes many of the items that the people in this category are
15 seeking reconsideration of. It's just specifically excluded.
16 Sometimes it's excluded because it's already covered under
17 another area of the settlement and taken into consideration
18 there. Other times it's simply not part of the settlement.

19 The stigma damages is a classic example or the
20 interest that somebody incurred, late charges in paying their
21 mortgage. They would have had to pay their mortgage whether or
22 not Chinese drywall was there. So to collect mortgage payments
23 because of Chinese drywall, it was excluded. That's one of the
24 problems we are having with the miscellaneous claims.

25 Is there anybody who is in the miscellaneous?

1 Wayne Clarke, Terrance DeMots, Patrick and Kathleen Dennis,
2 Tarek and Andrea Loufty, McBride, Pena, Prime Homes, RMM
3 Investments, Sam Sumner, and Julian Thornton, anybody wants to
4 speak on any of those?

5 Skip, you have something?

6 **MR. LAMBERT:** Yes, Your Honor. Very briefly,
7 Your Honor. I touched on this in my first comments. Again,
8 for the record, Hugh Lambert on behalf of Dr. Dennis.

9 To echo what you just said and to tell you on
10 behalf of my clients, we respect all of the work that's been
11 done by the plaintiffs' steering committee and by the defense
12 in confecting this agreement that Your Honor is referring to.
13 Without it, we couldn't have reached results in this period of
14 time. It seems like a long time, but it's not when you look at
15 the thousands and thousands of claimants involved.

16 In the case of Dr. Dennis, the loss basically
17 centers around his inability to complete his boards as a
18 physician and his no longer being able to function as an
19 emergency room physician. It's all set out in our papers.
20 Those are not things that are excluded under the settlement
21 agreement. I just refer you and the special master to the
22 papers that we submitted. Thank you, Your Honor.

23 **THE COURT:** Thank you very much.

24 **MR. DURKEE:** Your Honor, this is David Durkee. I
25 don't know if you want to hear from me at this time.

1 **THE COURT:** Sure. Go ahead, David. You have Pena,
2 is it?

3 **MR. DURKEE:** That's correct, Your Honor. I have
4 Mr. Pena. I also had Mirtha Arias, which I don't know if I
5 heard that name stated, but I believe she was scheduled for
6 this morning also.

7 **THE COURT:** Go ahead, David. I have her under
8 foreclosure and short sale, but you can speak on her behalf
9 too.

10 **MR. DURKEE:** Okay, Your Honor. It goes along with
11 the same thing. Mr. Pena, I believe it may be categorized by
12 the special master or the people that considered the evidence
13 as stigma damage, but he had a contract on his home for over a
14 million dollars. When they went to do the inspection for that
15 sale, which was executed and the only contingency was the
16 inspection, it fell through due to the presence of Chinese
17 drywall. He then resold the property after remediation and
18 sustained a very significant drop in sale price.

19 We do provide an economic report by an
20 economist. There are some other miscellaneous damages, but his
21 claim is obviously very significant because he did have cash in
22 hand for over a million dollars because of the sale. That deal
23 obviously was directly canceled because of the Chinese drywall.

24 I know the provisions and requirements of the
25 settlement. We are just asking you to make special

1 consideration on this one and to review the evidence with
2 particularity. We do believe it falls a little bit different
3 than just stigma damage. We believe it's more economic in
4 nature and it's more certain in nature.

5 The only other one I have this morning for you
6 is Ms. Arias. I know eventually there's going to be a pro rata
7 distribution on this. I believe her award at this time that we
8 are appealing by the special master is around \$80,000 or
9 something to that effect. It's \$80,526.49.

10 She doesn't believe that that is just because
11 she did put down a total of \$143,000 in cash money as a down
12 payment, and that was absolutely paid. It's in the
13 documentation we provided. It's cash money that she took out
14 of her pocket and paid for this home. I don't believe there's
15 any dispute that that amount of money was lost when the short
16 sale went through.

17 So the fact that the evidence that's been
18 considered so far has awarded her a total of about \$80,000 when
19 there's no doubt she lost \$143,000 as a result of the down
20 payment on the home, we feel that should be considered
21 differently.

22 Those are really the only other claims I have,
23 Your Honor. As a result, may I be excused at this time?

24 **THE COURT:** Yes. Thank you for your work, David. I
25 appreciate it.

10 : 4 6
1 **MR. DURKEE:** Thank you, Your Honor, for allowing me
2 to attend by phone and to consider these additional claims.

3 **THE COURT:** Okay.

4 **MS. BRASWELL:** Kasie Braswell. I represent McBride
5 Family Properties. If it's okay, I would like to present mine
6 at this time.

7 **THE COURT:** Sure. Go ahead, ma'am.

8 **MS. BRASWELL:** McBride Family Properties had a total
9 of four condominiums in South Florida and presented lost rent
10 or miscellaneous claims on all four. Three of the four were
11 awarded lost rents, and the fourth was initially awarded an
12 amount of \$2,500. We asked for reconsideration, and the
13 special master then awarded zero.

14 Based on his explanation of the award, I agree
15 with the fact that we probably cannot recover property taxes
16 and condo fees and whatnot because those are things that they
17 would have had to pay anyway, but we do believe that McBride is
18 entitled to the \$7,500 in lost rents that was not awarded.

19 **THE COURT:** Okay. You're speaking for the McBride
20 claims?

21 **MS. BRASWELL:** Yes, Your Honor.

22 **THE COURT:** Thank you very much.

23 **MS. BRASWELL:** Thank you.

24 **THE COURT:** Patrick, do you want to speak now?

25 **MR. MONTOYA:** Thank you, Judge. Patrick Montoya on

10 : 4 8
1 behalf of Prime Homes.

2 I would like to thank Mr. Woody and Mr. Balhoff.
3 I think the response that they provided on April 15 gave us a
4 lot of guidance in these claims in terms of if there were any
5 potential deficiencies and understanding what the issues were.
6 Our filings were based on really what the special master let us
7 know he believed was missing, and we have made some
8 supplemental filings as a result.

9 The upshot of the Prime Homes claim is there
10 were over 100 properties that were developed. This was a very
11 large condominium association development. 91 of those
12 properties had Chinese drywall. We are here today on 19 of
13 those properties and their miscellaneous claims.

14 What we have done, Judge, and what it
15 essentially boils down to is an area of carrying costs, which
16 you have accurately described. What's interesting about the
17 settlement agreement that Jake put up was that the settlement
18 agreement reads so long as it is not excluded, then it can be
19 considered, as long as it's equitably justified. I think those
20 words are very important not only to the special master but to
21 the Court, especially in a situation like this.

22 Frankly, anybody who is sitting in this room
23 that's been a victim of Chinese drywall has the equities on
24 their side. So in terms of equitable justification -- and that
25 seemed to be the main basis for denying these costs in the

1 special master's response -- we would like those to be
2 reconsidered.

3 We submitted those carrying costs at document
4 entry 20233-3. There's a spreadsheet. I apologize for the
5 small type that's there, but those are the carrying costs.
6 Basically what we did, there was \$4,476,758 in carrying costs.
7 We divided that number by the 19 properties, coming out with a
8 pro rata basis of \$49,195 per property.

9 There was also mention in the special master's
10 response that stucco replacement was not included. We agree
11 with that. The stucco replacement is not part of this carrying
12 cost number.

13 Finally, there was mention that the HVAC that
14 was replaced, which to my understanding has been compensated in
15 this program in this claim area in the past, we did not submit
16 sufficient documentation. We have cured that. We have now
17 submitted that documentation. That can be found at document
18 entry 20233-4, which is a spreadsheet of all the HVAC
19 replacements and repair. The exhibit behind that, 20223-5 and
20 -6, is close to 562 pages of receipts. The total of those HVAC
21 claims for these 19 properties -- and we have limited them only
22 to those 19 properties -- is \$56,666.02.

23 So our request is for the carrying costs in the
24 amount of \$49,195 per property, understanding that this HVAC is
25 included in those carrying costs, but we wanted to provide that

10:51
1 specific proof as well. So at a minimum, given the Court's
2 position on the HVAC replacement, the \$56,666.02 should be
3 awarded, and that's spread against the 19 properties, as is
4 demonstrated in this exhibit.

5 If the Court would like us to, within a day I
6 can break it down by property, the amount, and provide that to
7 Mr. Woody.

8 **THE COURT:** When did we get that?

9 **MR. MONTOYA:** This was filed on May 3, so two days
10 ago.

11 **THE COURT:** Okay.

12 **MR. MONTOYA:** But we had made the claim for the HVAC
13 as part of our initial claim. Then when the special master's
14 response was filed on April 15, we got the information as soon
15 as we could, understanding that these records are going on four
16 and five years old in many cases. Thank you for your
17 consideration, Judge.

18 **THE COURT:** Thanks, Patrick. Thank you and Ervin for
19 all of the work that you have done in the case. It's been very
20 helpful.

21 Jake, do you want to respond to that? Did you
22 have a chance to look at the material that he just filed?

23 **MR. WOODY:** We have not had a chance to look at that
24 just yet. We are happy to do that.

25 **THE COURT:** Why don't you do that, and then we will

1 talk about it more.

2 MR. WOODY: Yes, sir.

3 THE COURT: Yes, ma'am.

4 MS. HAMILTON: Your Honor, my name is Brandy
5 Hamilton. I'm from Barrett Law Group in Mississippi, and I'm
6 here today on behalf of my client, Mr. Wayne Clarke.

7 Your Honor, my client, Mr. Clarke, lost his
8 home, like so many others, after Hurricane Katrina. He took
9 out an SBA loan to repair it and, without his knowledge, used
10 defective Chinese drywall in the repairs.

11 He began renting the property after the repairs
12 were finished in order to earn an income to pay the monthly SBA
13 loan notes. He took a job in Houston, after he had already
14 retired from 20 years in the military, in order to have
15 additional income to pay for all of these new expenses.

16 When the Chinese drywall was discovered, his
17 tenants moved out, and he was no longer able to rent the
18 property out. Due to this loss of monthly income, Mr. Clarke
19 began having trouble paying the monthly payments on the SBA
20 loan. Despite his best effort and his attorney's best efforts,
21 the house went into foreclosure on August 24, 2011. Because
22 the house went into foreclosure, Mr. Clarke was not eligible
23 for the remediation program.

24 Two claims have been filed for Mr. Clarke for
25 relief from both the remediation fund and other loss fund

1 outlined in the settlement agreement. Mr. Clarke is eligible
2 for relief that he is seeking in both of the funds and has been
3 denied all relief.

4 The two offers from the special master were so
5 low that Mr. Clarke had no choice but to object because they
6 paled in comparison to the debt that he has from the SBA loan
7 and the inability to pay it because of his inability to rent
8 the home and the resulting foreclosure.

9 Today we are here seeking the fair and
10 appropriate relief my client is entitled to in this case. But
11 for the Chinese drywall, Mr. Clarke would not be in the
12 situation that he is in today: a foreclosed home; an SBA loan
13 for almost \$185,000 that he cannot afford; his wages are being
14 garnished every week as a result; and his credit is
15 nonexistent. He can't even afford to finance a vehicle right
16 now if his truck breaks down on the way home back to Texas.

17 My client qualifies specifically for relief
18 under Section 4.3.5.1 in the settlement agreement for
19 foreclosed properties. In that section it says, to calculate,
20 that you look to Section 4.3.1.1, which lays out the lump-sum
21 settlement. If you do the math, it's \$8.50 per square foot for
22 each square foot that's under air. His home has 1,670 square
23 foot, so that totals out to be approximately \$14,200.

24 This was filed under the miscellaneous claim
25 form because that was the only form that was available to

10:55
1 Mr. Clarke at the time. He was no longer a KPT owner because
2 at that point his home had already gone into foreclosure. When
3 we contacted the plaintiffs' steering committee, we were
4 informed by them to use this form. I think that's been a
5 little bit of confusion in his case, and I wanted to take this
6 moment to clarify that.

7 My client also qualifies for relief under the
8 other loss fund, Section 4.7.1.2, the lost use, sales and
9 rentals. He is eligible under the settlement agreement for
10 three months of rent that was lost. He was charging the
11 tenants at the time -- we have submitted to the Court
12 substantial evidence to show everything that he is entitled to.
13 So he was renting at the time his home out for \$1,300 per
14 month. Times three is \$3,900. Additionally, he qualifies for
15 relief under Section 4.7.1.3 in the agreement, which is
16 foreclosures, and that is the lost equity agreement.

17 Your Honor, we are just asking today that my
18 client gets the relief that he is entitled to under this
19 agreement and is made whole as much as possible. But for this
20 drywall that he put into this home, without knowledge of what
21 it would do and the results that would occur, we wouldn't be in
22 this court today. He would still be renting his home out after
23 Katrina to the tenants. He would still be getting monthly
24 rent, and he would still be paying on his loan. Now he has a
25 debt to the U.S. Treasury that's never going away. He will

1 never see another tax return. His wages are garnished. He did
2 everything he was supposed to do to set himself up for a
3 comfortable retirement after his service in the military.

4 Katrina happened. A lot of people suffered. He
5 did the right thing, rebuilt the house, and rented the house
6 out so he could make the income he needed to pay the loan.
7 This drywall has put him in a position where he is financially
8 ruined for the rest of his life. Your Honor, we just would
9 like the Court to look at the evidence that we have submitted
10 and make my client as whole as possible and grant him the
11 relief he deserves. Thank you.

12 **THE COURT:** Thank you for your presentation.

13 The question of the miscellaneous, there's a
14 certain period of time that lost rent is allowed. That's not
15 part of the law but part of the settlement agreement. That was
16 a problem under the miscellaneous provisions.

17 Under the foreclosure and short sale, do you
18 want to speak on that?

19 **MR. MARINO:** Your Honor, Rene Marino on behalf of the
20 Knauf defendants.

21 We do not oppose the appeals to the other loss
22 fund. What we are opposing -- and we filed a memorandum on
23 that -- is the appeal for the lump-sum payment, which comes
24 from the remediation fund.

25 It's not disputed this was commercial property,

10 : 5 8

1 and commercial properties do not get the lump-sum payment under
2 the settlement agreement. This property also, because it was
3 not inspected by MZA or Benchmark, didn't receive a KPT
4 percentage. Even if it was eligible for a lump-sum payment, we
5 would not be able to assign a KPT percentage to the property.
6 So for those two reasons, it's not eligible for the lump-sum
7 payment.

8 **THE COURT:** Jake, do you want to speak on the issue
9 of the --

10 **MR. WOODY:** Yes, sir. I think I heard three
11 different claims, one for the lump sum that Rene just
12 addressed, one for lost rent, and one for foreclosure/short
13 sale.

14 On the lost rent issue, it sounds like that was
15 filed as part of the miscellaneous claim. We may, if the Court
16 wants us to, be able to convert this claim to the lost rent
17 category.

18 **THE COURT:** I think it was filed timely. Let's move
19 it over.

20 **MR. WOODY:** We will review it as if it was a lost
21 rent claim. We may need additional documentation. We'll work
22 with Mr. Clarke's attorney to get that.

23 On the foreclosure/short sale claim, it may be
24 that Mr. Balhoff can speak more to that. It appears that we
25 reviewed and there were claims for damages like reduction in

1 the tax-assessed value of the home that are simply not part of
2 the framework.

3 **THE COURT:** It's specifically provided that it's not
4 part.

5 Dan, do you want to speak on any of that?

6 **THE SPECIAL MASTER:** Your Honor, I don't have those
7 figures in front of me, but you are exactly right. Those kinds
8 of damages are not part of -- what we try to do is value the
9 equity that was in the house that was lost by each homeowner.
10 There were certain things that were losses but were not the
11 equity in the house that was lost by the homeowner. So that
12 was the touchstone.

13 The one thing that I did hear -- and I think
14 that if either myself or Mr. Woody -- I don't know if we will
15 be taking a lunch break. Maybe we can talk afterwards. Any
16 supplemental information we get, any follow-up we need to do,
17 we want to make it as expeditious as possible.

18 Mr. Davis made the point -- and I think it's
19 true -- for everybody's sake, we need to get this over with as
20 quickly as possible. So we will be working with counsel in
21 that respect.

22 **THE COURT:** All right. That's fine.

23 Anything more on miscellaneous, the ones that I
24 called?

25 Foreclosure/short sale. Belitti -- we talked

11:01
1 about Wayne Clarke already -- Ferguson, and Perdomo, anything
2 on any of those?

3 **MR. MONTOYA:** Yes, Your Honor. Ferguson and Perdomo.

4 **THE COURT:** Yes.

5 **MR. MONTOYA:** Your Honor, Patrick Montoya again on
6 behalf of Ferguson and Perdomo.

7 I'm just going by the special master's response.
8 We will handle the Ferguson claim first. The issue there was a
9 finding that she was entitled to \$75,000 in compensation and
10 asserted an additional \$30,000 in capital improvement expenses,
11 but there wasn't appropriate documentation filed.

12 We have since supplemented that information,
13 once we received the special master's filing. I will just walk
14 Your Honor through it. Here's the summary, which is at
15 document entry 20232-5. We'll make this a little bit larger.

16 Her deposit of \$100,000 we have filed at the
17 same document entry, 20232-2. That's not in dispute from the
18 special master. What has been provided subsequent to the
19 special master's filing was the additional \$61,000 in capital
20 improvements. Those were listed as custom drapes and blinds, a
21 pool that was installed, kitchen countertops, closets. The
22 checks and the backup for all that has provided to the Court
23 and to the special master as well. That was filed on May 3,
24 again after we understood what the special master was seeking
25 in terms of capital improvements.

1 The only issue that may confuse the special
2 master and the Court is the checks don't say "Monica Ferguson"
3 to these entities. They are written out of single-purpose
4 entities. We provided, also with our same filing, the
5 corporate registration showing she is the sole owner of those
6 companies so there's no confusion. In other words, the upshot
7 of our claim is that she is entitled to \$161,786 as her award.

8 **THE COURT:** Let's make sure that you have those.

9 **MR. WOODY:** Yes, sir. I think, just like Prime
10 Homes, those were filed just a day or two ago. At your
11 direction, we will review that paperwork.

12 **THE COURT:** Okay.

13 **MR. MONTOYA:** The next one is the Perdomo claim. The
14 issue on the Perdomo claim was a deficiency balance, and the
15 special master said the paperwork was not sufficient.
16 Mr. Perdomo purchased the home for \$290,000, paid \$40,137 in
17 equity or on his mortgage, and then the house was sold in a
18 short sale for \$100,000. He did not receive any of the
19 \$100,000 at all. He continued to pay on his mortgage that was
20 owed, an additional \$11,931. He still owes \$71,715.

21 So I have done a very high-tech summary of his
22 losses. It's the \$40,137 that was paid on his mortgage. The
23 house was foreclosed on. He has continued to pay in \$11,931.
24 He still owes \$71,715. We believe his total loss is \$123,783.

25 The issue was the documentation. On May 3, at

1 document entry 20229-6, we provided a statement from Regions
2 Bank made out to the Perdomos. What you will see at the second
3 page of it is the \$11,000 -- I mentioned that he had paid the
4 \$11,931, the principal that's owed, the \$71,715, in addition to
5 the \$40,000 I mentioned before. So that's how I come up with
6 the math on the \$123,783 as the total loss. Again, these were
7 filed on May 3 and have been provided to the special master as
8 well.

9 **THE COURT:** Give him a chance to look at them.

10 **MR. WOODY:** Yes, sir. We will review these.

11 **MR. MONTOYA:** Thank you, Judge.

12 **THE COURT:** Thanks, Patrick.

13 Preremediation alternative living expenses. We
14 have three of those claims: Ancira, Duplessis, and Grenoune.

15 **MR. CHRISTINA:** Sal Christina, Your Honor, for Chris
16 Ancira.

17 **THE COURT:** Sal.

18 **MR. CHRISTINA:** Salvadore Christina of the Becnel Law
19 Firm for Chris Ancira.

20 Your Honor, Mr. Ancira, upon discovering Chinese
21 drywall in his house in October of 2008, decided to move out of
22 his home because he had a young child at the time that was two,
23 and his wife was pregnant with their second one. At the time
24 no one could answer his questions regarding could this hurt the
25 children, what kind of health effect would be in the place, so

1 he rented a house on Jena Street in New Orleans. He stayed
2 there from October of 2008 through December of 2009. At that
3 time he was paying \$1,500 a month, which equated to \$19,500.

4 After that they decided they were not going to
5 move back into their house in Chinchuba Creek after the
6 remediation would take place, so they decided to purchase a
7 house on General Pershing in New Orleans. They are asking they
8 be compensated for the payments they made up until the time the
9 remediation started on their house in Chinchuba Creek, which
10 would take them from December of 2009 through April of 2011,
11 when the Knauf remediation program was able to remediate their
12 home. The payments they were making at that time for that home
13 was \$2,517 a month, and they made those payments for 16 months,
14 which would equate to \$40,272. So they are asking for a total
15 ALE award of \$59,772.

16 **THE COURT:** Jake, do you want speak on that one?

17 **MR. WOODY:** Yes, sir. According to my notes, it
18 looks like we made an offer of \$14,400, which is the capped
19 amount pursuant to PT0 29. I believe that we may need some
20 additional proof of payment for these other losses. I'm happy
21 to work with Mr. Christina.

22 **THE COURT:** Let's work with Sal on that and see if we
23 can resolve it.

24 **MR. WOODY:** Yes, sir.

25 **THE COURT:** Duplessis, anybody?

11:08
1 **MR. REICHERT:** Yes. Don Reichert from Bruno & Bruno
2 on behalf of Mr. and Mrs. Duplessis. They were here earlier
3 today. Mr. Duplessis had to go home, so Mrs. Duplessis brought
4 him.

5 **THE COURT:** Okay.

6 **MR. REICHERT:** Your Honor, as our objection said,
7 they have submitted numerous documentation supporting their
8 claims. Mr. and Mrs. Duplessis have submitted memos, receipts,
9 which the total has become \$80,057.36. They also have a lot of
10 unique circumstances and facts in this case.

11 Mr. and Mrs. Duplessis have been owners of
12 4727 Press Drive for over 40 years. They raised their four
13 children there. They had to move out in September of 2012
14 because of medical conditions that they were experiencing.
15 This was five months prior to the remediation move-out date.

16 Then, unfortunately, they experienced a lot of
17 difficulties with remediation. The remediation program,
18 instead of being three months, ended up being another
19 additional year and a half. So Mr. and Mrs. Duplessis were out
20 of their house over two years regarding this process.

21 When they originally moved out in
22 September 2012, they had to move into another house they owned,
23 which previously was being leased and they were receiving
24 \$1,800 a rent per month. So they lost out on this money for
25 the five months that they were out of the house originally.

1 They also lost out on this money the whole time that they were
2 out of the house through the whole remediation program.

3 They also had additional expenses with Cox,
4 utility, electricity, storage, and this is all of our expenses
5 that we have submitted to the special master. It's in the
6 record before this Honorable Court.

7 Because of the unique circumstances, because we
8 believe that there's equitable justification in this case, we
9 are asking Your Honor to reconsider this or get the special
10 master to reconsider this and award Mr. and Mrs. Duplessis a
11 higher amount of money than what the award is.

12 **THE COURT:** Jake, do you know about this one? Any
13 comments?

14 **MR. WOODY:** Yes, sir. Based on my notes about this
15 claimant, it appears that when we reviewed it, it looked like
16 there were claims for two separate properties, one for the
17 affected property and one for the property that they moved
18 into.

19 When that happens, there's sort of a double
20 recovery issue. You would have been paying one set of expenses
21 no matter what, even if you didn't have Chinese drywall. So we
22 attempted to figure out what did you pay because you had
23 Chinese drywall. In this case it would have been most likely
24 the payments for the home or property that you moved into.

25 There may be some confusion about what's what,

1 and I'm happy to work with counsel to review that and figure
2 out what --

3 **THE COURT:** Let's do that and see if you all can
4 straighten it out.

5 **MR. REICHERT:** We would appreciate that because we
6 don't want a double recovery here.

7 **THE COURT:** Right. Let's make sure of that.

8 **MR. WOODY:** We will take care of it.

9 **THE COURT:** Thank you.

10 Finally, Grenoune. Anybody on that one?

11 **MS. WERKEMA:** Yes, Your Honor. This is Holly Werkema
12 with Baron & Bud. I'm appearing on behalf of Meir Grenoune.

13 **THE COURT:** Okay.

14 **MS. WERKEMA:** I'll try to make this as brief as
15 possible. I know it's been a long hearing. This is a
16 prerediation alternative living expense claim.

