SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - - -

ELSA HALL, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
ETHLYN LOUISE HALL AND AS	)	
SUCCESSOR TRUSTEE OF THE ETHLYN	)	No. 16-1150
LOUISE HALL FAMILY TRUST,	)	
Petitioner,	)	
v.	)	
SAMUEL HALL, ET AL.,	)	
Respondents.	)	

- - - - - - - - - - - - - - - - - - - -

Pages: 1 through 66

Place: Washington, D.C.

Date: January 16, 2018

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - - -

ELSA HALL, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
ETHLYN LOUISE HALL AND AS) No. 16-1150
SUCCESSOR TRUSTEE OF THE ETHLYN)
LOUISE HALL FAMILY TRUST,)
Petitioner,)
v.)
SAMUEL HALL, ET AL.,)
Respondents.)

- - - - - - - - - - - - - - - - - - - -

Washington, D.C.

Tuesday, January 16, 2018

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:04 a.m.

APPEARANCES:

ANDREW C. SIMPSON, Christiansted, V.I.; on behalf of the Petitioner.

NEAL K. KATYAL, Washington, D.C.; on behalf of the Respondents

C O N T E N T S

ORAL ARGUMENT OF: PAGE:

ANDREW C. SIMPSON

On behalf of the Petitioner 3

ORAL ARGUMENT OF:

NEAL K. KATYAL

On behalf of the Respondents 30

REBUTTAL ARGUMENT OF:

ANDREW C. SIMPSON

On behalf of the Petitioner 63

P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 16-1150, Hall versus Hall.

Mr. Simpson.

ORAL ARGUMENT OF ANDREW C. SIMPSON

ON BEHALF OF THE PETITIONER

MR. SIMPSON: Mr. Chief Justice, may it please the Court:

Ever since the Judiciary Act of 1789, there has been a right of appeal from a final judgment. We ask that this Court support the right of appeal in this case because -- for three reasons.

First, it comes from a final judgment entered in the case. It provides a bright-line rule that brooks no exception. When a final judgment is entered, you have a right of appeal.

Second, Rule 42 does not merge cases. There's a careful architecture in the federal rules from Rules 13 through Rule 24 designed to bring cases that should be tried as one case together.

Rule 42, on the other hand, is for the exceptional case that doesn't fall within the categories that fall under Rules 13 through 24. And -- and there's no reason for merger in those cases.

JUSTICE SOTOMAYOR: Please explain to me what the purpose of 42 -- dividing it up into two sections is.

MR. SIMPSON: Certainly.

JUSTICE SOTOMAYOR: Because you don't need the (b) section under your reading. Why use the word "consolidate," which your adversary points out generally has a connotation of merging two things into one? Why use it at all?

MR. SIMPSON: I --

JUSTICE SOTOMAYOR: What's the necessity of it?

MR. SIMPSON: I -- I think Rule 42(a)(1), which talks about joining for hearing or trial, is designed for the case that the judge wants to keep on separate tracks but has a reason to have, say, an omnibus hearing; whereas 42(a)(2) is for true consolidation, whether it's for trial, for a hearing, or for

pretrial.

JUSTICE SOTOMAYOR: I don't understand the necessity, meaning if we had only (a)(1), the court could do exactly what you're saying as well. It didn't need (a)(2) to accomplish what (a)(1) already says it can. It suggests to me that there's a separate purpose for (a)(2).

MR. SIMPSON: I -- I agree that there is a separate purpose. I think, as -- in the -- as Footnote 4 in the Ringwald case explains, the old consolidation statute actually is embodied in (a)(2) and (a)(3). It's (a)(1) that is new. So there was consolidation before, and (a)(2) and (a)(3) continued the consolidation.

What (a)(1) does is allow for, as I say, an omnibus hearing where the cases remain on separate tracks. And if I can give an example of how that would work, suppose there is a mass tort, a industrial explosion. You have a class of plaintiffs, separate actions, that are death cases. You have some who are terminally ill from this case, from this explosion. You have some that have property

damage only.

The court might decide I'm going to consolidate under (a)(2) the death cases and the people who are terminal and the -- and the -- and the property damage. So we have three separate groups, three separate tack -- tracks.

It made sense to keep those cases together and consolidate them under (a)(2), but there might be, for example, the initial hearing, where the judge says: Despite that I've got these three groups of consolidated cases, separately consolidated, I also have overriding administrative business to do, and I'm going to do that under (a)(1). I'm going to have an omnibus pretrial hearing under (a)(1), I'm going to bring everyone together. I'm not consolidating these three groups, but we're going to talk about how we're going to administer this case. And --

JUSTICE SOTOMAYOR: How is this different from a case in which a plaintiff brings multiple claims, not all of them directly related? And in that situation, if there's a partial entry of judgment on one of the claims, you can't appeal. How is this

different?

MR. SIMPSON: Are you talking about where the plaintiff has filed separate lawsuits or just one lawsuit --

JUSTICE SOTOMAYOR: One lawsuit with multiple claims.

MR. SIMPSON: Because this -- this is a -- my client's case is one lawsuit with multiple claims that proceed to determination, just as --

JUSTICE GINSBURG: Your -- your client has not brought a lawsuit with multiple claims. Your client has brought a claim. And it's not like a -- one plaintiff has one, two, three claims. This is a separate claim brought not by the plaintiff, so it's not the plaintiff picking one claim and -- and leaving out another plaintiff's claim.

This is a lawsuit A against B and then a separate lawsuit on an entirely different subject matter, B against C. So --

MR. SIMPSON: That's --

JUSTICE GINSBURG: -- it doesn't bring up at all the question that Justice Sotomayor just posed.

MR. SIMPSON: That -- that's entirely correct. And under Rule 14, if C was liable to B for something arising out of the A versus B lawsuit, that could be brought as one lawsuit and --

JUSTICE KAGAN: Mr. Simpson, I guess I don't understand your answer to Justice Sotomayor or Justice Ginsburg because, although this suit does present this different kind of issue, I took it that your argument would apply just as well to a suit in which somebody has five claims, splits them up into five different lawsuits. And you're saying that should be treated the same way that one claim with -- one suit with those five claims is.

MR. SIMPSON: I -- I don't think that those -- well, I think if it gets to the point where a final judgment is entered because the case has not been managed from an early point of the case, where in that situation what the courts do is, under Rule 12(b)(6), they -- they say that this -- this -- you have five different lawsuits going on. Once one is decided, you're facing res judicata in the other four.

And what they do is they order the plaintiff to file all of the claims in one case, and then they dismiss the other four. So that's how that's handled under the architecture of the rules. That shouldn't even come up under Rule 42.

JUSTICE KAGAN: I -- I guess the -- the bigger point that I'm making is that it seems to me that your argument applies whenever there is consolidation of cases, regardless of exactly how those cases look and what's in them. Am I -- am I right about that, the breadth of your argument?

MR. SIMPSON: Yes, Your Honor. I -- that is absolutely correct. And I point out in the briefs that when you have that kind of a case, what the court of appeals can do is stay them. But I actually believe, more importantly, the district court should be managing those early on and you should never get to that point.

JUSTICE KAGAN: Do you think --

CHIEF JUSTICE ROBERTS: I take it -- it's correct, isn't it, that if you prevail and so that you can appeal, you must appeal?

MR. SIMPSON: Absolutely. And that's why I say if -- if that case that Justice Kagan has described gets to that point, then, yes, they must appeal, and then I think the court of appeals has the ability to look at them and say, well, this case should have been brought as one case and I'm going to -- the court can say I will stay that.

CHIEF JUSTICE ROBERTS: Yeah, but I mean -- yes, but I think most people would think that the district court has a greater familiarity with the litigation, particularly since the court of appeals may know nothing about it until you get a notification, and understands how related the two cases are or how not related they are. And maybe the ability to consolidate ought to continue to -- I mean, to keep the cases together, to the extent appropriate, ought to remain with the district court, rather than suddenly throwing the issue before a court of appeals that is new to the whole litigation.

MR. SIMPSON: It -- that -- that's certainly the argument that has been made by the amici, but I think if you look at the

architecture of the rules, again, Rule 23(f) also deals with an appeal coming up, an interlocutory appeal under the class action statutes, and there the discretion is given completely to the appellate court. And --

JUSTICE GINSBURG: But what about the district court in a case like this one? Could the district court say I think that E, your client, loses on her claim, but I'm not going to enter -- I'm going to instruct the clerk not to enter judgment until we resolve the -- what started out as a counterclaim and then became a separate claim?

MR. SIMPSON: I think the court can do that. I don't think that would be appropriate. I don't think that's what the rules anticipate.

If -- and, you know, under Rule 72, if a judgment is entered on the docket, after 150 days it's deemed final. So I think there's a -- there's an indication in the rules that we want these cases to move along.

JUSTICE KENNEDY: But as -- as these questions indicate, there's a whole wide range of -- of possibilities here. And you're saying that the district judge, which, as the Chief

Justice pointed out, is really better situated to decide whether the appeal should be held, has -- has very little authority to do that.

And, furthermore, it seems to me this is a trap for the unwary.

MR. SIMPSON: Well, to address the first question, I -- I think the district court has great latitude to do this, but it's under the rubric of Rule 13, compulsory counterclaims, Rule 14, third-party practice, Rule 19, joinder of indispensable parties.

That's where these -- the Footnote 7 cases in Gelboim, the cases that should have been filed as one, that's where that's supposed to happen. That's not where it comes up in Rule 42.

In terms of a trap for the unwary, the double final judgment rule that my friend proposes actually creates the trap for the unwary because you can have situations where a final judgment is not entered after your case is dismissed and a final judgment is entered.

You can have a situation where you don't know how the court is going to deem it consolidated because, if I understand their

argument, if it's consolidated for trial, they agree that it can be appealed immediately, but if -- a final judgment is entered, but if it's consolidated for this nebulous all purposes, it cannot.

JUSTICE KENNEDY: Suppose these parties who certainly don't agree on very much did agree that this case could be treated as one for purposes of appeal.

What would the stipulation say? What words would they use to do that?

MR. SIMPSON: For the parties to stipulate that it would be --

JUSTICE KENNEDY: The parties -- the parties agree that there should be only one appeal. Is it -- is it possible under -- and I'm not sure what the stipulation would even say.

MR. SIMPSON: I think the -- I think the stipulation in that circumstance would be the parties in 1154 who have the final judgment would stipulate in the court of appeals to a stay and say we agree that this should remain in abeyance until the rest of the case is decided.

But that allows the party to protect their right of appeal.

CHIEF JUSTICE ROBERTS: Well, the court of appeals might well have something to say about that. The courts of appeals don't like to have matters just resting on their docket, depending upon matters of years before the district court might get to the other matter.

MR. SIMPSON: Certainly. But I think if the parties are coming to the court and explaining why they think it should be stayed, I -- I don't -- the court of appeals might disagree, and, obviously, that's its prerogative.

JUSTICE GORSUCH: Well, counsel, for the -- for the courts of appeals that prefer the practice of deferring everything until there's a final judgment on a final matter in the district court, could they just have a rule, a local rule or practice of deferring cases along the lines that we've just discussed?

MR. SIMPSON: I -- I think -- I think if -- they could have a rule for cases that

should have been filed as one, the Gelboim note 7 cases.

JUSTICE GORSUCH: No, I'm talking about for cases just like this. If we're in a circuit that prefers as a matter of practice to wait until everything is done, is there anything inhibiting them from adopting a rule staying cases where there's another related matter still lurking in the district court? I can't see any.

And it's not -- this is not an unfriendly question.

MR. SIMPSON: Understood. I -- I -- I think the whole purpose, you know, of Rule 1 and the Federal Rules of Civil Procedure, and I think there's an equivalent under the Federal Rules of Appellate Procedure, is that cases are supposed to be administered for the speedy administration of justice, speedy and efficient.

And I think a blanket rule like that would run counter to that. I think if the court exercised its discretion to look at each case and say, well, we think this should be stayed, I think that would pass muster.

JUSTICE ALITO: Suppose you were arguing this point before the civil rules committee. And so the question would be: What is the best procedure, what would your argument be? Why is the procedure you outline a better one than the alternative?

MR. SIMPSON: The reason it's a better one is because it provides this bright line rule. You cannot be trapped. When you have a final judgment, you know you have to appeal.

There's -- as I indicated, there's a problem in the double final judgment rule with not having a second final judgment actually entered. There's the problem of not knowing why the case was -- that the court of appeals might disagree with you as to why the court of --

JUSTICE ALITO: But why would there -- why would the alternative not provide a bright line rule? So the alternative might be that if a case -- if cases are consolidated, they are considered to be one case for purposes of the final judgment rule.

MR. SIMPSON: I -- I think -- I think that's counter to a whole -- a lot of history

of this Court and counter to the rest of the, as we describe in the briefs, the various problems with merging cases.

JUSTICE KENNEDY: Could you design a rule, if you were following Justice Alito's question, you are addressing the rules committee, you want to improve the rules, could you design a rule so that the parties or the judge does have an option?

MR. SIMPSON: Absolutely. It would be Rule 42(a)(4). And it would be -- provide that in cases that should have been brought as one or could have been brought as one under Rules 13 through 24, the district court will have the power to merge them. But if they don't fall within that category, that is the Gelboim Footnote 7 category --

JUSTICE ALITO: But why is that better than Rule 54(b)? This is what I'm getting at. So you -- I asked you why would your rule be a better rule, and part of your answer was there's a lot of history and authority on the other side. But I'm asking you to disregard all that.

Let's say it's just a policy question.

Why is your rule better than a rule that says that when cases are consolidated they are considered to be one case for purposes of the final judgment rule, and the district court, of course, can proceed under Rule 54(b) if it wishes?

MR. SIMPSON: It creates a lot of mirky rules. For example, if a plaintiff has -- a private party plaintiff is suing and the government is suing, and those two cases are consolidated, when -- when does the time for no -- for filing a notice of appeal run, 30 days or 60 days? If they're not merged, each party knows. If they're merged, there's a real question as to when that happens.

JUSTICE GINSBURG: In this case -- in this case, it was the clerk that entered the final judgment, am I right? The clerk was the one who issued the judgment under 58.

MR. SIMPSON: Yes.

JUSTICE GINSBURG: And doesn't that rule provide that the court could otherwise order if the court didn't want that judgment to be entered?

MR. SIMPSON: Yes. And -- and not

only that, you know, I think there is evidence from -- not only from that, but from the fact that when the motion for attorneys' fees was not filed within 14 days of final judgment, the district judge denied the motion for fees for failure to file it in a timely fashion. If that was not a final judgment, they would not have denied the motion.

JUSTICE KAGAN: Could you explain a little bit more how you're reading Rule 58?

MR. SIMPSON: Sure.

JUSTICE KAGAN: And that was what Justice Ginsburg asked you; is that right, and you said yes, it authorizes the court to do that. What -- how does it do that?

MR. SIMPSON: It -- it's non-specific. Essentially, it says if -- with -- after entry of a verdict, and two other occasions, the clerk shall enter the judgment, unless the district judge directs otherwise.

There's no guidance given to that.

JUSTICE GORSUCH: Well, but, counsel, that's what it says I think in (b)(1) with respect to general verdicts. But then (b)(2) with respect to special verdicts doesn't

contain any parallel language like that and, in fact, suggests that the judgment has to be entered promptly.

What do we do about that?

MR. SIMPSON: I -- I -- I think -- I think it does have to be entered promptly. And that -- I think that's what happened in this case. It was entered promptly. Not under 52 -- not under that section.

