

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

-----  
MACQUARIE INFRASTRUCTURE )  
CORPORATION, ET AL., )  
                                ) Petitioners, )  
                                ) v. ) No. 22-1165  
MOAB PARTNERS, L.P., ET AL., )  
                                ) Respondents. )  
-----

Pages: 1 through 71  
Place: Washington, D.C.  
Date: January 16, 2024

---

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

MACQUARIE INFRASTRUCTURE )

CORPORATION, ET AL., )

Petitioners, )

v. ) No. 22-1165

MOAB PARTNERS, L.P., ET AL., )

Respondents. )

- - - - -

Washington, D.C.

Tuesday, January 16, 2024

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

1 APPEARANCES:

2 LINDA T. COBERLY, ESQUIRE, Chicago, Illinois; on  
3 behalf of the Petitioners.

4 DAVID C. FREDERICK, ESQUIRE, Washington, D.C.; on  
5 behalf of Respondent Moab Partners, L.P.

6 EPHRAIM McDOWELL, Assistant to the Solicitor General,  
7 Department of Justice, Washington, D.C.; for the  
8 United States, as amicus curiae, supporting the  
9 Respondent.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	LINDA T. COBERLY, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	DAVID C. FREDERICK, ESQ.	
7	On behalf of Respondent	
8	Moab Partners, L.P.	26
9	ORAL ARGUMENT OF:	
10	EPHRAIM McDOWELL, ESQ.	
11	For the United States, as amicus	
12	curiae, supporting the Respondent	47
13	REBUTTAL ARGUMENT OF:	
14	LINDA T. COBERLY, ESQ.	
15	On behalf of the Petitioners	66
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(10:03 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 22-1165, Macquarie Infrastructure Corporation versus Moab.

Ms. Coberly.

ORAL ARGUMENT OF LINDA T. COBERLY  
ON BEHALF OF THE PETITIONERS

MS. COBERLY: Thank you, Mr. Chief Justice, and may it please the Court:

Like many cases, this case should be resolved by the text, and, here, the text is in Rule 10b-5 as adopted by the Congress in the PSLRA. That text makes clear that an omission is actionable in just one circumstance, when the omitted fact is material and necessary to make a statement not misleading.

Today, you're going to hear arguments for omission liability in a different circumstance, when the omitted fact is material and required to be stated by Item 303. None of those arguments is rooted in the text.

The text doesn't permit eliding the statement requirement by treating the entire

1 management narrative as misleading if one thing  
2 is left out. The PSLRA shows that Congress had  
3 something far more specific in mind by the word  
4 "statement."

5           The text also doesn't permit recasting  
6 a claim about what a 10-K does or doesn't say as  
7 a claim involving a fraudulent scheme or act.  
8 Whenever this Court has recognized liability  
9 under Rule 10b-5(a) or (c), the case has  
10 involved something more or different than speech  
11 alone.

12           And this is all in the context of the  
13 judicially implied private right of action,  
14 which this Court is loath to expand. No  
15 circuit, either before or after the PSLRA, has  
16 approached 10b-5 liability in the ways that Moab  
17 and the government are seeking here.

18           Now, to be clear, no one is seeking  
19 immunity. The SEC has extensive powers to  
20 penalize an omission that violates Item 303.  
21 But, without the element of a misleading  
22 statement, an omission can't be the subject of a  
23 private class action.

24           I'm happy to take the Court's  
25 questions.

1 JUSTICE THOMAS: Can a -- a compliance  
2 certification statement be made misleading by an  
3 omission?

4 MS. COBERLY: I would say no, Your  
5 Honor, for a couple of reasons.

6 So, first of all, the government isn't  
7 arguing that a compliance statement itself is a  
8 misleading statement. The government's argument  
9 is that a compliance statement makes the  
10 narrative as a whole the misleading statement.

11 As for the compliance certification  
12 itself, though, Your Honor, that statement  
13 wouldn't be actionable under the federal  
14 securities laws because, first of all, it would  
15 be a statement of opinion, and, secondly, to the  
16 extent that it is relating to an item of future  
17 import, it would be protected by the  
18 forward-looking -- the bar on claims against  
19 forward-looking statements by the safe harbor.

20 JUSTICE SOTOMAYOR: Are there any  
21 specific arguments with respect to 906? I think  
22 that question was related to 906 and the  
23 certification there.

24 MS. COBERLY: They're -- the -- Moab  
25 is making an argument based on 906, Your Honor.

1 I'll note that the Second Circuit did not rely  
2 on 906, a 906 certification. The 906  
3 certification wasn't mentioned in the complaint,  
4 in the briefs below, or -- or in the brief in  
5 opposition. So we don't think it's really --

6 JUSTICE SOTOMAYOR: And that  
7 certification is not a part of the 303 filing,  
8 is it?

9 MS. COBERLY: It is not. It is a  
10 separate document from the securities filings  
11 themselves. And, of course, the requirement for  
12 a 906 certification does not appear in the  
13 securities laws. It appears in the criminal  
14 code. And this Court is loath to interpret a  
15 civil remedy from something in the criminal code  
16 unless Congress specifically stated so.

17 JUSTICE SOTOMAYOR: So, in this case,  
18 we don't need to reach that issue?

19 MS. COBERLY: I think that's correct,  
20 Your Honor.

21 CHIEF JUSTICE ROBERTS: Counsel, the  
22 distinction you draw between sort of half-truths  
23 and omissions strikes me as one that might be  
24 hard to apply in practice.

25 Let's say you have a statement that,



1 you know, our -- our sales are going to rise  
2 because of the new processors we're going to  
3 bring online, but what you don't say is that our  
4 sales are going to fall because EPA is going to  
5 issue new regulations. You know what --  
6 something like along those lines that you know.  
7 And they're going to limit further the use of  
8 No. 6 oil.

9 Now is that an omission case because,  
10 you know, there's a difference between new  
11 processors increasing sales and EPA regulation  
12 lowering it, or is it a half-truth situation  
13 because the first part says our sales will rise?

14 MS. COBERLY: Well, Your Honor, that's  
15 a kind of question that district courts answer  
16 every day in securities cases. In every  
17 instance where a plaintiff identifies a  
18 statement and identifies it as a half-truth, the  
19 court is then tasked with answering a lot of  
20 questions about that statement. Does it match  
21 the omitted fact? Is it close enough in topic  
22 given the context of -- of the -- of the  
23 statements?

24 CHIEF JUSTICE ROBERTS: Well, what's  
25 the answer in the hypothetical that I --

1 MS. COBERLY: I think the answer to  
2 that question, Your Honor, would be no, and  
3 that's because the statement needs to be  
4 something like in kind in both subject matter  
5 and specificity. And so the classic example  
6 that this Court has discussed in Escobar is  
7 taken from Justice Cardozo in Junius  
8 Construction, and that's two streets intersect  
9 and if a third also exists but is omitted, then  
10 the statement about the two streets might be  
11 misleading by omission.

12 JUSTICE KAGAN: Well, where do you get  
13 that from the text? I mean, I understand how  
14 you get your principal argument from the text.  
15 But, there, I understood you to be saying that  
16 there are limits on the ways in which an  
17 omission can make statements in the MD&A or in  
18 the broader form misleading, and I don't see  
19 anything like that in the text.

20 MS. COBERLY: Well, what the text  
21 tells us, Your Honor, is -- is the -- the text  
22 makes it unlawful to omit to state a material  
23 fact necessary in order to -- to make the  
24 statements made, in the light of the  
25 circumstances under which they were made, not

1 misleading. And courts have interpreted that  
2 text to require a similarity in like -- in both  
3 subject matter and specificity between the  
4 statement rendered misleading and the omitted  
5 fact, and that's how courts typically --

6 JUSTICE KAGAN: Well, I mean, I -- I  
7 -- I guess this is along the same lines as the  
8 Chief Justice's question. If you have a set of  
9 paragraphs or a set of sentences, what have you,  
10 which paints a very rosy picture of the  
11 prospects of a company, and then it turns out  
12 that you've omitted the thing that is actually  
13 going to crater the company next month, that  
14 rosy picture seems to be rendered misleading.

15 But I understood your answer to the  
16 Chief Justice to say that you did not agree with  
17 that. Am I -- is that right?

18 MS. COBERLY: So I think the first  
19 question is if there is a statement that the  
20 complaint identifies --

21 JUSTICE KAGAN: And when you say "if  
22 there is a statement," I mean, it's -- it's  
23 actually framed in the plural in the text, so  
24 it's "statements." Are you saying that there  
25 has to be one discrete statement? And where --

1 where does that come from?

2 MS. COBERLY: The -- it comes from the  
3 PSLRA, Your Honor. So the PSLRA requires that  
4 each statement must be specifically identified  
5 in the complaint. So the PSLRA took that plural  
6 language, the plural language in Rule 10b-5, and  
7 it described what -- what is the pleading  
8 requirement for that statement in the context of  
9 a claim based on an omission that makes  
10 statements made misleading, and what it said is  
11 the complaint shall specify each statement  
12 alleged to have been misleading.

13 JUSTICE KAGAN: So --

14 MS. COBERLY: So --

15 JUSTICE KAGAN: -- again, go back to  
16 my hypothetical, and it's like -- it's a big  
17 paragraph that just says this company has a  
18 bright future ahead of it for the following 19  
19 reasons, and then it doesn't tell you the thing  
20 that's going to crater the company next week.