17 In late 2007, my client and his family were
18 living in the affected property. His children started
19 experiencing headaches, asthma, respiratory issues, and
20 nosebleeds. The home smelled strongly of rotten eggs. They
21 weren't exactly able to figure out what the problem was, but
22 they vacated the property.

23 They already owned a rental property which had a
24 current tenant, and what they did was ask the tenant to vacate
25 so that the family could then move into the rental property.

1 They eventually had to go through eviction proceedings to get
2 the tenant out so that they were able to relocate to the rental
3 property.

4 From the time that they moved into the rental
5 property until the remediation began, they paid \$136,000 in
6 mortgage payments on the rental property while they waited for
7 their affected property to be remediated. \$86,000 of that was
8 paid towards interest on the mortgage, so that would not be
9 going towards the equity that they were gaining in the home by
10 making these mortgage payments. What the special master has
11 awarded for the final award is \$14,400, which is the maximum
12 they were allowed to award under PTO 29. And that will, of
13 course, be prorated once it's ultimately paid.

14 Now, I understand the settlement administrator
15 and the special master's authority to make determinations on
16 these claims and set the guidelines for the claims process.
17 They have done a fantastic job in this case, as everyone on the
18 phone I'm sure knows, but in this instance I just can't agree
19 with their determination.

20 It doesn't make sense to allow a claimant to
21 receive an award for all of their alternative living expenses
22 if they rented a property and to cap those who moved into a
23 property that they owned at \$14,400. If the reasoning is that
24 they --

25 **UNIDENTIFIED SPEAKER:** When will I be able to speak?

1 **MS. WERKEMA:** I'm going to continue, Your Honor.

2 **THE COURT:** Yes, go ahead.

3 **MS. WERKEMA:** As far as the interest payments that
4 were made on this property, that would not have been being paid
5 towards the equity in the property. So if their reasoning is
6 that they don't want someone to get sort of a double recovery
7 and that they are recovering under alternative living expenses
8 and also gaining equity in the home, I ask at least the
9 interest payments be allowed that were made for the long period
10 that they were forced to be out of their home. The \$86,000 in
11 interest on the mortgage that was paid for the alternative
12 housing is clearly set forth in the documents that were
13 provided. It's all shown in document ID 117542.

14 A lot of losses were incurred by everyone that's
15 a claimant in this litigation, and this is only a small part of
16 what these claimants experienced. They had to take on this
17 additional mortgage payment for the alternative housing while
18 their affected property sat empty. There's personal property
19 damage, health problems of the children, and ultimately the
20 claimants ended up getting divorced just because of the stress
21 that this Chinese drywall situation put on their marriage. I
22 just ask the Court to please reconsider the \$14,400 award and
23 issue an award that's more fair and reflects the damage they
24 have suffered.

25 **THE COURT:** Anything on that one, Jake?

1 **MR. WOODY:** Yes, sir. I think there are two issues
2 here. One is the expenses associated with the property that
3 these people moved into, which Holly spoke about earlier. I
4 think she is right that we tried to exclude equity that you are
5 earning because you are theoretically going to get that back
6 when you sell the property. We can look at the interest
7 payments and the documents she gave us.

8 Then there's, I think, a second component to
9 this claim, and that is the income lost on the affected
10 property, rental income lost on the affected property. That
11 would be covered under the lost rent claim type, which caps it
12 at three months. I can talk with Holly about the specifics of
13 both of those issues and see if we can resolve this claim.

14 **THE COURT:** Holly, get with Jake after this
15 conference.

16 **MS. WERKEMA:** Okay. Will do, Your Honor. Thank you
17 for allowing me to speak.

18 **THE COURT:** We have three left, 1100 Valencia,
19 DeMots, and Doering.

20 **MR. DIAZ:** Good morning, Your Honor. Victor Diaz,
21 VM Diaz and Partners, on behalf of the appeal of 1100 Valencia.
22 First of all, Your Honor, it's good to see you again.

23 **THE COURT:** The same.

24 **MR. DIAZ:** I stand here before you seven years older,
25 and I'm not sure if I'm seven years wiser.

11:16
1 **THE COURT:** I'm sure you are.

2 **MR. DIAZ:** I have represented nearly 200 victims of
3 Chinese drywall since 2009. 184 of them have been processed
4 through the auspices of this Court. I stand before you on
5 behalf of my last unresolved claim, that of my client
6 1100 Valencia.

7 We are appealing the special master award of
8 \$41,338.98 on a claim of approximately \$700,000. These clients
9 have been part of these proceedings for seven years. The
10 principals you met personally in Miami, Rodney Barreto and
11 Tito Gomez. I believe Mr. Gomez is on the line. He was going
12 to be here in person, but the inclement weather in South
13 Florida prevented him from attending.

14 They started construction in 2006 on a
15 \$2 million home in the Coral Gables neighborhood of
16 South Florida. It's a 6-bedroom, 6-and-1/2-bath home which was
17 put on the market for over \$2 million. They had a contract to
18 purchase the home for \$2 million, which is part of the
19 submissions that we submitted for this other loss, use, and
20 sale fund, and during the inspection period the prospective
21 homeowner discovered the presence of Chinese drywall, which was
22 subsequently confirmed to be KPT drywall.

23 From 2007 through 2011, while you went through
24 your benchmark trials, established the remediation protocol,
25 and they were able to have their home remediated, the home was

1 eventually sold in November of 2011 for \$1,889,000, for a lost
2 sale of \$110,000.

3 We are here before you appealing two aspects of
4 this submitted claim only, carrying costs on the home of
5 \$330,684.86 -- that's \$330,684.86 -- and the lost sale of
6 \$110,000, which is the differential between \$2 million and the
7 eventual sale four years later for \$1,889,000.

8 The settlement administrator's omnibus response
9 states only that the claimant may recover only for interest on
10 the loan. They have awarded, as I stated, only \$41,338.98. I
11 am unable to reconcile the special master's award with either
12 the evidence that was submitted in support of my client's claim
13 or the explicit language of the settlement agreement.

14 We are not claiming anything that is part of the
15 other loss exclusions under Section 4.7.3 of the agreement. We
16 are not claiming stigma damages. We are not claiming damage to
17 reputation. We are not claiming loss of use and enjoyment. We
18 are not claiming any psychological or emotional injury. We are
19 not claiming medical monitoring. We are not claiming injury to
20 reputation. We are not claiming any credit injury. We are not
21 claiming any legal or accounting fees. We are not claiming any
22 loss of investment opportunity, although in this case it was
23 significant.

24 This claim was submitted under Section 4.7.10.2,
25 which states not as the special master states in his response,

1 that a claimant may recover only for paid interest on the loan.
2 It says the claimant may recover for "any economic loss arising
3 from the inability to sell the affected property as a result of
4 property damages caused by KPT," and the losses that we are
5 claiming are directly caused by the inability of these owners
6 to sell the property.

7 They fall into two categories, the carrying
8 costs on the home during the period of time between the
9 identification of the KPT drywall and the sale of the home in
10 November of 2011 after it was remediated, which includes paid
11 interest of \$220,785.39 -- \$220,785.39, and that's where I find
12 it hard because even the special master concedes that paid
13 interest is recoverable -- and a lost sale of \$110,000.

14 I do not believe that the special master's
15 report takes into consideration all of the evidence that's been
16 submitted in support of this claim. At document ID 172688, we
17 have submitted proof of payments for interest from 2007 through
18 2011. This is money actually paid out by my clients.

19 Document 172107 has the proof of payments by
20 Mr. Rodney Barreto. Document 172129 has the proof of payments
21 by Mr. Tito Gomez. Document 1720195 has the proof of payments
22 by 1100 Valencia. Document 172722 and document 172095 have the
23 proof of payments on the second loan they had to take out on
24 the property.

25 The total interest that is supported by the

1 documentation submitted that was paid on the mortgage loans was
2 \$220,785.39. We have submitted the original loan documents in
3 the record. The original mortgage was document ID 341606. The
4 first mortgage modification is 341605. The second mortgage
5 modification is document 351604. The third mortgage
6 modification is document ID 341603. The fourth mortgage
7 modification is 341602.

8 We also submitted tax returns reflecting the
9 interest paid, which are documents 172762, -68, -78, and
10 documents 172800, -818, and -826.

11 In addition, although the special master says
12 it's not recoverable -- I don't see it covered by the net
13 exclusion provision of the settlement agreement -- insurance
14 payments were made on this house during the period that it was
15 not able to be sold for \$54,811.73, which is at document ID
16 172725. Property taxes were paid of \$46,651.23, which would
17 not have been paid had the home been sold in 2007, when it was
18 under contract, for a total carrying cost of \$330,684.86. The
19 only other part I am claiming is the lost sale of \$110,000.

20 As to the deposit that was lost and the
21 prerediation interest, I'm not pressing those on appeal, but
22 I do think that the two components that I have emphasized to
23 the Court, the actual carrying cost of the home of \$330,684.86
24 and the lost sale of \$110,000, squarely fit within the
25 definition of this fund. I cannot reconcile nor can my clients

1 reconcile that with the award of \$41,000.

2 Your Honor, I will close by saying the
3 following. My clients were originally one of seven opt-outs
4 that I represented in this case. In November of 2012, at the
5 request of this Court, my clients met with the senior
6 leadership of the PSC to try to persuade them to rescind their
7 opt-out. Because they were unconvinced that the legalities of
8 this program would fairly compensate them for their injuries,
9 they declined the invitation, but they accepted Your Honor's
10 invitation to participate in a mediation with Judge Farina in
11 Miami, Florida, on March 15, 2013.

12 During that mediation we went through the
13 settlement administration program. We went through the
14 particulars of this claim. We went through the criteria in the
15 then existent language of the settlement agreement. Based on
16 the trust that they had in Judge Farina, a jurist that they
17 have known over two decades, and based on their confidence in
18 the justice of this Court and the sensitivity that this Court
19 has exhibited towards the victims of Chinese drywall, they were
20 persuaded by the assurances that they received to withdraw
21 their opt-out, dismiss their pending claim in Florida, which
22 was ready to be set for trial, and to submit their claim to the
23 other loss fund, having been assured that their claim would be
24 timely processed and timely paid.

25 We submitted the claim as soon as the other loss

1 fund became open, seven months after that mediation, on
2 October 13, 2013. They waited seven months patiently, until
3 October 13, 2013, to submit their claim. They did it as soon
4 as the fund opened.

5 They then waited 14 months -- and we understand
6 this process has been tedious, and thousands of claims have
7 been processed -- for the settlement administrator to qualify
8 their claim and offer them a \$10,000 award. The very same day
9 as they received that award, it was communicated to them by my
10 office, and they rejected the offer from the settlement
11 administrator and submitted our request for review by the
12 special master.

13 December 3, 2015, the special master submitted
14 its review and reduced the award to zero from \$10,000. Two
15 weeks later we submitted our request for reconsideration.
16 Again, we submitted all of the documentation that had been
17 given to the settlement administrator in December of 2015. In
18 March of 2016, we received the special master's revised award
19 of \$41,338, and two weeks later we filed our objection.

20 We are not seeking one penny of compensation
21 from the delay from March 15, 2013, when they stood before
22 Your Honor and pled their case and Your Honor gave them
23 assurances that if they went this way, that at the end they
24 would be fairly compensated.

25 Since then these losses have accumulated, they

1 have been out-of-pocket, and the interest between 2013 and 2016
2 and the effort expended in order to get here today will go
3 uncompensated.

4 Your Honor asked them to trust you, so did
5 Judge Farina, and to have confidence in this process. They
6 remain confident that after this appeal that you will give
7 deliberate consideration to the evidence they have submitted
8 and reconsider this award.

9 Mr. Gomez is on the line. I don't know if he
10 has anything he wants to add or if the Court wishes to hear
11 from him.

12 **THE COURT:** Thank you, Victor. I appreciate it.

13 Jake, do you want to comment on anything?

14 **MR. WOODY:** Yes, sir. As you can appreciate, this is
15 a fairly complex claim with many payments and mortgage
16 modifications. We have, as you saw from the timeline, made an
17 offer. However, I will work with Mr. Balhoff to look at the
18 documents submitted and make a recommendation to Your Honor.

19 **THE COURT:** Get with him, Victor and Dan, and see
20 whether we can move in the direction you want.

21 **MR. DIAZ:** Thank you, Your Honor.

22 **THE COURT:** Thank you very much.

23 Anything from DeMots and Doering?

24 That's it unless I hear from anybody. Anything?

25 **MR. FREDERICKS:** Your Honor, this is Gary Fredericks

1 I know we talked about the bodily injuries, but I didn't hear
2 the name called Emmanuel Bentley.

3 **THE COURT:** Okay, Mr. Fredericks. Thank you.

4 Anybody else? Folks, thank you very much.

5 Court will stand in recess.

6 **MR. BELITTI:** Your Honor?

7 **THE COURT:** Yes, sir. I'm sorry. Who is this?

8 **MR. BELITTI:** My name is Domenico Belitti. Can I
9 speak now?

10 **THE COURT:** Yes. Go ahead, Mr. Belitti.

11 **MR. BELLITTI:** The reason why I'm appealing -- I'm a
12 little bit nervous. This is the first time I have done this.
13 The resolution offer is not sufficient to fully compensate me.
14 I purchased the property back in May 2007 for \$265,000. The
15 total of payments that I made were over \$59,000. A total loss
16 for all the years was over \$139,000.

17 If you could see all the exhibits that I have,
18 all the paperwork that I have there -- because I had to do a
19 short sale. As you can see, the payment history that I have
20 there proves my good intentions on keeping the property.
21 Obviously, I had to do a short sale due to having Chinese
22 drywall.

23 I even tried at the end, because I couldn't take
24 it no more, that the realtor recommended me to rent the
25 property. They stayed there for a few months, and then they

1 took off on me also. Because of that, obviously you can see
2 that, you know, I lost a lot of money, not just equity.

3 The special master award, they awarded me one
4 price, and then the pro rata reduction was \$41,000. If you see
5 my paperwork, I lost almost close to \$140,000. I thought maybe
6 in consideration -- I'm appealing so hopefully I can get more.

7 **THE COURT:** Mr. Belitti, I will ask Jake to respond
8 to that.

9 **MR. WOODY:** Your Honor, I don't believe that this
10 appeal was on the original list, at least my list.

11 **THE COURT:** It was on the foreclosure/short sale.

12 Mr. Belitti, we will take a look at your case,
13 and I will get another recommendation from the special master,
14 and I'll rule on it. Thank you very much.

15 **MR. BELLITTI:** Thank you, Your Honor. What's the
16 time frame?

17 **THE COURT:** Do that in two weeks. Thank you very
18 much.

19 **THE DEPUTY CLERK:** Court will stand in recess.

20 (Proceedings adjourned.)

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of proceedings in the above-entitled matter.

s/ Toni Doyle Tusa
Toni Doyle Tusa, CCR, FCRR
Official Court Reporter

Case 2:09-md-02047-EEF-JCW Document 20468 Filed 08/26/16 Page 85 of 102		
MR. BELITTI: [2] 82/5 82/7	\$330,684.86 [4] 76/5 76/5 78/18 78/23	2011 [6] 59/21 68/10 75/23 76/1 77/10
MR. BELLITTI: [2] 82/10 83/14	\$4,478,750 [1] 67/5	2012 [3] 69/13 69/22 79/4
MR. CHRISTINA: [4] 46/12 47/11 67/14 67/17	\$40,000 [1] 67/5	2013 [5] 79/11 80/2 80/3 80/21 81/1
MR. DAVIS: [2] 13/1 17/17	\$40,137 [2] 66/16 66/22	2015 [2] 80/13 80/17
MR. DIAZ: [4] 74/19 74/23 75/1 81/20	\$40,272 [1] 68/14	2016 [4] 1/5 3/2 80/18 81/1
MR. DURKEE: [8] 15/9 15/13 17/3 17/19 52/23 53/2 53/9 54/25	\$41,000 [2] 79/1 83/4	20223-5 [1] 57/19
MR. FREDERICKS: [8] 34/5 34/8 34/10 37/2 37/12 37/18 37/20 81/24	\$41,338 [1] 80/19	20229-6 [1] 67/1
MR. LAMBERT: [9] 17/25 20/17 20/20 21/1 26/8 26/11 30/12 31/24 52/5	\$41,338.98 [2] 75/8 76/10	20232-2 [1] 65/17
MR. MARINO: [1] 62/18	\$46,651.23 [1] 78/16	20232-5 [1] 65/15
MR. MONTOYA: [7] 55/24 58/8 58/11 65/2 65/4 66/12 67/10	\$49,195 [2] 57/8 57/24	20233-3 [1] 57/4
MR. REICHERT: [3] 68/25 69/5 71/4	\$54,811.73 [1] 78/15	20233-4 [1] 57/18
MR. RYAN: [6] 37/24 38/2 38/8 41/11 41/14 43/11	\$56,666.02 [2] 57/22 58/2	2047 [1] 1/3
MR. WOODY: [18] 8/17 11/10 11/15 12/20 51/2 58/22 59/1 63/9 63/19 66/8 67/9 68/16 68/23 70/13 71/7 73/25 81/13 83/8	\$59,000 [1] 82/15	24 [1] 59/21
MS. BRASWELL: [4] 55/3 55/7 55/20 55/22	\$59,772 [1] 68/15	26 [1] 32/18
MS. CUCCI: [4] 32/2 32/5 32/8 34/1	\$61,000 [1] 65/19	275 [1] 2/7
MS. HAMILTON: [1] 59/3	\$7,500 [1] 55/18	29 [6] 9/11 9/13 9/14 9/19 68/19 72/12
MS. OWEN: [3] 47/14 47/16 48/19	\$700,000 [1] 75/8	3
MS. WERKEMA: [5] 71/10 71/13 72/25 73/2 74/15	\$71,715 [3] 66/20 66/24 67/4	30 [1] 5/12
THE COURT: [91]	\$75,000 [1] 65/9	302 [1] 10/4
THE DEPUTY CLERK: [1] 83/18	\$8.50 [1] 60/21	341602 [1] 78/7
THE SPECIAL MASTER: [3] 26/12 29/15 64/5	\$80,000 [2] 54/8 54/18	341603 [1] 78/6
UNIDENTIFIED SPEAKER: [1] 72/24	\$80,057.36 [1] 69/9	341605 [1] 78/4
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	\$86,000 [2] 72/7 73/10	351604 [1] 78/5
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	172095 [1] 77/22	64 [5] 10/3 10/23 11/5 31/19 31/22
	172107 [1] 77/19	66 [1] 43/13
	172129 [1] 77/20	68 [1] 78/9
	172688 [1] 77/16	7
	172722 [1] 77/22	7,987 [3] 8/23 9/3 14/23
	172725 [1] 78/16	70130 [1] 2/7
	172762 [1] 78/9	702 [1] 21/4
	172800 [1] 78/10	727 [3] 9/17 9/24 11/1
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	2005 [1] 3/14	9
	2006 [2] 48/4 75/14	91 [1] 56/11
	2007 [5] 71/17 75/23 77/17 78/17 82/14	
	2008 [3] 3/15 67/21 68/2	
	2009 [11] 40/18 43/4 43/14 43/16 48/2 48/4 48/15 48/21 68/2 68/10 75/3	
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\$28,000 [1] 44/8		
\$290,000 [1] 66/16		
\$3,900 [1] 61/14		
\$30,000 [1] 65/10		