JUSTICE GORSUCH: But as I understood your answer to Justice Kagan and -- and Justice Ginsburg, it was one of the reasons we don't need to worry about your proposed rule is that the district court has discretion to delay the entry of judgment and that that is textually found in (b)(1), which, indeed, it is with respect to general verdicts, but there's no parallel language that you can rely on with respect to (b)(2).

And does that diminish your argument by suggesting there the district court doesn't have discretion to delay the entry of judgment?

MR. SIMPSON: I -- I don't -- I don't think it diminishes the argument at all. I think -- we are advocating for the entry of

judgment. So whether it's under (b)(1) or (b)(2), I'm not sure that there's a distinction from our point of view.

JUSTICE KAGAN: May I ask you a different kind of question, Mr. Simpson? It just really goes back to the language here.

I mean, would you agree that your understanding of what it means to consolidate cases is different from the ordinary meaning of that term?

MR. SIMPSON: I think -- I'm not sure what the ordinary meaning of that term is, quite frankly, Your Honor.

JUSTICE KAGAN: Well, suppose I said to you that a company was going to consolidate two offices. Are they going to have two offices or one office?

MR. SIMPSON: Typically, I think people would think they would have one office. So if you're talking about the -- the typical layman's understanding, yes, I think that means one.

JUSTICE KAGAN: So -- and it's not just laymen, right? I mean, if you look at Black's Law Dictionary, it says a consolidation

in civil procedure, it defines as "the court-ordered unification of two or more actions into a single action."

So that's the Black's Law Dictionary definition. Same thing. Two becomes one.

MR. SIMPSON: And I -- I -- I don't think that's what the rules do. And I don't think that's --

JUSTICE GINSBURG: Well, there was a statute, was there not, before the rules, there was a statute?

MR. SIMPSON: Correct.

JUSTICE GINSBURG: And the statute used the word "consolidate," didn't it? I don't have it in front of me. So I -- but what the -- the statute that dealt with this issue before Rule 58.

MR. SIMPSON: Yes, Your Honor.

JUSTICE GINSBURG: Didn't that statute --

MR. SIMPSON: Again, I'm looking for the language, but --

JUSTICE KAGAN: I mean, it did. And -- and then, in Johnson, Johnson tells us that "consolidate" for the purpose of that

predecessor statute did not mean a complete merger.

MR. SIMPSON: Correct.

JUSTICE KAGAN: So Johnson is very much on your side. But -- but Johnson was interpreting a statute which, although it similarly used the word "consolidate," was different in other respects.

And I'm wondering whether now that we're on a kind of blank slate, we have a new rule, it's different from the statute in a number of ways, why we have to keep on giving this quite unusual understanding of the word "consolidate," why we have to keep on the same track; why we can't just say, you know what, "consolidate" means consolidate. It means two becomes one.

MR. SIMPSON: That -- I -- of course, you're -- you are operating on a blank slate and you could do that, but I think when you look at how the courts have interpreted "consolidate," there are many different understandings of the term.

And -- and so -- and I think that's what the -- the rules have embodied over the

years. So you have --

JUSTICE KAGAN: Well, there is -- lots of courts say, look, we're going to consolidate for some purposes but not all purposes. And when a court does that, of course, it means something else. It means just segments of these two lawsuits are going to come together.

But when a court says we're going to consolidate for all purposes, I mean, just the usual understanding of that is, okay, now we have one lawsuit in front of us. And that would have consequences as to what we think the final judgment is, when it comes, and when your appellate rights would kick in.

MR. SIMPSON: Yes, Your Honor. But, again, even there the courts are all over the world on that.

Some courts say all purposes has to --

JUSTICE KAGAN: I know. But where -- we kind of get to figure out what's right and what's wrong as to all these courts that are all confused. That's why we're here.

MR. SIMPSON: But I would submit then that if -- if that would be the definition, then the cases must truly become one.

JUSTICE KAGAN: But there could be --
JUSTICE BREYER: In which case I have just one question, which is forget the consolidation for a moment, just to clarify in my mind; think of Rule 54(b), imagine it's a case with a lot of parties and a lot of issues, and Rule 54(b), I think, says that the court can direct entry of a final judgment as to one or more but fewer than all the claims or parties, right?
MR. SIMPSON: Yes.
JUSTICE BREYER: Okay. Now suppose a judge does that as to one of the claims. At that moment, the clerk writes a separate piece of paper and it says final judgment as to that claim, right?
MR. SIMPSON: I don't -- I don't know how that --
JUSTICE BREYER: Well, that's important because -- because what I'm going to ask you is -- is -- there is a single piece of paper here, is there not?
MR. SIMPSON: Yes.
JUSTICE BREYER: And it says final judgment, right?

MR. SIMPSON: In this case only, yes.

JUSTICE BREYER: So I thought perhaps there is a rule somewhere which says when there is a final judgment on a separate piece of paper, you can take an appeal. But there is no such rule that I can find.

Rather, what it says is the appeals courts have jurisdiction over every decision, final decision. It doesn't say "final judgment." And so, if it says "final decision" and there is no place where it says you can always appeal from a final judgment, then whether this counts as a decision for purposes of appeal, is it a final decision, is up for grabs.

And the policy arguments and the old statute and the old case are all relevant. Now, have I got the question right?

MR. SIMPSON: I think so, yes.

JUSTICE BREYER: I do?

MR. SIMPSON: Yes, I think so.

JUSTICE BREYER: Okay. So then we are going to decide -- if we decided against you and said, no, final decision does not always mean final judgment, and, indeed, this is a

case for the policy reasons they list, for example, where it doesn't count, okay, and the judge has to -- all right. What havoc would we work?

MR. SIMPSON: A lot of havoc.

JUSTICE BREYER: I know you think that, but I want to know what.

MR. SIMPSON: Well, for -- for starters, there's -- there's always been the core, going -- going not even back just to the Judiciary Act but back to Blackstone, of the final judgment that -- where the court disassociates itself from the case being an appealable judgment. And that's what we have here.

JUSTICE BREYER: And so all the time, under Rule 54(b) when he issues a final judgment, it's always appealable? True or false?

MR. SIMPSON: If -- if the judge certifies the question under --

JUSTICE BREYER: No, he doesn't certify it. What he does is follow 54(b). He enters in a normal case, not consolidated, a piece of paper which says this is a final

judgment in respect to claim number 1 of the -- there are 42 claims in the case. That piece of paper is entered.

Is there always an appeal, yes or no?

MR. SIMPSON: Yes, unless the court of appeals decides that the judge has not applied 54(b) --

JUSTICE BREYER: So you will -- I will be able to find authority where -- that supports this; is that right? And where is that authority in your brief? Because I want to -- the authority is for the proposition, forgetting consolidation, that once a piece of paper under 54(b) is entered, it says final judgment in respect to some but not all of the case, there is always an appeal.

Where is that authority?

MR. SIMPSON: I think that's what Rule 54(b) says.

JUSTICE BREYER: Where is the authority that says that's what Rule 54(b) means?

MR. SIMPSON: I -- I -- I'm not sure that the question has come up in that --

JUSTICE BREYER: Oh, it must have come

up. Surely, somebody has tried to take an appeal sometime from a judgment under 54(b) where there are 92 parties in a case. Like a BP, they have 4,000 parties, okay, and -- and one of them gets a partial judgment and it's entered under 54(b), wants an appeal. That's never come up? Okay, you don't have the authority. I'll look for it.

JUSTICE GINSBURG: In 54(b), it's not simply that the -- the judge enters a judgment. He has to make a finding. He has to find that there is no just reason for delay. Only if the court expressly determines that there is no just reason for a delay. And the whole purpose of 54(b) is to enable an appeal even though the case has covered the --

JUSTICE BREYER: Thank you. That's what I wanted to know, actually.

MR. SIMPSON: Okay. I -- I apologize. I did not understand the question. But because exactly when the order is issued it becomes appealable, I don't know anyone who would challenge that unless they were claiming that the judge had not met the standard.

I -- if there are no further

questions, I'd like to reserve the balance of my time.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Katyal.

ORAL ARGUMENT OF NEAL K. KATYAL

ON BEHALF OF THE RESPONDENTS

MR. KATYAL: Thank you, Mr. Chief Justice, and may it please the Court:

The district here entered -- the court entered an order here consolidating for all purposes the cases brought by brother and sister against each other. Instead of challenging that, Petitioner wants to appeal part of its claims now. That maneuver runs headlong into determinations by both Congress and this Court that litigants can only appeal generally from final decisions.

If adopted, my friend's rule --

JUSTICE SOTOMAYOR: Could you tell me how you square this with the fact that the district court denied the motion for attorneys' fees because it wasn't filed with -- within 15 days of the final judgment?

MR. KATYAL: Absolutely. So, first of

all, Justice Sotomayor, this is a late-breaking claim in the reply brief, both -- it's not --

JUSTICE SOTOMAYOR: But it does suggest to that me the district court --

MR. KATYAL: I will --

JUSTICE SOTOMAYOR: -- was treating them --

MR. KATYAL: I don't think so. I'll get to that in a moment. But I do think it is waived. I mean, that is both -- below we argued this was an all-purpose consolidation. We pointed out in our brief in opposition at page 2 the only time they take issue with it is in their merits reply brief. And as this Court said in Argentina versus NML, that is far too late.

But now, to answer the substantive question --

CHIEF JUSTICE ROBERTS: But just to interrupt --

MR. KATYAL: Yes.

CHIEF JUSTICE ROBERTS: -- that means -- that means that maybe they can't raise a separate claim for the fees. It's a -- it's an argument; it's not a separate claim.

MR. KATYAL: No, but the -- as I understand his argument, it's that we -- this case is not an all-purpose consolidation case. And I think to make that argument -- and using the attorneys' fees as his rationale for that.

And I think to make that argument only in the reply brief at the merits stage is too late, Mr. Chief Justice.

CHIEF JUSTICE ROBERTS: Okay. Now you can get back to Justice Sotomayor.

MR. KATYAL: Now, with -- with respect to the attorney fees questions, I think my friend has misstated the way the rules work. So, first of all, the judgment here, the piece of paper, to use Justice Breyer's term, was entered on February 4th of 2015.

That resolved all claims. It was at that moment a final judgment and started three different clocks ticking. One is the 14-day attorneys' fees clock. One is the -- the Rule 59 motion for a new trial, which is a 28-day clock. And one is the 30-day notice of appeal clock.

Now, the attorneys' fees motion was filed actually 20 days later, after the 14-day

clock had expired. Had the motion been filed within the 14 days, it wouldn't have been out of time. But the different -- what happened here is that the motion came in late. And all the district court is saying, which is the same thing that courts all over the country say, is: You don't get to start a new attorneys' fees clock by filing after the 14-day period a motion for a Rule 59 new trial.

Moore's Federal Practice says this is essentially a trap engendered by the 2009 rules.

JUSTICE SOTOMAYOR: But if it's not a final judgment at all, which is your point, it's not a final judgment until both -- all issues in both cases are resolved, how does the 14-day clock start --

MR. KATYAL: So, Justice Sotomayor --

JUSTICE SOTOMAYOR: -- without a final judgment?

MR. KATYAL: Justice Sotomayor, our position is it is a final judgment when the piece of paper was entered on February 4th. And what changed it, and this is what Rule 59, the advisory committee notes say, is when you

file a Rule 59 motion, it suspends what was otherwise a final judgment.

So we agree, my friend could have brought his appeal February 5th, absolutely. There's no problem with that. But what he's trying to do now is have his cake and eat it, too, may -- file a motion for a new trial and then take a piece of the case up, and it runs headlong into all the --

JUSTICE GINSBURG: But the piece -- the piece has a final judgment attached to it. There were two final judgments, right? There was a final judgment in her case and there was a final judgment in her brother's case.

She's not -- she wants to appeal her case. Nothing else to be done in her case. So she should wait, how many, two, three more years until she can appeal?

Do you claim that the judge would have in any way altered the judgment that you won during the pendency of the -- of the son's suit against the -- the daughter?

MR. KATYAL: Yes, we do, Justice Ginsburg. There is a few different points to make here.

Number 1 is in all-purpose consolidation cases it's very common to have two pieces of paper, two judgments as there are here. The Gonzalez case in the Northern District of Illinois in 2014, the Tucker case in the Eastern District. Lots of cases say that you have to -- and you actually are mandated to have two pieces of paper, even when you have all-purposes consolidation.

But to go back to Justice Breyer's question, there is no case, zero case that says that when you file two pieces of paper, that that somehow changes things.

Rather, the Court has always looked to the underlying substance. Is this two becoming one or is it two separate claims?

JUSTICE GINSBURG: But it's for the judge --

CHIEF JUSTICE ROBERTS: Well, if it's just -- if it's -- if they're consolidated for all purposes, why did the district court enter separate judgments? Why didn't he wait and say, well, there's only going to be one judgment because these are all consolidated for all purposes, so I should wait 'til we're ready

to have one judgment?

MR. KATYAL: Because, again, I think lots of times courts do it for belts and suspenders reasons, but I don't think that that somehow takes back their all-purpose consolidation. All-purpose consolidation --

JUSTICE GORSUCH: Why not? Why doesn't it?

MR. KATYAL: So --

JUSTICE GORSUCH: That's where I get stuck.

If we have a district court that issues separate judgments, I think pretty much any cautious litigator would take that seriously and file a notice of appeal because it's a signal from the district court that it is complete. It is finished. There is a final decision in this matter.

MR. KATYAL: So, Justice Gorsuch, first, let's start with what the district court did. It's found at the petition appendix, page 815. This is the consolidation order. And it says: "First, the motion to consolidate is granted. Second" --

JUSTICE GORSUCH: I've read it and

it's ambiguous. It doesn't say they are merged. It doesn't use that word.

MR. KATYAL: Well --

JUSTICE GORSUCH: It doesn't say for all purposes.

And then we have, as the Chief Justice points out, a later order from the same district court, which I assume we would take as seriously as a consolidation order, it being a final judgment and all. So help me out with that.

MR. KATYAL: Yes. If I could, first I'd like to -- just to use the language of the plain text of this order -- of what the order is.

So Number 2 is the following cases, plural, shall be consolidated, Number 1154 and then 1395.

And then the third piece is: "All submissions in the consolidated case shall be filed in Case Number 354." So two really does, plural, cases, become one, kind of like married --

JUSTICE GINSBURG: If the case --

JUSTICE BREYER: That's why I'm

interested in rule -- in Rule 54. I'm interested in a case. We're not interested in consolidation.

So rule -- under that rule, no consolidation because the finding of what Justice Ginsburg said, a district judge can enter a final judgment as to some but not to all the parties or claims.

Now, once you as a lawyer see that piece of paper that says final judgment, you think: I better appeal.

MR. KATYAL: Well, I don't --

JUSTICE BREYER: Period. Now, if there is nothing to the contrary, there is a strong argument for doing the same thing here because lawyers then know, once they see a piece of paper saying a final judgment, bong, appeal.

Now, sometimes they also have to know that if someone has moved for a new trial and it's granted, then, of course, there's no longer a final judgment. But that wouldn't be true in Rule 59 or 50, what was it, 50, wherever it was, 54, in respect to a new trial for some of the other parties.

MR. KATYAL: So --

JUSTICE BREYER: That wouldn't affect the judgment on -- that says final judgment as to Smith when Jones gets a new trial on other issues.