21 How does your analysis apply to that?

22 MS. COBERLY: I think the analysis  
23 would change. The result would be the same, and  
24 let me explain why. I think, in that instance,  
25 there might very well be a statement that is the

1 -- that satisfies the statement element of the  
2 omission claim provided that it was identified  
3 in the complaint.

4           But this is why the specificity is so  
5 important. Once that specific statement, that  
6 -- that paragraph with the rosy future and so  
7 on, is identified in the complaint, then the  
8 defendant has the opportunity to move to dismiss  
9 the case.

10           It might, for example, in that  
11 instance invoke a -- invoke the safe harbor for  
12 forward-looking statements. It might also  
13 invoke this Court's ruling in *Omnicare*, which  
14 identifies statements of opinion as being  
15 different from statements of fact.

16           Now, of course, a statement of opinion  
17 can be misleading, but that requires a very  
18 special kind of omitted fact that the Court was  
19 very clear about in the *Omnicare* decision.

20           So the importance of the specific  
21 statement is tied in part to the PSLRA's  
22 requirements, which are very important here,  
23 especially because that's the moment when  
24 Congress finally weighed in on the judicially  
25 implied private right of action.

1                   But the statement requirement is also  
2                   important because of all the things that flow  
3                   from it, all of the other elements and  
4                   safeguards that use the statement as their  
5                   predicate. And to have, as -- as the government  
6                   argues, the statement be the entire narrative,  
7                   which, here, was pages and pages and pages on  
8                   many different topics with respect to multiple  
9                   different subsidiaries of a holding company,  
10                  that kind of statement isn't what the -- the  
11                  Congress had in mind when it used the word  
12                  "statement" in the PSLRA.

13                  JUSTICE BARRETT: Ms. Coberly, can I  
14                  ask you what I think is a -- a variation on this  
15                  theme? Is the rule that you're asking for  
16                  pretty narrow?

17                  Because the Chief and Justice Kagan  
18                  are pointing out that it can sometimes be  
19                  difficult to tell when an omission causes a  
20                  statement or statements in the disclosure to be  
21                  misleading. So Professor Grundfest suggests  
22                  that most omission cases can pretty easily be  
23                  repleaded as misleading statement cases.

24                  Do you agree that that's going to be  
25                  true of some significant portion of these,

1 meaning that the rule that you're asking for is  
2 fairly narrow?

3 MS. COBERLY: It -- yes, I do agree  
4 with that, Your Honor. And so, first of all, I  
5 think it's important to remember how we got  
6 here. The Second Circuit held that a violation  
7 of Item 303 is actionable independent of whether  
8 there's a misleading statement. And -- and we  
9 think that rule is incorrect and needs to be  
10 vacated.

11 Now, as far as what the -- the status  
12 quo will be going forward, and it is what the  
13 law is in every other circuit right now, a  
14 plaintiff must identify a specific statement.  
15 If that happens, then, of course, the statement  
16 requirement is satisfied and we move on to the  
17 other elements.

18 So all we're seeking here is respect  
19 for the text of 10(b) that -- which says that an  
20 omission is actionable only when necessary to --  
21 when the omitted fact is necessary to make the  
22 other statements made not misleading. And so  
23 we're -- we're simply asking for what Congress  
24 asked for, which is that the complaint identify  
25 a misleading statement.

1 JUSTICE JACKSON: Is there anything --

2 JUSTICE SOTOMAYOR: Are you hoping --  
3 I -- I'm sorry. I thought the Second Circuit in  
4 the alternative had held that there were  
5 half-truths here, and so why are we here if  
6 you're going to lose anyway when you go down --  
7 back down?

8 MS. COBERLY: Well, respectfully, we  
9 don't think we're going to lose when we go back  
10 down, but --

11 JUSTICE SOTOMAYOR: I know you won --  
12 I know you won on this issue on the district  
13 court.

14 MS. COBERLY: Indeed. So the specific  
15 half-truths that the Second Circuit identified  
16 don't have to do with the Item 303 omission. So  
17 the -- the paragraphs in the complaint that  
18 described the Item 303 omission simply referred  
19 to Item 303 and did not tie that failure to  
20 comply with any specific statement.

21 The two statements --

22 JUSTICE SOTOMAYOR: Was -- was this  
23 fought about below on the Second -- in the  
24 Second Circuit? So did you make these -- this  
25 argument in the Second Circuit?



1           I mean, obviously, we can just, if we  
2 were to rule in your favor, not to suggest we  
3 are, but just to say that, we would vacate and  
4 remand and let the Second Circuit apply the  
5 correct rule, correct?

6           MS. COBERLY: Yes. But the -- the two  
7 statements, there were two very specific  
8 statements that the court found had been  
9 adequately pleaded as half-truths, and both of  
10 those statements, first of all, were in oral  
11 discussions. They were not in pleadings. They  
12 were not in filings with the SEC. So Item 303  
13 didn't apply to them at all.

14           They were statements made orally by  
15 management in conferences with investors, and  
16 the court held that both of those statements  
17 were rendered misleading by -- and this is how  
18 Moab had argued it -- by the omission of  
19 specific facts relating to the base of  
20 customers.

21           So they're very -- they're statements  
22 about factually who are our customers, and the  
23 allegation was that those statements were  
24 misleading because there was information about  
25 those customers, factual information, that had

1 been omitted. So that's the very narrow  
2 omission claim, half-truth claim, that the  
3 Second Circuit allowed to proceed.

4           And that claim, by the way, is  
5 proceeding today in the district court. The  
6 claim that's before the Court today is about --  
7 is a much broader claim. It's a claim that --  
8 that the holding company should have disclosed  
9 not just the existence of IMO 2020, not the fact  
10 that it -- the alleged fact that it didn't  
11 comply with Item 303, but very specifically the  
12 idea, the prediction, that IMO 2020 would have a  
13 very significant negative impact on the  
14 performance of one of the subsidiaries and that  
15 that impact would cause the holding company to  
16 cut its dividends, which is ultimately the news  
17 that the plaintiffs allege led to the decrease  
18 in the stock price.

19           JUSTICE SOTOMAYOR: Thank you,  
20 counsel.

21           JUSTICE JACKSON: And I suppose that  
22 you can argue, you know, with many different  
23 parts of that argument. You -- you -- you're  
24 going to claim that they're wrong about the way  
25 in which the omission had an impact, but I guess

1 they're also arguing that you're seeking blanket  
2 immunity for omissions in the Item 303 context.

3 Are you?

4 MS. COBERLY: We are not, Your Honor.

5 And --

6 JUSTICE JACKSON: So you -- so you  
7 agree that Item 303 omissions could give rise to  
8 the kind of liability that they say exists here?

9 MS. COBERLY: No. No. And I want to  
10 draw a distinction between immunity and 10b-5.  
11 So we think that in -- a failure to comply with  
12 Item 303 is not actionable unless it's tied to a  
13 specific misleading statement that's plead --  
14 pleaded in the complaint, in which case the Item  
15 303 requirement is not doing very much work.

16 JUSTICE JACKSON: But can that -- can  
17 that statement be of the nature that the SG  
18 points out? So you have a list, you know, the  
19 company does comply partially, it -- it talks  
20 about various trends, et cetera, but it leaves  
21 out a few that seem to be pretty consequential  
22 if investors knew about them.

23 Is that the kind of scenario that you  
24 say could possibly give rise to liability here  
25 but just wasn't pled in this situation?

1 MS. COBERLY: Well, in -- first of  
2 all, in that instance, I'm not sure Item 303 is  
3 doing very much work. So we already have the  
4 classic example, again, from Justice Cardozo  
5 in -- in Junius Construction of the two roads  
6 and the one road.

7 So the analogy here would be, if the  
8 complaint had identified a specific statement of  
9 certain forward-looking trends that were going  
10 to have an impact and it left out this  
11 forward-looking trend that was going to have an  
12 impact, the plaintiff might be able to plead the  
13 statement requirement by identifying that  
14 specific statement.

15 Now that didn't happen here, but --  
16 but that was a -- that would be a -- a pleading  
17 that might satisfy --

18 JUSTICE KAVANAUGH: On -- on the --

19 MS. COBERLY: -- the statement  
20 requirement.

21 JUSTICE KAVANAUGH: -- immunity word,  
22 I thought your response would be that the SEC --

23 MS. COBERLY: We do.

24 JUSTICE KAVANAUGH: -- has authority  
25 to enforce omissions in 303.

1 MS. COBERLY: That is my response.  
2 With respect to the question about immunity for  
3 10(b) liability, we're -- even there, we're not  
4 seeking immunity exactly. We're simply saying  
5 that you have to identify a misleading statement  
6 and it has to be something that's like in kind.

7 But Your Honor is quite right that the  
8 SEC has ample authority to -- to pursue and  
9 penalize failures to violate or failures to  
10 comply with that --

11 JUSTICE JACKSON: Right. But just  
12 to -- just to be clear, I guess I'm -- I'm just  
13 trying to understand, are you making the  
14 argument that there's something about the nature  
15 of an Item 303 disclosure that it can't give  
16 rise to liability or there are circumstances  
17 that you can envision like the one perhaps you  
18 identified where it might, but they didn't  
19 allege that in this case?