<p>A able [15] 16/12 16/13 24/6 36/24 47/2 52/18 59/17 63/5 63/16 68/11 71/21 72/2 72/25 75/25 78/15 about [31] 3/7 5/12 11/9 13/19 13/24 25/5 25/6 26/14 27/24 28/21 28/21 36/16 36/19 36/21 39/3 39/12 43/3 45/16 48/12 49/21 50/6 54/18 56/16 59/1 65/1 70/12 70/14 70/25 74/3 74/12 82/1 above [1] 84/6 above-entitled [1] 84/6 abscesses [1] 24/23 absolute [1] 40/17 absolutely [4] 43/5 44/15 48/24 54/12 academic [1] 45/4 accept [1] 9/22 acceptable [1] 40/1 accepted [3] 10/4 28/12 79/9 accomplished [2] 18/22 18/23 accordance [2] 7/20 11/14 according [2] 7/12 68/17 accounting [1] 76/21 accumulated [1] 80/25 accurately [1] 56/16 acid [1] 48/11 across [7] 20/10 40/25 41/17 42/5 43/7 44/11 45/6 action [2] 6/18 36/10 actual [2] 16/5 78/23 actually [5] 28/6 38/11 40/10 48/23 77/18 add [3] 13/3 15/1 81/10 addition [9] 5/6 11/12 11/23 12/10 12/17 12/18 13/23 67/4 78/11 additional [16] 35/13 36/7 39/25 40/21 42/24 50/14 55/2 59/15 63/21 65/10 65/19 66/20 68/20 69/19 70/3 73/17 Additionally [3] 33/2 35/19 61/14 address [2] 17/1 26/19 addressed [2] 18/21 63/12 Adele [2] 1/17 47/17 adept [1] 30/18 adjourned [1] 83/20 administer [1] 27/6 administration [1] 79/13 administrator [7] 8/17 8/19 28/8 72/14 80/7 80/11 80/17 administrator's [2] 32/16 76/8 adopted [1] 28/7 advise [1] 47/1 affected [15] 8/25 10/11 10/15 11/20 19/24 23/23 38/13 47/2 70/17 71/18 72/7 73/18 74/9 74/10 77/3 affidavit [3] 16/16 42/3 42/10 afford [2] 60/13 60/15 after [23] 7/4 10/13 13/6 13/7 16/14 16/19 23/21 23/23 23/25 35/20 53/17 59/8 59/11 59/13 61/22 62/3 65/24 68/4 68/5 74/14 77/10 80/1 81/6 afterwards [1] 64/15 again [23] 12/5 17/14 22/10 23/8 23/22 23/23 24/5 26/23 28/11 29/3 30/14 35/3 36/21 37/1 43/12 43/23 44/22 52/7 65/5 65/24 67/6 74/22 80/16 against [3] 11/25 13/14 58/3 agenda [2] 38/3 41/13 ages [1] 30/9 ago [2] 58/10 66/10</p>	<p>agree [4] 32/12 55/14 57/10 72/18 agreed [2] 67/17 agreement [29] 9/7 10/6 11/18 28/7 28/8 29/7 29/14 30/15 32/15 32/22 49/20 51/4 51/7 52/12 52/21 56/17 56/18 60/1 60/18 61/9 61/15 61/16 61/19 62/15 63/2 76/13 76/15 78/13 79/15 agreements [2] 12/5 19/3 ahead [6] 38/8 53/1 53/7 55/7 73/2 82/10 aided [1] 2/11 ailments [2] 43/19 43/22 air [4] 48/22 48/23 49/7 60/22 alarms [1] 5/5 albeit [1] 43/19 ALE [1] 68/15 all [65] 1/5 3/8 3/14 4/20 4/24 6/14 6/15 9/6 9/17 11/5 11/7 17/20 18/2 19/11 20/4 20/24 21/5 22/8 24/17 26/3 26/17 26/18 30/15 30/16 32/14 32/15 32/21 33/8 36/5 37/12 38/5 39/4 39/7 39/16 39/18 40/6 41/9 41/22 43/11 45/9 45/12 48/5 50/7 50/11 50/12 52/10 52/19 55/10 57/18 58/19 59/15 60/3 64/22 65/22 66/19 70/4 71/3 72/21 73/13 74/22 77/15 80/16 82/16 82/17 82/18 alleged [2] 3/9 3/10 allergies [1] 44/21 allergist [1] 44/4 allocation [2] 50/14 50/15 allow [3] 35/1 51/6 72/20 allowed [4] 25/19 62/14 72/12 73/9 allowing [3] 45/8 55/1 74/17 allows [2] 16/19 51/4 almost [5] 34/14 35/3 43/4 60/13 83/5 alone [1] 33/17 along [5] 13/15 18/3 31/4 44/19 53/10 alphabetical [1] 12/23 already [10] 13/4 39/6 41/2 47/6 51/9 51/16 59/13 61/2 65/1 71/23 also [29] 3/9 4/2 4/17 7/9 7/19 8/2 9/14 11/1 12/12 14/19 23/25 29/24 31/14 36/22 37/4 37/14 40/1 53/4 53/6 57/9 61/7 63/2 66/4 69/9 70/1 70/3 73/8 78/8 83/1 alternative [8] 9/1 13/25 67/13 71/16 72/21 73/7 73/11 73/17 although [4] 13/13 16/4 76/22 78/11 am [4] 18/2 32/10 76/11 78/19 amongst [1] 31/22 amount [11] 4/13 4/16 11/3 23/11 33/19 54/15 55/12 57/24 58/6 68/19 70/11 analysis [4] 19/16 19/17 41/17 48/7 Ancira [4] 67/14 67/16 67/19 67/20 and/or [1] 25/20 Andrea [1] 52/2 another [8] 6/24 11/24 21/20 51/17 62/1 69/18 69/22 83/13 answer [1] 67/24 any [30] 5/10 6/24 8/12 10/19 10/21 10/25 17/10 19/16 24/25 36/14 39/1 39/13 40/12 40/20 40/22 48/12 52/4 54/15 56/4 64/5 64/15 64/16 65/2 66/18 70/12 76/18 76/20 76/21 76/21 77/2 anybody [14] 12/25 15/4 15/6 15/8 32/2 34/3 45/1 51/25 52/3 56/22 68/25</p>	<p>71/10 81/24 82/4 anyone [1] anything [13] 17/22 26/1 41/10 45/16 47/13 64/23 65/1 73/25 76/14 81/10 81/13 81/23 81/24 anyway [1] 55/17 apologize [1] 57/4 appeal [8] 8/14 10/5 39/8 62/23 74/21 78/21 81/6 83/10 appealed [6] 10/3 10/10 10/24 12/11 12/12 14/7 appealing [6] 32/10 54/8 75/7 76/3 82/11 83/6 appeals [9] 8/5 10/17 10/22 10/25 14/15 14/16 14/17 45/10 62/21 appear [1] 34/13 Appearances [2] 1/10 2/1 appearing [2] 32/9 71/12 appears [2] 63/24 70/15 appliances [1] 11/20 applicable [1] 10/15 applies [1] 38/5 appreciate [12] 20/24 20/25 26/6 33/23 37/2 37/23 39/2 50/19 54/25 71/5 81/12 81/14 appreciates [1] 47/11 appropriate [3] 43/6 60/10 65/11 approximately [2] 60/23 75/8 April [3] 56/3 58/14 68/10 April 15 [2] 56/3 58/14 arc [1] 43/6 are [134] area [8] 3/17 5/12 36/23 36/24 36/24 51/17 56/15 57/15 argument [2] 8/10 10/19 arguments [2] 39/4 42/7 Arias [2] 53/4 54/6 arises [1] 3/8 arising [1] 77/2 around [4] 18/23 19/5 52/17 54/8 articulately [1] 37/22 as [131] asbestos [5] 7/15 7/16 29/21 29/22 43/20 asbestosis [3] 7/15 29/19 29/20 ask [9] 17/22 33/14 36/5 47/5 50/16 71/24 73/8 73/22 83/7 asked [4] 35/12 48/15 55/12 81/4 asking [5] 53/25 61/17 68/7 68/14 70/9 aspect [3] 8/8 12/19 16/23 aspects [1] 76/3 asserted [1] 65/10 assessed [1] 64/1 assessments [1] 34/21 assign [1] 63/5 assist [1] 46/10 associated [3] 19/6 37/6 74/2 association [1] 56/11 assume [1] 42/6 assurances [2] 79/20 80/23 assured [1] 79/23 asthma [3] 33/10 36/2 71/19 at [74] 7/25 8/16 8/22 9/10 10/19 12/5 14/2 15/14 15/16 17/13 18/20 19/15 19/21 20/2 20/8 20/11 21/3 21/20 22/3 27/3 28/18 30/9 30/16 36/21 37/1 38/24 38/25 39/15 39/19 40/25 41/4 42/5 43/16 45/7 48/18 50/2 52/14 52/25 54/7 54/23 55/6 57/3 57/17 58/1 58/22 58/23 61/1 61/2 61/11 61/13</p>
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<p>A</p> <p>at... [24] 62/9 65/14 65/16 66/10 66/19 66/25 67/2 67/9 67/22 67/23 68/2 68/12 72/23 73/8 74/6 74/12 77/16 78/15 79/4 80/23 81/17 82/23 83/10 83/12</p> <p>attack [3] 30/1 30/3 42/4 attempt [3] 10/16 13/17 44/11 attempted [1] 70/22 attend [2] 45/8 55/2 attending [1] 75/13 attention [1] 20/9 attesting [1] 32/20 attorney [2] 12/25 63/22 attorney's [1] 59/20 attorneys' [2] 14/19 14/20 August [1] 59/21 auspices [1] 75/4 authority [1] 72/15 authorized [1] 9/13 autonomic [1] 33/3 available [2] 19/5 60/25 award [29] 20/4 20/10 29/8 29/11 33/14 33/14 43/5 47/6 50/17 54/7 55/14 66/7 68/15 70/10 70/11 72/11 72/12 72/21 73/22 73/23 75/7 76/11 79/1 80/8 80/9 80/14 80/18 81/8 83/3 awarded [10] 15/18 54/18 55/11 55/11 55/13 55/18 58/3 72/11 76/10 83/3 awards [2] 8/9 50/25 aware [2] 13/5 18/2 away [2] 18/24 61/25</p>	<p>became [1] 80/1 because [52] 1/20 4/23 4/25 5/26 6/5 11/3 14/16 17/15 19/13 19/13 19/13 23/14 25/15 26/20 27/3 29/1 30/25 36/21 38/23 39/8 41/15 42/4 42/5 48/3 48/5 48/17 51/16 51/23 53/21 53/22 53/23 54/10 55/16 59/21 60/5 60/7 60/25 61/1 63/2 67/22 69/14 70/7 70/7 70/22 71/5 73/20 74/5 77/12 79/7 82/18 82/23 83/1</p> <p>Becnel [3] 46/14 47/8 67/18 become [3] 5/3 27/4 69/9 becomes [1] 27/3 bedroom [1] 75/16 been [70] 3/10 8/13 11/2 11/17 11/22 11/22 12/6 13/4 15/17 15/19 15/20 15/21 17/17 18/5 18/21 19/8 19/21 20/6 21/11 24/6 25/10 26/4 27/20 31/12 32/15 33/20 35/8 36/1 36/24 40/7 40/23 41/2 41/19 42/6 43/14 44/3 44/19 45/2 45/3 45/4 47/8 47/9 48/3 49/15 50/11 52/10 54/17 56/23 57/14 58/19 59/24 60/2 61/4 65/18 67/7 69/11 70/20 70/23 71/15 73/4 75/3 75/9 77/15 78/17 78/17 79/23 80/6 80/7 80/16 81/1</p> <p>before [20] 1/8 10/18 10/20 13/1 14/22 16/18 21/3 21/17 26/2 40/8 40/9 44/6 45/24 50/10 67/5 70/6 74/24 75/4 76/3 80/21</p> <p>began [3] 59/11 59/19 72/5 begin [3] 3/6 38/4 44/20 beginning [2] 26/4 30/22</p> <p>behalf [17] 13/2 15/11 35/12 37/8 46/18 47/17 52/8 52/10 53/8 56/1 59/6 62/19 65/6 69/2 71/12 74/21 75/5</p> <p>behind [1] 57/19</p> <p>being [14] 7/1 7/11 20/24 30/25 39/18 47/4 48/1 50/19 52/18 60/13 69/18 69/18 69/23 73/4</p> <p>beings [2] 19/23 31/15 belief [1] 24/21</p> <p>believe [33] 14/5 15/15 15/19 16/15 16/25 18/22 19/7 25/22 27/9 27/9 27/22 28/19 38/15 40/20 40/22 42/4 42/23 44/25 50/13 53/5 53/11 54/2 54/3 54/7 54/10 54/14 55/17 66/24 68/19 70/8 75/11 77/14 83/9</p> <p>believed [1] 56/7 believes [1] 46/21</p> <p>Belitti [6] 1/24 64/25 82/8 82/10 83/7 83/12</p> <p>bellwether [4] 5/17 6/7 18/9 19/1</p> <p>below [1] 10/9</p> <p>benchmark [2] 63/3 75/24</p> <p>Benefield [1] 23/17</p> <p>benefits [1] 12/12</p> <p>Bentley [3] 37/8 37/15 82/2</p> <p>Beret [1] 18/15</p> <p>best [4] 28/20 59/20 59/20 84/5</p> <p>better [3] 23/16 44/18 49/3</p> <p>between [11] 3/14 4/15 22/18 23/19 36/14 36/25 38/17 40/18 76/6 77/8 81/1</p> <p>beyond [2] 27/14 30/2</p> <p>big [3] 47/20 48/12 49/13</p> <p>biggest [1] 3/18</p> <p>bills [3] 33/17 33/20 35/25</p> <p>binding [1] 10/8</p> <p>birth [1] 16/1</p>	<p>bit [7] 24/11 38/5 39/22 54/2 61/5 63/1 82/12</p> <p>blacked [1] 42/6</p> <p>blinds [1] 65/20</p> <p>blood [1] 35/22</p> <p>board [4] 15/25 16/17 20/10 35/10</p> <p>board-certified [3] 15/25 16/17 35/10</p> <p>boards [2] 25/16 52/17</p> <p>boat [1] 46/16</p> <p>bodily [15] 8/25 12/23 13/25 14/9 19/19 26/18 26/19 26/22 27/7 32/11 32/19 32/24 38/11 43/7 82/1</p> <p>body [2] 23/13 48/10</p> <p>Bohi [1] 24/20</p> <p>boils [1] 56/15</p> <p>boom [1] 3/16</p> <p>both [10] 16/18 19/4 21/7 24/2 35/16 41/17 44/23 59/25 60/2 74/13</p> <p>bound [1] 27/6</p> <p>Bourgeois [4] 12/24 12/24 15/4 15/6</p> <p>brain [1] 33/8</p> <p>Brandy [2] 1/20 59/4</p> <p>Braswell [2] 1/18 55/4</p> <p>break [2] 58/6 64/15</p> <p>breaks [1] 60/16</p> <p>breathe [1] 49/17</p> <p>brief [1] 71/14</p> <p>briefing [2] 10/17 10/19</p> <p>briefly [2] 32/13 52/6</p> <p>bring [3] 26/20 26/23 47/1</p> <p>bronchitis [1] 40/3</p> <p>brought [1] 69/3</p> <p>BrownGreer [1] 8/19</p> <p>Bruno [2] 69/1 69/1</p> <p>Bud [1] 71/12</p> <p>builders [4] 3/21 4/20 4/25 5/25</p> <p>building [3] 3/19 4/7 4/23</p> <p>buildings [2] 3/11 5/6</p> <p>burden [2] 27/2 27/4</p> <p>burdens [1] 39/1</p> <p>but [68] 3/19 5/1 5/8 6/16 7/17 10/13 11/20 11/24 12/3 17/13 20/10 20/25 21/6 21/9 21/14 22/11 24/8 24/12 25/15 26/11 26/18 27/5 27/18 28/14 29/11 30/15 31/14 31/21 36/22 37/17 38/24 39/2 39/16 41/7 42/2 42/21 43/21 44/16 44/17 45/5 45/15 45/22 46/10 48/18 49/5 52/14 53/5 53/8 53/13 53/20 55/17 56/20 57/5 57/25 58/12 60/5 60/10 61/19 62/15 64/7 64/10 65/11 71/21 72/18 75/12 78/21 79/9 82/1</p>
<p>B</p> <p>B-E-N-F-I-E-L-D [1] 23/18</p> <p>B-O-H-I [1] 24/20</p> <p>back [9] 21/25 39/10 43/16 45/3 48/21 60/16 68/5 74/5 82/14</p> <p>background [4] 3/6 8/17 8/20 26/5</p> <p>backup [1] 65/22</p> <p>bad [2] 24/7 44/10</p> <p>balance [1] 66/14</p> <p>Balhoff [12] 2/4 9/19 9/25 18/3 20/5 22/10 24/17 26/1 26/16 56/2 63/24 81/17</p> <p>Balhoff's [2] 22/17 30/16</p> <p>Bank [1] 67/2</p> <p>Banner [4] 12/1 12/9 12/13 13/9</p> <p>Baron [1] 71/12</p> <p>Barreto [2] 75/10 77/20</p> <p>Barrett [1] 59/5</p> <p>base [5] 41/1 41/18 42/5 45/23 45/24</p> <p>based [24] 3/24 4/5 6/14 9/21 10/1 10/17 11/15 12/3 15/21 15/22 23/24 33/15 33/15 42/23 44/15 45/15 45/16 46/19 47/4 55/14 56/6 70/14 79/15 79/17</p> <p>baseline [2] 48/7 48/14</p> <p>basic [2] 4/11 31/13</p> <p>basically [6] 5/19 15/20 21/17 49/9 52/16 57/6</p> <p>basis [8] 16/20 17/10 17/13 17/15 43/4 43/9 56/25 57/8</p> <p>bath [1] 75/16</p> <p>Baton [1] 50/6</p> <p>Baton Rouge [1] 50/6</p> <p>battery [1] 44/4</p> <p>be [93]</p> <p>bear [1] 41/20</p>	<p>became [1] 80/1 because [52] 1/20 4/23 4/25 5/26 6/5 11/3 14/16 17/15 19/13 19/13 19/13 23/14 25/15 26/20 27/3 29/1 30/25 36/21 38/23 39/8 41/15 42/4 42/5 48/3 48/5 48/17 51/16 51/23 53/21 53/22 53/23 54/10 55/16 59/21 60/5 60/7 60/25 61/1 63/2 67/22 69/14 70/7 70/7 70/22 71/5 73/20 74/5 77/12 79/7 82/18 82/23 83/1</p> <p>Becnel [3] 46/14 47/8 67/18 become [3] 5/3 27/4 69/9 becomes [1] 27/3 bedroom [1] 75/16 been [70] 3/10 8/13 11/2 11/17 11/22 11/22 12/6 13/4 15/17 15/19 15/20 15/21 17/17 18/5 18/21 19/8 19/21 20/6 21/11 24/6 25/10 26/4 27/20 31/12 32/15 33/20 35/8 36/1 36/24 40/7 40/23 41/2 41/19 42/6 43/14 44/3 44/19 45/2 45/3 45/4 47/8 47/9 48/3 49/15 50/11 52/10 54/17 56/23 57/14 58/19 59/24 60/2 61/4 65/18 67/7 69/11 70/20 70/23 71/15 73/4 75/3 75/9 77/15 78/17 78/17 79/23 80/6 80/7 80/16 81/1</p> <p>before [20] 1/8 10/18 10/20 13/1 14/22 16/18 21/3 21/17 26/2 40/8 40/9 44/6 45/24 50/10 67/5 70/6 74/24 75/4 76/3 80/21</p> <p>began [3] 59/11 59/19 72/5 begin [3] 3/6 38/4 44/20 beginning [2] 26/4 30/22</p> <p>behalf [17] 13/2 15/11 35/12 37/8 46/18 47/17 52/8 52/10 53/8 56/1 59/6 62/19 65/6 69/2 71/12 74/21 75/5</p> <p>behind [1] 57/19</p> <p>being [14] 7/1 7/11 20/24 30/25 39/18 47/4 48/1 50/19 52/18 60/13 69/18 69/18 69/23 73/4</p> <p>beings [2] 19/23 31/15 belief [1] 24/21</p> <p>believe [33] 14/5 15/15 15/19 16/15 16/25 18/22 19/7 25/22 27/9 27/9 27/22 28/19 38/15 40/20 40/22 42/4 42/23 44/25 50/13 53/5 53/11 54/2 54/3 54/7 54/10 54/14 55/17 66/24 68/19 70/8 75/11 77/14 83/9</p> <p>believed [1] 56/7 believes [1] 46/21</p> <p>Belitti [6] 1/24 64/25 82/8 82/10 83/7 83/12</p> <p>bellwether [4] 5/17 6/7 18/9 19/1</p> <p>below [1] 10/9</p> <p>benchmark [2] 63/3 75/24</p> <p>Benefield [1] 23/17</p> <p>benefits [1] 12/12</p> <p>Bentley [3] 37/8 37/15 82/2</p> <p>Beret [1] 18/15</p> <p>best [4] 28/20 59/20 59/20 84/5</p> <p>better [3] 23/16 44/18 49/3</p> <p>between [11] 3/14 4/15 22/18 23/19 36/14 36/25 38/17 40/18 76/6 77/8 81/1</p> <p>beyond [2] 27/14 30/2</p> <p>big [3] 47/20 48/12 49/13</p> <p>biggest [1] 3/18</p> <p>bills [3] 33/17 33/20 35/25</p> <p>binding [1] 10/8</p> <p>birth [1] 16/1</p>	<p>C</p> <p>C-U-C-C-I [1] 15/7</p> <p>cabined [1] 8/12</p> <p>calculate [1] 60/19</p> <p>calculations [2] 11/7 25/13</p> <p>call [4] 3/18 6/4 8/16 27/15</p> <p>called [4] 13/7 37/16 64/24 82/2</p> <p>came [3] 7/5 14/23 19/7</p> <p>can [42] 8/20 9/12 11/6 14/24 20/8 22/14 27/15 27/24 28/3 29/4 29/25 30/8 31/7 34/19 35/19 36/9 41/5 42/18 45/1 45/16 46/10 49/17 50/22 50/23 53/8 56/18 57/17 58/6 63/24 64/15 68/23 71/3 74/6 74/12 74/13 78/25 81/14 81/20 82/8 82/19 83/1 83/6</p> <p>can't [5] 23/10 29/7 49/3 60/15 72/18</p> <p>canceled [1] 53/23</p>

<p>C cancer [5] 34/14 35/16 36/15 36/17 36/25 cannot [6] 11/4 34/13 42/18 55/15 60/13 78/25 cap [1] 72/22 capable [1] 30/18 capacity [1] 21/12 capital [3] 65/10 65/19 65/25 capped [2] 31/19 68/18 caps [1] 74/11 cardboard [1] 4/15 cardiologists [1] 44/7 care [2] 50/5 71/8 careful [1] 20/7 carry [1] 39/1 carrying [12] 51/1 56/15 57/3 57/5 57/6 57/11 57/23 57/25 76/4 77/7 78/18 78/23 case [35] 8/13 8/14 15/22 16/5 20/1 21/19 22/5 28/1 28/6 30/2 30/5 30/24 31/20 39/21 40/8 42/9 44/14 44/23 45/13 47/10 49/5 50/2 50/13 52/16 58/19 60/10 61/5 69/10 70/8 70/23 72/17 76/22 79/4 80/22 83/12 cases [17] 1/5 5/8 5/14 5/15 6/17 21/5 26/18 28/10 28/11 28/13 29/5 35/11 41/16 43/21 49/21 50/21 58/16 cash [3] 53/21 54/11 54/13 categories [1] 77/7 categorized [1] 53/11 category [3] 41/7 51/14 63/17 causation [7] 21/8 22/23 24/5 25/3 37/5 38/16 49/4 cause [7] 22/14 27/21 27/24 28/16 29/25 33/1 49/25 caused [22] 5/9 7/16 22/8 22/22 23/25 24/8 27/12 28/3 28/14 29/6 29/21 30/3 30/10 42/10 42/16 45/18 45/25 46/7 46/22 47/24 77/4 77/5 causes [3] 24/18 27/19 46/6 causing [1] 31/1 CCR [3] 2/6 84/2 84/9 cell [2] 33/11 34/25 centers [1] 52/17 certain [5] 7/8 7/9 54/4 62/14 64/10 certainly [6] 38/8 39/24 47/7 49/21 50/13 50/15 CERTIFICATE [1] 84/1 certification [1] 32/20 certified [3] 15/25 16/17 35/10 certify [1] 84/4 challenge [1] 25/5 challenges [1] 39/5 chance [3] 58/22 58/23 67/9 change [1] 23/16 charges [1] 51/20 charging [1] 61/10 checked [1] 48/22 checks [2] 65/22 66/2 chemical [4] 27/23 31/13 33/3 43/24 chemicals [2] 33/3 33/5 chemistry [5] 21/17 21/21 22/3 25/6 48/12 chest [1] 22/2 child [5] 16/1 37/14 46/25 47/1 67/22 children [5] 19/13 67/25 69/13 71/18 73/19 China [4] 3/22 3/24 4/9 4/9</p>	<p>Chinchuba [2] 68/5 68/9 CHINESE [12] 1/3 3/1 3/25 4/1 4/4 4/2 11/16 11/19 11/24 17/13 18/15 18/18 19/25 22/14 22/20 23/1 23/4 23/19 23/22 23/25 24/13 24/22 27/13 27/18 27/23 28/3 28/14 28/16 29/6 29/11 30/7 31/6 32/20 32/24 33/1 33/5 33/7 33/22 34/17 35/4 35/15 36/4 37/6 38/10 38/17 40/11 41/25 42/11 42/16 43/15 44/1 44/20 46/20 46/22 47/4 51/22 51/23 53/16 53/23 56/12 56/23 59/10 59/16 60/11 67/20 70/21 70/23 73/21 75/3 75/21 79/19 82/21 CHINESE-MANUFACTURED [3] 1/3 3/11 22/14 choice [1] 60/5 Chris [2] 67/15 67/19 Christina [6] 1/16 46/13 47/9 67/15 67/18 68/21 chronic [1] 22/14 circumstance [1] 24/5 circumstances [4] 24/21 36/4 69/10 70/7 cited [1] 15/22 Civil [1] 32/18 claim [52] 9/7 9/14 9/16 14/13 14/14 15/1 15/17 15/20 16/24 18/8 19/19 25/14 25/15 32/11 36/10 38/7 43/16 44/17 51/9 51/10 53/21 56/9 57/15 58/12 58/13 60/24 63/15 63/16 63/21 63/23 65/8 66/7 66/13 66/14 71/16 74/9 74/11 74/13 75/5 75/8 76/4 76/12 76/24 77/16 79/14 79/21 79/22 79/23 79/25 80/3 80/8 81/15 claimant [8] 8/4 39/13 70/15 72/20 73/15 76/9 77/1 77/2 claimants [22] 5/13 9/4 9/15 9/17 9/22 10/3 10/4 10/23 11/1 11/7 12/8 12/11 13/20 14/20 26/22 39/16 42/6 45/6 50/24 52/15 73/16 73/20 claimed [2] 7/11 17/10 claiming [17] 16/3 16/4 16/6 16/6 17/12 76/14 76/16 76/16 76/17 76/18 76/19 76/19 76/20 76/21 76/21 77/5 78/19 claims [58] 8/22 8/23 8/24 8/24 9/2 9/3 9/4 9/13 9/18 11/5 11/5 11/6 11/25 12/10 12/23 12/24 12/25 13/14 13/18 14/9 14/10 17/16 18/21 19/8 20/9 25/15 25/21 28/8 30/19 31/18 38/11 39/17 40/9 40/22 42/20 42/22 43/7 50/9 51/3 51/6 51/13 51/24 54/22 55/2 55/10 55/20 56/4 56/13 57/21 59/24 63/11 63/25 67/14 69/8 70/16 72/16 72/16 80/6 clarify [1] 61/6 clarity [1] 36/9 Clarke [11] 52/1 59/6 59/7 59/18 59/22 59/24 60/1 60/5 60/11 61/1 65/1 Clarke's [1] 63/22 class [8] 10/11 10/12 10/14 10/15 26/25 27/2 27/5 27/6 classic [3] 41/16 43/18 51/19 clean [2] 18/16 27/8 cleaned [1] 6/15 clear [1] 35/14 clearly [3] 23/2 43/8 73/12 client [12] 31/11 41/1 42/5 59/6 59/7 60/10 60/17 61/7 61/18 62/10 71/17 75/5 client's [2] 46/19 76/12</p>	<p>clients [11] 18/2 18/13 38/21 40/1 47/15 52/1 57/1 57/8 57/8 57/9 79/3 79/5 clinical [2] 24/21 45/2 close [3] 57/20 79/2 83/5 closets [1] 65/21 closing [2] 24/19 37/4 Coast [3] 3/12 4/18 5/11 coils [1] 49/8 collateral [1] 25/15 collect [1] 51/22 comatose [3] 34/22 35/2 35/20 come [7] 8/7 13/21 30/9 38/20 39/10 48/17 67/5 comes [2] 10/5 62/23 comfortable [1] 62/3 coming [1] 57/7 comment [1] 81/13 comments [12] 13/4 13/15 15/1 26/10 26/14 26/21 37/1 39/2 45/11 50/20 52/7 70/13 commercial [2] 62/25 63/1 committee [4] 13/13 18/4 52/11 61/3 committees [1] 19/4 common [1] 29/10 communicated [1] 80/9 companies [1] 66/6 company [2] 3/24 48/21 comparison [1] 60/6 compensate [2] 79/8 82/13 compensated [3] 57/14 68/8 80/24 compensation [4] 41/6 51/1 65/9 80/20 competent [7] 15/15 15/24 16/20 38/16 41/4 43/9 44/23 complained [2] 39/3 40/7 complaints [6] 16/2 16/14 38/18 39/17 44/13 44/14 complete [5] 12/7 12/17 35/15 42/4 52/17 complex [1] 81/15 complicated [1] 31/9 complications [1] 31/5 complied [2] 9/6 32/14 component [2] 13/24 74/8 components [2] 13/18 78/22 compound [1] 47/24 compounds [8] 22/1 22/20 23/7 48/1 48/9 49/10 49/11 49/23 compromise [3] 41/20 42/15 43/24 compromised [1] 38/24 computer [1] 2/11 computer-aided [1] 2/11 concedes [1] 77/12 conclusion [2] 8/22 9/10 concur [1] 26/13 condition [10] 11/21 19/24 24/15 24/18 34/18 34/25 35/5 47/23 47/25 49/15 conditioner [1] 49/7 conditions [6] 20/12 22/15 24/8 40/12 46/23 69/14 condo [1] 55/16 condominium [1] 56/11 condominiums [1] 55/9 conducted [1] 46/21 confected [2] 13/6 19/3 confecting [1] 52/12 confer [1] 10/15 conference [1] 74/15 confidence [3] 28/3 79/17 81/5 confident [1] 81/6</p>
--	---	--