And so why wouldn't the lawyer think exactly the same here?

MR. KATYAL: So --

JUSTICE BREYER: It's the same process. It's the same thing. It is totally consolidated, perhaps no more and no less than an ordinary case with thousands of parties and thousands of issues.

MR. KATYAL: So -- so, Justice Breyer, I'll answer your question and then, if I could, I'd like to return to Justice Gorsuch's question.

JUSTICE BREYER: Yeah.

MR. KATYAL: So the answer to your question is the part of Rule 54 which nobody has read yet. And if you -- turn our red brief to the appendix, page 3A reproduces 54. And I'll just read a part of it to you: "When an action presents more than one claim for relief, whether there's a claim, counterclaim,

cross-claim or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more but fewer than all."

JUSTICE BREYER: Right.

MR. KATYAL: Now, here is the important language, a sentence down: "Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties does not end the action."

So the Rule 54, Justice Breyer, answers the question by saying, look, if you have a consolidated case, and then not all the claims or counterclaims of all of the rights and parties are adjudicated, then you're on notice that your case is not yet final.

And that's what we're asking you to do, which is the rule, as our red brief at page 14 points out, in every single circuit, with the partial exception of the Sixth Circuit, which has introduced contrary things. And he wants to switch up the rule massively.

Now, Justice Gorsuch, you asked what

about this order, doesn't it suggest maybe that it wasn't all-purpose consolidation? As -- as I said, the Third Circuit as the case comes to the court, this is found at petition appendix, page 4, says this was all-purpose consolidation. At the oral argument, they even asked this and said, hey, it doesn't use the word all purpose, but the court relying on the Third Circuit precedent, which is Bergstrom, said if a decision -- and this is the law in many, many circuits -- if a decision doesn't say all-purpose consolidation or not, but everything is merged together, it is treated as all-purpose consolidation.

And that follows --

CHIEF JUSTICE ROBERTS: Mr. Katyal, one thing that concerns me. This is, for all the back and forth, a relatively simple case. We're talking about two cases, same lawyers, same parties, but consolidation can come up in a situation and often does when there are 100 separate cases, a mass tort situation.

And there, one waiting for the final judgment can be a very long wait and it could be very prejudicial. I mean, let's say it's in

some sort of mass tort and some of the people have, you know, emotional distress damages, others physical injury, and early on the judge says, look, I don't think you can recover emotional distress.

So all the cases that just have emotional distress, judgment is entered against them.

Now let's go on to the other thing which is going to take five years. Doesn't your position make that extremely complicated?

MR. KATYAL: No, Mr. Chief Justice. I think that this is -- this is really a bad solution of my friend in search of a problem. There is no problem. That is, in those complicated cases, there are three different independent safety valves.

And as this Court in Mohawk said, they go a long way toward resolving this in, for example, the multiple claim case.

So there is Rule 54. The district court can -- can send a case up to the court of appeals. There is 1292(b), an interlocutory appeal. And there is the writ of mandamus. And together I think those do a good job --

JUSTICE GINSBURG: But why wouldn't the district court think: What's the point in my entering a 54(b) rule? I have a case in which a final judgment is entered. Why isn't that piece of paper that says final judgment under Rule 58 the equivalent of 54(b)? I mean, the judges say you want me to order a 54(b) judgment, but there's already a final judgment in this case. The clerk entered it. And I didn't tell him otherwise.

MR. KATYAL: So just let me say, Justice Ginsburg, I'm not aware of any case in the entire federal system that says because I entered a piece of paper with the -- that uses the words final judgment, that that alone is enough.

And to the contrary, and this goes back to Justice Breyer's question, Mackey and Cold Metal Process are both cases in which there was the designation of a final judgment. But that wasn't enough because, if you resolve only some of the claims or you resolve claims only against some of the defendants, that's not enough. You've got to ask for the 54 or have it sua sponte.

JUSTICE GINSBURG: Can you explain to me, you did say in your brief that there is -- that a common issue is central to the resolution of these two cases.

One case is the estate against the son for using his -- rent from his mother's property improperly. That's the charge of the estate.

Then there's the charge of the son against the daughter for alienation of affection. What is the -- what is the common issue central to the resolution of both of those cases?

MR. KATYAL: The Third Circuit found -- and this is Petition Appendix pages 8 and 9 -- that there was overlap, that there was going to be credibility determinations, that there was going to be --

JUSTICE GINSBURG: You said the central issue. I see in one case the central issue is did the son misuse the rent from his mother's property? Other case, did the daughter alienate the mother's affection against the son?

MR. KATYAL: And --

JUSTICE GINSBURG: So what's --

MR. KATYAL: And the central issues in both turn on the state of mind and the credibility of both the brother and the sister. And that is what the petition appendix -- what the Third Circuit found. That's why they were central. Look, I can imagine they could disagree with that, but that's appealing the consolidation order, not now going back and saying: I want to break apart a chunk of the case.

JUSTICE GINSBURG: Can I ask you, this relates to the question that the chief asked, and I think it's key: She's lost the case, and she's lost it and has a final judgment. The judge orders a new trial of the other case. How much time has elapsed from the time she lost her case with a paper saying final judgment and when the son's case against the daughter is finally resolved?

MR. KATYAL: Right. So the -- there is a large gap of time, as there often is in --

JUSTICE GINSBURG: How much time?

MR. KATYAL: I think about approximately two years. And that's true

sometimes in multiple defendant cases --

JUSTICE GINSBURG: And she should -- she should sit there --

MR. KATYAL: No.

JUSTICE GINSBURG: -- for the two years?

MR. KATYAL: No. She should do exactly what the Third Circuit said, ask for a 54(b) judgment or perhaps a 1292. And the difference is, as the Chief Justice and Justice Kennedy were saying to my friend, the district court is empowered under 54 and 1292 and they are the ones with expertise and familiarity --

JUSTICE GINSBURG: How would a lawyer that has a final judgment, which -- you -- you get a piece of paper that says final judgment, you know that now you can appeal. How would a lawyer know that, oh, this piece of paper that says final judgment, forget it, that it's meaningless, meaningless; you have to get a 54(b) judgment?

MR. KATYAL: Because, as I was saying, Justice Ginsburg, any lawyer who read Rule 54(b), the language I was reading to Justice Breyer, it says however you designate it -- and

I'm not even sure it uses the words "final judgment" on that form, but however you designate it, the designation alone is not enough. That is the rule in circuit after circuit.

And, you know, if you adopt my friend's rule --

JUSTICE BREYER: Okay. Okay. So --

MR. KATYAL: -- you have a trap for the unwary on the other side.

JUSTICE BREYER: All right. Now I think I may be getting this. You say, look, here's what you want us to say. Once you see your cases consolidated for all relevant purposes -- I mean, there could be exceptions, but forget that for a second -- for all relevant purposes, you have what the rules call a case with multiple claims involving multiple parties, both.

And, therefore, what you do, lawyer, is if you want a quick appeal, you tell the judge to make an express finding that there is no just reason for delay. Judge, you must make that finding or you cannot enter a final judgment. Whatever you call it, it isn't a

final judgment. That's because of the "otherwise" language.

So you want the consolidation -- it would be nice if it explicitly, but you want us to say it implicitly references 54(b) and that's how we should handle it; is that right or wrong?

MR. KATYAL: That is right. And that is exactly what every circuit does -- this is our red brief at page 14 -- with the partial exception of the Sixth. We're asking that you keep the same rule in place.

JUSTICE ALITO: Well, in Johnson --

JUSTICE KAGAN: Mr. Katyal --

JUSTICE ALITO: Mr. Katyal, in Johnson, the Court -- before Rule 42 was adopted, the Court said consolidation is permitted as a matter of convenience and economy and administration but does not merge the suits into a single cause or change the rights of the parties.

Now, if -- and -- and there's the old rule that the plaintiff is the master of the complaint that the plaintiff files. So, if the intent of Rule 42 was to change that, wouldn't

the -- wouldn't the -- the rule drafters have done so clearly? But just to use the term "consolidation" doesn't -- is certainly not a clear signal that Johnson's understanding of consolidation is no longer the one that's embodied in the rule.

MR. KATYAL: So, Justice Alito, we quite agree that plaintiffs are in general the masters of their complaint, but they're not masters of the timing of their appeal. That is the whole purpose of the final judgment rule, to empower district courts really to make the determination.

Johnson was a partial consolidation case. It was not a full purpose consolidation case. And here's what the advisory committee notes in 1937 said about this. They said: Section 734, which was the statute being interpreted in Johnson, but is -- insofar as the statute differs from the rule, it is modified.

And so you do have the advisory committee saying so. And as Justice Kagan points out, that is the definition --

JUSTICE GINSBURG: The advisory

committee did not say -- it said insofar as; it didn't say that your position is the correct one.

Suppose -- could you not, instead of just -- there was -- the court granted a new trial in your client's case against the daughter. You could have asked the district court at that point to stay the entry of judgment on the estate's claim, couldn't you?

MR. KATYAL: Well, I -- I think we might be able to, but as Justice Gorsuch was pointing out, that delay of the entry of the judgment when you have a special verdict form --

JUSTICE GINSBURG: But you had --

MR. KATYAL: -- has to occur within 150 days.

JUSTICE GINSBURG: You had a certain advantage by not doing that, by not asking to stay the entry of judgment on the estate's claim, because then you and your law firm have no claim outstanding against you that has to be shown on financial statements.

MR. KATYAL: So --

JUSTICE GINSBURG: So by having the

separate judgment final, you don't have to report it, but if you're right that it really isn't a final judgment, then as the -- Sam and his law firm, had they listed this as a claim still outstanding against them --

MR. KATYAL: So, Justice Ginsburg, we agree with you that sometimes, if you adopt our rule, it's going to benefit one side or the other. I think the point we're making here is the same point that this Court made in Mohawk, which is in general in the mine run of cases --

JUSTICE GINSBURG: But I asked -- I asked you that question. Do you know, then, did they treat it as a claim still outstanding against them?

MR. KATYAL: Well, I think that -- I think that as the Third Circuit said, yes, there's so much overlap between these two that there can be --

JUSTICE GINSBURG: No, I'm asking you how that law firm treated what was a claim against them and now is no longer because they prevailed after the trial. And a judgment has been entered.

MR. KATYAL: Well, they can certainly

appeal from that judgment that -- which dismissed the claim against the law firm. The question is only can they appeal of right --

JUSTICE GINSBURG: No, I'm not talking about the claim against. I just want to know is that -- on your theory, then the claims should be still outstanding.

MR. KATYAL: We agree every claim that they lost on one of those two pieces of paper --

JUSTICE GINSBURG: No, the other --

MR. KATYAL: -- can be appealed.

JUSTICE GINSBURG: The claim that they won, the claim that they -- they won -- the estate lost, right? The estate lost that case. And I'm asking you, do they have to still report it as a potential liability unless and until the whole case is wrapped up?

MR. KATYAL: So if I understand your question -- I mean, if they lost everything, they lost -- and they -- they didn't win any claims against us. So the law firm has won. And the -- and the son has won in the trial.

And those are what those two pieces of paper are. And my point to you is anything

that -- that my friend on the other side lost, they can appeal. The only question is the timing. And if they are worried about the hardship, they can use Rule 54 or 1292.

JUSTICE GORSUCH: Mr. Katyal, on 54, where I get tripped up is the word "action." 54 speaks of sending upstairs a claim within an -- within an action. And the federal rules consistently understand the word "action" to be the complaint, the lawsuit. In fact, even this rule that we're now interpreting speaks of actions. Rule 2, Rule 3.

So it seems to me that your dependence on 54 runs into a bit of a plain language issue.

MR. KATYAL: I don't think so. I think that this Court has always said that Rule 54 should be interpreted practically, not technically. It does have a kind of unique meaning that goes all the way back to Mackey and Cold Metal. And the question is --

JUSTICE GORSUCH: Do you have any -- do you have any answer on the text of action, though?

MR. KATYAL: Well, I think that the

text of action is -- refers -- means a single judicial unit, and the -- and the rules empower a court to -- a district court to decide what is a single judicial unit.

So this is why every circuit, basically, with the exception of the Sixth, says it is -- an action for purposes of Rule 54 is a all-purpose consolidated set of cases, which is merged. Two becomes one. That is an action.

Now, there are times when the rules use different words -- use the same words to have different meanings in it. So attorneys' fees, for example, are considered costs under Rule 68 but not 41.

JUSTICE GORSUCH: Do you know anywhere else in -- in the rules where "action" is used differently?

MR. KATYAL: Well, I think actually -- you know, I don't -- I'm not sure that you -- you should get into that for purposes here and -- and write an opinion that says action for all purposes in other rules, but --

JUSTICE GORSUCH: No, I'm -- I'm just asking whether you're familiar with any other

place in the rules.

MR. KATYAL: Well, I -- I don't know that it comes up really in -- in any other rules. Our red brief explains the kind of idea that this is going to have some domino effect on other rules, we don't think is true.

To the extent it'll matter, it might matter in, you know, a couple of rules. But, if anything, as Professor Steadman's article shows, you know, that might promote more efficiency. But we think you shouldn't get into it.

There's a long tradition of the Court adopting different meanings of words in the Federal Rules of Civil Procedure, costs, you know, costs and, you know, other -- other words like that.

So I don't think you should get -- I don't think you should do more. Now, if -- our central point to you, and this is made by the district judge's amicus brief, is that the whole point of the federal rules is to empower them as dispatchers to send up those cases, as the Chief Justice said, pose unique hardships.

Now, Justice Ginsburg, you had asked,

well, the 1937 rules don't really fully repudiate Johnson, but I do think -- and this goes back to --

JUSTICE GINSBURG: No, we don't repudiate --

MR. KATYAL: -- Justice --

JUSTICE GINSBURG: -- it at all. There's not one word said about Johnson.

MR. KATYAL: Well, there's not one word said about Johnson, but there is something important in the rules, and this goes back to the very first question today, which is Justice Sotomayor's question, there are two different parts to Rule 42. There is (a)(2) and there's (a)(1). (a)(1) is to join for hearing any -- or trial -- any or all matters at issue in the actions. But (2) is broader. It's to consolidate the actions.

And that's got to mean something more than just holding a joint proceeding, like my friend on the other side said with his hypothetical, that really does refer to and empower the district court to make an all-purpose consolidation, to make two one, like marriage.

JUSTICE KAGAN: And was that in the prior statute, Mr. Katyal, that 42(a)(1), which really does lead you to think about the term consolidation differently.

MR. KATYAL: Right. Right. So I don't believe the prior statute did break apart these two. And so I do think that, to go back to the plain text of (a)(2), I do think it does say something different.

JUSTICE KAGAN: Could you also add 42(a)(3)? Because 42(a)(1) is about, you know, joint hearings and trials.

MR. KATYAL: Exactly.

JUSTICE KAGAN: 42(a)(3) says, look, you can also issue any other kind of order you want to minimize delay. And then, separate from that, you have this consolidation provision.

MR. KATYAL: Exactly, Justice Kagan. And so, look, I could imagine that you could twist the rule and mean it to -- to be something else and try and get it out of Johnson, but, boy, before you did so and go against the plain text, I think you'd have to have an incredibly good reason to depart from

the long-standing idea that federal district courts are best empowered, as the amicus brief by federal judges says, to make these determinations, to send up those cases.