20 MS. COBERLY: We are not asking this  
21 Court to make a ruling based on the nature of  
22 Item 303 representations. What we're asking the  
23 Court to do is respect the text of Rule  
24 10b-5(b).

25 If a -- if a plaintiff identifies a

1 specific misleading statement in a -- an Item  
2 303 disclosure, that happens to be in an Item  
3 303 disclosure, which means, by the way, it  
4 happens to be anywhere in the MD&A of the public  
5 filing, then the plaintiff could plead that  
6 specific statement as a misleading statement for  
7 purposes of the --

8 JUSTICE KAGAN: But just to --

9 CHIEF JUSTICE ROBERTS: I --

10 JUSTICE KAGAN: -- make sure I --

11 CHIEF JUSTICE ROBERTS: I was just  
12 going to say, I thought you argued that the  
13 private actions could not be brought under  
14 Section 303 alone even though the Commission  
15 might be able to take actions?

16 MS. COBERLY: We do argue that, Your  
17 Honor, but -- but the problem here is to -- to  
18 identify -- what the Second Circuit held was  
19 that a violation of Item 303, standing alone, is  
20 actionable under Rule 10b-5(b) whether or not  
21 there was a misleading statement. And so what  
22 we're asking for is for the Court to require the  
23 misleading statement.

24 The statement has to be identified and  
25 it has to be something specific to comply with

1 the PSLRA pleading requirements, and then the  
2 defendant will go through the process, and the  
3 court, of evaluating whether that kind of  
4 statement is the sort of thing on which  
5 securities liability can rest.

6 JUSTICE KAGAN: And just to make sure  
7 I understand your answer to Justice Jackson's  
8 hypothetical, if, in the MD&A, the -- the  
9 company says there are three trends that you  
10 should know about, you, the investor, should  
11 know about, when you think about our future  
12 sales, and it lists three trends, but it doesn't  
13 list a fourth that's actually much more  
14 consequential than those three and cuts in the  
15 opposite direction, has the -- has -- has -- has  
16 that satisfied the requirement?

17 MS. COBERLY: I think that would  
18 satisfy the requirement of the misleading  
19 statement.

20 JUSTICE KAGAN: Yeah.

21 MS. COBERLY: It remains -- then there  
22 are other pleading requirements as well --

23 JUSTICE KAGAN: Sure.

24 MS. COBERLY: -- including potentially  
25 the application of the safe harbor, because I

1 actually think that statement that Your Honor is  
2 positing probably is a forward-looking statement  
3 that would be protected from liability under the  
4 statutory safe harbor.

5 JUSTICE KAGAN: But, in terms of the  
6 issue that we're deciding today --

7 MS. COBERLY: Right.

8 JUSTICE KAGAN: -- it would pass that?

9 MS. COBERLY: I think it likely would  
10 pass that, Your Honor. And that's why it's so  
11 important that the statement be specific and  
12 identified.

13 There's actually -- the -- the -- the  
14 safe harbor provision itself contains an  
15 important textual clue as well. It discusses  
16 statements as being something contained in the  
17 filings, contained in, in fact, specifically  
18 contained in the Management's Discussion and  
19 Analysis, which, of course, is a lengthy  
20 narrative. Based on that understanding of what  
21 a statement is, it's not appropriate to suggest,  
22 as the government does, that the statements made  
23 could be in general the entire MD&A.

24 And one of the reasons it's important  
25 for the PSLRA, I think, to identify something



1 more specific is because the MD&A is long and  
2 complex and covers many different subjects. I  
3 mean, our client, for example, was a holding  
4 company that had four different major  
5 subsidiaries engaged in different businesses.  
6 It was affected by many regulations. It, in  
7 fact, disclosed in its MD&A the possibility that  
8 regulations that impact the commodities stored  
9 by this subsidiary could impact the outcome, the  
10 financial results, of the holding company. That  
11 was actually disclosed at a higher level of  
12 generality. That did not become misleading  
13 simply because it did not provide a specific  
14 example that included this alleged regulation.

15           And we -- we want companies to  
16 disclose what's required under Item 303. We  
17 want them to provide that information. But, if  
18 we have a rule that says anytime you say  
19 anything you can be held liable for what you  
20 don't say, that would have exactly the opposite  
21 result of the requirement.

22           JUSTICE BARRETT: Ms. Coberly, what  
23 about 10b-5(a) and(c)? Would a 303 omission be  
24 actionable under either of those subsections,  
25 and are you asking us to say anything about

1 that?

2 MS. COBERLY: We are not asking the  
3 Court to say anything about that necessarily  
4 because the Second Circuit didn't. So we did  
5 not brief that issue as if it was before the  
6 Court. The Second Circuit did not rely on that.

7 But what I can say, Your Honor, is  
8 that every time this Court has recognized  
9 liability under (a) and (c), it has found  
10 something in addition to speech alone. And if  
11 it were the case that you could -- this in our  
12 case is a quintessential (b) case, right? It's  
13 about what a 10-K or a 10-Q does or doesn't say.

14 And if that case could be recast as a  
15 scheme case or an act case and avoid the  
16 specific requirements of (b), no one would ever  
17 bring a claim under (b). And, presumably, there  
18 would be some decision by some court of appeals  
19 somewhere that held that a misrepresentation or  
20 omission in a 10-K or a 10-Q can be asserted  
21 under (a) and (c). And no court, including the  
22 Second Circuit, has ever reached that result as  
23 far as we are aware.

24 CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 Justice Thomas?

2 Justice Gorsuch, anything further?

3 All right. Justice Barrett?

4 Okay. Thank you, counsel.

5 MS. COBERLY: Thank you.

6 CHIEF JUSTICE ROBERTS: Mr. Frederick.

7 ORAL ARGUMENT OF DAVID C. FREDERICK

8 ON BEHALF OF RESPONDENT MOAB PARTNERS, L.P.

9 MR. FREDERICK: Thank you, Mr. Chief  
10 Justice, and may it please the Court:

11 This case involves a classic 10b-5(b)  
12 misleading half-truth. Petitioners disclosed a  
13 few known trends that would affect their bottom  
14 line but omitted the IMO 2020 uncertainty that  
15 would decimate 40 percent of their revenue.  
16 Just as disclosing two roads near a property  
17 when a third one actually bisects it is a  
18 classic fraudulent half-truth, so is a partial  
19 Item 303 disclosure that omits required material  
20 information. A reasonable investor would expect  
21 the description of known trends to be complete  
22 and would be misled by such a material omission.

23 If accepted, Petitioners' argument  
24 would create a roadmap for fraud. Petitioners  
25 knew they were about to lose a substantial part

1 of their business but kept their stock price  
2 artificially inflated by deliberately  
3 withholding information about their readiness to  
4 comply with an important rule change. When the  
5 truth emerged, their stock price fell by more  
6 than 40 percent in one day.

7 Congress enshrined a private right of  
8 action to redress this kind of half-truth. Now  
9 Petitioners concede that an omission can be a  
10 half-truth when there is a statement on the same  
11 subject. But Item 303 defines the relevant  
12 subject, any known trends or uncertainties that  
13 are reasonably likely to significantly affect  
14 revenues or income.

15 So, if a company, as, Mr. Chief  
16 Justice, your hypothetical pointed out,  
17 discloses that sales are going to go up by some  
18 customers, but suppose that the supplier of  
19 parts is about to go into bankruptcy, both of  
20 those statements go to the same subject under  
21 Item 303. But an omission of one, the  
22 bankruptcy of the supplier, would materially  
23 affect the bottom line. For the reason that  
24 they don't give you a standard for determining  
25 the same subject, it has to be tied to Item 303.

1 I welcome the Court's questions.

2 JUSTICE THOMAS: But, even if you  
3 lose, doesn't the SEC have authority over the  
4 omission?

5 MR. FREDERICK: Not under 10b-5(b)  
6 under their theory. The SEC would only have  
7 administrative authority through their Corporate  
8 Finance Department, but they wouldn't have the  
9 authority to bring a fraud claim that would seek  
10 other potential remedies. And the SEC has made  
11 quite clear that its enforcement staff is meager  
12 compared to the resources and opportunities for  
13 institutional investors like the ones that I  
14 represent to be able to bring private actions.

15 JUSTICE THOMAS: And so which  
16 omissions would not be misleading?

17 MR. FREDERICK: Well, omission --

18 JUSTICE THOMAS: If pure omissions are  
19 misleading -- it seems as though you're saying  
20 the mere fact that it is an omission makes it  
21 misleading. Can you -- is there a limit to  
22 that?

23 MR. FREDERICK: Yes, there is, Justice  
24 Thomas. And what the Second Circuit did below  
25 was it went through, essentially, a decision

1 tree whether there was a violation of Item 303.  
2 It asked first, is there a known trend? Would  
3 it reasonably affect the bottom line? If the  
4 answer to that is no, then any omission that  
5 would not concern a known trend wouldn't be  
6 required for disclosure. And if there was an  
7 uncertainty about that, then the managers are  
8 asked whether or not disclosing that event would  
9 be reasonably likely to occur, which is a lower  
10 standard still.

11 The Second Circuit provided those kind  
12 of prophylactic protections through the decision  
13 tree that it undertook to determine whether or  
14 not an omission in these particular contexts  
15 would be important, and it determined -- and  
16 this isn't challenged on appeal -- that it was  
17 objectively unreasonable for the company not to  
18 put in their Item 303 disclosure the facts that  
19 would be necessary to determine the company's  
20 readiness to deal with the IMO 2020 rule change,  
21 which is going to decimate the 6 oil market.