C
confidential [1] 16/25
confidentiality [1] 17/5
confidentially [1] 17/6
confined [1] 46/10
confirmed [1] 75/22
confuse [2] 21/14 66/1
confusion [3] 61/5 66/6 70/25
connection [3] 22/18 23/19 36/14
consequence [1] 19/22
consider [5] 17/6 17/22 36/5 51/5 55/2
consideration [16] 7/19 12/16 26/17
36/22 37/12 40/21 41/8 42/19 50/14
50/17 51/17 54/1 58/17 77/15 81/7
83/6
considered [7] 15/16 15/21 30/25 53/12
54/18 54/20 56/19
consisted [1] 9/4
consistency [2] 43/2 43/6
Consistent [1] 41/12
consistently [1] 41/24
consists [1] 11/18
consolidated [1] 5/15
construction [1] 75/14
contact [2] 4/23 25/1
contacted [1] 61/3
contain [2] 11/23 11/24
contained [3] 4/13 4/16 11/16
contaminants [2] 48/24 49/6
contemporary [1] 50/10
contingency [1] 53/15
continue [2] 33/16 73/1
continued [4] 18/6 18/11 66/19 66/23
continues [1] 13/13
continuously [1] 40/7
continuum [2] 43/22 44/12
contract [3] 53/13 75/17 78/18
contractors [1] 5/25
contraindications [1] 23/9
contributed [1] 24/22
contributing [1] 37/5
convert [1] 63/16
convey [1] 28/22
COPD [1] 40/5
copper [5] 4/21 4/21 4/21 4/22 31/14
Coral [1] 75/15
corporate [1] 66/5
corporation [1] 4/5
correct [3] 14/5 53/3 84/4
corrected [1] 6/23
cost [3] 57/12 78/18 78/23
costs [10] 51/1 56/15 56/25 57/3 57/5
57/6 57/23 57/25 76/4 77/8
cough [1] 43/23
coughing [2] 40/3 42/15
could [20] 7/3 9/21 9/22 12/10 18/8
18/9 21/14 27/21 28/16 28/20 31/19
33/10 39/13 45/22 58/15 62/6 67/24
67/24 71/25 82/17
couldn't [3] 18/21 52/13 82/23
counsel [7] 10/11 10/14 10/15 13/3
38/11 64/20 71/1
countertops [1] 65/21
country [3] 3/15 3/17 5/11
counts [1] 35/22
couple [2] 13/18 22/25
course [3] 17/16 21/10 72/13
court [56] 1/1 2/6 5/15 5/16 7/6 7/24
8/7 8/10 8/11 9/11 10/4 10/13 10/16

13/4 13/5 14/22 15/16 17/1 18/3 18/22
21/11 21/12 21/16 21/23 23/22
34/11 34/13 36/5 38/4 38/7 47/10
47/21 49/23 51/5 56/21 58/5 61/11
61/22 62/9 63/15 65/22 66/2 70/6
73/22 75/4 78/23 79/5 79/18 79/18
81/10 82/5 83/19 84/2 84/3 84/10
Court's [4] 10/21 10/24 18/5 58/1
courtroom [2] 3/5 45/13
courts [2] 27/25 28/5
covered [3] 51/16 74/11 78/12
Cox [1] 70/3
create [1] 23/11
created [4] 5/7 7/17 22/7 43/16
credit [2] 60/14 76/20
Creek [2] 68/5 68/9
criteria [1] 79/14
critical [1] 50/5
Cucci [6] 1/13 15/7 15/8 32/6 32/7
33/25
Cullens [4] 12/25 15/5 37/9 37/10
cured [1] 57/16
current [1] 71/24
currently [3] 36/3 48/8 50/16
custom [1] 65/20

D
D-A-B-A-L-S-A [1] 15/9
Dabalsa [2] 15/9 15/11
dad [1] 20/20
Dailyn [1] 34/4
damage [11] 3/9 18/8 18/23 19/8 25/13
31/1 53/13 54/3 73/19 73/23 76/16
damaged [2] 23/10 31/12
damages [12] 8/3 12/2 12/18 18/25
19/5 25/18 51/19 53/20 63/25 64/8
76/16 77/4
Dan [10] 2/4 9/19 9/25 18/3 20/5 24/17
26/1 26/16 64/5 81/19
Daniel [1] 24/19
date [2] 50/11 69/15
Daubert [18] 21/4 21/8 21/10 21/24
25/4 25/23 27/15 28/1 28/15 28/20
28/23 30/20 30/23 31/10 39/11 39/13
42/7 49/19
Daubert-type [1] 28/15
David [8] 1/11 15/10 15/12 37/9 52/24
53/1 53/7 54/24
Davis [4] 2/2 13/2 26/25 64/18
day [5] 14/24 38/22 58/5 66/10 80/8
days [2] 10/12 58/9
deadline [1] 8/23
deal [5] 8/24 12/20 23/13 50/23 53/22
dealing [1] 50/24
dealt [5] 13/12 13/12 13/24 14/19 31/8
debate [1] 41/6
debilitating [1] 33/7
debt [2] 60/6 61/25
decades [1] 79/17
December [4] 68/2 68/10 80/13 80/17
December 3 [1] 80/13
decided [4] 17/17 67/21 68/4 68/6
decision [4] 10/13 10/21 32/10 32/13
decisions [1] 10/9
declined [1] 79/9
defective [5] 5/20 5/21 5/23 6/6 59/10
defendant [2] 6/10 19/5
defendants [5] 5/14 6/3 10/11 10/14
62/20
defense [1] 52/11

deficiencies [1] 56/5
deficiency [1] 66/4
define [1] 36/25
defined [1] 29/19
definitely [1] 30/22
definition [1] 78/25
degree [1] 42/14
dehumidifier [1] 6/11
delay [1] 80/21
deliberate [1] 81/7
delivered [1] 17/23
delivery [1] 17/21
demanded [1] 44/24
demands [1] 3/20
demonstrated [1] 58/4
DeMots [3] 52/1 74/19 81/23
denied [1] 60/3
Dennis [7] 17/25 20/16 22/22 23/6 52/1
52/8 52/16
Dennis' [1] 22/18
denominator [1] 29/10
denying [1] 56/25
deposit [2] 65/16 78/20
describe [1] 5/7
described [2] 31/12 56/16
deserve [1] 29/13
deserves [1] 62/11
design [1] 7/18
designed [3] 8/11 11/15 21/7
Despite [1] 59/20
destroyed [1] 49/9
detail [2] 24/12 25/11
detailed [1] 6/16
determination [2] 15/17 72/19
determinations [2] 10/1 72/15
determine [2] 6/7 11/4
determined [2] 40/23 41/2
devastated [1] 38/10
develop [1] 6/20
developed [6] 6/13 24/24 43/24 44/13
45/4 56/10
developing [1] 40/5
development [1] 56/11
devised [1] 6/16
diagnosed [4] 33/2 34/14 47/25 49/15
diagnosis [5] 44/1 44/21 47/20 48/2
50/9
Diaz [5] 1/23 32/1 34/3 74/20 74/21
did [29] 9/14 13/15 15/24 16/10 16/20
26/8 26/16 27/11 31/5 35/1 37/17 44/6
48/9 48/16 49/4 53/21 54/11 57/6
57/15 58/8 58/21 62/1 62/5 64/13
66/18 70/22 71/24 80/3 81/4
didn't [9] 5/5 17/10 24/8 28/24 31/16
45/24 63/3 70/21 82/1
died [2] 34/15 35/3
differ [1] 9/13
different [13] 9/8 11/25 12/5 16/8 19/12
19/14 29/12 29/13 30/8 30/9 40/22
54/2 63/11
differential [3] 44/1 44/21 76/6
differently [1] 54/21
difficult [2] 20/25 46/2
difficulties [2] 40/4 69/17
difficulty [2] 30/5 45/23
direct [2] 38/16 40/13
direction [3] 28/8 66/11 81/20
directly [4] 17/12 29/22 53/23 77/5
discomfort [1] 36/18
discovered [4] 24/1 48/5 59/16 75/21

<p>D</p> <p>discovering [1] 67/20</p> <p>discovery [2] 5/16 5/16</p> <p>discretion [1] 51/5</p> <p>discuss [2] 37/16 41/6</p> <p>discussing [1] 30/6</p> <p>discussions [2] 7/2 13/6</p> <p>disease [4] 29/21 29/21 39/6 48/5</p> <p>dismiss [1] 79/21</p> <p>dispute [3] 27/24 54/15 65/17</p> <p>disputed [1] 62/25</p> <p>dissatisfied [1] 9/15</p> <p>distribute [2] 4/6 31/21</p> <p>distribution [3] 19/16 31/19 54/7</p> <p>distributors [2] 3/21 6/1</p> <p>district [6] 1/1 1/2 1/9 17/5 84/3 84/3</p> <p>divided [1] 57/7</p> <p>divorced [2] 46/24 73/20</p> <p>do [53] 5/1 6/7 11/23 13/1 15/12 15/14 16/4 16/24 17/2 25/1 25/13 30/22 32/7 37/15 40/21 41/10 45/23 46/10 47/3 47/7 49/3 49/12 49/13 49/24 51/1 53/14 53/19 54/2 55/17 55/24 58/21 58/24 58/25 60/21 61/21 62/2 62/17 62/21 63/1 63/8 64/5 64/8 64/16 68/16 70/12 71/3 74/16 77/14 78/22 81/13 82/18 82/21 83/17</p> <p>doctor [19] 18/13 23/8 24/8 24/15 25/17 27/11 27/18 28/13 28/19 28/19 28/20 29/5 31/11 32/23 35/21 42/9 46/18 46/25 49/18</p> <p>doctor's [1] 27/14</p> <p>doctors [6] 27/22 28/2 29/5 43/14 44/19 45/21</p> <p>document [17] 45/17 57/3 57/17 65/15 65/17 67/1 73/13 77/16 77/19 77/20 77/21 77/22 77/22 78/3 78/5 78/6 78/15</p> <p>documentary [1] 9/6</p> <p>documentation [15] 32/15 33/15 35/2 35/9 36/6 46/8 54/13 57/16 57/17 63/21 65/11 66/25 69/7 78/1 80/16</p> <p>documented [1] 48/25</p> <p>documenting [1] 32/19</p> <p>documents [13] 7/22 7/23 8/13 9/8 9/22 33/13 47/5 73/12 74/7 78/2 78/9 78/10 81/18</p> <p>Doering [2] 74/19 81/23</p> <p>does [5] 20/7 33/18 33/19 33/21 40/21</p> <p>doesn't [9] 5/22 6/21 8/11 19/20 36/14 46/4 46/5 54/10 72/20</p> <p>doing [3] 12/22 17/14 45/5</p> <p>dollars [3] 36/1 53/14 53/22</p> <p>Domenico [2] 1/24 82/8</p> <p>Don [1] 69/1</p> <p>don't [29] 5/3 17/1 17/2 20/2 24/23 27/9 28/14 30/16 32/12 37/15 38/5 39/1 43/19 48/11 49/12 49/22 50/1 52/25 53/4 54/14 58/25 64/6 64/14 66/2 71/6 73/6 78/12 81/9 83/9</p> <p>Donald [1] 1/21</p> <p>done [19] 6/8 6/14 6/24 7/1 7/12 18/3 19/1 19/1 20/6 26/3 45/2 47/11 50/9 52/11 56/14 58/19 66/21 72/17 82/12</p> <p>Donohoe [8] 18/13 20/2 20/16 20/22 22/6 24/12 24/24 25/14</p> <p>doorknobs [1] 49/8</p> <p>Doppler [1] 24/4</p> <p>dose [1] 39/15</p>	<p>dose-response [1] 39/15</p> <p>double [9] 70/37 74/96</p> <p>doubt [2] 30/2 54/19</p> <p>dovetail [1] 50/13</p> <p>down [7] 48/17 54/11 54/11 54/19 56/15 58/6 60/16</p> <p>downspouts [1] 4/21</p> <p>Doyle [4] 2/6 84/2 84/9 84/9</p> <p>Dr [2] 22/18 22/22</p> <p>Dr. [10] 22/6 22/9 23/6 23/17 24/19 25/14 32/23 33/18 52/8 52/16</p> <p>Dr. Benefield [1] 23/17</p> <p>Dr. Daniel [1] 24/19</p> <p>Dr. Dennis [3] 23/6 52/8 52/16</p> <p>Dr. Donohoe [2] 22/6 25/14</p> <p>Dr. Frank [1] 22/9</p> <p>Dr. Kaye [1] 32/23</p> <p>Dr. Kilburn [1] 33/18</p> <p>draft [1] 9/11</p> <p>dramatically [1] 16/7</p> <p>drapes [1] 65/20</p> <p>drastically [2] 23/15 35/23</p> <p>Drive [1] 69/12</p> <p>drop [1] 53/18</p> <p>drug [3] 29/25 30/4 30/4</p> <p>dry [1] 23/12</p> <p>drywall [86]</p> <p>ducts [1] 23/10</p> <p>due [10] 20/4 22/17 33/4 33/7 34/24 35/21 44/20 53/16 59/18 82/21</p> <p>Duplessis [9] 67/14 68/25 69/2 69/3 69/3 69/8 69/11 69/19 70/10</p> <p>during [6] 16/18 19/21 75/20 77/8 78/14 79/12</p> <p>Durkee [6] 1/11 15/10 38/15 39/23 39/25 52/24</p> <p>dysfunction [1] 33/4</p> <hr/> <p>E</p> <p>each [7] 9/7 20/13 25/3 25/13 44/15 60/22 64/9</p> <p>earlier [3] 45/1 69/2 74/3</p> <p>early [1] 38/21</p> <p>earn [1] 59/12</p> <p>earning [1] 74/5</p> <p>easier [1] 27/3</p> <p>East [1] 4/18</p> <p>EASTERN [4] 1/2 3/13 5/11 84/3</p> <p>echo [1] 52/9</p> <p>economic [3] 53/19 54/3 77/2</p> <p>economist [1] 53/20</p> <p>educator [1] 35/5</p> <p>effect [4] 46/23 46/24 54/9 67/25</p> <p>effects [2] 16/6 25/6</p> <p>effort [2] 59/20 81/2</p> <p>efforts [1] 59/20</p> <p>eggs [2] 5/7 71/20</p> <p>either [5] 12/8 12/12 15/5 64/14 76/11</p> <p>ELDON [1] 1/8</p> <p>electricity [1] 70/4</p> <p>element [5] 4/11 6/2 27/11 27/13 41/5</p> <p>eligibility [1] 12/4</p> <p>eligible [12] 9/4 9/12 11/25 12/8 39/8 40/23 41/3 59/22 60/1 61/9 63/4 63/6</p> <p>eliminate [1] 18/11</p> <p>Elouise [2] 34/5 34/7</p> <p>else [5] 17/15 17/22 30/10 46/16 82/4</p> <p>elsewhere [1] 3/22</p> <p>Elvin [1] 46/12</p> <p>emergency [3] 25/17 34/22 52/19</p>	<p>emitted [1] 22/20</p> <p>Emmanuel [9] 3/28 3/11 102/2</p> <p>emotional [1] 76/18</p> <p>emphasize [1] 12/16</p> <p>emphasized [1] 78/22</p> <p>empty [1] 73/18</p> <p>enable [1] 14/25</p> <p>encephalopathy [1] 33/3</p> <p>encounter [1] 35/16</p> <p>end [6] 14/2 14/3 18/20 42/1 80/23 82/23</p> <p>ended [2] 69/18 73/20</p> <p>ends [1] 50/21</p> <p>enjoyment [1] 76/17</p> <p>enlarged [1] 7/3</p> <p>enough [2] 6/21 16/9</p> <p>ensure [1] 9/5</p> <p>entities [3] 4/3 66/3 66/4</p> <p>entitled [8] 43/5 55/18 60/10 61/12 61/18 65/9 66/7 84/6</p> <p>entity [3] 4/1 4/2 4/4</p> <p>entry [5] 57/4 57/18 65/15 65/17 67/1</p> <p>environment [1] 18/24</p> <p>environmental [2] 24/21 35/6</p> <p>environments [2] 18/7 25/8</p> <p>envy [1] 30/16</p> <p>EPA [1] 35/11</p> <p>epidemiology [2] 39/14 45/3</p> <p>equate [1] 68/14</p> <p>equated [1] 68/3</p> <p>equipment [2] 4/7 4/7</p> <p>equitable [2] 56/24 70/8</p> <p>equitably [1] 56/19</p> <p>equities [1] 56/23</p> <p>equity [9] 61/16 64/9 64/11 66/17 72/9 73/5 73/8 74/4 83/2</p> <p>Ervin [1] 58/18</p> <p>especially [2] 49/14 56/21</p> <p>Esq [15] 1/11 1/12 1/15 1/16 1/17 1/18 1/19 1/20 1/21 1/22 1/23 2/2 2/3 2/4 2/5</p> <p>essentially [1] 56/15</p> <p>established [4] 5/19 39/19 44/25 75/24</p> <p>establishes [1] 48/14</p> <p>establishing [1] 26/5</p> <p>evaluate [3] 30/19 31/3 31/18</p> <p>evaluating [1] 8/3</p> <p>evaluation [1] 35/18</p> <p>Evelyn [1] 37/24</p> <p>even [13] 5/7 24/7 24/7 27/14 27/14 35/1 40/4 41/6 60/15 63/4 70/21 77/12 82/23</p> <p>event [2] 5/10 6/24</p> <p>eventual [1] 76/7</p> <p>eventually [6] 6/12 8/6 38/23 54/6 72/1 76/1</p> <p>ever [4] 21/17 42/20 48/8 48/17</p> <p>every [6] 26/25 28/10 28/12 46/25 49/8 60/14</p> <p>everybody [3] 17/15 19/20 45/15</p> <p>everybody's [2] 17/17 64/19</p> <p>everyone [5] 14/25 28/22 46/16 72/17 73/14</p> <p>everything [5] 20/8 25/12 26/17 61/12 62/2</p> <p>eviction [1] 72/1</p> <p>evidence [25] 6/12 6/14 8/4 11/15 14/13 15/15 15/19 15/23 15/24 17/11 28/15 33/1 38/16 41/4 44/16 44/23 46/11 53/12 54/1 54/17 61/12 62/9</p>
---	--	---

<p>E</p> <p>evidence... [3] 76/12 77/15 81/7</p> <p>evidence-based [2] 6/14 11/15</p> <p>evidentiary [1] 10/18</p> <p>exacerbate [1] 40/12</p> <p>exactly [3] 20/21 64/7 71/21</p> <p>example [3] 30/24 48/10 51/19</p> <p>exceeded [3] 33/17 43/8 45/7</p> <p>excellent [2] 34/16 35/5</p> <p>excerpts [1] 21/6</p> <p>exclude [2] 44/21 74/4</p> <p>excluded [8] 25/4 41/5 51/11 51/15 51/16 51/23 52/20 56/18</p> <p>excludes [1] 51/14</p> <p>exclusion [1] 78/13</p> <p>exclusions [2] 51/8 76/15</p> <p>Excuse [1] 13/1</p> <p>excused [1] 54/23</p> <p>executed [1] 53/15</p> <p>execution [1] 50/11</p> <p>exhibit [3] 24/16 57/19 58/4</p> <p>exhibit behind [1] 57/19</p> <p>exhibited [1] 79/19</p> <p>exhibits [1] 82/17</p> <p>existent [1] 79/15</p> <p>expectancy [1] 35/8</p> <p>expedited [1] 17/15</p> <p>expeditious [1] 64/17</p> <p>expeditiously [1] 19/2</p> <p>expended [1] 81/2</p> <p>expense [2] 10/20 71/16</p> <p>expenses [14] 9/1 31/5 33/17 44/9 44/25 59/15 65/10 67/13 70/3 70/4 70/20 72/21 73/7 74/2</p> <p>experienced [4] 23/22 50/1 69/16 73/16</p> <p>experiencing [2] 69/14 71/19</p> <p>experiment [1] 45/18</p> <p>experimented [1] 30/1</p> <p>expert [3] 32/17 33/18 39/11</p> <p>experts [4] 21/22 31/13 37/4 50/4</p> <p>explain [2] 32/13 51/2</p> <p>explanation [1] 55/14</p> <p>explicit [1] 76/13</p> <p>expose [1] 45/3</p> <p>exposed [9] 5/2 7/23 18/14 22/22 29/11 40/20 43/5 45/25 48/1</p> <p>exposure [35] 7/16 7/17 17/12 18/7 18/11 18/17 19/11 22/3 22/14 22/19 23/3 23/19 24/22 25/7 27/13 29/21 30/7 30/7 30/8 31/6 33/4 34/23 35/6 35/11 35/21 35/25 36/4 36/15 36/25 40/11 42/11 42/16 43/21 46/20 47/24</p> <p>expression [1] 17/9</p> <p>extended [5] 30/8 34/12 34/19 35/17 36/6</p> <p>extension [1] 40/5</p> <p>extensive [2] 36/2 37/10</p> <p>extensively [2] 35/12 35/14</p> <p>extent [3] 7/14 29/18 46/11</p> <p>eye [2] 21/19 24/2</p> <p>eyeballs [1] 23/7</p> <p>eyes [5] 23/12 23/13 24/2 40/4 43/23</p>	<p>facts [2] 33/14 69/10</p> <p>failed [1] 23/2</p> <p>fair [4] 4/12 31/22 60/9 73/23</p> <p>fairly [5] 31/17 48/13 79/8 80/24 81/15</p> <p>fairness [1] 33/14</p> <p>fall [1] 77/7</p> <p>FALLON [1] 1/8</p> <p>falls [1] 54/2</p> <p>familiar [2] 21/9 38/22</p> <p>family [5] 16/10 55/5 55/8 71/17 71/25</p> <p>fantastic [1] 72/17</p> <p>far [4] 30/18 31/3 54/18 73/3</p> <p>Farina [3] 79/10 79/16 81/5</p> <p>father [2] 16/9 20/19</p> <p>FCRR [3] 2/6 84/2 84/9</p> <p>federal [5] 15/22 21/11 27/25 28/5 32/18</p> <p>fee [1] 33/18</p> <p>feel [3] 36/21 38/24 54/20</p> <p>feels [1] 21/23</p> <p>fees [5] 14/19 14/20 36/1 55/16 76/21</p> <p>fell [1] 53/16</p> <p>felt [3] 12/15 31/16 39/8</p> <p>Ferguson [5] 65/1 65/3 65/6 65/8 66/2</p> <p>ferreting [1] 29/18</p> <p>few [9] 12/7 13/3 13/15 19/17 19/17 26/23 31/18 38/10 82/25</p> <p>field [3] 27/20 27/24 37/4</p> <p>figure [4] 31/23 70/22 71/1 71/21</p> <p>figures [1] 64/7</p> <p>figuring [1] 30/18</p> <p>filed [16] 5/10 38/11 58/9 58/14 58/22 59/24 60/24 62/22 63/15 63/18 65/11 65/16 65/23 66/10 67/7 80/19</p> <p>filing [4] 10/13 65/13 65/19 66/4</p> <p>filings [2] 56/6 56/8</p> <p>filled [1] 43/15</p> <p>final [11] 8/15 10/8 10/22 10/25 11/5 14/6 14/16 14/23 14/25 15/17 72/11</p> <p>Finally [2] 57/13 71/10</p> <p>finance [1] 60/15</p> <p>financial [1] 42/25</p> <p>financially [2] 42/2 62/7</p> <p>find [1] 77/11</p> <p>finding [1] 65/9</p> <p>fine [2] 31/24 64/22</p> <p>finished [1] 59/12</p> <p>firm [3] 46/14 47/8 67/19</p> <p>first [15] 4/4 12/23 18/2 18/12 19/8 20/24 21/25 27/13 38/4 39/19 52/7 65/8 74/22 78/4 82/12</p> <p>fishing [3] 46/4 46/5 46/6</p> <p>fit [1] 78/24</p> <p>five [6] 12/24 13/10 38/21 58/16 69/15 69/25</p> <p>fix [2] 16/9 33/11</p> <p>Florida [7] 3/16 16/17 55/9 75/13 75/16 79/11 79/21</p> <p>flow [1] 51/3</p> <p>focus [2] 26/20 26/23</p> <p>folded [1] 28/7</p> <p>folks [5] 27/17 39/3 39/7 43/4 82/4</p> <p>follow [6] 17/4 28/6 28/9 34/19 35/19 64/16</p> <p>follow-up [1] 64/16</p> <p>followed [1] 48/8</p> <p>following [1] 79/3</p> <p>foot [3] 60/21 60/22 60/23</p> <p>footage [1] 12/4</p> <p>forced [1] 73/10</p>	<p>Forces [1] 18/15</p> <p>foreclosed [3] 60/12 60/19 66/23</p> <p>foreclosure [13] 9/1 13/25 14/10 53/8 59/21 59/22 60/8 61/2 62/17 63/12 63/23 64/25 83/11</p> <p>foreclosure/short [5] 9/1 63/12 63/23 64/25 83/11</p> <p>foreclosures [1] 61/16</p> <p>foregoing [1] 84/4</p> <p>form [4] 16/19 60/25 60/25 61/4</p> <p>Fort [1] 38/1</p> <p>Fort Lauderdale [1] 38/1</p> <p>forth [8] 9/6 9/14 9/20 25/3 25/18 49/6 49/7 73/12</p> <p>fortunately [3] 7/14 24/1 39/1</p> <p>forward [6] 26/20 26/24 34/9 38/14 40/14 44/8</p> <p>foul [1] 24/23</p> <p>found [2] 33/5 57/17</p> <p>four [8] 38/21 50/4 55/9 55/10 55/10 58/15 69/12 76/7</p> <p>fourth [2] 55/11 78/6</p> <p>frame [2] 17/18 83/16</p> <p>framed [1] 29/2</p> <p>framework [1] 64/2</p> <p>Frank [1] 22/9</p> <p>frankly [4] 40/19 40/22 40/23 56/22</p> <p>Fredericks [10] 1/14 34/5 34/6 34/7 34/8 36/11 37/8 37/23 81/25 82/3</p> <p>front [1] 64/7</p> <p>full [2] 11/19 12/2</p> <p>fully [1] 82/13</p> <p>function [2] 41/20 52/18</p> <p>fund [17] 10/10 11/10 11/12 12/19 13/20 17/16 31/20 59/25 59/25 61/8 62/22 62/24 75/20 78/25 79/23 80/1 80/4</p> <p>funds [5] 11/4 12/1 12/2 12/18 60/2</p> <p>further [10] 10/18 10/22 10/25 21/23 24/25 39/1 40/20 47/1 49/2 50/14</p> <p>future [1] 33/19</p>
<p>F</p> <p>faced [1] 36/13</p> <p>facilities [2] 4/8 4/9</p> <p>fact [12] 13/19 14/7 24/10 25/15 27/21 28/16 41/24 42/12 48/25 49/6 54/17 55/15</p>		<p>G</p> <p>Gables [1] 75/15</p> <p>gaining [2] 72/9 73/8</p> <p>garnished [2] 60/14 62/1</p> <p>Gary [3] 1/14 34/6 81/25</p> <p>gas [2] 19/6 31/1</p> <p>gasses [8] 22/4 22/6 23/4 24/9 25/7 31/13 35/12 37/1</p> <p>gassing [2] 48/23 49/9</p> <p>gate [1] 21/12</p> <p>gate-keeping [1] 21/12</p> <p>gave [8] 6/7 28/8 29/9 42/13 43/25 56/3 74/7 80/22</p> <p>general [11] 19/15 21/2 21/7 21/19 24/15 24/20 25/2 28/5 44/3 49/4 68/7</p> <p>genes [1] 19/14</p> <p>gentlemen [1] 3/4</p> <p>German [1] 3/24</p> <p>German-based [1] 3/24</p> <p>Germany [1] 4/5</p> <p>get [24] 13/21 16/10 16/24 19/9 20/10 21/17 23/16 29/2 43/21 44/17 58/8 63/1 63/22 64/16 64/19 70/9 72/1 73/6 74/5 74/14 81/2 81/19 83/6 83/13</p> <p>gets [3] 17/16 49/17 61/18</p> <p>getting [4] 18/23 18/24 61/23 73/20</p> <p>give [11] 8/17 8/20 14/12 27/1 29/7 36/8 36/9 38/19 45/14 67/9 81/6</p>