CHIEF JUSTICE ROBERTS: You -- you've mentioned that a couple times. What -- what are we to make of the amicus brief by -- filed by seven retired federal judges? Do we imply that the other 280 don't agree with it or -- or --

(Laughter.)

CHIEF JUSTICE ROBERTS: I -- I don't quite know what to -- what to do with that.

MR. KATYAL: Right. I mean, I think, you know, you have -- you have a similar group before you in Gelboim, and I do think that, you know, look, we -- if we had more time I suppose we would have gotten more judges, but we did want to bring to you the perspective, I think the judges want to bring to you the perspective of, you know, having to sit through these long, complicated trials --

CHIEF JUSTICE ROBERTS: Well, it's the perspective of seven individuals. I don't know that that represents the perspective of

district judges generally.

MR. KATYAL: Right. It's -- it's just one data point, but I do think it's a data point that squares very much with what this Court has said time and again in Cold Metal, in Mackey, in, you know, Richardson, that district courts and complex cases, to use what you were saying earlier, Mr. Chief Justice, are particularly suited to trying to decide whether or not cases are going to be interrelated.

And to allow piecemeal appeals, you know, without the permission of the district court is really to do something very dangerous to the -- to the circuits.

JUSTICE KAGAN: Mr. Katyal, what do you think we should do if, on the one hand, we think your rule makes a lot of sense for cases that are consolidated completely for all purposes, but, on the other hand, we're concerned that this case should not have been?

What should we do with that?

MR. KATYAL: Well, I don't think, you know, that it's way too late to say this case shouldn't have been consolidated. I mean, that's just, I think, waived in multiple

different ways, but --

JUSTICE KAGAN: It just does seem to me that many of the questions that have been put to you really do deal with the question of whether consolidation was proper here.

MR. KATYAL: Right. Exactly. And as our brief at page 43 explains, look, you can appeal a consolidation order. You can even do it on an interlocutory basis. There are cases that permit that. That would have been the proper cause of action.

But to fight, and this is my opening lines to you today, to fight about that, you know, through the guise of trying to say, well, I get to file a right of appeal, he's complaining about consolidation. Let him complain about consolidation, you know, he should have complained about it and other litigants can in other cases, but don't try and twist Rule 54 and Rule 42 to try and accommodate that.

That's a very separate thing.

JUSTICE GINSBURG: Well, would you -- you're making it two cases, in fact, your client did, because originally that claim was

brought as a counterclaim, part of one action and a counterclaim. You deliberately dropped the counterclaim and commenced an independent action.

MR. KATYAL: So, Justice Ginsburg, that's exactly what's going on in Cold Metal. There are two very different -- there are two different causes of action.

JUSTICE GINSBURG: You made it -- your client made it from a case with a claim and a counterclaim into two cases.

MR. KATYAL: Right. And that's an argument he could have used to try and oppose consolidation. But at this point, as this case comes to the Court, I don't think that would be appropriate.

Now, to the extent we're worried about abuse about consolidation or something like that, I think Justice Alito's idea of the national federal rules committee is one to think about this, but I don't think it would be a good idea to use local rules and have geographic variations circuit to circuit and people having to wonder whether or not they have to file notices of appeal and, you know,

whether there would be a right --

JUSTICE GORSUCH: Wouldn't it be clearer if it were in the rules rather than in the case law which is currently so split?

MR. KATYAL: Well, I don't think it's actually split. I mean, if you go back --

JUSTICE GORSUCH: Well, the reason that we took this case is because there is a split.

MR. KATYAL: Well, only with a partial exception of the Sixth Circuit. Our brief goes through all of these cases. When you deal with all-purpose consolidation -- his split is about partial consolidation in general. There's only three cases we have been able to find in the Sixth Circuit, two of which are unreported, that disagree with what every other circuit that we have been able to find that's ruled on this has found.

So I think all we're saying to you is leave the rules where they are. To the extent you're concerned about any, you know, problems with the rules, any problems with consolidation, I think the national rules committee is the place to be.

If there are no further questions.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Simpson, four minutes.

REBUTTAL ARGUMENT OF ANDREW C. SIMPSON, ON BEHALF OF THE PETITIONER

MR. SIMPSON: The -- the characterization of this consolidation changed in the -- from the opposition to the writ for certiorari to the red brief.

At the red brief, at the certiorari stage, it was characterized as we did as a consolidation for trial.

And that's what it was. I think it's important to understand that all the circuits disagree about even what is consolidation for all purposes.

The Bogsian case from the Third Circuit says a case consolidated for pretrial and trial purposes is for all purposes.

That's what happened in our case. It was consolidated for pretrial and trial. And so, under the Third Circuit definition, it is all purposes.

Other circuits have a completely

different definition and they talk about, in the unitary consolidation type of case, there's one docket, there's one judgment entered, not two. They call that all-purpose consolidation.

So that's one of the problems we have here. The Rule 54, Justice Gorsuch, as you noted, refers to a single action. There's nothing in the amendments to the -- or the adoption of the federal rules to suggest that the rules committee was planning on overruling a Supreme Court precedent from the year before that said cases don't merge. Merge doesn't appear in the federal rules.

To correct one statement in reference to a question asked by Justice Ginsburg, Your Honor, the son's case is still not final. So it is not two years. We are now three years -- February will make three years since the entry of the final judgment in my client's case, and the other case still is not final.

The new trial has already been held. No judgment has been entered on it. Once a judgment is entered on it --

JUSTICE SOTOMAYOR: How long -- do you have any idea why it's being held? This is

more curiosity.

MR. SIMPSON: No, I -- I -- I -- I -- I have a theory. The -- the -- the -- the counsel representing Elsa in her individual capacity made an oral motion for a new trial and judgment on the pleadings or, excuse me, judgment as a matter of law. At the time of the conclusion of Samuel's case, when that was denied, they rested and put on no evidence.

The judge took the motion under advisement. The verdict then came in. And he's never ruled on that. And -- and at the same time, they also filed a written one before --

JUSTICE SOTOMAYOR: What's the verdict?

MR. SIMPSON: The -- the verdict --

JUSTICE SOTOMAYOR: Against your client?

MR. SIMPSON: The verdict was against Elsa in her individual capacity. And one -- just one quick clarification on this case.

There are two different Elsas in this case. They are not the same parties. Elsa in her individual capacity is legally distinct

from Elsa as the trustee of the trust. And that's the Alexander v. Todman case. And the Third Circuit makes that very clear. So this is not A versus B and B versus A where B could have asserted this -- this as a counterclaim against Elsa in her individual capacity.

If there are no other questions.

CHIEF JUSTICE ROBERTS: Thank you, counsel. The case is submitted.

(Whereupon, at 11:03 a.m., the case was submitted.)

1

1 [3] **15**:14 **28**:1 **35**:1
10:04 [2] **1**:18 **3**:2
100 [1] **41**:21
11:03 [1] **66**:10
1154 [2] **13**:21 **37**:17
12(b)(6 [1] **8**:21
1292 [3] **46**:9,12 **53**:4
1292(b [1] **42**:23
13 [4] **3**:23 **4**:3 **12**:9 **17**:14
1395 [1] **37**:18
14 [6] **8**:2 **12**:10 **19**:4 **33**:2 **40**:21 **48**:10
14-day [4] **32**:19,25 **33**:8,17
15 [1] **30**:23
150 [2] **11**:18 **50**:17
16 [1] **1**:14
16-1150 [1] **3**:4
1789 [1] **3**:11
19 [1] **12**:11
1937 [2] **49**:17 **56**:1

2

2 [4] **31**:13 **37**:16 **53**:12 **56**:17
20 [1] **32**:25
2009 [1] **33**:11
2014 [1] **35**:5
2015 [1] **32**:16
2018 [1] **1**:14
23(f [1] **11**:1
24 [3] **3**:23 **4**:3 **17**:14
28-day [1] **32**:21
280 [1] **58**:9

3

3 [2] **2**:4 **53**:12
30 [2] **2**:7 **18**:12
30-day [1] **32**:22
354 [1] **37**:21
3A [1] **39**:22

4

4 [2] **5**:11 **41**:5
4,000 [1] **29**:4
41 [1] **54**:15
42 [10] **3**:21 **4**:1,7 **9**:6 **12**:16 **28**:2 **48**:16,25 **56**:14 **60**:20
42(a)(1 [3] **4**:20 **57**:2,11
42(a)(2 [1] **4**:24
42(a)(3 [2] **57**:11,14
42(a)(4 [1] **17**:11
43 [1] **60**:7
4th [2] **32**:16 **33**:23

5

50 [2] **38**:23,23
52 [1] **20**:8
54 [16] **38**:1,24 **39**:20,22 **40**:13 **42**:21 **43**:24 **46**:12 **53**:4,5,7,14,18 **54**:7 **60**:20 **64**:6
54(b [21] **17**:19 **18**:5 **25**:5,7 **27**:17,23 **28**:7,14,19,21 **29**:2,6,9,15 **43**:3,6,7 **46**:9,21,24 **48**:5
58 [4] **18**:19 **19**:10 **22**:17 **43**:6
59 [5] **32**:21 **33**:9,24 **34**:1 **38**:23
5th [1] **34**:4

6

60 [1] **18**:13
63 [1] **2**:10
68 [1] **54**:15

7

7 [3] **12**:12 **15**:2 **17**:17
72 [1] **11**:17
734 [1] **49**:18

8

8 [1] **44**:15
815 [1] **36**:22

9

9 [1] **44**:16
92 [1] **29**:3

A

a)(1 [8] **5**:3,6,13,17 **6**:14,16 **56**:15,15
a)(2 [8] **5**:5,8,13,15 **6**:3,8 **56**:14 **57**:8
a)(3 [2] **5**:13,15
a.m [3] **1**:18 **3**:2 **66**:10
abeyance [1] **13**:24
ability [2] **10**:5,17
able [4] **28**:9 **50**:11 **62**:15,18
above-entitled [1] **1**:16
absolutely [5] **9**:15 **10**:1 **17**:10 **30**:25 **34**:4
abuse [1] **61**:18
accommodate [1] **60**:21
accomplish [1] **5**:5
Act [2] **3**:11 **27**:11
action [18] **11**:3 **22**:3 **39**:24 **40**:12 **53**:6,8,9,23 **54**:1,7,10,17,22 **60**:11 **61**:1,4,8 **64**:7
actions [5] **5**:22 **22**:3 **53**:12 **56**:17,18
actually [9] **5**:12 **9**:18 **12**:19 **16**:13 **29**:18 **32**:25 **35**:7 **54**:19 **62**:6
add [1] **57**:10
address [1] **12**:6
addressing [1] **17**:6
adjudicated [1] **40**:17
adjudicates [1] **40**:9
administer [1] **6**:19
administered [1] **15**:18
administration [2] **15**:19 **48**:19
administrative [1] **6**:13
adopt [2] **47**:6 **51**:7
adopted [2] **30**:19 **48**:17
adopting [2] **15**:7 **55**:14
adoption [1] **64**:9
advantage [1] **50**:19
adversary [1] **4**:13
advisement [1] **65**:11
advisory [4] **33**:25 **49**:16,22,25
advocating [1] **20**:25
affect [1] **39**:2
affection [2] **44**:11,23
agree [12] **5**:9 **13**:2,7,8,15,23 **21**:7 **34**:3 **49**:8 **51**:7 **52**:8 **58**:9
AL [1] **1**:10
Alexander [1] **66**:2
alienate [1] **44**:23
alienation [1] **44**:10
ALITO [6] **16**:1,18 **17**:18 **48**:13,15 **49**:7
Alito's [2] **17**:5 **61**:19
all-purpose [13] **31**:11 **32**:3 **35**:1 **36**:5,6 **41**:2,5,12,14 **54**:8 **56**:24 **62**:13 **64**:4
all-purposes [1] **35**:9
allow [2] **5**:17 **59**:11
allows [1] **14**:1
alone [2] **43**:15 **47**:3
already [3] **5**:6 **43**:8 **64**:21
altered [1] **34**:20
alternative [3] **16**:6,19,20
although [2] **8**:8 **23**:6
ambiguous [1] **37**:1
amendments [1] **64**:8
amici [1] **10**:25
amicus [3] **55**:21 **58**:2,7
ANDREW [5] **1**:21 **2**:3,9 **3**:7 **63**:5
another [2] **7**:18 **15**:8
answer [7] **8**:7 **17**:21 **20**:11 **31**:17 **39**:15,19 **53**:23
answers [1] **40**:14
anticipate [1] **11**:16
apart [2] **45**:10 **57**:6
apologize [1] **29**:19
appeal [42] **3**:12,14,20 **6**:25 **9**:25,25 **10**:4 **11**:2,3 **12**:2 **13**:9,16 **14**:2 **16**:10 **18**:12 **26**:5,12,14 **28**:4,16 **29**:2,6,15 **30**:14,17 **32**:22 **34**:4,15,18 **36**:15 **38**:11,18 **42**:24 **46**:17 **47**:21 **49**:10 **52**:1,3 **53**:2 **60**:8,15 **61**:25
appealable [3] **27**:14,18 **29**:22
appealed [2] **13**:2 **52**:12
appealing [1] **45**:8
appeals [14] **9**:17 **10**:5,13,21 **13**:22 **14**:4,5,13,17 **16**:15 **26**:7 **28**:6 **42**:23 **59**:11
appear [1] **64**:13
APPEARANCES [1] **1**:20
appellate [3] **11**:5 **15**:17 **24**:14
appendix [5] **36**:21 **39**:22 **41**:4 **44**:15 **45**:5
applied [1] **28**:7
applies [1] **9**:9
apply [1] **8**:10
appropriate [3] **10**:19 **11**:15 **61**:16
approximately [1] **45**:25
architecture [3] **3**:22 **9**:5 **11**:1
Argentina [1] **31**:15
argued [1] **31**:11
arguing [1] **16**:2
argument [23] **1**:17 **2**:2,5,8 **3**:4,7 **8**:10 **9**:9,13 **10**:24 **13**:1 **16**:4 **20**:20,24 **30**:6 **31**:25 **32**:2,4,6 **38**:15 **41**:6 **61**:13 **63**:5
arguments [1] **26**:16
arising [1] **8**:3
article [1] **55**:9
asserted [1] **66**:5
assume [1] **37**:8
attached [1] **34**:11
attorney [1] **32**:12
attorneys' [7] **19**:3 **30**:22 **32**:5,20,24 **33**:7 **54**:13
authority [8] **12**:3 **17**:22 **28**:9,11,12,17,21 **29**:8
authorizes [1] **19**:14
aware [1] **43**:12