22 And so, for that reason, it seems very  
23 clear to us that when the managers are assessing  
24 what needs to be in the Item 303 disclosure,  
25 omitting something that would be so material, as

1 was the case here, would be independently  
2 actionable.

3 And I would point out that the  
4 underlying Second Circuit case that's really on  
5 appeal here is called Stratte-McClure. That was  
6 the precedent on which the per curiam panel  
7 below relied.

8 Stratte-McClure said that omissions  
9 that were of such materiality would lead the  
10 financial statements to be misleading. We think  
11 what it meant by that was the MD&A part. And  
12 the comment is made, well, the MD&A is many  
13 pages. Well, the statement in a Supreme Court  
14 brief can be many, many pages. And so the fact  
15 that we're not talking about one sentence, but  
16 we're talking about a statement, is relevant for  
17 determining what material information reasonable  
18 investors would want to have.

19 JUSTICE JACKSON: Can I just --

20 CHIEF JUSTICE ROBERTS: Counsel --

21 JUSTICE JACKSON: Go ahead.

22 CHIEF JUSTICE ROBERTS: -- you -- you  
23 began by saying this was a classic half-truth.

24 MR. FREDERICK: Yes.

25 CHIEF JUSTICE ROBERTS: Are -- are you

1 -- is -- the way that the dispute was presented  
2 at least in some parts is a distinction between  
3 half-truths and -- and pure omissions.

4 Are you giving up on that distinction,  
5 or you don't buy it? I mean, you -- you do not  
6 buy that distinction at all?

7 MR. FREDERICK: I think their -- what  
8 they define "pure omission" to be is a violation  
9 of a disclosure rule. And if you look at a  
10 disclosure violation, you have to look at what  
11 was disclosed compared to what wasn't disclosed.

12 And that's the classic half-truth that  
13 your very first hypothetical, Mr. Chief Justice,  
14 brought to light. And we think, here, where the  
15 company is talking about some of the material  
16 trends that would affect their bottom line but  
17 not the trend that's going to affect nearly half  
18 of their business, is clearly a material trend  
19 and a material omission that renders the  
20 statements that they've made elsewhere in the  
21 Item 303 disclosure to be misleading.

22 JUSTICE BARRETT: And you would --

23 JUSTICE KAVANAUGH: But isn't --

24 JUSTICE BARRETT: -- have to identify  
25 those specific statements?



1           MR. FREDERICK: Well, there are two  
2 answers, Justice Barrett, and I want to be clear  
3 for the record what our position is.

4           We agree with the SG that the  
5 categorical matter, the statement, is the MD&A.  
6 So that is an adequate statement if referenced  
7 in the complaint, which we have on paragraphs  
8 277 and 278 of our complaint.

9           If, however, the Court were to  
10 conclude that more particularized statements  
11 within the MD&A needed to be identified, we've  
12 also done that in the complaint in the preceding  
13 six or seven paragraphs.

14           And so whichever way the Court rules,  
15 if it accepts the Solicitor General's more  
16 categorical approach or if it takes the more  
17 nuanced approach that we have also offered as an  
18 alternative, we think that you get to the same  
19 place.

20           JUSTICE KAGAN: But, if I understand  
21 you correctly, Mr. Frederick -- and this is  
22 really just repeating the Chief Justice's  
23 question -- you have put off the table, you're  
24 not defending the Second Circuit's position,  
25 which is that there's no statement, however

1 capaciously or narrowly defined, there's no  
2 statement that needs to be alleged becomes  
3 misleading because of the omission?

4 MR. FREDERICK: That's not correct,  
5 Justice Kagan. What the Stratte-McClure Court  
6 said and held was that the omissions rendered  
7 the financial statement misleading. And so the  
8 Second Circuit has viewed the categorical  
9 position that the government does as the correct  
10 ruling on the statement.

11 JUSTICE KAGAN: Well, let -- let's  
12 just imagine that the Second Circuit said  
13 something else, which is that any omission  
14 counts without having to show that it rendered  
15 any other statement misleading.

16 You would reject that?

17 MR. FREDERICK: I -- I -- I don't  
18 think that anybody -- that any court has ever  
19 held that. We're not arguing that. The Second  
20 Circuit didn't hold that. It would be purely  
21 hypothetical.

22 JUSTICE KAGAN: So what everybody is  
23 arguing about is just sort of how narrow or how  
24 capacious we should understand the requirement  
25 that there needs to be another statement that's

1 rendered misleading?

2 MR. FREDERICK: I think that's  
3 basically right in terms of framing the  
4 battlefield here, Justice Kagan, and that's why  
5 the subject is what is so important.

6 They're willing to concede that there  
7 can be half-truths when there are omissions on  
8 the same subject, but they never really make  
9 clear what is the subject in the context of a  
10 public filing by a public company to a public  
11 agency charged with administering particular  
12 rules designed to protect investors.

13 JUSTICE KAVANAUGH: Can -- can we just  
14 say that a -- an omission alone is not good  
15 enough, you have to identify a statement as  
16 well, and send it back?

17 MR. FREDERICK: I don't think that's  
18 going to help anyone, Justice Kavanaugh,  
19 frankly, for this reason.

20 JUSTICE KAVANAUGH: It'll help us, but  
21 --

22 (Laughter.)

23 MR. FREDERICK: I -- and I appreciate  
24 my role is to help you, Justice Kavanaugh. But,  
25 in furtherance of helping the bar, let me urge

1 you to say that the omission has to be tied to  
2 the particular statements at issue, which are,  
3 here, the MD&A, the management discussion. That  
4 has to be the subject in which you evaluate  
5 omissions and statements.

6 It's the only administrable rule where  
7 you look at what is required under the Item 303  
8 rule and you determine whether the company  
9 complied with the form --

10 JUSTICE KAVANAUGH: Well, to say the  
11 MD&A as a whole is misleading really kind of  
12 waters down the -- the statement requirement.  
13 At least that's the argument on the other side.

14 MR. FREDERICK: It is. And that's why  
15 we made the backup argument that if charged with  
16 looking at particular statements in the MD&A, we  
17 pleaded that, we can do that, we can establish  
18 that.

19 But I think, Justice Kavanaugh, what's  
20 important is that when there are material  
21 omissions of the type and sky -- size and scope  
22 here, it's really important to have a tool to be  
23 able to say, we're not going to flyspeck every  
24 sentence and the placement of every comma. This  
25 company didn't disclose what was going to happen

1 to 40 percent of their business.

2 JUSTICE GORSUCH: Well, Mr. Frederick,  
3 if -- if there's such agreement that a  
4 statement's required and, in fact, you -- you  
5 seem to be okay with your -- your friend, Ms.  
6 Coberly's, suggestion that it has to be a  
7 specific statement in a specific context, why  
8 not send it back for analysis under that  
9 standard?

10 MR. FREDERICK: Certainly, a -- a  
11 remand is going to happen anyway because of the  
12 existence of the other claims.

13 JUSTICE GORSUCH: But would -- would  
14 that -- would that help the bar?

15 MR. FREDERICK: I don't know that --

16 JUSTICE GORSUCH: Would that be  
17 useful?

18 MR. FREDERICK: Well, what I would  
19 like to urge the Court is that when a -- an  
20 omission is evaluated in the context of a  
21 misleading statement, the test for determining  
22 it in an Item 303 context is, is it the subject  
23 covered by the Item 303 requirement?

24 JUSTICE GORSUCH: I understand that's  
25 your first argument, but you seem to be --

1 MR. FREDERICK: No.

2 JUSTICE GORSUCH: -- content with a  
3 more specific level of analysis too, and your  
4 friend on the other side suggests that that  
5 might even be required by the PSLRA.

6 MR. FREDERICK: Well --

7 JUSTICE GORSUCH: And if you're  
8 content with it and she's content with it and  
9 you say it would be helpful for us to go beyond  
10 talking about omissions, why shouldn't we go  
11 ahead and do that?

12 MR. FREDERICK: Because I think the  
13 government's position is the more categorical  
14 one, which we defend as well, and we believe  
15 that is correct for multiple reasons. The PSLRA  
16 doesn't require individual sentences. It  
17 requires statements, statements --

18 JUSTICE GORSUCH: But, if lower courts  
19 have uniformly, Ms. Coberly suggests, understood  
20 it at a lower level of specificity than --  
21 than -- than that, why -- why shouldn't -- if  
22 you're asking for help for the bar, why wouldn't  
23 it be helpful for the bar to affirm what lower  
24 courts have done in that respect?

25 MR. FREDERICK: Well, I think she's

1 misstated the law of the Second Circuit, is the  
2 financial statement, and the MD&A is the  
3 important narrative discussion in the financial  
4 statement. So, to the extent that she's talking  
5 about other courts, the only other court that's  
6 addressed the question presented directly is the  
7 Ninth Circuit, which has held categorically that  
8 no Item 303 violation can give rise to a 10b-5  
9 claim.

10 JUSTICE GORSUCH: No, but we're  
11 talking about 10b-5 generally. We're now moving  
12 past the 303 issue as I understand it and  
13 talking about what it takes to plead a 10b-5(b)  
14 case generally.