<p>G</p> <p>given [5] 24/20 42/25 45/1 58/1 80/17</p> <p>giving [1] 8/3</p> <p>global [5] 12/1 12/9 12/13 13/10 13/12</p> <p>globally [1] 13/18</p> <p>go [23] 5/5 8/5 13/11 14/6 20/2 21/24 23/14 24/12 25/11 34/9 38/8 39/1 39/23 41/15 45/2 53/1 53/7 55/7 69/3 72/1 73/2 81/2 82/10</p> <p>goes [3] 31/3 46/25 53/10</p> <p>going [23] 14/15 17/14 22/24 24/12 26/22 29/2 38/23 40/9 43/15 46/3 46/4 46/5 47/4 48/17 54/6 58/15 61/25 65/7 68/4 72/9 73/1 74/5 75/11</p> <p>Gomez [4] 75/11 75/11 77/21 81/9</p> <p>gone [5] 14/1 29/22 29/23 30/1 61/2</p> <p>good [10] 3/4 8/18 17/4 32/3 37/25 47/15 47/16 74/20 74/22 82/20</p> <p>gook [1] 23/12</p> <p>got [5] 4/11 6/24 19/5 50/12 58/14</p> <p>government [1] 35/10</p> <p>grant [2] 47/6 62/10</p> <p>gravely [1] 38/13</p> <p>great [4] 26/3 26/8 42/21 46/10</p> <p>Green [1] 18/15</p> <p>Grenoune [3] 67/14 71/10 71/12</p> <p>ground [1] 5/4</p> <p>group [2] 50/22 59/5</p> <p>groups [1] 3/23</p> <p>guidance [1] 56/4</p> <p>guidelines [1] 72/16</p> <p>Gulf [2] 3/12 5/11</p> <p>Gulfport [1] 20/19</p> <p>gypsum [3] 4/12 4/14 4/15</p>	<p>65/22 66/23 69/9 72/10 77/19 77/20 77/22 77/23 77/24 77/25 77/26</p> <p>hasn't [3] 36/24 45/3 45/4</p> <p>have [193]</p> <p>haven't [2] 42/7 50/2</p> <p>having [12] 21/13 36/20 40/25 41/3 41/4 44/6 48/3 48/5 51/24 59/19 79/23 82/21</p> <p>haze [2] 23/25 24/3</p> <p>HB [1] 2/7</p> <p>HB-275 [1] 2/7</p> <p>he [103]</p> <p>headaches [5] 33/7 36/2 40/4 43/23 71/19</p> <p>healing [2] 23/23 24/24</p> <p>health [12] 16/7 22/15 22/19 22/23 34/16 34/17 35/5 35/15 47/2 48/16 67/25 73/19</p> <p>hear [9] 26/11 26/22 39/4 45/9 52/25 64/13 81/10 81/24 82/1</p> <p>heard [6] 13/16 31/18 43/3 46/16 53/5 63/10</p> <p>hearing [3] 1/8 33/24 71/15</p> <p>heart [2] 29/25 30/3</p> <p>held [1] 45/5</p> <p>Hello [2] 15/6 32/4</p> <p>help [1] 46/9</p> <p>helpful [5] 26/5 37/11 47/8 47/9 58/20</p> <p>her [37] 15/16 15/17 16/7 16/13 20/22 24/15 24/24 34/17 34/25 35/1 35/8 35/15 35/16 35/16 35/22 40/9 40/10 40/11 40/12 42/3 42/11 42/12 42/14 42/15 42/15 44/4 44/11 44/23 48/16 50/2 53/7 53/8 54/7 54/14 54/18 65/16 66/7</p> <p>here [33] 3/5 8/8 8/20 9/19 10/23 11/9 12/11 12/20 12/25 13/12 14/2 16/17 18/13 18/14 18/20 20/18 20/25 21/15 21/16 32/10 38/14 41/18 50/19 56/12 59/6 60/9 69/2 71/6 74/2 74/24 75/12 76/3 81/2</p> <p>Here's [1] 65/14</p> <p>Hers [1] 24/14</p> <p>hesitate [2] 25/1 39/23</p> <p>high [1] 66/21</p> <p>high-tech [1] 66/21</p> <p>higher [1] 70/11</p> <p>highly [1] 39/12</p> <p>him [14] 16/19 16/20 20/5 20/22 22/8 25/16 47/1 62/7 62/10 67/9 69/4 75/13 81/11 81/19</p> <p>himself [1] 62/2</p> <p>his [79] 9/20 9/21 18/17 20/19 20/20 22/6 22/6 22/9 22/19 22/20 22/22 23/2 23/3 23/10 23/13 23/13 23/13 23/18 23/21 24/2 24/8 25/14 25/16 25/16 25/17 26/4 26/6 31/11 31/11 37/11 46/8 46/18 46/18 46/19 46/19 46/20 46/21 46/23 46/25 46/25 47/2 47/3 47/11 52/17 52/17 52/18 53/13 53/20 55/14 59/7 59/9 59/16 59/20 59/20 60/7 60/13 60/14 60/16 60/22 61/2 61/5 61/13 61/22 61/24 62/1 62/3 62/8 66/17 66/19 66/21 66/22 66/24 67/21 67/22 67/23 67/24 71/17 71/18 76/25</p> <p>history [9] 18/16 34/15 35/15 41/22 41/23 43/2 43/24 46/20 82/19</p> <p>Holder [2] 37/9 37/9</p> <p>Holleman [5] 20/17 20/18 22/24 23/10 23/20</p>	<p>Holleman's [1] 23/3</p> <p>home [55] 11/21 12/4 12/17 16/7 16/8 16/9 16/10 16/12 16/13 16/14 16/18 16/19 16/19 16/22 22/20 23/21 24/13 34/17 40/10 47/5 48/15 48/22 53/13 54/14 54/20 59/8 60/8 60/12 60/16 60/22 61/2 61/13 61/20 61/22 64/1 66/16 67/22 68/12 68/12 69/3 70/24 71/20 72/9 73/8 73/10 75/15 75/16 75/18 75/25 75/25 76/4 77/8 77/9 78/17 78/23</p> <p>homeowner [3] 64/9 64/11 75/21</p> <p>homeowners [1] 38/9</p> <p>homes [16] 3/11 6/18 6/22 6/24 11/13 11/14 11/16 11/23 18/10 26/6 38/20 38/23 52/2 56/1 56/9 66/10</p> <p>honest [1] 39/12</p> <p>honestly [1] 27/23</p> <p>Honor [100]</p> <p>Honor's [2] 26/14 79/9</p> <p>HONORABLE [2] 1/8 70/6</p> <p>hopefully [1] 83/6</p> <p>hospital [1] 34/21</p> <p>hospitalization [1] 22/7</p> <p>hospitalizations [1] 35/25</p> <p>hospitalized [3] 16/1 35/17 35/21</p> <p>house [29] 6/15 19/21 22/25 23/15 33/6 47/1 48/4 48/6 49/7 49/8 49/16 59/21 59/22 62/5 62/5 64/9 64/11 66/17 66/23 67/21 68/1 68/5 68/7 68/9 69/20 69/22 69/25 70/2 78/14</p> <p>household [1] 35/22</p> <p>housing [3] 3/16 73/12 73/17</p> <p>Houston [1] 59/13</p> <p>how [7] 6/7 8/20 17/1 30/18 31/3 48/19 67/5</p> <p>Howard [6] 37/24 39/21 40/8 41/9 43/13 44/15</p> <p>Howard's [1] 38/6</p> <p>however [3] 8/11 16/24 81/17</p> <p>huge [1] 49/22</p> <p>Hugh [3] 1/12 17/25 52/8</p> <p>human [3] 19/23 31/14 48/10</p> <p>humidity [1] 4/17</p> <p>hundreds [1] 38/9</p> <p>hurdle [2] 39/19 50/2</p> <p>Hurricane [1] 59/8</p> <p>hurt [1] 67/24</p> <p>husband [1] 20/23</p> <p>HVAC [6] 57/13 57/18 57/20 57/24 58/2 58/12</p> <p>hydrogen [1] 48/11</p>
<p>H</p> <p>had [56] 3/16 3/21 3/24 5/17 6/14 9/5 11/22 13/21 14/8 16/11 17/9 23/1 24/14 27/12 28/9 38/12 39/17 40/25 42/2 44/13 44/22 45/21 46/24 48/3 48/4 49/15 49/15 49/15 51/21 53/4 53/13 55/8 55/17 56/12 58/12 58/23 59/13 60/5 61/2 67/3 67/22 69/3 69/13 69/22 70/3 70/22 71/23 72/1 73/16 75/17 77/23 78/17 79/16 80/16 82/18 82/21</p> <p>half [2] 36/1 69/19</p> <p>Hamilton [2] 1/20 59/5</p> <p>hand [1] 53/22</p> <p>handle [4] 18/4 18/23 19/5 65/8</p> <p>handled [1] 20/7</p> <p>handling [1] 19/8</p> <p>happened [2] 5/5 62/4</p> <p>happens [1] 70/19</p> <p>happy [5] 39/24 41/13 58/24 68/20 71/1</p> <p>hard [4] 4/14 19/4 47/10 77/12</p> <p>harder [1] 27/5</p> <p>hardly [1] 49/17</p> <p>has [78] 6/2 8/21 14/11 14/17 15/17 15/20 15/21 17/17 18/3 18/16 20/6 20/7 22/22 23/8 23/12 23/14 24/3 24/3 24/4 26/3 26/4 27/20 29/22 29/23 31/12 32/15 35/6 35/8 35/24 36/1 36/3 36/16 39/6 39/10 39/13 39/21 41/2 41/18 41/19 42/2 43/3 43/8 43/9 43/14 43/22 44/3 44/8 45/14 45/15 45/16 46/24 47/8 47/9 47/11 47/19 48/8 48/16 49/16 50/1 54/18 56/23 57/14 60/2 60/6 60/22 61/24 62/7 65/18</p>	<p>here [33] 3/5 8/8 8/20 9/19 10/23 11/9 12/11 12/20 12/25 13/12 14/2 16/17 18/13 18/14 18/20 20/18 20/25 21/15 21/16 32/10 38/14 41/18 50/19 56/12 59/6 60/9 69/2 71/6 74/2 74/24 75/12 76/3 81/2</p> <p>Here's [1] 65/14</p> <p>Hers [1] 24/14</p> <p>hesitate [2] 25/1 39/23</p> <p>high [1] 66/21</p> <p>high-tech [1] 66/21</p> <p>higher [1] 70/11</p> <p>highly [1] 39/12</p> <p>him [14] 16/19 16/20 20/5 20/22 22/8 25/16 47/1 62/7 62/10 67/9 69/4 75/13 81/11 81/19</p> <p>himself [1] 62/2</p> <p>his [79] 9/20 9/21 18/17 20/19 20/20 22/6 22/6 22/9 22/19 22/20 22/22 23/2 23/3 23/10 23/13 23/13 23/13 23/18 23/21 24/2 24/8 25/14 25/16 25/16 25/17 26/4 26/6 31/11 31/11 37/11 46/8 46/18 46/18 46/19 46/19 46/20 46/21 46/23 46/25 46/25 47/2 47/3 47/11 52/17 52/17 52/18 53/13 53/20 55/14 59/7 59/9 59/16 59/20 59/20 60/7 60/13 60/14 60/16 60/22 61/2 61/5 61/13 61/22 61/24 62/1 62/3 62/8 66/17 66/19 66/21 66/22 66/24 67/21 67/22 67/23 67/24 71/17 71/18 76/25</p> <p>history [9] 18/16 34/15 35/15 41/22 41/23 43/2 43/24 46/20 82/19</p> <p>Holder [2] 37/9 37/9</p> <p>Holleman [5] 20/17 20/18 22/24 23/10 23/20</p>	<p>I</p> <p>I'll [2] 71/14 83/14</p> <p>I'm [40] 8/12 8/19 17/14 24/11 25/11 25/12 26/16 28/22 31/6 31/22 32/9 33/25 36/13 36/17 36/20 37/14 39/22 41/13 46/3 46/4 46/5 46/9 46/10 50/7 59/5 59/5 65/7 68/20 71/1 71/12 72/18 73/1 74/25 74/25 75/1 78/21 82/7 82/11 82/11 83/6</p> <p>ID [5] 73/13 77/16 78/3 78/6 78/15</p> <p>idea [2] 6/8 31/17</p> <p>identification [1] 77/9</p> <p>if [51] 5/22 10/14 14/5 20/15 21/23 24/25 27/8 27/14 27/18 31/8 31/10 32/13 36/7 37/3 37/15 38/4 38/7 39/12 39/25 42/18 42/18 43/6 46/8 49/11</p>

I
 if... [27] 49/23 50/22 52/25 53/4 55/5
 56/4 58/5 60/16 60/21 63/4 63/15
 63/20 64/14 64/14 68/22 70/21 71/3
 72/22 72/23 73/5 74/13 74/25 80/23
 81/9 81/10 82/17 83/4
 illness [5] 25/16 33/16 34/13 34/25
 37/5
 impact [2] 42/2 42/25
 impacts [1] 40/6
 important [4] 20/1 21/4 42/4 56/20
 importantly [2] 41/22 44/16
 impossible [1] 19/9
 improved [3] 24/2 24/3 34/18
 improvement [1] 65/10
 improvements [2] 65/20 65/25
 in [360]
 inability [5] 52/17 60/7 60/7 77/3 77/5
 inclement [1] 75/12
 include [3] 33/18 33/19 33/21
 included [3] 7/10 57/10 57/25
 includes [1] 77/10
 including [2] 28/11 51/8
 income [6] 59/12 59/15 59/18 62/6 74/9
 74/10
 inconsistent [1] 41/16
 increase [1] 50/17
 increased [1] 35/23
 incur [1] 31/5
 incurred [2] 51/20 73/14
 independent [1] 4/3
 indicated [5] 17/8 18/17 38/12 38/12
 41/23
 indicating [1] 44/19
 indications [1] 29/24
 individual [5] 8/4 17/11 18/16 18/20
 20/9
 individuals [11] 7/25 8/7 14/8 14/14
 19/10 19/11 19/12 25/8 25/13 30/19
 46/9
 individuals' [1] 25/21
 indoor [1] 48/22
 ineffective [2] 5/3 6/13
 InEx [4] 12/1 12/9 12/13 13/10
 inexplicable [1] 22/19
 information [5] 35/13 36/9 58/14 64/16
 65/12
 informed [1] 61/4
 ingestion [1] 30/3
 inhumane [1] 45/2
 initial [2] 48/2 58/13
 initially [4] 6/10 13/6 29/9 55/11
 injuries [13] 3/9 5/9 7/11 7/12 7/19 7/20
 8/3 17/10 17/12 29/18 32/25 79/8 82/1
 injury [26] 7/15 7/16 8/25 12/23 13/25
 14/9 15/17 16/3 18/21 19/19 25/9
 25/15 26/18 26/20 26/22 27/7 27/12
 29/19 32/11 32/19 38/11 43/7 50/21
 76/18 76/19 76/20
 injustice [1] 21/14
 inquiry [1] 21/23
 inspected [1] 63/3
 inspection [3] 53/14 53/16 75/20
 installed [1] 65/21
 installers [1] 6/1
 instance [1] 72/18
 instances [3] 19/18 25/22 30/17
 instead [2] 12/3 69/18
 instrumental [1] 26/7

insurance [1] 78/13
 integral [1] 13/3
 intentions [1] 82/20
 interest [17] 45/5 51/1 51/20 72/8 73/3
 73/9 73/11 74/6 76/9 77/1 77/11 77/13
 77/17 77/25 78/9 78/21 81/1
 interesting [1] 56/16
 interfered [1] 25/16
 interfering [1] 21/12
 interpreted [1] 31/10
 interrelated [1] 13/10
 into [43] 4/10 7/2 7/4 7/19 10/6 12/16
 13/11 14/23 16/12 16/24 21/24 24/12
 25/11 28/7 29/23 29/23 30/1 30/15
 35/2 36/22 37/12 38/23 39/23 43/16
 48/4 48/10 48/11 50/17 51/17 59/21
 59/22 61/2 61/20 68/5 69/22 70/18
 70/24 71/25 72/4 72/22 74/3 77/7
 77/15
 intolerance [1] 33/3
 introduce [2] 18/12 20/14
 introduction [1] 38/5
 investment [1] 76/22
 Investments [1] 52/3
 invitation [2] 79/9 79/10
 involved [4] 5/12 22/3 25/6 52/15
 involves [1] 27/1
 involving [1] 20/11
 irritant [1] 31/15
 irritated [2] 30/11 40/4
 irritation [5] 22/7 23/22 24/2 29/10
 43/23
 is [243]
 isn't [1] 29/3
 issue [18] 9/11 10/16 11/7 12/6 21/3
 21/14 21/24 22/24 29/2 30/2 63/8
 63/14 65/8 66/1 66/14 66/25 70/20
 73/23
 issued [2] 10/1 40/19
 issues [14] 5/18 7/17 14/22 14/23 18/8
 18/24 20/11 21/20 22/23 31/9 56/5
 71/19 74/1 74/13
 it [158]
 it's [53] 4/12 6/3 6/21 13/9 18/5 20/1
 20/25 21/4 22/1 28/21 29/4 29/10
 29/19 29/22 35/7 36/15 36/17 37/18
 39/12 40/11 42/3 42/5 43/21 46/3
 49/22 51/15 51/16 51/16 51/18 52/14
 52/19 54/3 54/4 54/9 54/12 54/13 55/5
 56/19 58/19 60/21 62/25 63/6 64/3
 64/3 64/18 66/22 70/5 71/15 72/13
 73/13 74/22 75/16 78/12
 items [2] 13/24 51/14
 its [4] 4/1 10/19 14/11 80/14
 itself [1] 47/24

J
 J.E [1] 12/25
 Jackie [1] 15/7
 Jacqueline [2] 1/13 32/6
 Jacques [1] 47/18
 Jaesiel [1] 32/1
 Jake [12] 2/5 8/19 51/2 56/17 58/21
 63/8 68/16 70/12 73/25 74/14 81/13
 83/7
 Jena [1] 68/1
 Jena Street [1] 68/1
 Jill [1] 37/9
 job [6] 18/3 20/6 26/8 49/3 59/13 72/17
 Josephson [6] 41/11 43/12 44/5 44/11

44/13 44/22
 JUDGE [13] 9/25 38/3 38/9 41/12
 41/15 55/25 56/14 58/17 67/11 79/10
 79/16 81/5
 Judge Farina [1] 81/5
 Julian [1] 52/3
 junk [2] 21/12 21/13
 jurist [1] 79/16
 jurors [1] 21/13
 just [40] 13/3 15/1 18/12 18/17 19/12
 19/14 19/17 20/2 21/2 21/10 26/20
 26/23 28/24 29/7 29/17 31/14 37/18
 38/25 46/17 47/3 47/7 51/15 52/9
 52/21 53/25 54/3 54/10 58/22 58/24
 61/17 62/8 63/11 65/7 65/13 66/9
 66/10 72/18 73/20 73/22 83/2
 justice [3] 21/13 43/7 79/18
 justification [2] 56/24 70/8
 justified [1] 56/19