B

b)(1 [3] **19**:23 **20**:16 **21**:1
b)(2 [3] **19**:24 **20**:19 **21**:2
back [14] **21**:6 **27**:10,11 **32**:10 **35**:10 **36**:5 **41**:18 **43**:18 **45**:9 **53**:20 **56**:3,11 **57**:7 **62**:6
bad [1] **42**:13
balance [1] **30**:1
basically [1] **54**:6
basis [1] **60**:9
became [1] **11**:12
become [2] **24**:25 **37**:22
becomes [4] **22**:5 **23**:17 **29**:21 **54**:9
becoming [1] **35**:15
behalf [8] **1**:21,23 **2**:4,7,10 **3**:8 **30**:7 **63**:6
believe [2] **9**:18 **57**:6
below [1] **31**:10
belts [1] **36**:3
benefit [1] **51**:8
Bergstrom [1] **41**:9
best [2] **16**:4 **58**:2
better [7] **12**:1 **16**:5,7 **17**:18,21 **18**:1 **38**:11
between [1] **51**:18
bigger [1] **9**:8
bit [2] **19**:10 **53**:14
Black's [2] **21**:25 **22**:4
Blackstone [1] **27**:11
blank [2] **23**:10,19
blanket [1] **15**:21
Bogsian [1] **63**:18
bong [1] **38**:17
both [10] **30**:16 **31**:2,10 **33**:15,16 **43**:19 **44**:12 **45**:3,4 **47**:19
boy [1] **57**:23
BP [1] **29**:4
breadth [1] **9**:13
break [2] **45**:10 **57**:6
BREYER [25] **25**:2,12,19,24 **26**:2,20,22 **27**:6,16,22 **28**:8,20,25 **29**:17 **37**:25 **38**:13 **39**:2,9,14,18 **40**:5,13 **46**:25 **47**:8,11
Breyer's [3] **32**:15 **35**:10 **43**:18
brief [17] **28**:11 **31**:2,12,14 **32**:7 **39**:21 **40**:20 **44**:2 **48**:10 **55**:4,21 **58**:2,7 **60**:7 **62**:11 **63**:10,11
briefs [2] **9**:16 **17**:2
bright [2] **16**:8,19
bright-line [1] **3**:17

bring [5] **3**:24 **6**:16 **7**:23 **58**:19,20
brings [1] **6**:22
broader [1] **56**:17
brooks [1] **3**:18
brother [2] **30**:12 **45**:4
brother's [1] **34**:14
brought [10] **7**:12,13,15 **8**:4 **10**:6 **17**:12,13 **30**:12 **34**:4 **61**:1
business [1] **6**:13

C

cake [1] **34**:6
call [3] **47**:17,25 **64**:4
came [3] **1**:16 **33**:4 **65**:11
cannot [3] **13**:5 **16**:9 **47**:24
capacity [4] **65**:5,21,25 **66**:6
careful [1] **3**:22
Case [99] **3**:4,14,17,24 **4**:2,21 **5**:11, 24 **6**:19,21 **7**:8 **8**:19,20 **9**:3,17 **10**: 2,6,7 **11**:7 **12**:21 **13**:8,24 **15**:24 **16**: 15,21,22 **18**:3,16,17 **20**:8 **25**:2,6 **26**:1,17 **27**:1,13,24 **28**:2,16 **29**:3, 16 **32**:3,3 **34**:8,13,14,16,16 **35**:4,5, 11,11 **37**:20,21,24 **38**:2 **39**:12 **40**: 15,18 **41**:3,18 **42**:20,22 **43**:3,9,12 **44**:5,20,22 **45**:11,14,16,18,19 **47**: 18 **49**:15,16 **50**:6 **52**:15,18 **59**:20, 23 **61**:10,14 **62**:4,8 **63**:18,19,21 **64**:2,16,19,20 **65**:8,22,24 **66**:2,9, 10
cases [57] **3**:21,24 **4**:5 **5**:18,23 **6**:3, 7,12 **9**:10,11 **10**:15,18 **11**:21 **12**: 13,13 **14**:22,25 **15**:2,4,8,17 **16**:21 **17**:3,12 **18**:2,10 **21**:9 **24**:25 **30**:12 **33**:16 **35**:2,6 **37**:16,22 **41**:19,22 **42**:6,16 **43**:19 **44**:4,13 **46**:1 **47**:14 **51**:11 **54**:8 **55**:23 **58**:4 **59**:7,10,17 **60**:9,19,24 **61**:11 **62**:12,15 **64**:12
categories [1] **4**:3
category [2] **17**:16,17
cause [2] **48**:20 **60**:11
causes [1] **61**:8
cautious [1] **36**:14
central [7] **44**:3,12,20,20 **45**:2,7 **55**: 20
certain [1] **50**:18
Certainly [6] **4**:9 **10**:24 **13**:7 **14**:10 **49**:3 **51**:25
certifies [1] **27**:21
certify [1] **27**:23
certiorari [2] **63**:10,11
challenge [1] **29**:23
challenging [1] **30**:14
change [2] **48**:20,25
changed [2] **33**:24 **63**:8
changes [1] **35**:13
characterization [1] **63**:8
characterized [1] **63**:12
charge [2] **44**:7,9
CHIEF [25] **3**:3,9 **9**:23 **10**:9 **11**:25 **14**:3 **30**:3,8 **31**:19,22 **32**:8,9 **35**:19 **37**:6 **41**:16 **42**:12 **45**:13 **46**:10 **55**: 24 **58**:5,12,23 **59**:8 **63**:2 **66**:8
Christiansted [1] **1**:21
chunk [1] **45**:10
circuit [21] **15**:5 **40**:21,22 **41**:3,9 **44**:14 **45**:6 **46**:8 **47**:4,5 **48**:9 **51**:17 **54**:5 **61**:23,23 **62**:11,16,17 **63**:19, 23 **66**:3
circuits [4] **41**:11 **59**:14 **63**:15,25
circumstance [1] **13**:20
Civil [4] **15**:15 **16**:2 **22**:1 **55**:15
claim [31] **7**:13,15,17,18 **8**:14 **11**:9, 13 **25**:16 **28**:1 **31**:2,24,25 **34**:19 **39**:24,25 **40**:1 **42**:20 **50**:9,21,22 **51**:4,14,21 **52**:2,5,8,13,14 **53**:7 **60**: 25 **61**:10
claiming [1] **29**:23
claims [23] **6**:22,25 **7**:6,9,12,15 **8**: 12,15 **9**:2 **25**:9,13 **28**:2 **30**:15 **32**: 17 **35**:16 **38**:8 **40**:10,16 **43**:22,22 **47**:18 **52**:6,22
clarification [1] **65**:22
clarify [1] **25**:4
class [2] **5**:22 **11**:3
clear [2] **49**:4 **66**:3
clearer [1] **62**:3
clearly [1] **49**:2
clerk [6] **11**:10 **18**:17,18 **19**:19 **25**: 14 **43**:9
client [6] **7**:11,13 **11**:9 **60**:25 **61**:10 **65**:19
client's [3] **7**:8 **50**:6 **64**:19
clock [6] **32**:20,22,23 **33**:1,8,17
clocks [1] **32**:19
Cold [4] **43**:19 **53**:21 **59**:5 **61**:6
come [6] **9**:6 **24**:7 **28**:24,25 **29**:7 **41**:20
comes [6] **3**:16 **12**:15 **24**:13 **41**:3 **55**:3 **61**:15
coming [2] **11**:2 **14**:11
commenced [1] **61**:3
committee [9] **16**:3 **17**:7 **33**:25 **49**: 16,23 **50**:1 **61**:20 **62**:25 **64**:10
common [3] **35**:2 **44**:3,11
company [1] **21**:15
complain [1] **60**:17
complained [1] **60**:18
complaining [1] **60**:16
complaint [3] **48**:24 **49**:9 **53**:10
complete [2] **23**:1 **36**:17
completely [3] **11**:5 **59**:18 **63**:25
complex [1] **59**:7
complicated [3] **42**:11,16 **58**:22
compulsory [1] **12**:9
concerned [2] **59**:20 **62**:22
concerns [1] **41**:17
conclusion [1] **65**:8
confused [1] **24**:22
Congress [1] **30**:16
connotation [1] **4**:14
consequences [1] **24**:12
considered [3] **16**:22 **18**:3 **54**:14
consistently [1] **53**:9
consolidate [17] **4**:12 **6**:3,8 **10**:17 **21**:8,15 **22**:14,25 **23**:7,14,16,16,22 **24**:3,9 **36**:23 **56**:18
consolidated [21] **6**:11,12 **12**:25 **13**:1,4 **16**:21 **18**:2,11 **27**:24 **35**:20, 24 **37**:17,20 **39**:11 **40**:15 **47**:14 **54**: 8 **59**:18,24 **63**:19,22
consolidating [2] **6**:17 **30**:11
consolidation [47] **4**:24 **5**:12,14, 16 **9**:10 **21**:25 **25**:4 **28**:13 **31**:11 **32**:3 **35**:2,9 **36**:6,6,22 **37**:9 **38**:3,5 **41**:2,6,12,14,20 **45**:9 **48**:3,17 **49**:3, 5,14,15 **56**:24 **57**:4,17 **60**:5,8,16, 17 **61**:14,18 **62**:13,14,24 **63**:8,13, 16 **64**:2,4
contain [1] **20**:1
continue [1] **10**:17
continued [1] **5**:15
contrary [3] **38**:14 **40**:23 **43**:17
convenience [1] **48**:18
core [1] **27**:10
correct [7] **8**:2 **9**:15,24 **22**:12 **23**:3 **50**:2 **64**:14
costs [3] **54**:14 **55**:15,16
couldn't [1] **50**:9
counsel [6] **14**:16 **19**:22 **30**:4 **63**:3 **65**:4 **66**:9
count [1] **27**:2
counter [3] **15**:22 **16**:25 **17**:1
counterclaim [7] **11**:12 **39**:25 **61**: 1,2,3,11 **66**:5
counterclaims [2] **12**:10 **40**:16
country [1] **33**:6
counts [1] **26**:13
couple [2] **55**:8 **58**:6
course [4] **18**:5 **23**:18 **24**:5 **38**:21
COURT [79] **1**:1,17 **3**:10,13 **5**:4 **6**:2 **9**:17,19 **10**:4,7,11,13,20,21 **11**:5,7, 8,14 **12**:7,24 **13**:22 **14**:4,8,11,13, 20 **15**:9,23 **16**:15,16 **17**:1,14 **18**:4, 22,23 **19**:14 **20**:14,21 **24**:5,8 **25**:7 **27**:12 **28**:5 **29**:13 **30**:9,10,17,22 **31**:4,14 **33**:5 **35**:14,21 **36**:12,16, 20 **37**:8 **40**:2 **41**:4,8 **42**:18,22,22 **43**:2 **46**:12 **48**:16,17 **50**:5,8 **51**:10 **53**:17 **54**:3,3 **55**:13 **56**:23 **59**:5,13 **61**:15 **64**:11
court-ordered [1] **22**:2
courts [14] **8**:21 **14**:5,17 **23**:21 **24**: 3,16,18,21 **26**:8 **33**:6 **36**:3 **49**:12 **58**:2 **59**:7
covered [1] **29**:16
creates [2] **12**:19 **18**:7
credibility [2] **44**:17 **45**:4
cross-claim [1] **40**:1
curiosity [1] **65**:1
currently [1] **62**:4

D

D.C [2] **1**:13,23
damage [2] **6**:1,5
damages [1] **42**:2
dangerous [1] **59**:13
data [2] **59**:3,3
daughter [5] **34**:22 **44**:10,23 **45**:20 **50**:7
days [8] **11**:19 **18**:12,13 **19**:4 **30**:24 **32**:25 **33**:2 **50**:17
deal [2] **60**:4 **62**:12
deals [1] **11**:2
dealt [1] **22**:16
death [2] **5**:23 **6**:3
decide [5] **6**:2 **12**:2 **26**:23 **54**:3 **59**: 9
decided [3] **8**:24 **13**:25 **26**:23
decides [1] **28**:6
decision [10] **26**:8,9,10,13,14,24 **36**:18 **40**:8 **41**:10,11
decisions [1] **30**:18
deem [1] **12**:24
deemed [1] **11**:19
defendant [1] **46**:1
defendants [1] **43**:23
deferring [2] **14**:18,21
defines [1] **22**:1
definition [5] **22**:5 **24**:24 **49**:24 **63**: 23 **64**:1
delay [7] **20**:14,22 **29**:12,14 **47**:23 **50**:12 **57**:16
deliberately [1] **61**:2
denied [4] **19**:5,8 **30**:22 **65**:9
depart [1] **57**:25
dependence [1] **53**:13
depending [1] **14**:7
describe [1] **17**:2
described [1] **10**:3
design [2] **17**:4,8
designate [2] **46**:25 **47**:3
designated [1] **40**:9
designation [2] **43**:20 **47**:3
designed [2] **3**:23 **4**:21
Despite [1] **6**:10
determination [2] **7**:9 **49**:13
determinations [3] **30**:16 **44**:17 **58**:4
determines [1] **29**:13
Dictionary [2] **21**:25 **22**:4
difference [1] **46**:10
different [25] **6**:21 **7**:1,20 **8**:9,12, 23 **21**:5,9 **23**:8,11,22 **32**:19 **33**:3 **34**:24 **42**:16 **54**:12,13 **55**:14 **56**:13 **57**:9 **60**:1 **61**:7,8 **64**:1 **65**:23
differently [2] **54**:18 **57**:4
differs [1] **49**:20
diminish [1] **20**:20
diminishes [1] **20**:24
direct [2] **25**:8 **40**:3
directly [1] **6**:23
directs [1] **19**:20
disagree [5] **14**:14 **16**:16 **45**:8 **62**: 17 **63**:16
disassociates [1] **27**:13
discretion [4] **11**:4 **15**:23 **20**:14,22
discussed [1] **14**:23
dismiss [1] **9**:3
dismissed [2] **12**:22 **52**:2
dispatchers [1] **55**:23
disregard [1] **17**:23
distinct [1] **65**:25
distinction [1] **21**:2
distress [3] **42**:2,5,7
district [40] **9**:19 **10**:11,20 **11**:7,8,

25 **12**:7 **14**:8,20 **15**:9 **17**:14 **18**:4 **19**:5,20 **20**:14,21 **30**:10,22 **31**:4 **33**:5 **35**:5,6,21 **36**:12,16,20 **37**:8 **38**:6 **42**:21 **43**:2 **46**:11 **49**:12 **50**:7 **54**:3 **55**:21 **56**:23 **58**:1 **59**:1,6,12
dividing [1] **4**:7
docket [3] **11**:18 **14**:7 **64**:3
doing [2] **38**:15 **50**:19
domino [1] **55**:5
done [3] **15**:6 **34**:16 **49**:2
double [2] **12**:18 **16**:12
down [1] **40**:7
drafters [1] **49**:1
dropped [1] **61**:2
during [1] **34**:21