15 MR. FREDERICK: Well --

16 JUSTICE GORSUCH: And as -- as Ms.  
17 Coberly suggests at least -- and what I've read  
18 seems to comport with it -- that the level of  
19 specificity is lower than -- than -- than just  
20 saying go look at a long document like a legal  
21 brief.

22 MR. FREDERICK: Well, Justice Gorsuch,  
23 I don't -- I don't want to fight your instinct  
24 to ratify --

25 JUSTICE GORSUCH: Oh, go ahead and

1 fight it.

2 (Laughter.)

3 JUSTICE GORSUCH: But, if you're  
4 looking for guidance and that's correct and  
5 useful guidance and --

6 MR. FREDERICK: The -- the problem --

7 JUSTICE GORSUCH: -- I mean, or do you  
8 want us just to go ahead and answer the --  
9 the -- the narrow question presented about  
10 omissions? I -- I'm just --

11 MR. FREDERICK: I would say that --

12 JUSTICE GORSUCH: -- wondering where  
13 you're at.

14 MR. FREDERICK: -- the problem with  
15 getting too high a level of specificity is that  
16 it misses the very hypothetical that the Chief  
17 started the argument with, where the company  
18 oversells the fact that 30 percent of its  
19 revenue come from a customer that, say, doubles  
20 its order, but it doesn't talk about the parts  
21 supplier that's about to go into bankruptcy that  
22 would affect 30 percent.

23 When --

24 JUSTICE GORSUCH: That -- that might  
25 be a -- a specific. I mean, we're going to have



1 to argue about that, but that's, I think, what  
2 lower courts do all the time and say is that  
3 specific enough. Is that more like the  
4 crossroads example that you both have used, or  
5 is it too far flung to qualify as a statement on  
6 that subject matter?

7 MR. FREDERICK: And that's why the  
8 Item 303 framework is a better one than a  
9 free-floating same-subject test, which is the  
10 other side's offer.

11 JUSTICE GORSUCH: But do you concede  
12 that elsewhere in securities law it is more  
13 specific than that under 10b-5(b) and that --  
14 that courts do require a more specific level of  
15 granularity than just say it's somewhere in a --  
16 required somewhere in a regulation?

17 MR. FREDERICK: Yes, but that is  
18 usually in the context of earnings calls, press  
19 releases, voluntary statements in which the  
20 company is not required to make disclosures.

21 JUSTICE JACKSON: But I guess --

22 MR. FREDERICK: And --

23 JUSTICE JACKSON: Sorry. I guess  
24 that's my problem, Mr. Frederick, because I'm --  
25 to the extent that the government's general

1 categorical view reduces to whenever the company  
2 is required to make statements, not doing so  
3 renders the report misleading, I -- I guess I  
4 don't understand how that's any different than  
5 just saying pure omissions in a context in which  
6 there's a regulation that requires you to  
7 disclose count.

8           It seems to me it -- it -- it writes  
9 out of the statute something about the statement  
10 being rendered misleading to interpret that to  
11 mean anytime you are required to disclose  
12 certain information in a statement and it isn't  
13 there you have a misleading statement.

14           MR. FREDERICK: But, Justice Jackson,  
15 the part of the statute that they don't really  
16 want to talk about is the part that says "in the  
17 light of the circumstances under which they were  
18 made." The circumstances here are the  
19 regulation requiring disclosure on specific  
20 topics.

21           JUSTICE JACKSON: No, I understand  
22 that. But the Chief Justice asked the very  
23 question that I was going to ask, which is what  
24 is the difference between a pure omission in a  
25 world in which you're required to make a

1 disclosure and an omission that renders a  
2 statement misleading? And if you do it at a  
3 certain level of generality, I see that there is  
4 no difference between those two.

5 MR. FREDERICK: And I think there is  
6 no difference except in the circumstance where  
7 you simply don't file an MD&A at all. That is a  
8 pure omission. It is as pure as you can be that  
9 you have violated the rule by simply not  
10 complying with it.

11 Now I'm told that never happens in the  
12 real world, but that's why this whole pure  
13 omission thing is a canard for really not  
14 capturing what is going on in a securities  
15 action, which are a series of half-truths.

16 Here, the difference is that between  
17 the voluntary scenario where you do have to have  
18 more specificity about the misleading omissions  
19 and statements, where you're under a regulatory  
20 regime that requires certain disclosures and  
21 certain managers' analyses, you have to follow  
22 the regulation, and the regulation here calls  
23 for this disclosure.

24 Now, Justice Jackson, to be sure, not  
25 all of those misleading statements or omissions

1 are going to give rise to 10b-5 claims. You  
2 have to plead -- plead materiality and  
3 specificity.

4 JUSTICE JACKSON: But why -- why is  
5 there a difference in 10(b) and -- and -- and  
6 Section 11 then? In other words, how do you  
7 respond -- it seems to me the Section 11  
8 argument is what you're saying. When you're  
9 required to state something and you don't state  
10 it, Section 11 says there's liability.

11 We have different language in 10b-5.  
12 So how do you account for that?

13 MR. FREDERICK: Well, 10b-5 is  
14 intended to be more of a catch-all for a -- a  
15 provision in which the SEC was intending to  
16 capture by rule all conceivable forms of fraud.  
17 Section 11 is a very specific rule capturing  
18 just the disclosures made in offering documents  
19 because, once a stock is put on the market  
20 through an offering document, the offering  
21 document, all four corners, are supposed to help  
22 the investor identify the worth of the offering.

23 Once the offering is made, the market  
24 takes over, right? And so the specificity  
25 required is necessary because Section 11 is a

1 strict liability offense. It does not involve  
2 scienter. Fraud requires scienter.

3 And so having more particularity with  
4 respect to the offering document statements in  
5 that context makes economic sense, and it makes  
6 governmental sense in the -- in the regard that  
7 what you're doing is holding the maker of those  
8 statements strictly liable for messing up by --  
9 either by misleading in some way or omitting  
10 something that was stated.

11 You don't do that in the fraud context  
12 because you're looking for broader concepts and  
13 language in which to enforce, and that's why the  
14 SEC, when it promulgated Rule 10b-5, looked to a  
15 different provision that did speak to the  
16 circumstances in which fraud could be conducted.

17 JUSTICE ALITO: Mr. Frederick, what  
18 about the question that we agreed to review?  
19 Now you told us it was a worthless question in  
20 your brief in opposition. But, wisely or not,  
21 we took the case to decide that question.

22 And based on the argument this morning  
23 and your briefs, I don't really see a  
24 disagreement between you and Ms. Coberly on the  
25 narrow question that the Court agreed to take.

1 I understand you to say that when there is a  
2 material omission in the 303, then a number of  
3 statements in the 303 can be regarded as  
4 misleading. And you need to say that, right, to  
5 get under 10b-5(b)? Is that correct?

6 MR. FREDERICK: Well, we need that to  
7 get under 10b-5(b). We do that multiple ways,  
8 either categorically because the entire MD&A is  
9 false and misleading or because the individual  
10 statements within it are false and misleading.

11 JUSTICE ALITO: All right. I'll  
12 follow up when --

13 CHIEF JUSTICE ROBERTS: Why don't you  
14 go ahead now.

15 JUSTICE ALITO: Well, the question is  
16 whether a failure to make a disclosure required  
17 under Item 303 can support a private claim under  
18 Section 10(b) -- you'll understand that to refer  
19 to 10b-5(b) -- "even in the absence of an  
20 otherwise misleading statement."

21 And you're not arguing that as I  
22 understand it. You're arguing that there are  
23 misleading statements in the 303 because it --  
24 it fails to state things that should have been  
25 stated.

1                   MR. FREDERICK: But the opacity of  
2                   that last phrase that you highlighted, Justice  
3                   Alito, is part of my argument. What is an  
4                   otherwise misleading statement depends on  
5                   context. The context here are the omissions.  
6                   So you might look at a statement and say:  
7                   That's not misleading, except for the fraud and  
8                   omissions that were material to render that  
9                   particular statement otherwise misleading.

10                   So we argue on the Question Presented  
11                   the Second Circuit has never decided this on the  
12                   basis of pure omissions. They decided it in the  
13                   context of misleading financial statements. And  
14                   the "otherwise misleading" gets the half-truth  
15                   theory into the case.

16                   CHIEF JUSTICE ROBERTS: Thank you,  
17                   counsel.

18                   Justice Thomas?

19                   JUSTICE THOMAS: Mr. Frederick, am I  
20                   correct in assuming that the -- you're just  
21                   adding, you're saying it has to be a pure  
22                   material omission?

23                   MR. FREDERICK: What I'm saying is  
24                   that --

25                   JUSTICE THOMAS: It seems to me as the

1 only adjective you're adding is "material."

2 MR. FREDERICK: "Material" is  
3 necessary to make a 10b-5 claim --

4 JUSTICE THOMAS: Yeah.

5 MR. FREDERICK: -- Justice Thomas.

6 And so -- there also has to be scienter. So it  
7 has to be a pure material omission with scienter  
8 that also causes the other elements in order to  
9 give rise to a 10b-5 claim. We -- we  
10 acknowledge --

11 JUSTICE THOMAS: Yeah.

12 MR. FREDERICK: -- that.

13 CHIEF JUSTICE ROBERTS: Anything  
14 further?

15 Justice Gorsuch? No?

16 Justice Jackson?

17 Thank you, counsel.

18 Mr. McDowell.

19 ORAL ARGUMENT OF EPHRAIM McDOWELL

20 FOR THE UNITED STATES, AS AMICUS CURIAE,

21 SUPPORTING THE RESPONDENT

22 MR. McDOWELL: Thank you, Mr. Chief

23 Justice, and may it please the Court:

24 I want to just pick up on this idea  
25 that the Petitioners are asking for a tight



1 factual connection between the statement and --  
2 and the omission. But that ignores the context  
3 in which an MD&A is -- is made. The context is  
4 Item 303.