K
 Kasie [2] 1/18 55/4
 Kate [1] 24/14
 Kathleen [1] 52/1
 Katrina [4] 3/15 59/8 61/23 62/4
 Kaye [1] 32/23
 keep [1] 46/17
 keeping [2] 21/12 82/20
 Kilburn [2] 32/23 33/18
 kind [6] 9/8 28/16 29/8 29/10 46/17
 67/25
 kinds [2] 24/17 64/7
 kitchen [1] 65/21
 Knauf [17] 3/25 3/25 4/1 4/4 4/4 6/5
 6/17 9/7 10/6 10/11 10/14 13/5 13/8
 22/20 51/4 62/20 68/11
 knew [3] 5/21 15/25 40/9
 know [28] 3/8 17/1 19/11 20/5 20/25
 21/9 24/10 26/7 27/17 31/15 31/15
 36/21 37/15 45/6 45/12 47/10 47/19
 52/25 53/4 53/24 54/6 56/7 64/14
 70/12 71/15 81/9 82/1 83/2
 knowing [2] 23/1 23/21
 knowledge [4] 39/2 46/19 59/9 61/20
 known [3] 3/25 48/13 79/17
 knows [2] 28/22 72/18
 KPT [12] 11/16 11/19 11/22 11/24
 22/20 22/21 61/1 63/3 63/5 75/22 77/4
 77/9

L
 L-A-M [1] 47/22
 lack [1] 43/2
 lacking [1] 30/6
 ladder [1] 14/15
 ladies [1] 3/4
 laid [3] 14/12 14/17 15/20
 LAM [1] 47/22
 Lambert [9] 1/12 17/25 26/2 26/14 29/1
 30/12 38/12 49/3 52/8
 Lambert's [1] 26/21
 language [2] 76/13 79/15
 large [4] 4/13 4/16 36/17 56/11
 largely [1] 12/7
 larger [1] 65/15
 Lasik [4] 23/1 23/3 23/7 24/7
 last [7] 8/8 11/6 12/7 14/15 29/4 37/13
 75/5
 late [2] 51/20 71/17
 latent [2] 47/25 49/14

<p>L later [3] 76/7 80/15 80/19 Lauderdale [1] 38/1 Laurel [1] 41/11 law [5] 15/22 46/14 59/5 62/15 67/18 lawyer [1] 20/18 lawyers [1] 27/18 lays [1] 60/20 lead [1] 21/14 leadership [1] 79/6 leap [2] 49/13 49/22 leased [1] 69/23 least [9] 17/13 39/19 40/25 41/4 42/5 45/7 50/2 73/8 83/10 led [3] 8/21 22/7 22/8 left [3] 22/16 31/18 74/18 legal [1] 76/21 legalities [1] 79/7 legion [1] 29/20 Leonard [2] 2/2 13/2 lesions [2] 33/8 33/11 less [2] 14/5 41/2 let [5] 3/6 21/2 26/2 26/11 56/6 let's [6] 50/22 63/18 66/8 68/22 71/3 71/7 letter [2] 40/10 46/18 level [4] 8/15 38/19 39/16 41/6 levels [1] 8/14 liability [3] 1/4 5/19 6/4 liable [4] 5/21 5/24 6/5 6/6 liaison [1] 13/3 life [5] 33/10 35/7 35/8 36/3 62/8 like [31] 8/25 16/24 18/12 18/17 23/6 26/19 31/10 32/13 38/4 39/22 42/25 43/13 43/20 46/3 46/18 49/25 51/11 51/11 52/14 55/5 56/2 56/21 57/1 58/5 59/8 62/9 63/14 63/25 66/9 68/18 70/15 likely [1] 70/23 limited [2] 30/8 57/21 line [2] 75/11 81/9 lines [2] 13/15 31/4 link [3] 38/16 39/20 40/18 links [1] 23/2 list [2] 83/10 83/10 listed [1] 65/20 listening [2] 27/17 28/23 literally [2] 18/10 31/8 literature [8] 27/19 29/20 30/6 36/14 36/23 39/15 42/13 45/17 litigation [6] 1/4 3/7 3/8 5/13 26/3 73/15 little [5] 46/2 54/2 61/5 65/15 82/12 lived [5] 16/7 22/25 24/12 33/6 49/16 lives [1] 22/24 living [10] 9/1 13/25 16/12 16/22 18/18 67/13 71/16 71/18 72/21 73/7 loan [11] 59/9 59/13 59/20 60/6 60/12 61/24 62/6 76/10 77/1 77/23 78/2 loans [1] 78/1 long [10] 24/13 40/5 40/8 40/9 47/20 52/14 56/18 56/19 71/15 73/9 longer [3] 52/18 59/17 61/1 look [17] 3/21 7/25 19/15 20/2 20/11 22/3 36/20 37/1 52/14 58/22 58/23 60/20 62/9 67/9 74/6 81/17 83/12 looked [3] 3/22 21/20 70/15 looking [1] 29/8 looks [1] 68/18 lose [1] 47/4</p>	<p>loss [25] 8/23 8/23 10/10 11/10 11/12 12/11 12/11 12/11 12/11 12/11 12/11 59/18 59/25 61/8 62/21 66/24 67/6 75/19 76/15 76/17 76/22 77/2 79/23 79/25 82/15 losses [7] 8/24 64/10 66/22 68/20 73/14 77/4 80/25 lost [33] 9/1 25/17 51/10 51/10 54/15 54/19 55/9 55/11 55/18 59/7 61/8 61/10 61/16 62/14 63/12 63/14 63/16 63/20 64/9 64/11 69/24 70/1 74/9 74/10 74/11 76/1 76/5 77/13 78/19 78/20 78/24 83/2 83/5 lot [13] 26/6 26/21 27/17 29/22 29/23 31/7 38/20 56/4 62/4 69/9 69/16 73/14 83/2 Loufty [1] 52/2 LOUISIANA [4] 1/2 2/7 24/14 84/4 low [1] 60/5 Luis [1] 32/1 lump [6] 60/20 62/23 63/1 63/4 63/6 63/11 lump-sum [5] 60/20 62/23 63/1 63/4 63/6 lunch [1] 64/15 lung [3] 22/5 38/24 41/20 lungs [4] 22/7 23/6 33/11 49/14 lymphangiomyomatosis [1] 47/21</p> <p>M</p> <p>ma'am [3] 32/5 55/7 59/3 made [21] 9/3 9/17 12/6 26/11 27/1 27/4 32/10 48/3 56/7 58/12 61/19 64/18 67/2 68/8 68/13 68/18 73/4 73/9 78/14 81/16 82/15 magnificent [1] 20/6 main [1] 56/25 make [20] 9/12 9/13 9/21 13/15 14/18 17/22 19/18 20/14 37/4 53/25 62/6 62/10 64/17 65/15 66/8 71/7 71/14 72/15 72/20 81/18 makes [3] 4/15 19/15 42/11 making [2] 68/12 72/10 malady [1] 34/1 malfunctioning [2] 5/4 5/4 manifestations [1] 33/2 manner [2] 18/22 19/1 manufacture [4] 4/7 4/8 5/23 5/23 manufactured [8] 1/3 3/11 4/2 4/9 6/5 22/14 44/10 44/10 manufacturer [3] 3/19 5/20 6/3 manufacturers [1] 3/23 many [15] 12/11 19/14 19/14 20/6 23/9 23/9 27/22 27/22 29/2 29/5 45/7 51/14 58/16 59/8 81/15 March [3] 79/11 80/18 80/21 March 15 [2] 79/11 80/21 Marino [2] 2/3 62/19 marker [2] 43/19 43/21 market [1] 75/17 marriage [1] 73/21 Martinez [1] 34/4 Mary [1] 24/14 mass [1] 18/5 massive [1] 18/4 master [46] 8/5 9/16 9/18 9/19 9/23 9/25 10/9 10/18 10/20 11/2 11/8 14/11 17/8 18/4 20/7 22/12 25/21 26/16 30/17 39/10 50/23 51/5 52/21 53/12 54/8 55/13 56/6 56/20 60/4 65/18</p>	<p>65/23 65/24 66/2 66/15 67/7 70/5 70/7 72/1 72/1 72/1 72/1 72/1 72/1 80/12 80/13 83/3 83/13 master's [12] 10/12 20/4 57/1 57/9 58/13 65/7 65/13 65/19 72/15 76/11 77/14 80/18 masters [2] 32/11 35/14 material [8] 3/19 4/14 5/22 6/6 8/12 17/14 37/1 58/22 materials [2] 9/5 10/2 math [3] 14/5 60/21 67/6 matter [7] 5/22 24/16 32/10 35/7 47/8 70/21 84/6 matters [5] 13/13 14/6 15/1 15/4 20/6 maximum [1] 72/11 may [29] 1/5 3/2 10/10 10/19 14/9 16/5 22/10 24/6 31/2 32/13 37/3 39/16 41/6 53/11 54/23 58/9 63/15 63/21 63/23 65/23 66/1 66/25 67/7 68/19 70/25 76/9 77/1 77/2 82/14 May 2007 [1] 82/14 May 3 [4] 58/9 65/23 66/25 67/7 maybe [3] 50/22 64/15 83/5 McBride [5] 52/2 55/4 55/8 55/17 55/19 MD [1] 1/3 me [23] 3/6 13/1 17/3 21/2 25/1 26/2 26/11 31/10 31/12 32/12 33/14 33/24 37/18 38/4 45/8 52/25 55/1 64/7 74/17 82/13 82/24 83/1 83/3 mean [1] 19/20 means [2] 8/2 19/23 mechanical [1] 2/11 mediation [3] 79/10 79/12 80/1 medical [56] 16/13 16/15 17/9 18/16 19/11 19/19 21/6 22/13 22/21 23/9 23/24 24/18 25/3 25/17 25/23 27/19 30/6 31/4 32/19 32/21 33/17 33/20 34/12 34/15 34/15 34/20 35/7 35/11 35/17 35/19 35/24 36/14 39/14 40/2 40/19 41/18 42/12 42/13 42/14 43/1 43/1 43/9 43/14 43/18 43/19 44/15 44/17 46/19 46/23 49/1 49/15 50/4 50/8 50/10 69/14 76/19 medication [1] 33/9 meet [4] 10/15 39/13 42/18 42/18 meeting [1] 38/21 Meir [1] 71/12 member [1] 10/12 member's [1] 10/15 memorandum [1] 62/22 memos [1] 69/8 mention [5] 11/1 20/3 21/18 57/9 57/13 mentioned [2] 67/3 67/5 merit [1] 40/21 met [11] 39/10 39/19 41/3 41/4 42/7 42/22 43/8 45/7 50/11 75/10 79/5 metal [3] 49/8 49/12 49/24 metals [3] 4/20 4/25 5/1 methodology [1] 28/2 meting [1] 43/7 Miami [2] 75/10 79/11 Michael [1] 1/15 might [5] 4/20 20/14 27/4 27/23 45/22 Mike [3] 37/25 38/2 38/8 military [2] 59/14 62/3 million [7] 36/1 53/14 53/22 75/15 75/17 75/18 76/6 mind [1] 37/2 mine [1] 55/5 mines [1] 4/11</p>
--	--	--

<p>M</p> <p>minimum [3] 41/3 45/7 58/1</p> <p>mining [1] 19/7</p> <p>minor [1] 37/14</p> <p>Mirtha [1] 53/4</p> <p>miscellaneous [16] 9/2 14/1 50/22 50/25 51/3 51/13 51/24 51/25 53/20 55/10 56/13 60/24 62/13 62/16 63/15 64/23</p> <p>missed [1] 22/10</p> <p>missing [2] 36/8 56/7</p> <p>Mississippi [2] 20/19 59/5</p> <p>mixed [1] 48/9</p> <p>Mobile [1] 22/25</p> <p>mobility [1] 36/3</p> <p>modification [4] 78/4 78/5 78/6 78/7</p> <p>modifications [1] 81/16</p> <p>moist [3] 23/6 23/7 25/7</p> <p>moisture [5] 22/4 23/6 49/10 49/12 49/24</p> <p>moment [3] 19/21 32/4 61/6</p> <p>Monday [2] 17/21 17/23</p> <p>monetary [1] 12/3</p> <p>monetized [1] 7/3</p> <p>money [8] 54/11 54/13 54/15 69/24 70/1 70/11 77/18 83/2</p> <p>Monica [1] 66/2</p> <p>monitored [2] 48/16 48/22</p> <p>monitoring [1] 76/19</p> <p>month [4] 61/14 68/3 68/13 69/24</p> <p>monthly [5] 43/4 59/12 59/18 59/19 61/23</p> <p>months [10] 61/10 68/13 69/15 69/18 69/25 74/12 80/1 80/2 80/5 82/25</p> <p>Montoya [3] 1/19 55/25 65/5</p> <p>Montz [1] 24/14</p> <p>more [22] 20/15 24/11 27/11 28/13 28/21 29/6 29/14 30/18 31/16 38/13 39/9 44/16 45/19 46/2 54/3 54/4 59/1 63/24 64/23 73/23 82/24 83/6</p> <p>Moreover [1] 28/6</p> <p>morning [13] 3/4 8/18 32/3 33/24 37/25 38/14 46/16 47/15 47/16 50/7 53/6 54/5 74/20</p> <p>mortgage [18] 51/21 51/21 51/22 66/17 66/19 66/22 72/6 72/8 72/10 73/11 73/17 78/1 78/3 78/4 78/4 78/5 78/6 81/15</p> <p>most [4] 5/13 11/17 12/6 70/23</p> <p>mother [5] 34/14 34/21 35/4 35/13 36/16</p> <p>mother's [1] 34/13</p> <p>move [14] 26/20 26/24 35/22 40/15 41/13 48/6 63/18 67/21 68/5 69/13 69/15 69/22 71/25 81/20</p> <p>move-out [1] 69/15</p> <p>moved [12] 16/8 24/1 34/17 40/14 48/4 59/17 69/21 70/17 70/24 72/4 72/22 74/3</p> <p>moves [1] 23/15</p> <p>moving [3] 16/11 16/14 16/18</p> <p>Mr [11] 34/8 37/8 39/23 46/12 47/9 59/24 69/8 69/11 69/19 70/10 82/10</p> <p>Mr. [55] 15/5 17/25 18/13 20/2 22/10 22/17 23/20 26/2 26/14 26/21 26/25 29/1 30/12 30/16 34/3 36/11 37/9 37/10 37/23 38/12 38/15 39/25 46/14 46/15 49/3 53/4 53/11 56/2 56/2 58/7 59/6 59/7 59/18 59/22 60/1 60/5 60/11</p>	<p>61/1 63/22 63/24 64/14 64/18 66/16 67/20 68/19 69/2 69/3 75/1 77/20 77/21 81/9 81/17 82/3 83/7 83/12</p> <p>Mr. Ancira [1] 67/20</p> <p>Mr. and [1] 69/2</p> <p>Mr. Balhoff [4] 22/10 56/2 63/24 81/17</p> <p>Mr. Balhoff's [2] 22/17 30/16</p> <p>Mr. Belitti [2] 83/7 83/12</p> <p>Mr. Christina [1] 68/21</p> <p>Mr. Clarke [7] 59/7 59/18 59/22 60/1 60/5 60/11 61/1</p> <p>Mr. Clarke's [1] 63/22</p> <p>Mr. Cullens [3] 15/5 37/9 37/10</p> <p>Mr. Davis [2] 26/25 64/18</p> <p>Mr. Diaz [1] 34/3</p> <p>Mr. Donohoe [2] 18/13 20/2</p> <p>Mr. Duplessis [1] 69/3</p> <p>Mr. Durkee [2] 38/15 39/25</p> <p>Mr. Fredericks [3] 36/11 37/23 82/3</p> <p>Mr. Gomez [2] 75/11 81/9</p> <p>Mr. Holleman [1] 23/20</p> <p>Mr. Hugh [1] 17/25</p> <p>Mr. Lambert [6] 26/2 26/14 29/1 30/12 38/12 49/3</p> <p>Mr. Lambert's [1] 26/21</p> <p>Mr. Pena [2] 53/4 53/11</p> <p>Mr. Perdomo [1] 66/16</p> <p>Mr. Rodney [1] 77/20</p> <p>Mr. Sterling [2] 46/14 46/15</p> <p>Mr. Tito [1] 77/21</p> <p>Mr. Wayne [1] 59/6</p> <p>Mr. Woody [3] 56/2 58/7 64/14</p> <p>Mrs [5] 69/3 69/8 69/11 69/19 70/10</p> <p>Mrs. [1] 69/2</p> <p>Mrs. Duplessis [1] 69/2</p> <p>Ms [2] 42/10 43/12</p> <p>Ms. [26] 15/8 24/24 32/7 33/25 38/6 39/21 40/8 41/9 41/18 42/1 43/13 44/5 44/11 44/13 44/14 44/15 44/22 44/23 47/13 47/14 47/19 48/1 49/22 50/1 50/17 54/6</p> <p>Ms. Arias [1] 54/6</p> <p>Ms. Cucci [3] 15/8 32/7 33/25</p> <p>Ms. Donohoe [1] 24/24</p> <p>Ms. Howard [5] 39/21 40/8 41/9 43/13 44/15</p> <p>Ms. Howard's [1] 38/6</p> <p>Ms. Josephson [4] 44/5 44/11 44/13 44/22</p> <p>Ms. Ruggiano [3] 41/18 42/1 44/14</p> <p>Ms. Ruggiano's [1] 44/23</p> <p>Ms. Waguespack [7] 47/13 47/14 47/19 48/1 49/22 50/1 50/17</p> <p>much [19] 17/7 17/24 18/17 25/25 26/11 29/1 31/24 36/12 37/7 37/20 45/11 46/15 52/23 55/22 61/19 81/22 82/4 83/14 83/18</p> <p>multiple [5] 13/8 14/14 16/2 24/22 24/25</p> <p>must [1] 31/17</p> <p>my [58] 8/18 14/5 18/2 18/13 18/19 22/13 23/24 24/21 28/23 29/5 30/21 30/22 31/3 32/3 32/11 32/19 32/24 33/1 33/10 33/11 33/11 33/16 34/12 34/14 34/21 35/4 35/12 39/2 41/1 42/5 45/18 52/7 52/10 57/14 59/4 59/6 59/7 60/10 60/17 61/7 61/17 62/10 68/17 70/14 71/17 75/5 75/5 76/12 77/18 78/25 79/3 79/5 80/9 82/8 82/20 83/5 83/10 84/5</p>	<p>myself [4] 28/9 38/6 38/23 64/14</p> <p>myself [1] 61/1</p> <p>MZA [1] 63/3</p> <hr/> <p>N</p> <p>name [8] 8/18 32/3 32/5 37/16 53/5 59/4 82/2 82/8</p> <p>nation [1] 7/15</p> <p>nature [3] 11/21 54/4 54/4</p> <p>nearly [1] 75/2</p> <p>necessary [2] 21/11 23/11</p> <p>necessity [1] 21/23</p> <p>need [10] 9/8 11/6 20/3 29/6 33/20 47/10 63/21 64/16 64/19 68/19</p> <p>needed [7] 6/8 6/11 6/13 6/23 7/12 18/7 62/6</p> <p>needs [2] 6/22 20/9</p> <p>negligence [1] 6/2</p> <p>negotiated [1] 14/20</p> <p>neighborhood [1] 75/15</p> <p>neighborhoods [1] 38/22</p> <p>nervous [1] 82/12</p> <p>net [1] 78/12</p> <p>neuropathy [1] 33/4</p> <p>never [6] 11/22 33/12 49/15 49/15 61/25 62/1</p> <p>new [7] 2/7 8/12 18/14 44/6 59/15 68/1 68/7</p> <p>New Orleans [3] 18/14 68/1 68/7</p> <p>next [8] 15/7 15/9 17/23 20/22 22/16 24/11 32/1 66/13</p> <p>Nicole [3] 15/9 15/11 47/17</p> <p>night [1] 38/25</p> <p>no [30] 7/16 10/22 14/17 17/11 23/9 29/20 29/25 31/20 33/9 36/16 36/18 39/14 39/14 39/15 41/8 41/22 41/23 43/24 45/1 46/6 46/7 52/18 54/19 59/17 60/5 61/1 66/6 67/24 70/21 82/24</p> <p>nobody [1] 17/16</p> <p>none [4] 41/7 42/18 42/20 42/21</p> <p>nonexistent [1] 60/15</p> <p>nonsmokers [1] 30/9</p> <p>nor [1] 78/25</p> <p>nosebleeds [3] 33/8 38/25 71/20</p> <p>not [131]</p> <p>note [1] 37/4</p> <p>noted [3] 39/6 39/14 45/1</p> <p>notes [3] 59/13 68/17 70/14</p> <p>notice [1] 3/4</p> <p>November [3] 76/1 77/10 79/4</p> <p>November of [1] 76/1</p> <p>now [28] 10/3 11/9 16/23 18/19 20/1 24/11 26/15 26/19 28/5 28/23 28/25 29/3 39/1 40/8 41/13 41/17 43/13 44/5 45/25 48/16 48/21 49/17 55/24 57/16 60/16 61/24 72/14 82/9</p> <p>number [5] 3/5 3/6 3/12 57/7 57/12</p> <p>numerous [1] 69/7</p> <hr/> <p>O</p> <p>object [1] 60/5</p> <p>objected [1] 8/9</p> <p>objection [3] 10/13 69/6 80/19</p> <p>objections [1] 10/21</p> <p>oblige [1] 38/4</p> <p>obviously [5] 6/15 53/21 53/23 82/21 83/1</p> <p>occasions [3] 16/2 34/21 35/16</p> <p>occur [1] 61/21</p>
---	--	---