E

each [3] **15**:23 **18**:13 **30**:13
earlier [1] **59**:8
early [3] **8**:19 **9**:20 **42**:3
Eastern [1] **35**:6
eat [1] **34**:6
economy [1] **48**:19
effect [1] **55**:5
efficiency [1] **55**:11
efficient [1] **15**:20
elapsed [1] **45**:17
ELSA [6] **1**:3 **65**:4,21,24 **66**:1,6
Elsas [1] **65**:23
embodied [3] **5**:13 **23**:25 **49**:6
emotional [3] **42**:2,5,7
empower [4] **49**:12 **54**:2 **55**:22 **56**:23
empowered [2] **46**:12 **58**:2
enable [1] **29**:15
end [1] **40**:11
engendered [1] **33**:11
enough [4] **43**:16,21,24 **47**:4
enter [6] **11**:10,11 **19**:19 **35**:21 **38**:7 **47**:24
entered [28] **3**:17,19 **8**:18 **11**:18 **12**:21,22 **13**:3 **16**:14 **18**:17,24 **20**:3,6,8 **28**:3,14 **29**:6 **30**:10,11 **32**:16 **33**:23 **42**:7 **43**:4,9,14 **51**:24 **64**:3,22,23
entering [1] **43**:3
enters [2] **27**:24 **29**:10
entire [1] **43**:13
entirely [2] **7**:20 **8**:1
entry [11] **6**:24 **19**:17 **20**:15,22,25 **25**:8 **40**:3 **50**:8,12,20 **64**:18
equivalent [2] **15**:16 **43**:6
Essentially [2] **19**:17 **33**:11
ESTATE [5] **1**:4 **44**:5,8 **52**:15,15
estate's [2] **50**:9,20
ET [1] **1**:10
ETHLYN [2] **1**:5,6
even [11] **9**:5 **13**:17 **24**:16 **27**:10 **29**:15 **35**:8 **41**:6 **47**:1 **53**:10 **60**:8 **63**:16
everyone [1] **6**:16
everything [4] **14**:18 **15**:6 **41**:13 **52**:20
evidence [2] **19**:1 **65**:9
exactly [10] **5**:4 **9**:11 **29**:21 **39**:7 **46**:8 **48**:9 **57**:13,19 **60**:6 **61**:6
example [6] **5**:20 **6**:9 **18**:8 **27**:2 **42**:20 **54**:14
exception [5] **3**:18 **40**:22 **48**:11 **54**:6 **62**:11
exceptional [1] **4**:2
exceptions [1] **47**:15
excuse [1] **65**:6
exercised [1] **15**:23
expertise [1] **46**:13
expired [1] **33**:1
explain [3] **4**:6 **19**:9 **44**:1
explaining [1] **14**:12
explains [3] **5**:11 **55**:4 **60**:7
explicitly [1] **48**:4
explosion [2] **5**:21,25
express [1] **47**:22
expressly [1] **29**:13
extent [4] **10**:19 **55**:7 **61**:17 **62**:21
extremely [1] **42**:11

F

facing [1] **8**:24
fact [5] **19**:2 **20**:2 **30**:21 **53**:10 **60**:24
failure [1] **19**:6
fall [3] **4**:2,3 **17**:15
false [1] **27**:19
familiar [1] **54**:25
familiarity [2] **10**:12 **46**:13
FAMILY [1] **1**:7
far [1] **31**:15
fashion [1] **19**:6
February [4] **32**:16 **33**:23 **34**:4 **64**:18
federal [14] **3**:22 **15**:15,16 **33**:10 **43**:13 **53**:8 **55**:15,22 **58**:1,3,8 **61**:20 **64**:9,13
fees [10] **19**:3,5 **30**:23 **31**:24 **32**:5,12,20,24 **33**:7 **54**:14
few [1] **34**:24
fewer [4] **25**:9 **40**:4,9,11
fight [2] **60**:12,13
figure [1] **24**:20
file [8] **9**:2 **19**:6 **34**:1,7 **35**:12 **36**:15 **60**:15 **61**:25
filed [10] **7**:3 **12**:14 **15**:1 **19**:4 **30**:23 **32**:25 **33**:1 **37**:21 **58**:7 **65**:13
files [1] **48**:24
filing [2] **18**:12 **33**:8
final [77] **3**:12,16,18 **8**:18 **11**:19 **12**:18,21,22 **13**:3,21 **14**:19,19 **16**:10,12,13,23 **18**:4,18 **19**:4,7 **24**:13 **25**:8,15,24 **26**:4,9,9,10,12,14,24,25 **27**:12,17,25 **28**:14 **30**:18,24 **32**:18 **33**:14,15,19,22 **34**:2,11,12,13,14 **36**:17 **37**:10 **38**:7,10,17,22 **39**:3 **40**:3,18 **41**:23 **43**:4,5,8,15,20 **45**:15,18 **46**:15,16,19 **47**:1,24 **48**:1 **49**:11 **51**:1,3 **64**:16,19,20
finally [1] **45**:20
financial [1] **50**:23
find [5] **26**:6 **28**:9 **29**:11 **62**:15,18
finding [4] **29**:11 **38**:5 **47**:22,24
finished [1] **36**:17
firm [5] **50**:21 **51**:4,21 **52**:2,22
first [9] **3**:4,16 **12**:7 **30**:25 **32**:14 **36**:20,23 **37**:12 **56**:12
five [5] **8**:12,12,15,22 **42**:10
follow [1] **27**:23
following [2] **17**:5 **37**:16
follows [1] **41**:15
Footnote [3] **5**:11 **12**:12 **17**:17
forget [3] **25**:3 **46**:19 **47**:16
forgetting [1] **28**:13
form [2] **47**:2 **50**:14
forth [1] **41**:18
found [6] **20**:16 **36**:21 **41**:4 **44**:15 **45**:6 **62**:19
four [3] **8**:25 **9**:3 **63**:4
frankly [1] **21**:13
friend [7] **12**:18 **32**:13 **34**:3 **42**:14 **46**:11 **53**:1 **56**:21
friend's [2] **30**:19 **47**:7
front [2] **22**:15 **24**:11
full [1] **49**:15
fully [1] **56**:1
further [2] **29**:25 **63**:1
furthermore [1] **12**:4

G

gap [1] **45**:22
Gelboim [4] **12**:13 **15**:1 **17**:16 **58**:16
general [5] **19**:24 **20**:17 **49**:8 **51**:11 **62**:14
generally [3] **4**:13 **30**:18 **59**:1
geographic [1] **61**:23
gets [4] **8**:17 **10**:3 **29**:5 **39**:4
getting [2] **17**:19 **47**:12
GINSBURG [45] **7**:11,23 **8**:8 **11**:6 **18**:16,21 **19**:13 **20**:12 **22**:9,13,19 **29**:9 **34**:10,24 **35**:17 **37**:24 **38**:6 **43**:1,12 **44**:1,19 **45**:1,12,23 **46**:2,5,14,23 **49**:25 **50**:15,18,25 **51**:6,12,20 **52**:4,11,13 **55**:25 **56**:4,7 **60**:23 **61**:5,9 **64**:15
give [1] **5**:19
given [2] **11**:4 **19**:21
giving [1] **23**:12
Gonzalez [1] **35**:4
GORSUCH [18] **14**:16 **15**:3 **19**:22 **20**:10 **36**:7,10,19,25 **37**:4 **40**:25 **50**:11 **53**:5,22 **54**:16,24 **62**:2,7 **64**:6
Gorsuch's [1] **39**:16
got [4] **6**:11 **26**:18 **43**:24 **56**:19
gotten [1] **58**:18
government [1] **18**:10
grabs [1] **26**:15
granted [3] **36**:24 **38**:21 **50**:5
great [1] **12**:8
greater [1] **10**:11
group [1] **58**:15
groups [3] **6**:6,11,17
guess [2] **8**:6 **9**:7
guidance [1] **19**:21
guise [1] **60**:14

H

HALL [6] **1**:3,5,7,10 **3**:5,5
hand [3] **4**:1 **59**:16,19
handle [1] **48**:6
handled [1] **9**:4
happen [1] **12**:15
happened [3] **20**:7 **33**:3 **63**:21
happens [1] **18**:15
hardship [1] **53**:4
hardships [1] **55**:24
havoc [2] **27**:3,5
headlong [2] **30**:16 **34**:9
hear [1] **3**:3
hearing [7] **4**:20,23,25 **5**:18 **6**:10,15 **56**:15
hearings [1] **57**:12
held [3] **12**:2 **64**:21,25
help [1] **37**:10
history [2] **16**:25 **17**:22
holding [1] **56**:20
Honor [5] **9**:14 **21**:13 **22**:18 **24**:15 **64**:16
however [3] **40**:9 **46**:25 **47**:2
hypothetical [1] **56**:22

I

idea [5] **55**:4 **58**:1 **61**:19,22 **64**:25
ill [1] **5**:24
Illinois [1] **35**:5
imagine [3] **25**:5 **45**:7 **57**:20
immediately [1] **13**:2
implicitly [1] **48**:5
imply [1] **58**:8
important [4] **25**:20 **40**:7 **56**:11 **63**:15
importantly [1] **9**:19
improperly [1] **44**:7
improve [1] **17**:7
incredibly [1] **57**:25
indeed [2] **20**:16 **26**:25
independent [2] **42**:17 **61**:3
indicate [1] **11**:23
indicated [1] **16**:11
indication [1] **11**:20
indispensable [1] **12**:11
individual [4] **65**:4,21,25 **66**:6
individuals [1] **58**:24
industrial [1] **5**:21
inhibiting [1] **15**:7
initial [1] **6**:9
injury [1] **42**:3
insofar [2] **49**:19 **50**:1
Instead [2] **30**:13 **50**:4
instruct [1] **11**:10
intent [1] **48**:25
interested [3] **38**:1,2,2
interlocutory [3] **11**:3 **42**:23 **60**:9
interpreted [3] **23**:21 **49**:19 **53**:18
interpreting [2] **23**:6 **53**:11
interrelated [1] **59**:10
interrupt [1] **31**:20
introduced [1] **40**:23

involved [1] **40**:2
involving [1] **47**:18
isn't [4] **9**:24 **43**:4 **47**:25 **51**:3
issue [11] **8**:10 **10**:21 **22**:16 **31**:13 **44**:3,12,20,21 **53**:15 **56**:16 **57**:15
issued [2] **18**:19 **29**:21
issues [7] **25**:6 **27**:17 **33**:16 **36**:13 **39**:5,13 **45**:2
it'll [1] **55**:7
itself [1] **27**:13

J

January [1] **1**:14
job [1] **42**:25
Johnson [12] **22**:24,24 **23**:4,5 **48**:13,16 **49**:14,19 **56**:2,8,10 **57**:23
Johnson's [1] **49**:4
join [1] **56**:15
joinder [1] **12**:11
joining [1] **4**:20
joint [2] **56**:20 **57**:12
Jones [1] **39**:4
judge [20] **4**:22 **6**:10 **11**:25 **17**:9 **19**:5,20 **25**:13 **27**:3,20 **28**:6 **29**:10,24 **34**:19 **35**:18 **38**:6 **42**:3 **45**:16 **47**:22,23 **65**:10
judge's [1] **55**:21
judges [6] **43**:7 **58**:3,8,18,20 **59**:1
judgment [98] **3**:13,16,19 **6**:24 **8**:18 **11**:11,18 **12**:18,21,22 **13**:3,21 **14**:19 **16**:10,12,13,23 **18**:4,18,19,23 **19**:4,7,19 **20**:2,15,22 **21**:1 **24**:13 **25**:8,15,25 **26**:4,10,12,25 **27**:12,14,18 **28**:1,15 **29**:2,5,10 **30**:24 **32**:14,18 **33**:14,15,20,22 **34**:2,11,13,14,20 **35**:24 **36**:1 **37**:10 **38**:7,10,17,22 **39**:3,3 **40**:3 **41**:24 **42**:7 **43**:4,5,8,8,15,20 **45**:15,19 **46**:9,15,16,19,21 **47**:2,25 **48**:1 **49**:11 **50**:9,13,20 **51**:1,3,23 **52**:1 **64**:3,19,22,23 **65**:6,7
judgments [4] **34**:12 **35**:3,22 **36**:13
judicata [1] **8**:24
judicial [2] **54**:2,4
Judiciary [2] **3**:11 **27**:11
jurisdiction [1] **26**:8
JUSTICE [175] **3**:3,9 **4**:6,10,17 **5**:2 **6**:20 **7**:5,11,23,24 **8**:6,7,8 **9**:7,22,23 **10**:2,9 **11**:6,22 **12**:1 **13**:6,14 **14**:3,16 **15**:3,19 **16**:1,18 **17**:4,5,18 **18**:16,21 **19**:9,12,13,22 **20**:10,11,11 **21**:4,14,23 **22**:9,13,19,23 **23**:4 **24**:2,19 **25**:1,2,12,19,24 **26**:2,20,22 **27**:6,16,22 **28**:8,20,25 **29**:9,17 **30**:3,9,20 **31**:1,3,6,19,22 **32**:8,9,10,15 **33**:13,18,19,21 **34**:10,23 **35**:10,17,19 **36**:7,10,19,25 **37**:4,6,24,25 **38**:6,13 **39**:2,9,14,16,18 **40**:5,13,25 **41**:16 **42**:12 **43**:1,12,18 **44**:1,19 **45**:1,12,23 **46**:2,5,10,10,14,23,24 **47**:8,11 **48**:13,14,15 **49**:7,23,25 **50**:11,15,18,25 **51**:6,12,20 **52**:4,11,13 **53**:5,22 **54**:16,24 **55**:24,25 **56**:4,6,7,12 **57**:1,10,14,19 **58**:5,12,23 **59**:8,15 **60**:2,23 **61**:5,9,19 **62**:2,7 **63**:2 **64**:6,15,24 **65**:15,18 **66**:8

K

KAGAN [23] **8**:6 **9**:7,22 **10**:2 **19**:9,12 **20**:11 **21**:4,14,23 **22**:23 **23**:4 **24**:2,19 **25**:1 **48**:14 **49**:23 **57**:1,10,14,19 **59**:15 **60**:2
KATYAL [70] **1**:23 **2**:6 **30**:5,6,8,25 **31**:5,8,21 **32**:1,11 **33**:18,21 **34**:23 **36**:2,9,19 **37**:3,12 **38**:12 **39**:1,8,14,19 **40**:6 **41**:16 **42**:12 **43**:11 **44**:14,25 **45**:2,21,24 **46**:4,7,22 **47**:9 **48**:8,14,15 **49**:7 **50**:10,16,24 **51**:6,16,25 **52**:8,12,19 **53**:5,16,25 **54**:19 **55**:2 **56**:6,9 **57**:2,5,13,19 **58**:14 **59**:2,15,22 **60**:6 **61**:5,12 **62**:5,10
keep [6] **4**:22 **6**:7 **10**:18 **23**:12,14 **48**:12
KENNEDY [5] **11**:22 **13**:6,14 **17**:4 **46**:11
key [1] **45**:14
kick [1] **24**:14
kind [9] **8**:9 **9**:16 **21**:5 **23**:10 **24**:20 **37**:22 **53**:19 **55**:4 **57**:15
knowing [1] **16**:14
knows [1] **18**:14

L

language [9] **20**:1,18 **21**:6 **22**:22 **37**:13 **40**:7 **46**:24 **48**:2 **53**:14
large [1] **45**:22
late [4] **31**:16 **32**:8 **33**:4 **59**:23
late-breaking [1] **31**:1
later [2] **32**:25 **37**:7
latitude [1] **12**:8
Laughter [1] **58**:11
Law [10] **21**:25 **22**:4 **41**:10 **50**:21 **51**:4,21 **52**:2,22 **62**:4 **65**:7
lawsuit [10] **7**:4,5,8,12,19,20 **8**:4,4 **24**:11 **53**:10
lawsuits [4] **7**:3 **8**:13,23 **24**:7
lawyer [6] **38**:9 **39**:6 **46**:14,18,23 **47**:20
lawyers [2] **38**:16 **41**:19
layman's [1] **21**:21
laymen [1] **21**:24
lead [1] **57**:3
leave [1] **62**:21
leaving [1] **7**:17
legally [1] **65**:25
less [1] **39**:11
liabilities [1] **40**:10
liability [1] **52**:17
liable [1] **8**:2
line [2] **16**:8,20
lines [2] **14**:22 **60**:13
list [1] **27**:1
listed [1] **51**:4
litigants [2] **30**:17 **60**:19
litigation [2] **10**:12,22
litigator [1] **36**:14
little [2] **12**:3 **19**:10
local [2] **14**:21 **61**:22
long [5] **41**:24 **42**:19 **55**:13 **58**:21 **64**:24
long-standing [1] **58**:1
longer [3] **38**:22 **49**:5 **51**:22
look [16] **9**:11 **10**:5,25 **15**:23 **21**:24 **23**:21 **24**:3 **29**:8 **40**:14 **42**:4 **45**:7 **47**:12 **57**:14,20 **58**:17 **60**:7
looked [1] **35**:14
looking [1] **22**:21
loses [1] **11**:9
lost [9] **45**:14,15,18 **52**:9,15,15,20,21 **53**:1
lot [7] **16**:25 **17**:22 **18**:7 **25**:6,6 **27**:5 **59**:17
lots [3] **24**:2 **35**:6 **36**:3
LOUISE [2] **1**:5,7
lurking [1] **15**:9