5 Item 303 requires companies to  
6 disclose all information in a particular  
7 category. And when you have that sort of  
8 regulation, that's the subject matter in which  
9 you evaluate the statement and omission.

10 So just to take the Cardozo case as an  
11 example, that -- that case was a voluntary  
12 disclosure case. There was no disclosure  
13 regulation at issue. And in that circumstance,  
14 we agree that there will need to be some factual  
15 connection between the statement and the  
16 omission.

17 But, when you have a regulation like  
18 you have here, that's the way in which you  
19 evaluate the statement and omission. So just to  
20 take the facts of that case and -- and vary them  
21 a bit, suppose there were a regulation in that  
22 case requiring sellers to disclose to buyers  
23 everything that could affect the material value  
24 of the property. In that circumstance,  
25 disclosing -- not disclosing a nearby factory

1 would be misleading, even though, even in a  
2 voluntary disclosure case, it might not be  
3 misleading, and there would need to be a tight  
4 subject matter connection.

5 I welcome the Court's questions.

6 JUSTICE THOMAS: But aren't you too  
7 saying that as long as it's material, the  
8 omission is material, that it satisfied  
9 10b-5(b)?

10 MR. McDOWELL: No, Your Honor. We're  
11 saying that it has -- there has to be an Item 3  
12 -- Item 303 violation, it has to be material  
13 under this Court's decision in Basic, which is a  
14 different materiality standard than Item 303  
15 itself, and then there has to be scienter as  
16 well. So there are multiple different elements  
17 beyond just materiality.

18 JUSTICE THOMAS: What I'm trying to  
19 get at is I'm trying to understand what the --  
20 what's the difference between what you're saying  
21 and what Petitioner is saying. Petitioner  
22 seemed to suggest that an additional statement  
23 is required. You're saying at least from what  
24 I'm hearing that it has to be material, and I  
25 take as a grant it's scienter, okay? But I

1 don't see that that adds anything more other  
2 than it's a -- it's a pure omission that is  
3 material.

4 MR. McDOWELL: No, Your Honor, because  
5 we're saying that the statement here is the  
6 MD&A's narrative discussion and analysis as a  
7 whole, and when you have an omission that  
8 satisfies the Item 303 standard, that renders  
9 that entire narrative misleading because --

10 JUSTICE THOMAS: But I don't see how  
11 you could have an omission if you don't have the  
12 initial 303 statement.

13 MR. McDOWELL: You do have the initial  
14 303 statement. That's the MD&A. The MD&A is  
15 the statement in response to --

16 JUSTICE THOMAS: I -- I understand  
17 that, but I -- anyway, I understand what you're  
18 saying. I don't -- I don't know how you could  
19 even have the omission ab initio if you don't  
20 have the 303 statement, and it is from that  
21 statement that we're talking about the omission,  
22 the omission beyond -- nothing beyond that, a  
23 material omission from the 303 statement.

24 MR. McDOWELL: Your Honor, that -- our  
25 position is that if you have a material omission

1 from the 303 statement, that would be -- that  
2 would give -- that could give rise to liability.

3 JUSTICE THOMAS: Yeah.

4 MR. McDOWELL: And the reason for that  
5 is because reasonable investors will expect the  
6 MD&A to disclose all known trends or  
7 uncertainties. So, when you omit one, then  
8 you're violating those reasonable investor  
9 expectations.

10 Now there's been some discussion about  
11 the specificity of the statement required here.  
12 But, as my colleague suggested, the ordinary  
13 meaning of "statement" includes a narrative  
14 discussion and analysis like --

15 JUSTICE KAVANAUGH: How can -- how can  
16 the MD&A as a whole be misleading but not any  
17 single statement within it?

18 MR. McDOWELL: Your Honor, the MD&A as  
19 a whole is misleading because reasonable  
20 investors will assume that it is complete in  
21 light of Item 303. There may also be individual  
22 statements that are specifically misleading, as  
23 my colleague suggested, but our position is the  
24 categorical one that the entire MD&A is the  
25 statement and that's what's been rendered

1 misleading by the omission.

2 JUSTICE KAVANAUGH: And won't that  
3 always mean then that a omission -- an Item 303  
4 omission qualifies?

5 MR. McDOWELL: No, Your Honor,  
6 because, first of all, it has to meet the -- the  
7 standards of Item 303 itself, which requires  
8 that the trend or uncertainty be currently  
9 known, reasonably likely to occur, and  
10 reasonably likely to be material.

11 JUSTICE KAVANAUGH: Right. But once  
12 you have that?

13 MR. McDOWELL: Once you have that,  
14 then you would also have to show materiality  
15 under Basic, which is oftentimes a higher  
16 threshold, as well as scienter. So we're just  
17 talking about one element of the Rule 10b-5  
18 claim.

19 But, yes, as to the misleading  
20 omission element, our position is that when  
21 there is an Item 303 violation, that would  
22 satisfy that one element.

23 And just to understand why we think  
24 the right way to think about the statement is  
25 the MD&A as a whole, I want to give you an

1 example of a slightly more straightforward SEC  
2 disclosure regulation, which is Item 401.

3 That requires companies to list all  
4 the directors on the board of directors of the  
5 company. If a company omits one of those  
6 directors from the disclosure, that omission  
7 doesn't render misleading the identification of  
8 any other individual director, but it does  
9 render misleading the company's larger statement  
10 that this is our full board of directors.

11 The same analysis applies here. Item  
12 303 requires companies to disclose all material  
13 known trends or uncertainties. So, if you omit  
14 one, that doesn't render it -- the  
15 identification of any other one misleading, but  
16 it does render misleading the holistic statement  
17 that these are all the known trends or  
18 uncertainties affecting the company's financial  
19 condition.

20 JUSTICE JACKSON: I don't see that.  
21 And I -- I think Ms. Coberly agreed, but I guess  
22 I'm trying to figure out the difference between  
23 the language of 10b-5 with respect to this issue  
24 and Section 11.

25 The government's position it seems to

1 me renders those two the same in this context  
2 because Section 11 says that you may sue when a  
3 regulated party has "omitted to state a material  
4 fact required to be stated."

5 And in this context, you're saying  
6 that to the extent that Item 303 requires these  
7 trends and uncertainties to be stated, if they  
8 are omitted, we should consider that to count or  
9 satisfy the additional language in Section 10b-5  
10 that talks about your -- you needing to have a  
11 misleading statement.

12 MR. McDOWELL: With respect, Justice  
13 Jackson, that's not correct because Section 11  
14 goes on to say "or necessary to make the  
15 statements therein not misleading." So Section  
16 11 speaks to both pure omissions and half-truths  
17 expressly.

18 JUSTICE JACKSON: Right.

19 MR. McDOWELL: Subsection --

20 JUSTICE JACKSON: And it's different  
21 than 10(b), which doesn't have that first part,  
22 correct?

23 MR. McDOWELL: That -- that's correct.  
24 But -- but 10(b) does have the part that we are  
25 relying on and they're agreeing.

1 JUSTICE JACKSON: No, I understand.  
2 But, to the extent that 11 has two different  
3 things --

4 MR. McDOWELL: Right.

5 JUSTICE JACKSON: -- right, the part I  
6 read, "required to be stated," and the part that  
7 is similar to 10b-5, I don't understand your  
8 collapsing the two, and I feel like your  
9 argument is doing that.

10 MR. McDOWELL: No, Your Honor.  
11 They're distinct categories. So a pure omission  
12 would occur, for instance, if a company did not  
13 file an MD&A at all or, in the context of  
14 Section 11, if they omitted an entire category  
15 within a registration statement.

16 By contrast, a -- a half-truth is when  
17 you provide some disclosure under a particular  
18 category but omit other parts of the disclosure  
19 and that renders the entire statement within  
20 that category misleading. So that's the  
21 distinction here, and --

22 JUSTICE JACKSON: And do you think the  
23 Second Circuit appreciated that distinction in  
24 its opinion? Because I -- I sort of thought  
25 that they were saying the first.



1           MR. McDOWELL: So, Your Honor, the  
2           Second Circuit's decision is unpublished. It  
3           has fairly limited reasoning. And I read it to  
4           basically cite and adopt the Second Circuit's  
5           precedential opinion on this issue, which is  
6           Stratte-McClure.

7           And Stratte-McClure does rely on, as I  
8           read it, a half-truths theory because it says  
9           that the -- an Item 303 violation renders the  
10          financial statement misleading, which I take to  
11          mean the MD&A, and that's exactly our position.

12          So I do think that the actual  
13          precedent within the Second Circuit does agree  
14          with our position, and I don't think it would do  
15          any good to just say -- to just basically vacate  
16          and remand and -- and let them take another look  
17          because Stratte-McClure does decide this issue  
18          in the way that we think about it.