<p>O occurred [1] 42/5 occurring [1] 40/6 October [4] 67/21 68/2 80/2 80/3 October 13 [2] 80/2 80/3 odor [1] 5/6 off [6] 5/5 33/15 33/15 48/23 49/9 83/1 off-gassing [2] 48/23 49/9 offer [11] 9/15 9/21 9/22 10/4 11/8 28/12 68/18 80/8 80/10 81/17 82/13 offers [5] 9/3 9/12 9/13 9/17 60/4 office [1] 80/10 Official [3] 2/6 84/2 84/10 oftentimes [3] 6/20 30/6 45/23 okay [17] 29/15 32/9 34/8 34/9 34/10 36/11 38/7 53/10 55/3 55/5 55/19 58/11 66/12 69/5 71/13 74/16 82/3 old [3] 19/14 48/19 58/16 older [1] 74/24 omnibus [2] 15/21 76/8 on [146] once [2] 65/13 72/13 one [42] 3/24 4/7 13/8 13/19 15/9 16/23 20/3 20/6 22/5 27/11 28/10 28/12 32/1 32/4 36/15 39/5 40/21 41/16 42/25 46/17 50/5 51/23 54/1 54/5 63/11 63/12 63/12 64/13 66/13 67/23 67/24 68/16 70/12 70/16 70/17 70/20 71/10 73/25 74/2 79/3 80/20 83/3 ones [3] 14/4 38/14 64/23 ongoing [1] 13/14 online [1] 7/24 only [29] 5/8 6/11 10/13 11/20 16/11 22/11 25/14 26/18 28/25 30/14 33/10 42/1 42/23 45/14 47/2 53/15 54/5 54/22 56/20 57/21 60/25 66/1 73/15 76/4 76/9 76/9 76/10 77/1 78/19 onset [1] 44/6 open [2] 17/1 80/1 opened [1] 80/4 operating [1] 3/24 operations [1] 19/7 opinion [11] 17/9 22/13 22/18 23/24 27/15 32/25 42/13 45/14 45/15 45/16 45/18 opportunity [8] 8/4 8/6 13/21 14/8 14/12 36/8 40/25 76/22 oppose [1] 62/21 opposed [1] 42/19 opposing [1] 62/22 opt [3] 79/3 79/7 79/21 opt-out [2] 79/7 79/21 opt-outs [1] 79/3 or [61] 3/18 5/21 6/17 6/21 6/21 6/22 6/24 7/3 7/4 7/4 9/22 10/11 10/19 12/9 12/13 14/9 14/10 15/5 17/9 19/13 19/13 19/14 19/16 19/16 20/3 22/2 22/2 25/20 27/23 27/25 28/19 28/20 29/5 30/4 30/4 30/8 30/10 30/11 30/19 31/11 37/5 37/16 39/11 41/6 43/20 51/1 51/19 51/21 53/12 54/8 55/10 63/3 64/14 66/10 66/17 70/9 70/24 76/13 76/18 76/21 81/10 order [7] 10/24 12/23 18/6 40/19 59/12 59/14 81/2 orders [1] 10/16 original [3] 78/2 78/3 83/10 originally [3] 69/21 69/25 79/3</p>	<p>Orleans [4] 2/7 18/14 68/1 68/7 Other [33] 3/4 4/11 10/23 10/23 10/24 10/4 10/10 11/10 11/12 12/10 12/12 12/18 12/18 12/19 13/23 14/18 16/21 16/23 17/16 19/16 20/3 20/14 21/22 22/18 23/13 24/6 24/17 27/20 27/23 29/12 31/12 42/6 43/20 44/21 45/18 46/24 46/25 51/6 51/9 51/18 53/20 54/5 54/22 59/25 61/8 62/21 66/6 68/20 75/19 76/15 78/19 79/23 79/25 others [6] 3/15 31/16 38/13 40/16 43/8 59/8 otherwise [3] 10/8 10/17 29/7 ought [1] 12/15 our [20] 3/15 7/15 9/4 9/10 20/13 21/18 25/18 25/19 31/2 52/19 56/6 57/23 58/13 66/4 66/7 69/6 70/4 80/11 80/15 80/19 out [67] 3/17 3/20 5/6 6/15 9/7 9/12 14/12 14/17 16/8 16/10 16/14 19/7 21/5 21/22 22/16 23/15 24/17 29/18 30/18 30/22 31/23 34/17 35/22 39/15 40/15 41/21 42/6 44/9 44/24 46/18 47/4 48/6 49/4 50/8 52/19 54/13 57/7 59/9 59/17 59/18 60/20 60/23 61/13 61/22 62/6 66/3 67/2 67/21 69/13 69/15 69/19 69/21 69/24 69/25 70/1 70/2 70/22 71/2 71/4 71/21 72/2 73/10 77/18 77/23 79/7 79/21 81/1 out-of-pocket [3] 44/9 44/24 81/1 outline [1] 42/2 outlined [1] 60/1 outlines [1] 40/3 outs [1] 79/3 outstanding [1] 18/3 outstandingly [1] 18/22 over [23] 12/7 20/10 23/8 23/8 28/11 28/11 28/11 31/7 33/17 34/20 35/2 36/1 53/13 53/22 56/10 63/19 64/19 69/12 69/20 75/17 79/17 82/15 82/16 overnight [1] 17/21 owed [2] 66/20 67/4 Owen [2] 1/17 47/17 owes [2] 66/20 66/24 own [1] 10/19 owned [4] 3/25 69/22 71/23 72/23 owner [2] 61/1 66/5 owners [2] 69/11 77/5</p> <hr/> <p>P page [1] 67/3 pages [2] 34/20 57/20 paid [25] 11/2 14/24 17/16 20/9 33/18 40/23 54/12 54/14 66/16 66/22 67/3 72/5 72/8 72/13 73/4 73/11 77/1 77/10 77/12 77/18 78/1 78/9 78/16 78/17 79/24 pain [3] 33/21 36/2 36/18 paled [1] 60/6 paper [1] 27/8 papers [4] 22/12 25/18 52/19 52/22 paperwork [4] 66/11 66/15 82/18 83/5 paragraph [1] 22/16 part [22] 9/20 11/17 12/6 13/9 26/14 40/11 43/17 49/20 51/18 57/11 58/13 62/15 62/15 63/15 64/1 64/4 64/8 73/15 75/9 75/18 76/14 78/19 participate [1] 79/10 particular [10] 3/7 16/5 16/24 19/12 19/21 19/22 21/18 38/17 43/21 47/23</p>	<p>particularly [1] 54/2 particularly [3] 3/2 3/16 4/7 45/19 47/9 particulars [1] 79/14 parties [4] 7/2 7/5 7/18 9/11 Partners [1] 74/21 parts [2] 23/13 51/6 party [1] 10/19 passed [1] 30/20 past [2] 31/7 57/15 patience [1] 37/2 patient [4] 16/11 16/12 16/18 31/12 patiently [1] 80/2 Patrick [9] 1/19 17/25 20/23 52/1 55/24 55/25 58/18 65/5 67/12 pay [9] 51/21 55/17 59/12 59/15 60/7 62/6 66/19 66/23 70/22 paying [6] 14/20 51/20 59/19 61/24 68/3 70/20 payment [12] 11/3 11/7 12/3 54/12 54/20 62/23 63/1 63/4 63/7 68/20 73/17 82/19 payments [20] 12/6 51/22 59/19 68/8 68/12 68/13 70/24 72/6 72/10 73/3 73/9 74/7 77/17 77/19 77/20 77/21 77/23 78/14 81/15 82/15 pediatrician [4] 15/25 15/25 16/10 16/17 peer [3] 27/20 28/2 28/15 peer-reviewed [3] 27/20 28/2 28/15 Pena [4] 52/2 53/1 53/4 53/11 pending [1] 79/21 penny [1] 80/20 people [27] 3/5 5/7 7/23 8/9 14/12 18/6 18/24 20/11 23/9 24/6 26/3 27/20 29/2 29/11 30/1 30/9 31/5 31/15 31/22 38/13 39/16 39/19 49/25 51/14 53/12 62/4 74/3 per [6] 9/14 57/8 57/24 60/21 61/13 69/24 percent [2] 14/5 48/17 percentage [3] 19/23 63/4 63/5 Perdomo [6] 65/1 65/3 65/6 66/13 66/14 66/16 Perdomos [1] 67/2 perform [1] 11/6 performed [1] 23/8 period [8] 16/7 24/13 52/13 62/14 73/9 75/20 77/8 78/14 peripheral [1] 33/4 perirectal [1] 24/23 permanent [2] 16/3 16/5 permission [1] 10/7 permitted [1] 10/22 Pershing [1] 68/7 persistent [3] 40/3 42/15 44/14 person [6] 15/5 15/7 27/12 46/3 49/14 75/12 person's [3] 29/13 30/3 49/14 personal [8] 3/9 15/17 18/20 25/15 29/18 38/19 50/21 73/18 personally [1] 75/10 persuade [1] 79/6 persuaded [1] 79/20 pharmacy [1] 32/21 Philomin [1] 41/11 phone [7] 3/6 15/5 34/7 45/9 45/12 55/2 72/18 phrase [1] 22/2 physical [2] 5/9 19/24</p>
--	--	--

P
physician [10] 21/20 22/9 25/18 30/24
40/10 40/18 41/4 42/3 52/18 52/19
physician's [1] 22/2
physicians [6] 21/16 21/17 25/4 35/10
41/23 44/11
physicians' [1] 35/10
piece [1] 49/8
pieces [1] 4/7
place [7] 11/21 13/20 14/16 18/10
21/25 67/25 68/6
placed [4] 3/20 4/14 7/24 7/24
places [1] 4/18
plaintiff [1] 19/4
plaintiffs [1] 7/7
plaintiffs' [4] 13/3 13/13 52/11 61/3
please [6] 3/3 20/15 25/1 30/13 36/8
73/22
pled [1] 80/22
pocket [4] 44/9 44/24 54/14 81/1
point [17] 6/25 8/21 12/15 14/18 15/14
15/16 18/19 21/4 21/4 25/2 27/1 28/18
40/24 46/18 48/18 61/2 64/18
pointed [1] 30/22
points [4] 4/24 19/6 20/3 21/22
pool [1] 65/21
portion [1] 16/25
portions [1] 11/18
position [9] 6/10 15/13 25/17 30/16
37/11 37/18 39/22 58/2 62/7
possible [7] 18/11 18/25 61/19 62/10
64/17 64/20 71/15
possibly [2] 18/21 20/8
potential [2] 7/4 56/5
Poydras [1] 2/7
practice [1] 6/21
practitioner [1] 44/3
preappeal [1] 41/17
pregnant [1] 67/23
preremediation [3] 67/13 71/16 78/21
prescriptions [1] 34/20
presence [8] 3/10 21/1 42/16 49/10
49/12 49/23 53/16 75/21
present [7] 3/8 5/20 8/4 8/10 14/9
15/24 55/5
presentation [2] 41/1 62/12
presented [14] 4/16 7/6 7/6 7/18 8/6
8/14 13/4 14/10 14/13 14/14 15/15
37/22 44/22 55/9
presents [1] 24/3
Press [1] 69/12
pressing [1] 78/21
presumptions [1] 27/3
presumptively [1] 39/7
pretty [1] 46/15
prevent [2] 21/12 30/24
prevented [1] 75/13
preventing [1] 31/11
previously [1] 69/23
price [2] 53/18 83/4
primarily [2] 5/11 50/25
primary [1] 4/19
Prime [4] 52/2 56/1 56/9 66/9
principal [1] 67/4
principals [1] 75/10
prior [11] 16/11 18/16 34/16 35/4 35/15
38/11 41/22 41/23 43/2 48/4 69/15
priority [2] 18/5 18/7
pro [10] 1/13 1/14 1/24 11/3 11/4 11/7

32/9 54/6 57/8 83/4
pro [10] 1/13 1/14 1/24 11/3 11/4 11/7
pro se [1] 32/9
probabilities [1] 23/24
probability [3] 22/13 22/21 42/14
probably [8] 3/18 4/12 26/21 27/11
28/13 42/20 42/22 55/15
problem [21] 17/8 24/4 27/19 27/21
27/24 28/4 28/14 28/17 28/18 29/5
29/12 29/12 29/13 29/17 36/13 36/20
45/13 48/18 51/12 62/16 71/21
problematic [1] 5/22
problems [14] 4/16 5/8 5/8 16/21 22/19
42/15 44/6 47/20 48/3 48/6 49/16
49/25 51/24 73/19
procedure [6] 9/12 9/15 9/20 9/20
23/21 32/18
procedures [2] 22/8 23/8
proceeded [1] 5/17
proceedings [7] 2/11 3/1 10/20 72/1
75/9 83/20 84/6
process [11] 14/7 18/20 23/23 39/17
39/25 40/9 43/17 69/20 72/16 80/6
81/5
processed [3] 75/3 79/24 80/7
processes [1] 39/6
product [3] 3/21 5/20 5/21
PRODUCTS [1] 1/4
proffered [1] 15/19
program [36] 7/6 7/8 7/13 7/18 7/21 8/2
8/9 8/11 8/17 8/21 11/13 11/15 12/13
12/14 12/16 12/19 13/6 13/7 13/8
13/17 13/21 14/2 14/6 14/12 14/17
14/23 26/8 40/15 45/20 57/15 59/23
68/11 69/17 70/2 79/8 79/13
progression [1] 18/25
proof [9] 27/2 27/4 58/1 68/20 77/17
77/19 77/20 77/21 77/23
proper [1] 6/25
properly [2] 15/20 20/8
properties [13] 14/1 55/5 55/8 56/10
56/12 56/13 57/7 57/21 57/22 58/3
60/19 63/1 70/16
property [46] 3/9 8/25 11/22 13/21 18/8
18/23 19/8 53/17 55/15 57/8 57/24
58/6 59/11 59/18 62/25 63/2 63/5
70/17 70/17 70/24 71/18 71/22 71/23
71/25 72/3 72/5 72/6 72/7 72/22 72/23
73/4 73/5 73/18 73/18 74/2 74/6 74/10
74/10 77/3 77/4 77/6 77/24 78/16
82/14 82/20 82/25
prorated [1] 72/13
prospective [1] 75/20
protocol [12] 6/13 6/16 6/18 6/19 6/23
6/25 7/3 7/9 7/10 17/5 26/5 75/24
prove [4] 7/12 7/20 29/14 46/2
proved [3] 6/2 6/12 30/2
proves [1] 82/20
provide [6] 6/11 36/8 39/24 53/19 57/25
58/6
provided [26] 7/8 7/9 8/2 11/13 32/17
32/18 32/21 33/13 33/15 36/6 39/22
41/5 42/9 42/24 44/2 51/6 51/9 54/13
56/3 64/3 65/18 65/22 66/4 67/1 67/7
73/13
provision [1] 78/13
provisions [2] 53/24 62/16
PSC [1] 79/6
psychological [1] 76/18
PTO [6] 9/11 9/13 9/14 9/19 68/19

72/12
publicly [1] 39/23
pulmonary [5] 43/24 47/19 47/23 48/5
49/25
pulmonologist [2] 43/25 50/5
pulmonologists [2] 41/19 44/7
pun [1] 44/10
purchase [2] 68/6 75/18
purchased [2] 66/16 82/14
purpose [1] 66/3
purposes [2] 4/22 5/16
pursuant [4] 10/8 10/24 32/17 68/19
pursue [1] 13/14
pursuing [1] 44/17
put [12] 6/17 7/7 38/14 43/9 44/4 44/8
54/11 56/17 61/20 62/7 73/21 75/17
puts [1] 5/6

Q
qualification [1] 28/21
qualified [3] 19/18 25/5 28/19
qualifies [4] 25/23 60/17 61/7 61/14
qualify [1] 80/7
quality [2] 35/7 36/3
question [11] 6/6 29/3 29/20 29/25
30/10 36/16 36/18 46/6 46/7 46/7
62/13
questions [2] 24/25 67/24
quick [1] 20/14
quickly [3] 18/11 18/25 64/20
quoted [1] 22/11

R
rain [2] 46/5 46/6
rained [1] 46/7
rains [1] 46/4
raised [1] 69/12
ran [2] 3/17 3/19
rapidly [1] 5/16
rata [6] 11/3 11/4 11/7 54/6 57/8 83/4
RE [1] 1/3
reached [1] 52/13
react [1] 22/4
reacted [1] 22/6
reaction [3] 22/5 23/14 31/13
reactions [1] 39/16
reactive [3] 23/6 31/1 31/13
read [7] 10/6 22/13 22/17 23/20 24/20
25/11 25/12
reads [1] 56/18
ready [1] 79/22
real [1] 39/14
really [6] 15/21 27/9 30/10 49/3 54/22
56/6
realtor [1] 82/24
reason [5] 26/15 28/25 29/9 45/4 82/11
reasonable [5] 22/13 22/21 23/24 30/2
42/14
reasoning [2] 72/23 73/5
reasons [2] 23/5 63/6
rebuilt [1] 62/5
receipts [1] 69/8
receive [3] 63/3 66/18 72/21
received [9] 8/23 11/8 12/12 35/6 37/10
65/13 79/20 80/9 80/18
receiving [1] 69/23
receipts [1] 57/20
recess [2] 82/5 83/19
recognition [1] 39/18

R
 recognize [2] 36/23 40/6
 recognized [2] 7/10 39/9
 recommendation [2] 81/18 83/13
 recommended [5] 33/20 34/24 35/21
 48/6 82/24
 reconcile [3] 76/11 78/25 79/1
 reconsider [5] 25/21 70/9 70/10 73/22
 81/8
 reconsideration [7] 9/23 9/25 10/1 10/2
 51/15 55/12 80/15
 reconsiderations [1] 8/6
 reconsidered [1] 57/2
 record [13] 8/13 10/6 10/17 21/10
 28/15 40/2 40/11 41/18 48/25 52/8
 70/6 78/3 84/6
 recorded [2] 2/11 35/1
 records [34] 16/15 16/16 21/6 32/19
 32/21 34/12 34/15 34/16 34/19 34/20
 35/7 35/18 35/19 35/24 36/17 37/14
 38/15 39/22 39/25 40/17 41/20 41/24
 42/12 42/23 42/24 43/1 43/15 43/18
 43/25 44/2 49/1 50/4 50/8 58/15
 recover [4] 55/15 76/9 77/1 77/2
 recoverable [2] 77/13 78/12
 recovering [2] 23/7 73/7
 recovery [6] 23/3 24/7 25/24 70/20 71/6
 73/6
 recurrent [1] 40/3
 redevelopment [1] 23/25
 reduced [8] 22/1 23/4 24/9 25/7 35/7
 35/8 36/3 80/14
 reduction [2] 63/25 83/4
 refer [1] 52/21
 reference [2] 30/25 42/11
 referenced [1] 21/25
 references [2] 41/24 43/15
 referred [1] 40/13
 referring [1] 52/12
 reflecting [1] 78/8
 reflects [1] 73/23
 refrigerant [1] 4/22
 refrigerants [1] 5/3
 refused [1] 38/25
 regard [1] 6/2
 regarding [5] 32/11 34/12 36/10 67/24
 69/20
 Regions [1] 67/1
 registration [1] 66/5
 Reichert [2] 1/21 69/1
 reinforce [1] 29/17
 rejected [1] 80/10
 related [6] 17/12 18/18 29/22 32/24
 40/19 44/1
 relates [2] 1/5 32/19
 relationship [2] 24/9 36/25
 relevant [2] 10/9 42/13
 relief [9] 59/25 60/2 60/3 60/10 60/17
 61/7 61/15 61/18 62/11
 relocate [1] 72/2
 relocation [2] 12/2 12/14
 relocations [1] 12/9
 rely [1] 25/20
 remain [1] 81/6
 remaining [1] 14/4
 remains [1] 31/21
 remediate [1] 68/11
 remediated [7] 11/14 11/17 13/22
 40/10 72/7 75/25 77/10

remediation [26] 7/1 7/9 7/10 8/24
 11/11 11/18 12/3 12/5 13/21/2
 13/19 26/6 40/14 53/17 59/23 59/25
 62/24 68/6 68/9 68/11 69/15 69/17
 69/17 70/2 72/5 75/24
 remediations [1] 18/9
 remedies [1] 27/2
 remember [1] 20/20
 removal [1] 11/19
 remove [1] 18/6
 rendered [1] 32/25
 Rene [3] 2/3 62/19 63/11
 rent [17] 9/1 50/25 51/10 51/10 55/9
 59/17 60/7 61/10 61/24 62/14 63/12
 63/14 63/16 63/21 69/24 74/11 82/24
 rental [6] 71/23 71/25 72/2 72/4 72/6
 74/10
 rentals [1] 61/9
 rented [3] 62/5 68/1 72/22
 renting [3] 59/11 61/13 61/22
 rents [2] 55/11 55/18
 repair [8] 6/18 8/25 12/2 12/9 12/14
 26/6 57/19 59/9
 repairs [4] 6/9 7/1 59/10 59/11
 repeat [1] 38/6
 repeated [1] 22/8
 replaced [1] 57/14
 replacement [4] 11/19 57/10 57/11 58/2
 replacements [1] 57/19
 report [13] 22/17 23/2 23/18 24/16
 28/23 32/17 39/11 41/4 48/25 48/25
 49/5 53/19 77/15
 reporter [4] 2/6 47/22 84/3 84/10
 reports [6] 21/6 21/7 25/3 30/21 31/2
 45/21
 represent [3] 26/21 38/9 55/4
 represented [3] 12/25 75/2 79/4
 representing [2] 34/7 37/14
 reputation [2] 76/17 76/20
 request [8] 9/16 9/22 10/20 25/19
 57/23 79/5 80/11 80/15
 requested [3] 9/18 9/24 11/2
 requests [3] 9/24 10/1 10/3
 require [1] 27/25
 required [8] 7/20 24/24 32/15 32/22
 35/13 41/7 45/19 45/20
 requirements [4] 9/6 32/14 46/11 53/24
 requires [2] 17/5 28/23
 rescind [1] 79/6
 research [5] 35/10 35/11 35/11 35/17
 46/21
 resides [1] 18/14
 resold [1] 53/17
 resolution [4] 13/11 13/12 14/25 82/13
 resolve [4] 10/16 13/17 68/23 74/13
 resolved [5] 7/25 11/5 11/6 13/22 18/8
 respect [8] 10/10 20/5 26/18 27/7
 30/15 43/12 52/10 64/21
 respiratory [8] 16/2 16/21 40/4 40/6
 42/14 43/22 46/21 71/19
 respond [3] 30/17 58/21 83/7
 response [11] 29/1 35/14 39/9 39/15
 56/3 57/1 57/10 58/14 65/7 76/8 76/25
 responses [1] 15/21
 rest [2] 33/10 62/8
 restored [1] 6/22
 restricted [1] 8/12
 result [13] 3/10 3/17 3/21 16/1 34/22
 35/5 36/4 40/14 54/19 54/23 56/8
 60/14 77/3

resulting [2] 25/6 60/8
 results [2] 52/3 80/21
 retired [1] 59/14
 retirement [1] 62/3
 return [1] 62/1
 returned [1] 23/20
 returns [1] 78/8
 review [23] 8/12 9/4 9/10 9/16 9/18
 9/20 9/21 10/25 11/2 17/14 26/17
 34/12 35/18 41/1 47/5 49/2 54/1 63/20
 66/11 67/10 71/1 80/11 80/14
 reviewed [12] 9/3 9/18 9/25 14/14
 27/20 27/20 28/2 28/15 42/12 42/12
 63/25 70/15
 reviewing [1] 9/5
 revised [1] 80/18
 rewarded [1] 32/12
 right [17] 10/5 18/19 20/14 21/25 26/15
 26/19 28/23 28/25 37/17 43/11 51/12
 60/15 62/5 64/7 64/22 71/7 74/4
 rightfully [1] 18/6
 Rimkus [2] 48/21 49/5
 risk [1] 42/21
 Rita [1] 3/15
 RMM [1] 52/2
 Rodney [2] 75/10 77/20
 room [5] 6/11 25/17 34/22 52/19 56/22
 rotten [2] 5/6 71/20
 Rouge [1] 50/6
 Ruggiano [5] 41/11 41/15 41/18 42/1
 44/14
 Ruggiano's [2] 42/10 44/23
 ruined [1] 62/8
 rule [5] 27/7 27/9 28/5 32/18 83/14
 rules [5] 9/8 24/17 27/5 27/6 46/11
 runner [1] 38/24
 rust [1] 5/1
 Ryan [2] 1/15 37/25

S
 said [17] 16/17 22/10 22/11 22/15
 22/16 23/20 24/8 28/16 29/5 29/5
 29/19 38/15 39/10 46/6 52/9 66/15
 69/6
 sake [1] 64/19
 Sal [3] 67/15 67/17 68/22
 sale [23] 9/1 13/25 53/8 53/15 53/18
 53/22 54/16 62/17 63/13 63/23 64/25
 66/18 75/20 76/2 76/5 76/7 77/9 77/13
 78/19 78/24 82/19 82/21 83/11
 sales [1] 61/8
 Salvatore [3] 1/16 46/13 67/18
 Sam [1] 52/3
 same [9] 19/22 33/12 37/18 46/16
 53/11 65/17 66/4 74/23 80/8
 sat [1] 73/18
 satisfy [2] 21/7 27/15
 saw [1] 81/16
 say [15] 4/13 4/20 16/20 21/10 26/2
 27/11 28/13 29/4 29/4 29/12 30/12
 45/14 45/22 46/4 66/2
 saying [7] 3/6 30/14 42/21 45/21 45/23
 46/5 79/2
 says [11] 22/12 24/19 27/18 27/18
 27/21 29/1 46/3 46/19 60/19 77/2
 78/11
 SBA [5] 59/9 59/12 59/19 60/6 60/12
 scenarios [1] 18/9
 scheduled [1] 53/5
 science [3] 21/12 21/14 29/22