M

Mackey [3] **43**:18 **53**:20 **59**:6
made [7] **6**:7 **10**:24 **51**:10 **55**:20 **61**:9,10 **65**:5
managed [1] **8**:19
managing [1] **9**:20
mandamus [1] **42**:24
mandated [1] **35**:8
maneuver [1] **30**:15
many [5] **23**:22 **34**:17 **41**:11,11 **60**:3
marriage [1] **56**:25
married [1] **37**:22
mass [3] **5**:21 **41**:22 **42**:1
massively [1] **40**:24
master [1] **48**:23
masters [2] **49**:9,10
matter [11] **1**:16 **7**:21 **14**:9,19 **15**:5,9 **36**:18 **48**:18 **55**:7,8 **65**:7
matters [3] **14**:6,7 **56**:16
mean [18] **10**:10,18 **21**:7,24 **22**:23 **23**:1 **24**:9 **26**:25 **31**:10 **41**:25 **43**:6 **47**:15 **52**:20 **56**:19 **57**:21 **58**:14 **59**:24 **62**:6
meaning [4] **5**:3 **21**:9,12 **53**:20
meaningless [2] **46**:20,20
meanings [2] **54**:13 **55**:14
means [10] **21**:8,21 **23**:16,16 **24**:5,6 **28**:22 **31**:22,23 **54**:1
mentioned [1] **58**:6
merge [5] **3**:21 **17**:15 **48**:19 **64**:12,12
merged [5] **18**:13,14 **37**:2 **41**:13 **54**:9
merger [2] **4**:4 **23**:2
merging [2] **4**:14 **17**:3
merits [2] **31**:14 **32**:7
met [1] **29**:24
Metal [4] **43**:19 **53**:21 **59**:5 **61**:6
might [10] **6**:2,9 **14**:4,8,13 **16**:16,20 **50**:11 **55**:7,10
mind [2] **25**:5 **45**:3
mine [1] **51**:11
minimize [1] **57**:16
minutes [1] **63**:4
mirky [1] **18**:8
misstated [1] **32**:13
misuse [1] **44**:21
modified [1] **49**:21
Mohawk [2] **42**:18 **51**:10
moment [4] **25**:4,14 **31**:9 **32**:18
Moore's [1] **33**:10
morning [1] **3**:4
most [1] **10**:10
mother's [3] **44**:6,22,23
motion [14] **19**:3,5,8 **30**:22 **32**:21,24 **33**:1,4,9 **34**:1,7 **36**:23 **65**:5,10
move [1] **11**:21
moved [1] **38**:20
much [7] **13**:7 **23**:5 **36**:13 **45**:17,23 **51**:18 **59**:4
multiple [10] **6**:22 **7**:6,9,12 **40**:2 **42**:20 **46**:1 **47**:18,18 **59**:25
must [5] **9**:25 **10**:4 **24**:25 **28**:25 **47**:23
muster [1] **15**:25

N

national [2] **61**:20 **62**:24
NEAL [3] **1**:23 **2**:6 **30**:6
nebulous [1] **13**:4
necessity [2] **4**:18 **5**:3
need [3] **4**:11 **5**:5 **20**:13
never [3] **9**:20 **29**:7 **65**:12
new [14] **5**:14 **10**:21 **23**:10 **32**:21 **33**:7,9 **34**:7 **38**:20,24 **39**:4 **45**:16 **50**:5 **64**:21 **65**:5
nice [1] **48**:4
NML [1] **31**:15
nobody [1] **39**:20
non-specific [1] **19**:16
normal [1] **27**:24
Northern [1] **35**:4
note [1] **15**:1
noted [1] **64**:7
notes [2] **33**:25 **49**:17
nothing [4] **10**:13 **34**:16 **38**:14 **64**:8
notice [4] **18**:12 **32**:22 **36**:15 **40**:18
notices [1] **61**:25
notification [1] **10**:14
number [6] **23**:12 **28**:1 **35**:1 **37**:16,17,21

O

obviously [1] **14**:14
occasions [1] **19**:18
occur [1] **50**:16
office [2] **21**:17,19
offices [2] **21**:16,17
often [2] **41**:21 **45**:22
okay [10] **24**:10 **25**:12 **26**:22 **27**:2 **29**:4,7,19 **32**:9 **47**:8,8
old [4] **5**:12 **26**:16,17 **48**:22
omnibus [3] **4**:23 **5**:18 **6**:15
Once [6] **8**:23 **28**:13 **38**:9,16 **47**:13 **64**:22
one [71] **3**:24 **4**:14 **6**:24 **7**:4,5,8,14,14,17 **8**:4,14,14,23 **9**:2 **10**:7 **11**:7

12:14 **13**:9,15 **15**:1 **16**:6,8,22 **17**:12,13 **18**:3,19 **20**:12 **21**:17,19,22 **22**:5 **23**:17 **24**:11,25 **25**:3,8,13 **29**:5 **32**:19,20,22 **35**:16,23 **36**:1 **37**:22 **39**:24 **40**:3 **41**:17,23 **44**:5,20 **49**:5 **50**:3 **51**:8 **52**:9 **54**:9 **56**:8,9,24 **59**:3,16 **61**:1,20 **64**:3,3,5,14 **65**:13,21,22
ones [1] **46**:13
only [17] **5**:3 **6**:1 **13**:15 **19**:1,2 **26**:1 **29**:12 **30**:17 **31**:13 **32**:6 **35**:23 **43**:22,23 **52**:3 **53**:2 **62**:10,14
opening [1] **60**:12
operating [1] **23**:19
opinion [1] **54**:22
oppose [1] **61**:13
opposition [2] **31**:12 **63**:9
option [1] **17**:9
oral [7] **1**:16 **2**:2,5 **3**:7 **30**:6 **41**:6 **65**:5
order [15] **9**:1 **18**:23 **29**:21 **30**:11 **36**:22 **37**:7,9,14,14 **40**:8 **41**:1 **43**:7 **45**:9 **57**:15 **60**:8
orders [1] **45**:16
ordinary [3] **21**:9,12 **39**:12
originally [1] **60**:25
other [34] **4**:1 **8**:25 **9**:3 **14**:8 **17**:23 **19**:18 **23**:8 **30**:13 **38**:25 **39**:4 **40**:8 **42**:9 **44**:22 **45**:16 **47**:10 **51**:9 **52**:11 **53**:1 **54**:23,25 **55**:3,6,16,16 **56**:21 **57**:15 **58**:9 **59**:19 **60**:18,19 **62**:17 **63**:25 **64**:20 **66**:7
others [1] **42**:3
otherwise [6] **18**:22 **19**:20 **34**:2 **40**:8 **43**:10 **48**:2
ought [2] **10**:17,19
out [15] **4**:13 **7**:17 **8**:3 **9**:15 **11**:12 **12**:1 **24**:20 **31**:12 **33**:2 **37**:7,10 **40**:21 **49**:24 **50**:12 **57**:22
outline [1] **16**:5
outstanding [4] **50**:22 **51**:5,14 **52**:7
over [4] **23**:25 **24**:16 **26**:8 **33**:6
overlap [2] **44**:16 **51**:18
overriding [1] **6**:13
overruling [1] **64**:10

P

PAGE [8] **2**:2 **31**:13 **36**:21 **39**:22 **40**:20 **41**:5 **48**:10 **60**:7
pages [1] **44**:15
paper [20] **25**:15,22 **26**:5 **27**:25 **28**:3,14 **32**:15 **33**:23 **35**:3,8,12 **38**:10,17 **43**:5,14 **45**:18 **46**:16,18 **52**:10,25
parallel [2] **20**:1,18
part [5] **17**:21 **30**:15 **39**:20,23 **61**:1
partial [7] **6**:24 **29**:5 **40**:22 **48**:10 **49**:14 **62**:10,14
particularly [2] **10**:12 **59**:9
parties [22] **12**:11 **13**:7,12,14,15,21 **14**:11 **17**:8 **25**:6,10 **29**:3,4 **38**:8,25 **39**:12 **40**:2,11,17 **41**:20 **47**:19 **48**:21 **65**:24
parts [1] **56**:14
party [3] **14**:1 **18**:9,13
pass [1] **15**:25
pendency [1] **34**:21
people [5] **6**:4 **10**:10 **21**:19 **42**:1 **61**:24
perhaps [3] **26**:2 **39**:11 **46**:9
period [2] **33**:8 **38**:13
permission [1] **59**:12
permit [1] **60**:10
permitted [1] **48**:18
PERSONAL [1] **1**:3
perspective [4] **58**:19,20,24,25
petition [4] **36**:21 **41**:4 **44**:15 **45**:5
Petitioner [7] **1**:8,22 **2**:4,10 **3**:8 **30**:14 **63**:6
physical [1] **42**:3
picking [1] **7**:17
piece [18] **25**:14,21 **26**:4 **27**:25 **28**:2,13 **32**:14 **33**:23 **34**:8,10,11 **37**:19 **38**:10,17 **43**:5,14 **46**:16,18
piecemeal [1] **59**:11
pieces [5] **35**:3,8,12 **52**:9,24
place [4] **26**:11 **48**:12 **55**:1 **62**:25
plain [4] **37**:14 **53**:14 **57**:8,24
plaintiff [10] **6**:21 **7**:3,14,16,16 **9**:2 **18**:8,9 **48**:23,24
plaintiff's [1] **7**:18
plaintiffs [2] **5**:22 **49**:8
planning [1] **64**:10
pleadings [1] **65**:6
please [3] **3**:10 **4**:6 **30**:9
plural [2] **37**:17,22
point [19] **8**:17,19 **9**:8,15,21 **10**:3 **16**:2 **21**:3 **33**:14 **43**:2 **50**:8 **51**:9,10 **52**:25 **55**:20,22 **59**:3,4 **61**:14
pointed [2] **12**:1 **31**:12
pointing [1] **50**:12
points [5] **4**:13 **34**:24 **37**:7 **40**:21 **49**:24
policy [3] **17**:25 **26**:16 **27**:1
pose [1] **55**:24
posed [1] **7**:25
position [3] **33**:22 **42**:11 **50**:2
possibilities [1] **11**:24
possible [1] **13**:16
potential [1] **52**:17
power [1] **17**:15
practically [1] **53**:18
practice [5] **12**:10 **14**:18,21 **15**:5 **33**:10
precedent [2] **41**:9 **64**:11
predecessor [1] **23**:1
prefer [1] **14**:17
prefers [1] **15**:5
prejudicial [1] **41**:25
prerogative [1] **14**:15
present [1] **8**:9
presents [1] **39**:24
pretrial [4] **5**:1 **6**:15 **63**:19,22
pretty [1] **36**:13
prevail [1] **9**:24
prevailed [1] **51**:23
prior [2] **57**:2,6
private [1] **18**:9
problem [5] **16**:12,14 **34**:5 **42**:14,15
problems [4] **17**:3 **62**:22,23 **64**:5
Procedure [6] **15**:15,17 **16**:4,5 **22**:1 **55**:15
proceed [2] **7**:9 **18**:5
proceeding [1] **56**:20
process [2] **39**:10 **43**:19
Professor [1] **55**:9
promote [1] **55**:10
promptly [3] **20**:3,6,8
proper [2] **60**:5,11
property [4] **5**:25 **6**:5 **44**:7,22
proposed [1] **20**:13
proposes [1] **12**:19
proposition [1] **28**:12
protect [1] **14**:1
provide [3] **16**:19 **17**:11 **18**:22
provides [2] **3**:17 **16**:8
provision [1] **57**:18
purpose [9] **4**:7 **5**:7,10 **15**:14 **22**:25 **29**:14 **41**:8 **49**:11,15
purposes [23] **13**:4,9 **16**:22 **18**:3 **24**:4,4,9,18 **26**:13 **30**:12 **35**:21,25 **37**:5 **47**:15,17 **54**:7,21,23 **59**:19 **63**:17,20,20,24
put [2] **60**:4 **65**:9

Q

question [30] **7**:24 **12**:7 **15**:12 **16**:3 **17**:6,25 **18**:15 **21**:5 **25**:3 **26**:18 **27**:21 **28**:24 **29**:20 **31**:18 **35**:11 **39**:15,17,20 **40**:14 **43**:18 **45**:13 **51**:13 **52**:3,20 **53**:2,21 **56**:12,13 **60**:4 **64**:15
questions [6] **11**:23 **30**:1 **32**:12 **60**:3 **63**:1 **66**:7
quick [2] **47**:21 **65**:22
quite [4] **21**:13 **23**:13 **49**:8 **58**:13

R

raise [1] **31**:23
range [1] **11**:23
rather [4] **10**:20 **26**:7 **35**:14 **62**:3
rationale [1] **32**:5
read [4] **36**:25 **39**:21,23 **46**:23
reading [3] **4**:11 **19**:10 **46**:24
ready [1] **35**:25
real [1] **18**:14
really [12] **12**:1 **21**:6 **37**:21 **42**:13 **49**:12 **51**:2 **55**:3 **56**:1,22 **57**:3 **59**:13 **60**:4
reason [8] **4**:4,23 **16**:7 **29**:12,14 **47**:23 **57**:25 **62**:7
reasons [4] **3**:15 **20**:12 **27**:1 **36**:4
REBUTTAL [2] **2**:8 **63**:5
recover [1] **42**:4
red [6] **39**:21 **40**:20 **48**:10 **55**:4 **63**:10,11
refer [1] **56**:22
reference [1] **64**:14
references [1] **48**:5
refers [2] **54**:1 **64**:7
regardless [1] **9**:10
related [4] **6**:23 **10**:15,16 **15**:8
relates [1] **45**:13
relatively [1] **41**:18
relevant [3] **26**:17 **47**:14,17
relief [1] **39**:24
rely [1] **20**:18
relying [1] **41**:8
remain [3] **5**:18 **10**:19 **13**:23
rent [2] **44**:6,21
reply [3] **31**:2,14 **32**:7
report [2] **51**:2 **52**:17
REPRESENTATIVE [1] **1**:4
representing [1] **65**:4
represents [1] **58**:25
reproduces [1] **39**:22
repudiate [2] **56**:2,5
res [1] **8**:24
reserve [1] **30**:1
resolution [2] **44**:4,12
resolve [3] **11**:11 **43**:21,22
resolved [3] **32**:17 **33**:16 **45**:20
resolving [1] **42**:19
respect [8] **19**:24,25 **20**:17,19 **28**:1,15 **32**:11 **38**:24
respects [1] **23**:8
Respondents [4] **1**:11,24 **2**:7 **30**:7
rest [2] **13**:24 **17**:1
rested [1] **65**:9
resting [1] **14**:6
retired [1] **58**:8
return [1] **39**:16
Richardson [1] **59**:6
rights [4] **24**:14 **40**:10,16 **48**:21
Ringwald [1] **5**:11
ROBERTS [15] **3**:3 **9**:23 **10**:9 **14**:3 **30**:3 **31**:19,22 **32**:9 **35**:19 **41**:16 **58**:5,12,23 **63**:2 **66**:8
rubric [1] **12**:9
rule [89] **3**:18,21,23 **4**:1,19 **8**:2,21 **9**:6 **11**:1,17 **12**:9,10,11,16,18 **14**:21,21,25 **15**:7,14,21 **16**:9,12,20,23 **17**:5,8,11,19,20,21 **18**:1,1,4,5,22 **19**:10 **20**:13 **22**:17 **23**:11 **25**:5,7 **26**:3,6 **27**:17 **28**:18,21 **30**:19 **32**:20 **33**:9,24 **34**:1 **38**:1,1,4,4,23 **39**:20 **40**:13,20,24 **42**:21 **43**:3,6 **46**:23 **47**:4,7 **48**:12,16,23,25 **49**:1,6,11,20 **51**:8 **53**:4,11,12,12,17 **54**:7,15 **56**:14 **57**:21 **59**:17 **60**:20,20 **64**:6
ruled [2] **62**:18 **65**:12
rules [42] **3**:23,23 **4**:3 **9**:5 **11**:1,16,20 **15**:15,17 **16**:2 **17**:6,7,13 **18**:8 **22**:7,10 **23**:25 **32**:13 **33**:12 **47**:17 **53**:8 **54**:2,11,17,23 **55**:1,4,6,8,15,22 **56**:1,11 **61**:20,22 **62**:3,21,23,24 **64**:9,10,13
run [3] **15**:22 **18**:12 **51**:11
runs [3] **30**:15 **34**:8 **53**:14