19          The other -- the other point I wanted  
20          to make about the PSLRA's pleading standard is I  
21          think they're -- the other side is suggesting  
22          that that pleading standard can substantively  
23          limit the scope of subsection (b) of Rule 10b-5.  
24          But that gets the analysis backwards because, if  
25          you look at the pleading standard and it's at

1 page 11 of the addendum to the red brief, the  
2 pleading standard just tracks the language of  
3 subsection (b) of Rule 10b-5. It doesn't  
4 purport to change or restrict that language.

5 So I would read the PSLRA's pleading  
6 standard in light of the longstanding provision  
7 of subsection (b) of Rule 10b-5, not the other  
8 way around.

9 JUSTICE GORSUCH: Counsel --

10 MR. McDOWELL: So the only question --

11 JUSTICE GORSUCH: -- do you agree with  
12 Ms. Coberly, though, that lower courts have  
13 understood the PLSRA to require a more specific  
14 statement identification than you're proposing  
15 here?

16 MR. McDOWELL: No, Justice Gorsuch,  
17 not in this context, because this --

18 JUSTICE GORSUCH: No. No, no, no.  
19 Put aside the 303 context. In all other  
20 contexts --

21 MR. McDOWELL: In the --

22 JUSTICE GORSUCH: -- as I understand  
23 it, district courts have understood, lower  
24 courts have understood generally that the PSLRA  
25 is more specific, has a more specific nuanced

1 requirement than you're proposing.

2 MR. McDOWELL: In -- in the context of  
3 voluntary disclosures, yes. And that's --

4 JUSTICE GORSUCH: No, I understand  
5 that --

6 MR. McDOWELL: -- that was -- that's  
7 what I started with.

8 JUSTICE GORSUCH: -- I understand that  
9 distinction.

10 MR. McDOWELL: Right.

11 JUSTICE GORSUCH: But you agree that,  
12 outside this context, that's the standard?

13 MR. McDOWELL: Right, but -- yes, I  
14 agree with that --

15 JUSTICE GORSUCH: And the government  
16 doesn't object to that standard in all -- in  
17 other contexts?

18 MR. McDOWELL: In the voluntary  
19 disclosure context, we do not.

20 JUSTICE GORSUCH: Right.

21 MR. McDOWELL: But that's -- that  
22 distinction is critical because, when you have a  
23 reg --

24 JUSTICE GORSUCH: No, I -- I --

25 MR. McDOWELL: Yes.

1 JUSTICE GORSUCH: -- I do understand  
2 that. I just wanted to clarify. Thank you.

3 MR. McDOWELL: Yes. So -- and  
4 that distinct -- that distinction is critical  
5 because, when you have a regulation like this  
6 calling for all information in a particular  
7 category, the omission of information in that  
8 category will necessarily be misleading.

9 And just to take a step back and put  
10 the MD&A in context, it's part of a Form 10-K.  
11 And a Form 10-K document really is like a  
12 Question & Answer document with discrete  
13 categories, and as with any Q&A document, you  
14 can only understand an answer in light of the  
15 question being asked.

16 So just to take it into a different  
17 context, suppose a company's CEO were on a phone  
18 call with an investor and the investor says,  
19 what are all the big trends coming up for the  
20 next year -- may I complete the sentence?

21 CHIEF JUSTICE ROBERTS: You may  
22 complete the sentence, yes.

23 MR. McDOWELL: The investor asks, what  
24 are all the big trends coming up for the next  
25 year? If the -- if the CEO responded by listing

1 five positive trends but omitting a negative  
2 trend, I think we would all understand that to  
3 be misleading in the context of the question.

4 CHIEF JUSTICE ROBERTS: Thank you,  
5 counsel.

6 Sort of looking at things from the  
7 30,000-foot level, I -- I thought we had, if we  
8 haven't said it categorically and expressly,  
9 indicated that we don't want to get any further  
10 into the business of implying private rights of  
11 action. And, here, it seems to me that at -- at  
12 least as presented, this is a question of  
13 whether or not we extend the existing private  
14 right of action to cover 303 omissions. I'm  
15 talking about the private actions of course.

16 Why isn't that something that should  
17 cause us to be reluctant to extend the -- the  
18 right of action?

19 MR. McDOWELL: Mr. Chief Justice, I  
20 actually think that this issue is exactly like  
21 the issue you -- your opinion faces -- faced in  
22 Halliburton. In Halliburton, the -- there was  
23 an established element of reliance, and the  
24 Court said that you can point to a different way  
25 of satisfying an established element after the

1 PSLRA.

2 CHIEF JUSTICE ROBERTS: Well, but, I  
3 mean, it was the same principle that was being  
4 applied. Here, it's a different expansion under  
5 303, an entirely different thing that we hadn't  
6 mentioned in any of our prior implied right of  
7 action jurisprudence.

8 MR. McDOWELL: With respect --

9 CHIEF JUSTICE ROBERTS: A substantive  
10 addition rather than applying the same rule in a  
11 different context.

12 MR. McDOWELL: So I would make two  
13 points about that, Mr. Chief Justice.

14 First, we are not relying on a new  
15 theory. We're relying on the half-truth theory,  
16 which has existed since 1942 when the SEC passed  
17 Rule 10b-5. We're just saying that this fits  
18 within the half-truth theory, just like in --  
19 just like you said in Halliburton the basic  
20 presumption of reliance fits within the  
21 long-settled element of reliance.

22 The other thing I would say about this  
23 is I think Petitioners are over-reading this  
24 Court's decisions in Stoneridge and Janus. We  
25 read those decisions to reject attempts to

1 expand the class of defendants who can be liable  
2 under Rule 10b-5 after the PSLRA. We don't read  
3 them to say that you can't simply plead an old  
4 type of securities claim in a slightly new way.

5 CHIEF JUSTICE ROBERTS: Thank you.

6 MR. McDOWELL: And so that's the  
7 distinction.

8 CHIEF JUSTICE ROBERTS: Justice  
9 Thomas?

10 Justice Alito?

11 JUSTICE ALITO: Well, let me ask you  
12 the same question I asked -- I asked Mr.  
13 Frederick. What's your answer to the question  
14 on which we granted review? You changed the  
15 question. What's the question -- what's the  
16 answer to the question we agreed to review?

17 MR. McDOWELL: The answer is that an  
18 Item 303 violation can form the basis for a Rule  
19 10b-5 claim. And Ms. Coberly I don't take to be  
20 saying that.

21 JUSTICE ALITO: Well, that wasn't the  
22 question we granted review on. Even in the  
23 absence of an otherwise misleading statement.

24 MR. McDOWELL: Right. And I read  
25 "otherwise misleading" to be misleading in

1 its -- in its own -- on it -- by its own terms.  
2 We are saying that it doesn't have to be  
3 misleading on its own terms, but when you put it  
4 in the context of Item 303 disclosures, that's  
5 what makes it misleading.

6 JUSTICE ALITO: Well, don't you have  
7 to identify a statement or a number of  
8 statements, even if it's every single statement  
9 in the 303, that is otherwise misleading to  
10 bring -- to bring it within 10b-5(b)?

11 MR. McDOWELL: You do have to identify  
12 a statement, and we would say that the MD&A's  
13 narrative is the relevant statement. And  
14 there's nothing atypical about reading  
15 statements --

16 JUSTICE ALITO: Fine.

17 MR. McDOWELL: -- that way.

18 JUSTICE ALITO: Then there's an  
19 otherwise misleading statement, which is part of  
20 the question.

21 MR. McDOWELL: Well, with respect,  
22 Justice Alito, I don't think it gets you very  
23 far to answer the question that way because, as  
24 I mentioned earlier, the Second Circuit has  
25 already adopted our position on -- on the



1 half-truths --

2 JUSTICE ALITO: Yeah. Well, do you  
3 think the requirement to -- to identify the  
4 Question Presented means, particularly with  
5 respect to an amicus, the question that you  
6 would like us to address to provide guidance to  
7 the bar or to advance your interests? Do you  
8 think that's what the requirement is?

9 MR. McDOWELL: No, Your Honor. We  
10 answered the Question Presented by saying an  
11 Item 303 violation can give rise to a Rule 10b-5  
12 claim, and we presented two alternative theories  
13 for that. One is the half-truth theory under  
14 subsection (b), and one is the omission theory  
15 under subsections (a) and (c).

16 CHIEF JUSTICE ROBERTS: Justice  
17 Sotomayor?

18 Justice Kavanaugh?

19 JUSTICE KAVANAUGH: Quick question.  
20 The Commission enforces Item 303, correct?

21 MR. McDOWELL: That's right.

22 JUSTICE KAVANAUGH: And Mr. Frederick  
23 referred to that as meager. Do you have a  
24 response to that?

25 (Laughter.)

1           MR. McDOWELL: So I think -- so I do  
2 have a response to that. I do think that the  
3 SEC's resources in this area are -- are limited.  
4 This Court has repeatedly said that private  
5 litigation under Rule 10b-5 is an essential  
6 supplement to SEC enforcement actions. And that  
7 applies with full force here.

8           The SEC has a few hundred employees  
9 that are tasked with reviewing tens of thousands  
10 of forms from registered companies each year,  
11 and it's simply not realistic to think that  
12 those employees will be able to routinely  
13 detect, investigate, and penalize the many  
14 disclosure violations that are taking place.