<p>S scientific [3] 19/16 26/4 45/17 se [4] 1/13 1/14 1/24 32/9 Seaboard [2] 3/13 5/12 seal [2] 39/25 49/1 seated [1] 3/3 second [14] 18/13 23/14 23/21 23/23 27/14 34/24 35/2 35/3 35/20 67/2 67/23 74/8 77/23 78/4 section [12] 1/4 10/5 10/24 51/4 51/13 60/18 60/19 60/20 61/8 61/15 76/15 76/24 sections [1] 10/9 see [24] 5/17 16/11 16/12 28/11 28/24 35/20 36/17 43/20 46/9 48/23 49/23 50/22 62/1 67/2 68/22 71/3 74/13 74/22 78/12 81/19 82/17 82/19 83/1 83/4 seeking [5] 51/15 60/2 60/9 65/24 80/20 seemed [1] 56/25 seems [2] 31/10 52/14 seen [4] 41/19 43/14 43/22 44/3 sell [3] 74/6 77/3 77/6 send [2] 17/2 17/21 senior [2] 43/13 79/5 sense [5] 19/15 20/15 33/9 38/19 72/20 sensitive [2] 5/2 24/11 sensitivity [2] 43/25 79/18 sent [5] 4/9 5/15 7/25 34/22 35/9 separate [5] 11/17 14/19 37/15 41/19 70/16 September [2] 69/13 69/22 September 2012 [1] 69/22 series [1] 8/5 serious [1] 33/16 seriously [2] 34/12 36/5 service [4] 10/12 26/3 26/7 62/3 set [16] 9/6 9/8 9/13 9/20 12/5 18/4 25/3 25/18 27/5 50/8 52/19 62/2 70/20 72/16 73/12 79/22 sets [5] 9/7 9/11 9/14 49/6 49/7 setting [1] 49/4 settlement [59] 7/4 7/5 7/8 7/13 7/22 7/23 8/2 8/16 8/19 9/7 10/6 10/11 10/14 11/4 11/13 11/18 12/1 12/1 12/4 12/5 12/19 13/5 13/17 14/21 19/3 26/25 27/2 28/7 28/8 29/7 29/14 30/15 31/20 32/15 32/16 32/22 45/19 49/20 51/17 51/18 52/20 53/25 56/17 56/17 60/1 60/18 60/21 61/9 62/15 63/2 72/14 76/8 76/13 78/13 79/13 79/15 80/7 80/10 80/17 settlements [4] 13/9 13/11 27/5 27/6 seven [7] 6/17 74/24 74/25 75/9 79/3 80/1 80/2 several [3] 5/17 29/5 31/8 severe [1] 16/21 share [3] 11/3 11/4 19/18 she [58] 16/1 16/7 16/8 16/20 16/22 17/12 24/12 24/14 24/18 34/14 34/16 34/17 34/24 35/2 35/3 35/6 35/17 35/20 35/22 35/24 36/1 36/3 36/18 39/21 40/14 40/15 40/19 41/18 42/2 43/5 43/7 43/13 43/14 44/3 44/6 44/8 48/3 48/5 48/6 48/14 48/15 48/17 48/19 48/20 49/15 49/16 49/17 49/17 53/5 54/10 54/11 54/13 54/19 65/9 66/5 66/7 74/4 74/7</p>	<p>sheet [1] 27/8 sheetrock [1] 31/8 short [15] 9/1 13/25 40/2 46/17 47/21 53/8 54/15 62/17 63/12 63/23 64/25 66/18 82/19 82/21 83/11 shots [1] 36/2 should [6] 15/16 41/5 41/8 45/5 54/20 58/2 shouldn't [2] 25/4 31/21 show [3] 34/16 43/18 61/12 showing [1] 66/5 shown [4] 44/16 44/24 50/3 73/13 shows [1] 35/24 sic [3] 18/13 22/6 25/14 side [2] 46/23 56/24 significance [1] 4/19 significant [4] 4/23 53/18 53/21 76/23 silver [4] 4/21 4/23 4/23 31/14 similar [4] 23/22 39/17 40/17 42/7 simply [4] 19/22 38/25 51/18 64/1 since [8] 31/7 33/6 43/4 43/14 48/8 65/12 75/3 80/25 single [2] 7/16 66/3 single-purpose [1] 66/3 sinus [1] 43/23 sir [16] 11/11 12/21 37/3 37/13 37/19 51/3 59/2 63/10 66/9 67/10 68/17 68/24 70/14 74/1 81/14 82/7 sitting [1] 56/22 situation [13] 22/6 23/17 32/8 39/7 40/16 43/20 46/3 49/6 49/19 50/12 56/21 60/12 73/21 six [1] 6/17 skip [2] 21/3 52/5 Slidell [1] 18/14 small [3] 19/23 57/5 73/15 smell [1] 33/9 smelled [2] 31/16 71/20 smoke [1] 5/5 smokers [1] 30/9 so [72] 5/3 5/25 5/25 6/1 6/1 6/5 6/13 6/23 7/3 8/11 8/12 11/6 13/20 14/22 14/24 16/10 16/10 18/9 19/15 25/12 28/10 28/25 29/1 29/3 31/17 31/19 31/20 33/14 36/9 37/7 37/15 38/5 40/16 40/20 45/5 46/5 47/2 48/14 50/1 50/11 51/22 54/17 54/18 56/18 56/24 57/23 58/1 58/9 59/8 60/4 60/23 61/13 62/6 63/6 64/11 64/20 66/6 66/21 67/5 67/25 68/6 68/14 69/3 69/19 69/24 70/21 71/25 72/2 72/8 73/5 81/4 83/6 software [1] 2/11 sold [4] 66/17 76/1 78/15 78/17 sole [1] 66/5 some [43] 3/6 3/9 4/2 5/8 6/8 7/11 7/14 7/17 8/17 8/20 12/17 16/5 19/12 26/10 27/12 27/23 28/11 29/18 29/24 31/2 31/15 31/16 31/16 38/13 39/6 39/16 39/23 42/24 45/16 45/17 45/17 45/17 45/21 45/22 47/19 49/24 50/25 51/8 51/11 53/20 56/7 68/19 70/25 somebody [2] 44/22 51/20 someone [1] 73/6 someone's [1] 13/18 something [18] 5/23 6/21 16/4 28/21 30/4 30/7 30/10 30/11 30/12 31/4 36/7 44/9 45/14 45/15 45/18 50/2 52/5 54/9 sometimes [2] 29/24 51/16 somewhere [1] 3/14 son [1] 47/3</p>	<p>soon [4] 23/15 58/14 79/25 80/3 sorry [2] 53/2 82/7 sort [10] 6/16 19/14 29/10 30/4 30/5 30/11 31/4 45/13 70/19 73/6 sorts [2] 19/18 49/25 sounds [1] 63/14 South [5] 4/17 16/17 55/9 75/12 75/16 South Florida [1] 75/16 speak [13] 7/4 8/12 52/4 53/8 55/24 62/18 63/8 63/24 64/5 68/16 72/25 74/17 82/9 speaking [1] 55/19 special [62] 8/5 9/16 9/18 9/19 9/23 9/25 10/9 10/12 10/18 10/20 11/2 11/8 14/11 17/8 18/4 18/15 20/4 20/7 22/12 25/21 26/16 30/17 32/11 35/13 39/10 50/23 51/4 52/21 53/12 53/25 54/8 55/13 56/6 56/20 57/1 57/9 58/13 60/4 65/7 65/13 65/18 65/19 65/23 65/24 66/1 66/15 67/7 70/5 70/9 72/10 72/15 75/7 76/11 76/25 77/12 77/14 78/11 80/12 80/13 80/18 83/3 83/13 specialty [1] 21/18 specific [16] 17/10 19/17 21/6 21/7 21/8 22/23 24/4 25/2 25/22 30/17 30/25 45/20 49/4 49/21 51/8 58/1 specifically [10] 20/11 22/10 22/11 25/8 28/6 32/25 51/13 51/15 60/17 64/3 specifics [2] 21/24 74/12 spectrum [1] 45/6 spend [1] 47/3 spent [1] 38/20 spirometric [1] 48/7 spoke [3] 13/19 13/24 74/3 spontaneous [1] 43/2 spread [1] 58/3 spreadsheet [2] 57/4 57/18 squabble [1] 48/12 square [4] 12/4 60/21 60/22 60/22 squarely [1] 78/24 stabilized [1] 48/8 stable [1] 48/18 stage [4] 19/9 19/10 19/10 20/8 stages [1] 38/21 stand [6] 26/15 28/25 74/24 75/4 82/5 83/19 standard [5] 19/15 27/15 39/11 42/8 45/6 standards [2] 15/22 41/3 standpoint [8] 6/3 6/8 17/8 19/19 21/8 21/21 25/23 25/24 start [3] 12/24 26/2 30/14 started [8] 3/14 5/4 5/4 38/24 38/25 68/9 71/18 75/14 state [1] 35/2 stated [3] 28/7 53/5 76/10 statement [1] 67/1 states [11] 1/1 1/9 3/12 3/12 4/10 5/12 23/18 76/9 76/25 76/25 84/3 statistical [1] 19/16 stayed [2] 68/1 82/25 steering [3] 13/13 52/11 61/3 stem [2] 33/11 34/25 stenography [1] 2/11 Sterling [3] 46/12 46/14 46/15 stigma [5] 51/11 51/19 53/13 54/3 76/16 still [7] 13/14 24/3 61/22 61/23 61/24 66/20 66/24 stood [1] 80/21</p>
--	--	--

<p>T thinks [1] 46/5 third [1] 78/5 this [214] Thornton [1] 52/3 those [60] 4/25 5/1 6/3 7/12 7/19 7/20 8/7 9/3 9/4 9/18 9/24 9/25 10/2 10/3 12/6 14/10 14/16 15/1 19/8 19/17 24/7 25/18 27/6 31/22 36/15 37/13 38/11 38/14 41/13 50/8 50/11 50/16 50/22 50/23 52/4 52/20 54/22 55/16 56/11 56/13 56/19 57/1 57/3 57/5 57/20 57/22 57/25 63/6 64/6 64/7 65/2 65/20 66/5 66/8 66/10 67/14 68/13 72/22 74/13 78/21 though [1] 31/1 thought [2] 30/23 83/5 thoughts [2] 26/21 26/23 thousands [12] 5/10 5/13 5/14 14/1 14/1 18/10 18/10 31/8 31/9 52/15 52/15 80/6 threat [1] 31/20 three [22] 7/5 11/25 20/13 21/5 25/8 35/3 38/3 38/5 41/19 45/9 48/3 49/7 49/11 49/16 55/10 61/10 61/14 63/10 67/14 69/18 74/12 74/18 through [27] 4/1 8/5 11/17 12/12 12/13 14/2 14/6 14/11 21/3 39/17 41/24 42/10 44/4 53/16 54/16 65/14 68/2 68/10 70/2 72/1 75/4 75/23 75/23 77/17 79/12 79/13 79/14 throughout [4] 4/6 4/20 5/11 39/4 Tim [7] 20/17 20/18 20/18 22/24 22/24 23/3 23/10 Tim Holleman [2] 20/17 23/10 time [38] 8/16 16/6 16/19 17/18 19/22 20/25 24/13 33/23 34/24 35/3 35/20 38/20 38/24 43/16 45/9 47/3 48/18 49/17 52/14 52/14 52/25 54/7 54/23 55/6 61/1 61/11 61/13 62/14 67/22 67/23 68/3 68/8 68/12 70/1 72/4 77/8 82/12 83/16 time-wise [1] 20/25 timeline [2] 50/12 81/16 timely [5] 40/18 50/9 63/18 79/24 79/24 times [5] 27/1 27/4 45/7 51/18 61/14 Tina [2] 20/22 24/12 TIP [1] 13/7 tissue [1] 31/1 Tito [2] 75/11 77/21 Tito Gomez [1] 75/11 today [24] 3/5 8/8 8/20 9/19 10/23 10/25 11/9 12/6 12/11 12/20 14/4 17/1 34/13 38/3 48/20 49/21 56/12 59/6 60/9 60/12 61/17 61/22 69/3 81/2 told [1] 37/18 tolerate [1] 24/6 Toni [4] 2/6 84/2 84/9 84/9 too [3] 14/24 25/12 53/9 took [11] 6/10 6/12 7/19 12/16 13/20 26/17 39/8 54/13 59/8 59/13 83/1 tool [2] 21/11 22/2 tort [1] 18/5 total [13] 12/16 54/11 54/18 55/8 57/20 66/24 67/6 68/14 69/9 77/25 78/18 82/15 82/15 totally [1] 11/14 totals [1] 60/23 touched [1] 52/7</p>	<p>touchstone [1] 64/12 towards [1] 35/6 towards [5] 43/6 72/8 72/9 73/5 79/19 toxic [4] 18/24 22/19 33/4 35/6 toxicologist [1] 50/6 toxins [1] 40/13 trained [1] 21/16 transcribed [1] 10/21 transcript [1] 84/5 transcription [1] 2/11 Treasury [1] 61/25 treated [2] 16/18 36/2 treating [1] 42/3 treatment [4] 36/1 41/17 43/17 50/10 tremendously [1] 19/2 trial [2] 27/3 79/22 trials [6] 5/17 5/19 6/7 39/14 45/2 75/24 tried [6] 6/17 7/18 18/9 40/15 74/4 82/23 trouble [1] 59/19 troubled [1] 36/18 truck [1] 60/16 true [5] 27/25 29/4 38/13 64/19 84/4 truly [1] 25/4 trust [2] 79/16 81/4 try [8] 26/23 34/25 44/17 45/3 46/9 64/8 71/14 79/6 trying [5] 23/13 28/22 30/16 44/5 44/12 turn [1] 48/11 turned [2] 47/6 48/10 Tusa [4] 2/6 84/2 84/9 84/9 tweaked [1] 6/22 twice [1] 34/15 two [25] 3/23 4/19 4/25 5/1 7/4 20/3 20/14 24/13 34/21 58/9 59/24 60/4 63/6 66/10 67/22 69/20 70/16 74/1 76/3 77/7 78/22 79/17 80/14 80/19 83/17 twofold [1] 27/10 type [12] 7/14 9/8 9/14 11/24 17/11 25/9 28/15 43/19 46/3 51/10 57/5 74/11 types [5] 5/13 16/21 43/3 43/20 51/9 typically [1] 28/1</p> <p>U</p> <p>U.S [1] 61/25 U.S. [1] 28/1 U.S. Supreme Court [1] 28/1 ultimately [3] 13/11 72/13 73/19 unable [1] 76/11 unbeknown [1] 4/13 uncapped [1] 13/20 uncomfortable [1] 5/8 uncompensated [1] 81/3 unconvinced [1] 79/7 under [25] 9/12 28/1 29/6 29/14 39/25 49/1 51/16 52/20 53/7 60/18 60/22 60/24 61/7 61/9 61/15 61/18 62/16 62/17 63/1 72/12 73/7 74/11 76/15 76/24 78/18 undergo [1] 24/25 underlying [3] 40/12 48/18 49/14 undermines [1] 42/4 understand [10] 8/10 16/13 37/17 44/5 44/12 49/13 49/19 49/20 72/14 80/5 understandable [1] 23/5 understanding [6] 37/11 56/5 57/14 57/24 58/15 84/5 understood [1] 65/24</p>	<p>undoubted [1] 23/19 unfortunately [1] 15/1 20/20 69/16 unique [2] 69/10 70/7 UNITED [4] 1/1 1/9 4/10 84/3 United States [1] 4/10 unless [3] 10/8 10/16 81/24 Unlike [1] 5/13 unlikely [1] 39/13 unresolved [1] 75/5 unsupported [1] 21/13 until [5] 11/5 17/17 68/8 72/5 80/2 unusual [1] 24/5 up [18] 4/15 7/5 12/23 14/11 14/15 18/4 23/12 24/23 26/7 28/25 29/3 56/17 62/2 64/16 67/5 68/8 69/18 73/20 uploaded [1] 32/16 upon [8] 7/7 7/15 8/16 23/24 25/20 37/16 44/15 67/20 upshot [2] 56/9 66/6 upwards [1] 50/15 us [14] 6/7 8/17 8/21 9/13 9/19 15/12 32/7 36/8 51/2 56/3 56/6 58/5 63/16 74/7 use [7] 4/22 22/2 44/10 61/4 61/8 75/19 76/17 used [4] 4/25 21/11 30/23 59/9 using [2] 2/11 6/18 utility [1] 70/4</p> <p>V</p> <p>vacate [2] 48/15 71/24 vacated [1] 71/22 Valencia [4] 74/18 74/21 75/6 77/22 value [2] 64/1 64/8 various [5] 4/5 4/22 5/5 8/14 45/21 vehicle [1] 60/15 version [1] 47/21 very [38] 5/1 17/4 17/7 17/24 19/23 21/25 24/5 25/5 25/25 26/4 26/5 26/7 26/11 31/24 36/11 36/17 37/11 37/20 37/22 38/10 45/11 47/8 47/9 47/10 52/6 52/23 53/18 53/21 55/22 56/10 56/20 58/19 66/21 80/8 81/22 82/4 83/14 83/17 victim [1] 56/23 victims [2] 75/2 79/19 Victor [4] 1/23 74/20 81/12 81/19 view [1] 30/21 visitation [1] 46/25 visited [2] 3/15 7/15 visits [1] 34/21 VM [1] 74/21 VM Diaz [1] 74/21 voice [1] 28/23</p> <p>W</p> <p>W-I-L-K-L-O-W [1] 22/9 wages [2] 60/13 62/1 Waguespack [10] 47/13 47/14 47/17 47/18 47/19 48/1 49/5 49/22 50/1 50/17 Wait [1] 32/4 waited [3] 72/6 80/2 80/5 waiting [2] 14/24 17/15 wakes [1] 23/12 walk [1] 65/13 want [23] 11/1 13/15 14/18 15/12 20/2 20/13 24/23 32/7 34/11 37/15 51/1 52/25 55/24 58/21 62/18 63/8 64/5</p>
---	---	--

<p>W want... [6] 64/17 68/16 71/6 73/6 81/13 81/20 wanted [5] 13/3 15/1 30/12 57/25 61/5 wants [3] 52/3 63/16 81/10 warrants [1] 50/14 was [194] wasn't [2] 7/14 65/11 water [1] 48/10 watery [1] 43/23 way [11] 8/1 12/22 14/11 31/9 31/17 31/21 31/22 33/10 44/19 60/16 80/23 Wayne [3] 52/1 59/6 65/1 ways [1] 31/7 we [218] We'll [2] 63/21 65/15 wealthy [1] 16/9 weather [1] 75/12 website [2] 7/24 32/16 week [2] 17/23 60/14 weekend [1] 46/25 weeks [4] 35/3 80/15 80/19 83/17 well [23] 3/5 3/16 6/7 6/22 13/5 18/2 20/20 22/1 25/5 25/18 29/2 34/1 44/25 45/12 45/23 45/24 46/20 48/10 48/13 50/15 58/1 65/23 67/8 well-framed [1] 29/2 well-known [1] 48/13 well-qualified [1] 25/5 went [13] 7/2 30/15 35/2 48/21 53/14 54/16 59/21 59/22 75/23 79/12 79/13 79/14 80/23 were [84] 3/20 3/23 4/2 5/10 5/12 5/14 5/15 5/18 6/17 6/22 7/10 7/11 7/11 7/17 7/18 7/22 7/23 7/23 7/24 7/25 9/18 11/14 11/24 14/19 19/3 19/5 25/8 27/8 38/10 38/13 39/7 40/6 42/10 42/20 42/20 44/2 44/2 44/5 44/16 45/25 46/22 48/23 50/9 55/10 56/4 56/5 56/6 56/10 56/10 59/12 60/4 61/3 63/25 64/10 64/10 64/10 65/20 66/10 67/6 68/4 68/12 69/2 69/14 69/19 69/23 69/25 70/1 70/16 71/17 72/2 72/9 72/12 73/4 73/9 73/10 73/12 73/14 75/25 78/14 78/16 79/3 79/7 79/19 82/15 weren't [1] 71/21 Werkema [2] 1/22 71/11 wet [1] 31/14 what [72] 5/17 5/23 6/4 6/6 6/8 6/13 7/11 7/19 9/8 12/19 13/7 13/16 15/12 18/22 21/15 21/25 22/11 25/20 27/8 27/9 27/15 27/18 27/25 28/10 28/14 29/1 30/6 31/4 31/12 31/19 31/21 32/4 35/13 37/18 39/15 39/23 41/2 42/2 42/12 43/4 43/8 43/18 45/23 46/10 47/11 48/9 48/23 49/11 49/13 49/24 52/9 56/5 56/6 56/14 56/14 57/6 61/20 62/22 64/8 65/18 65/24 67/2 67/25 70/11 70/21 70/22 70/25 71/2 71/21 71/24 72/10 73/16 what's [6] 13/4 14/6 46/8 56/16 70/25 83/15 whatever [8] 7/5 14/9 14/10 14/25 21/18 22/2 24/4 45/4 whatnot [1] 55/16 wheelhouse [1] 22/2 when [32] 5/2 6/20 16/8 19/15 34/17 35/16 35/20 35/21 37/15 38/21 43/16</p>	<p>45/6 46/4 48/2 48/9 48/15 52/14 53/14 54/15 54/18 58/8 59/15 59/16 61/2 68/11 69/21 70/15 70/19 72/25 74/6 78/17 80/21 where [18] 6/25 8/9 19/10 22/12 23/7 27/2 28/15 29/24 30/8 38/20 41/7 43/21 45/20 46/9 48/14 51/10 62/7 77/11 whether [10] 5/21 7/2 27/25 28/18 28/19 30/3 30/10 30/19 51/21 81/20 which [61] 3/24 4/11 4/12 9/7 9/11 9/12 10/6 13/20 13/24 14/4 14/12 18/8 19/6 22/4 22/16 22/22 23/2 23/22 24/1 24/9 24/15 24/16 24/24 25/4 25/22 35/1 35/17 36/6 40/5 46/19 48/7 50/10 53/4 53/15 56/15 57/14 57/18 60/20 61/15 62/23 65/14 68/3 68/9 68/14 68/18 69/9 69/23 71/23 72/11 74/3 74/11 75/16 75/18 75/21 76/6 76/25 77/10 78/9 78/15 78/16 79/21 while [6] 16/12 16/21 24/2 72/6 73/17 75/23 who [29] 8/9 9/19 10/23 11/2 11/8 12/8 12/11 12/11 14/23 21/16 21/20 21/23 24/15 25/8 25/21 27/5 29/11 32/23 38/10 38/14 40/19 43/13 44/4 44/22 46/3 51/25 56/22 72/22 82/7 whole [5] 26/8 61/19 62/10 70/1 70/2 wholly [1] 3/25 whose [1] 18/16 why [7] 8/20 17/2 32/13 44/5 44/12 58/25 82/11 wife [1] 67/23 Wilklow [1] 22/9 will [59] 8/16 10/6 10/17 10/21 14/24 15/4 17/4 17/6 17/14 17/20 17/21 17/22 17/23 21/10 21/24 26/10 28/13 29/4 31/23 33/9 33/12 33/20 34/9 36/20 37/1 37/11 38/6 38/19 40/12 41/15 47/7 48/11 49/12 49/13 49/24 49/24 58/25 61/25 63/20 64/14 64/20 65/8 65/13 66/11 67/2 67/10 71/8 72/12 72/25 74/16 79/2 81/2 81/6 81/17 82/5 83/7 83/12 83/13 83/19 willing [1] 37/5 wires [2] 5/4 49/7 wiring [1] 6/14 wise [1] 20/25 wiser [1] 74/25 wish [1] 34/1 wishes [1] 81/10 withdraw [1] 79/20 within [4] 10/12 22/1 58/5 78/24 without [7] 10/18 10/25 19/7 35/14 52/13 59/9 61/20 witness [1] 45/14 woman [1] 43/13 won't [1] 25/11 Woody [5] 2/5 8/19 56/2 58/7 64/14 word [2] 47/7 47/20 words [2] 56/20 66/6 work [12] 5/3 6/21 19/4 38/6 52/10 54/24 58/19 63/21 68/21 68/22 71/1 81/17 worked [3] 9/10 14/11 47/10 working [3] 6/25 26/7 64/20 world [5] 3/19 4/6 4/20 20/5 28/20 worldwide [1] 4/5 worse [1] 5/7 worthy [1] 42/19</p>	<p>would [52] 11/21 16/24 16/25 18/12 27/3 31/4 32/13 33/11 36/5 38/4 38/4 39/24 42/24 43/5 45/2 46/17 47/5 50/16 51/21 55/5 55/17 56/2 57/1 58/5 60/11 61/21 61/21 61/22 61/23 61/24 62/8 63/5 67/25 68/6 68/10 68/14 70/20 70/23 71/5 72/8 73/4 74/11 78/16 79/8 79/23 80/24 wouldn't [1] 61/21 wounds [1] 24/24 writing [6] 7/7 17/2 27/8 29/23 36/24 37/10 written [3] 7/22 36/16 66/3 wrote [2] 40/10 46/18</p> <hr/> <p>Y y'all [1] 20/24 year [2] 7/4 69/19 year and a half [1] 69/19 years [18] 12/7 13/6 22/25 24/13 31/8 48/3 49/7 49/11 49/16 58/16 59/14 69/12 69/20 74/24 74/25 75/9 76/7 82/16 Yes [36] 11/11 12/21 15/10 15/12 20/16 30/13 34/9 37/3 37/17 37/19 38/2 41/12 41/12 41/14 46/13 51/3 52/6 54/24 55/21 59/2 59/3 63/10 65/3 65/4 66/9 67/10 68/17 68/24 69/1 70/14 71/11 73/2 74/1 81/14 82/7 82/10 yet [3] 11/2 20/3 58/24 you [158] You're [1] 55/19 young [2] 19/13 67/22 your [128] Your Honor [83] 8/18 13/2 13/15 14/15 15/2 15/10 17/4 17/18 17/20 18/1 18/1 19/6 20/15 21/2 21/3 21/9 21/22 21/23 25/10 25/19 25/20 25/24 26/9 26/13 29/16 30/13 30/18 31/6 31/22 32/9 32/12 32/17 33/6 33/14 33/23 34/6 34/11 36/7 37/3 37/21 38/22 39/5 39/13 41/9 43/3 43/22 45/1 46/14 47/5 47/12 47/15 49/2 49/9 50/7 50/16 52/6 52/7 52/12 52/22 52/24 53/3 54/23 55/21 59/4 59/7 61/17 62/19 64/6 65/3 65/14 67/20 70/9 73/1 74/16 79/2 80/22 80/22 81/4 81/18 81/21 81/25 83/9 83/15 Your Honor's [2] 26/14 79/9</p> <hr/> <p>Z zero [8] 15/18 32/12 41/5 42/19 43/6 50/15 55/13 80/14</p>
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