S

safety [1] **42**:17
Sam [1] **51**:3

same [16] **8**:14 **22**:5 **23**:14 **33**:5 **37**:7 **38**:15 **39**:7,9,10 **41**:19,20 **48**:12 **51**:10 **54**:12 **65**:13,24
SAMUEL [1] **1**:10
Samuel's [1] **65**:8
saying [13] **5**:4 **8**:13 **11**:24 **33**:5 **38**:17 **40**:14 **45**:10,18 **46**:11,22 **49**:23 **59**:8 **62**:20
says [35] **5**:6 **6**:10 **18**:1 **19**:17,23 **21**:25 **24**:8 **25**:7,15,24 **26**:3,7,10,11 **27**:25 **28**:14,19,21 **33**:10 **35**:11 **36**:23 **38**:10 **39**:3 **41**:5 **42**:4 **43**:5,13 **46**:16,19,25 **54**:7,22 **57**:14 **58**:3 **63**:19
search [1] **42**:14
Second [4] **3**:21 **16**:13 **36**:24 **47**:16
section [3] **4**:11 **20**:9 **49**:18
sections [1] **4**:8
see [5] **15**:10 **38**:9,16 **44**:20 **47**:13
seem [1] **60**:2
seems [3] **9**:9 **12**:4 **53**:13
segments [1] **24**:6
send [3] **42**:22 **55**:23 **58**:4
sending [1] **53**:7
sense [2] **6**:7 **59**:17
sentence [1] **40**:7
separate [22] **4**:22 **5**:7,10,19,22 **6**:6,6 **7**:3,15,20 **11**:13 **25**:14 **26**:4 **31**:24,25 **35**:16,22 **36**:13 **41**:22 **51**:1 **57**:16 **60**:22
separately [1] **6**:12
seriously [2] **36**:15 **37**:9
set [1] **54**:8
seven [2] **58**:8,24
shall [3] **19**:19 **37**:17,20
She's [3] **34**:15 **45**:14,15
shouldn't [3] **9**:5 **55**:11 **59**:24
shown [1] **50**:23
shows [1] **55**:10
side [6] **17**:23 **23**:5 **47**:10 **51**:8 **53**:1 **56**:21
signal [2] **36**:16 **49**:4
similar [1] **58**:15
similarly [1] **23**:7
simple [1] **41**:18
simply [1] **29**:10
SIMPSON [66] **1**:21 **2**:3,9 **3**:6,7,9 **4**:9,16,19 **5**:9 **7**:2,7,22 **8**:1,6,16 **9**:14 **10**:1,23 **11**:14 **12**:6 **13**:12,19 **14**:10,24 **15**:13 **16**:7,24 **17**:10 **18**:7,20,25 **19**:11,16 **20**:5,23 **21**:5,11,18 **22**:6,12,18,21 **23**:3,18 **24**:15,23 **25**:11,17,23 **26**:1,19,21 **27**:5,8,20 **28**:5,18,23 **29**:19 **63**:4,6,7 **65**:2,17,20
since [3] **3**:11 **10**:13 **64**:18
single [7] **22**:3 **25**:21 **40**:21 **48**:20 **54**:1,4 **64**:7
sister [2] **30**:13 **45**:4
sit [2] **46**:3 **58**:21
situated [1] **12**:1
situation [5] **6**:23 **8**:20 **12**:23 **41**:21,22
situations [1] **12**:20
Sixth [5] **40**:22 **48**:11 **54**:6 **62**:11,16
slate [2] **23**:10,19
Smith [1] **39**:4
solution [1] **42**:14
somebody [2] **8**:11 **29**:1
somehow [2] **35**:13 **36**:5
someone [1] **38**:20
sometime [1] **29**:2
sometimes [3] **38**:19 **46**:1 **51**:7
somewhere [1] **26**:3
son [5] **44**:5,9,21,24 **52**:23
son's [3] **34**:21 **45**:19 **64**:16
sort [1] **42**:1
SOTOMAYOR [20] **4**:6,10,17 **5**:2 **6**:20 **7**:5,24 **8**:8 **30**:20 **31**:1,3,6 **32**:10 **33**:13,18,19,21 **64**:24 **65**:15,18
Sotomayor's [1] **56**:13
speaks [2] **53**:7,11
special [2] **19**:25 **50**:13
speedy [2] **15**:18,19
split [4] **62**:4,6,9,13
splits [1] **8**:12
sponte [1] **43**:25
square [1] **30**:21
squares [1] **59**:4
stage [2] **32**:7 **63**:12
standard [1] **29**:24
start [3] **33**:7,17 **36**:20
started [2] **11**:12 **32**:18
starters [1] **27**:9
state [1] **45**:3
statement [1] **64**:14
statements [1] **50**:23
STATES [2] **1**:1,17
statute [14] **5**:12 **22**:10,11,13,16,19 **23**:1,6,11 **26**:17 **49**:18,20 **57**:2,6
statutes [1] **11**:4
stay [5] **9**:17 **10**:8 **13**:23 **50**:8,20
stayed [2] **14**:12 **15**:25
staying [1] **15**:8
Steadman's [1] **55**:9
still [7] **15**:9 **51**:5,14 **52**:7,16 **64**:16,20
stipulate [2] **13**:13,22
stipulation [3] **13**:10,17,20
strong [1] **38**:15
stuck [1] **36**:11
sua [1] **43**:25
subject [1] **7**:21
submissions [1] **37**:20
submit [1] **24**:23
submitted [2] **66**:9,11
substance [1] **35**:15
substantive [1] **31**:17
SUCCESSOR [1] **1**:6
suddenly [1] **10**:20
suggest [3] **31**:4 **41**:1 **64**:9
suggesting [1] **20**:21
suggests [2] **5**:6 **20**:2
suing [2] **18**:9,10
suit [4] **8**:9,11,15 **34**:21
suited [1] **59**:9
suits [1] **48**:20
support [1] **3**:13
supports [1] **28**:10
suppose [7] **5**:20 **13**:6 **16**:1 **21**:14 **25**:12 **50**:4 **58**:17
supposed [2] **12**:14 **15**:18
SUPREME [3] **1**:1,17 **64**:11
Surely [1] **29**:1
suspenders [1] **36**:4
suspends [1] **34**:1
switch [1] **40**:24
system [1] **43**:13

T

tack [1] **6**:6
talks [1] **4**:20
technically [1] **53**:19
tells [1] **22**:24
term [6] **21**:10,12 **23**:23 **32**:15 **49**:2 **57**:3
terminal [1] **6**:4
terminally [1] **5**:24
terms [1] **12**:17
text [5] **37**:14 **53**:23 **54**:1 **57**:8,24
textually [1] **20**:15
theory [2] **52**:6 **65**:3
There's [36] **3**:22 **4**:4 **5**:7 **6**:24 **11**:19,20,23 **14**:19 **15**:8,16 **16**:11,11,14 **17**:22 **18**:14 **19**:21 **20**:17 **21**:2 **27**:9,9 **34**:5 **35**:23 **38**:21 **39**:25 **43**:8 **44**:9 **48**:22 **51**:18 **55**:13 **56**:8,9,14 **62**:14 **64**:2,3,7
therefore [1] **47**:20
third [10] **37**:19 **41**:3,9 **44**:14 **45**:6 **46**:8 **51**:17 **63**:18,23 **66**:3
third-party [2] **12**:10 **40**:1
though [2] **29**:15 **53**:24
thousands [2] **39**:12,13
three [12] **3**:15 **6**:5,6,11,17 **7**:14 **32**:18 **34**:17 **42**:16 **62**:15 **64**:17,18
throwing [1] **10**:20
ticking [1] **32**:19
til [1] **35**:25
timely [1] **19**:6
timing [2] **49**:10 **53**:3
today [2] **56**:12 **60**:13
Todman [1] **66**:2
together [7] **3**:25 **6**:8,16 **10**:18 **24**:7 **41**:13 **42**:25
took [3] **8**:10 **62**:8 **65**:10
tort [3] **5**:21 **41**:22 **42**:1
totally [1] **39**:10
toward [1] **42**:19
track [1] **23**:15
tracks [3] **4**:22 **5**:19 **6**:6
tradition [1] **55**:13
trap [5] **12**:5,17,19 **33**:11 **47**:9
trapped [1] **16**:9
treat [1] **51**:14
treated [4] **8**:14 **13**:8 **41**:13 **51**:21
treating [1] **31**:6
trial [19] **4**:21,25 **13**:1 **32**:21 **33**:9 **34**:7 **38**:20,24 **39**:4 **45**:16 **50**:6 **51**:23 **52**:23 **56**:16 **63**:13,20,22 **64**:21 **65**:5
trials [2] **57**:12 **58**:22
tried [2] **3**:24 **29**:1
tripped [1] **53**:6
true [5] **4**:24 **27**:18 **38**:23 **45**:25 **55**:6
truly [1] **24**:25
TRUST [2] **1**:7 **66**:1
TRUSTEE [2] **1**:6 **66**:1
try [4] **57**:22 **60**:19,20 **61**:13
trying [3] **34**:6 **59**:9 **60**:14
Tucker [1] **35**:5
Tuesday [1] **1**:14
turn [2] **39**:21 **45**:3
twist [2] **57**:21 **60**:20
two [40] **4**:8,14 **7**:14 **10**:15 **18**:10 **19**:18 **21**:16,16 **22**:2,5 **23**:16 **24**:7 **34**:12,17 **35**:3,3,8,12,15,16 **37**:21 **41**:19 **44**:4 **45**:25 **46**:5 **51**:18 **52**:9,24 **54**:9 **56**:13,24 **57**:7 **60**:24 **61**:7,7,11 **62**:16 **64**:4,17 **65**:23
type [1] **64**:2
typical [1] **21**:20
Typically [1] **21**:18

U

under [32] **4**:3,11 **6**:3,8,14,15 **8**:2,21 **9**:4,6 **11**:3,17 **12**:8 **13**:16 **15**:16 **17**:13 **18**:5,19 **20**:8,9 **21**:1 **27**:17,21 **28**:14 **29**:2,6 **38**:4 **43**:6 **46**:12 **54**:14 **63**:23 **65**:10
underlying [1] **35**:15
understand [8] **5**:2 **8**:7 **12**:25 **29**:20 **32**:2 **52**:19 **53**:9 **63**:15
understanding [5] **21**:8,21 **23**:13 **24**:10 **49**:4
understandings [1] **23**:23
understands [1] **10**:15
Understood [2] **15**:13 **20**:10
unfriendly [1] **15**:12
unification [1] **22**:2
unique [2] **53**:19 **55**:24
unit [2] **54**:2,4
unitary [1] **64**:2
UNITED [2] **1**:1,17
unless [4] **19**:19 **28**:5 **29**:23 **52**:17
unreported [1] **62**:16
until [8] **10**:14 **11**:11 **13**:24 **14**:18 **15**:6 **33**:15 **34**:18 **52**:18
unusual [1] **23**:13
unwary [4] **12**:5,17,20 **47**:10
up [19] **4**:7 **7**:24 **8**:12 **9**:6 **11**:2 **12**:15 **26**:14 **28**:24 **29**:1,7 **34**:8 **40**:24 **41**:20 **42**:22 **52**:18 **53**:6 **55**:3,23 **58**:4
upstairs [1] **53**:7
uses [2] **43**:14 **47**:1
using [2] **32**:4 **44**:6
usual [1] **24**:10

V

V.I [1] **1**:21
valves [1] **42**:17

variations [1] **61:**23
various [1] **17:**2
verdict [6] **19:**18 **50:**13 **65:**11,16, 17,20
verdicts [3] **19:**24,25 **20:**17
versus [5] **3:**5 **8:**3 **31:**15 **66:**4,4
view [1] **21:**3

W

wait [5] **15:**6 **34:**17 **35:**22,25 **41:**24
waiting [1] **41:**23
waived [2] **31:**10 **59:**25
wanted [1] **29:**18
wants [5] **4:**22 **29:**6 **30:**14 **34:**15 **40:**24
Washington [2] **1:**13,23
way [6] **8:**14 **32:**13 **34:**20 **42:**19 **53:** 20 **59:**23
ways [2] **23:**12 **60:**1
Whatever [1] **47:**25
whenever [1] **9:**9
whereas [1] **4:**24
Whereupon [1] **66:**10
wherever [1] **38:**24
whether [11] **4:**25 **12:**2 **21:**1 **23:**9 **26:**13 **39:**25 **54:**25 **59:**9 **60:**5 **61:** 24 **62:**1
whole [8] **10:**22 **11:**23 **15:**14 **16:**25 **29:**14 **49:**11 **52:**18 **55:**22
wide [1] **11:**23
will [6] **10:**8 **17:**14 **28:**8,8 **31:**5 **64:** 18
win [1] **52:**21
wishes [1] **18:**6
within [8] **4:**2 **17:**16 **19:**4 **30:**23 **33:** 2 **50:**16 **53:**7,8
without [2] **33:**19 **59:**12
won [5] **34:**20 **52:**14,14,22,23
wonder [1] **61:**24
wondering [1] **23:**9
word [10] **4:**12 **22:**14 **23:**7,13 **37:**2 **41:**8 **53:**6,9 **56:**8,10
words [7] **13:**11 **43:**15 **47:**1 **54:**12, 12 **55:**14,16
work [3] **5:**20 **27:**4 **32:**13
world [1] **24:**17
worried [2] **53:**3 **61:**17
worry [1] **20:**13
wrapped [1] **52:**18
writ [2] **42:**24 **63:**9
write [1] **54:**22
writes [1] **25:**14
written [1] **65:**13

Y

year [1] **64:**11
years [9] **14:**7 **24:**1 **34:**18 **42:**10 **45:** 25 **46:**6 **64:**17,17,18

Z

zero [1] **35:**11