15           JUSTICE KAVANAUGH: Wouldn't someone  
16 provide information to the SEC staff when they  
17 think something was amiss?

18           MR. McDOWELL: I -- I don't know that  
19 they would. I mean, I think that's -- that's a  
20 bit speculative to think that. But I -- it may  
21 -- perhaps in some cases. But I would say also  
22 that the difference here is between enforcing it  
23 pursuant to Section 13 as opposed to Rule 10b-5,  
24 and there are greater penalties that the SEC can  
25 seek when they go under Rule 10b-5. And when

1 there is an intentionally deceptive disclosure  
2 violation, I think it makes good sense to allow  
3 the SEC to pursue those additional penalties.

4 JUSTICE KAVANAUGH: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice  
6 Barrett?

7 Justice Jackson?

8 Thank you, counsel.

9 Rebuttal?

10 REBUTTAL ARGUMENT OF LINDA T. COBERLY

11 ON BEHALF OF THE PETITIONERS

12 MS. COBERLY: Your Honor, I thought it  
13 was revealing that counsel is persisting in the  
14 argument that any failure to comply with Item  
15 303 is actionable because it makes the entire  
16 MD&A misleading. Every company has to file  
17 10-Ks and 10-Qs, every company, and every  
18 company has to comply with Item 303 and provide  
19 an MD&A.

20 Item 303 refers to the MD&A as a  
21 whole, and its function and purpose is to allow  
22 investors to see the company from the  
23 perspective of management. So the rule that you  
24 heard from both Moab and the government is  
25 tantamount to a rule that we don't have to -- a

1 plaintiff doesn't have to identify a specific  
2 statement, a specific misleading statement,  
3 within the financial statements or the MD&A as  
4 long as that information was required to be  
5 disclosed by Item 303.

6 That is functionally the pure omission  
7 theory that the Second Circuit adopted and that  
8 we object to. It's also tantamount to a  
9 requirement to -- to a definition of omission  
10 that includes the words "required to be stated,"  
11 which appears in Section 11 but conspicuously  
12 not in Section -- in Rule 10b-5(b).

13 The Commission had as its model for  
14 Rule 10b-5(b) both Section 11 and Section  
15 17(a)(2), and it didn't choose to follow the  
16 omission definition in Section -- in Section 11,  
17 and I think we need to attribute some  
18 consequence to that.

19 Further, counsel referred to a  
20 hypothetical that said, if you're required to  
21 list all of your executives and you list most of  
22 them, but you leave one out, that could be a  
23 misleading statement. I agree, and that's the  
24 statement that should be pleaded in the  
25 complaint, the paragraph, the sentence that

1 lists in -- that provides an incomplete list of  
2 the executives.

3 The fact that something was required  
4 to be disclosed actually doesn't add very much  
5 to the analysis there. It -- the -- the  
6 statement would be misleading on its face  
7 whether or not there was a requirement to  
8 disclose. So we think that actually supports  
9 the notion that a specific statement needs to be  
10 identified.

11 Now counsel for Moab argued that they  
12 did identify specific statements, and that's  
13 very interesting because the brief in opposition  
14 doesn't mention them. Neither did the  
15 paragraphs in the complaint that purported to  
16 state this theory based on Item 303. Now I  
17 assume that's because they were relying on the  
18 Second Circuit's rule in Stratte-McClure that  
19 said that you don't have to identify specific  
20 misleading statements when you are pleading  
21 something that is a violation of Item 303.

22 And if you look at those paragraphs in  
23 the complaint, paragraphs 277 and 278, they do  
24 not refer to any specific misleading statement,  
25 any paragraph or sentence where a list was given

1 that was incomplete, for example.

2 In order for that kind of analysis to  
3 -- analogy to apply here, there would need to be  
4 a list that was incomplete, and the plaintiff  
5 would need to identify it and point to it and  
6 say that's why -- say why the statement is  
7 misleading. And then we would have the  
8 opportunity to address that statement in a  
9 motion to dismiss.

10 Now the theory that you heard counsel  
11 for Moab articulate here is actually in some  
12 ways the theory that they pleaded in their  
13 complaint and that they lost in the district  
14 court and in the Second Circuit. Their  
15 complaint went through very specific statements,  
16 listing them, and it was not only in the  
17 voluntary statements, as counsel for the  
18 government referenced.

19 The plaintiff in this case followed  
20 the common practice in district courts across  
21 the nation, which is to list the specific parts  
22 of not only the transcripts of calls but the  
23 10-Qs and the 10-Ks. It went on for pages and  
24 pages. And they said here's a specific  
25 statement in the Ks and Qs, and here's why we

1 think it's misleading.

2           The district court looked at those  
3 statements and it concluded that no claim had  
4 been stated, and that's because many of the  
5 statements were forward-looking, some of them  
6 were statements of opinion, others in context  
7 were not misleading by omission. The district  
8 court dismissed the case based on those specific  
9 statements.

10           The Second Circuit did not revive it,  
11 with the exception of the two specific  
12 statements that Justice Sotomayor pointed out,  
13 which the court found to be pleaded allegedly  
14 misleading because of a very specific factual  
15 omission about the content of the base of  
16 customers.

17           So that claim is proceeding. The  
18 claim the -- the Second Circuit allowed to  
19 proceed is a far broader claim that allows a --  
20 a -- a case to proceed based simply on the  
21 notion that there's an omission of something  
22 required by Item 303. And we think the Court  
23 needs to vacate.

24           CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 MS. COBERLY: Thank you.

2 CHIEF JUSTICE ROBERTS: The case is  
3 submitted.

4 (Whereupon, at 11:09 a.m., the case  
5 was submitted.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



## Official - Subject to Final Review

<p style="text-align: center;"><b>1</b></p> <p><b>10(b)</b> [6] 14:19 20:3 43:5 45:18 54:21,24  <b>10-K</b> [5] 5:6 25:13,20 59:10,11  <b>10-Ks</b> [2] 66:17 69:23  <b>10-Q</b> [2] 25:13,20  <b>10-Qs</b> [2] 66:17 69:23  <b>10:03</b> [2] 1:16 4:2  <b>10b-5</b> [26] 4:14 5:16 11:6 18:10 38:8,11 43:1,11,13 44:14 47:3,9 52:17 53:23 54:9 55:7 56:23 57:3,7 61:17 62:2,19 64:11 65:5,23,25  <b>10b-5(a)</b> [2] 5:9 24:23  <b>10b-5(b)</b> [13] 20:24 21:20 26:11 28:5 38:13 40:13 45:5,7,19 49:9 63:10 67:12,14 11 [15] 43:6,7,10,17,25 53:24 54:2,13,16 55:2,14 57:1 67:11,14,16  <b>11:09</b> [1] 71:4  <b>13</b> [1] 65:23  <b>16</b> [1] 1:12  <b>17(a)(2)</b> [1] 67:15  <b>19</b> [1] 11:18  <b>1942</b> [1] 61:16</p>	<p><b>66</b> [1] 3:15</p> <p style="text-align: center;"><b>9</b></p> <p><b>906</b> [7] 6:21,22,25 7:2,2,2,12</p> <p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> [3] 1:16 4:2 71:4  <b>ab</b> [1] 50:19  <b>able</b> [5] 19:12 21:15 28:14 35:23 65:12  <b>above-entitled</b> [1] 1:14  <b>absence</b> [2] 45:19 62:23  <b>accepted</b> [1] 26:23  <b>accepts</b> [1] 32:15  <b>account</b> [1] 43:12  <b>acknowledge</b> [1] 47:10  <b>across</b> [1] 69:20  <b>act</b> [2] 5:7 25:15  <b>action</b> [9] 5:13,23 12:25 27:8 42:15 60:11,14,18 61:7  <b>actionable</b> [9] 4:16 6:13 14:7,20 18:12 21:20 24:24 30:2 66:15  <b>actions</b> [5] 21:13,15 28:14 60:15 65:6  <b>actual</b> [1] 56:12  <b>actually</b> [11] 10:12,23 22:13 23:1,13 24:11 26:17 60:20 68:4,8 69:11  <b>add</b> [1] 68:4  <b>addendum</b> [1] 57:1  <b>adding</b> [2] 46:21 47:1  <b>addition</b> [2] 25:10 61:10  <b>additional</b> [3] 49:22 54:9 66:3  <b>address</b> [2] 64:6 69:8  <b>addressed</b> [1] 38:6  <b>adds</b> [1] 50:1  <b>adequate</b> [1] 32:6  <b>adequately</b> [1] 16:9  <b>adjective</b> [1] 47:1  <b>administering</b> [1] 34:11  <b>administrable</b> [1] 35:6  <b>administrative</b> [1] 28:7  <b>adopt</b> [1] 56:4  <b>adopted</b> [3] 4:14 63:25 67:7  <b>advance</b> [1] 64:7  <b>affect</b> [8] 26:13 27:13,23 29:3 31:16,17 39:22 48:23  <b>affected</b> [1] 24:6  <b>affecting</b> [1] 53:18  <b>affirm</b> [1] 37:23  <b>agency</b> [1] 34:11  <b>agree</b> [11] 10:16 13:24 14:3 18:7 32:4 48:14 56:13 57:11 58:11,14 67:23  <b>agreed</b> [4] 44:18,25 53:21 62:16  <b>agreeing</b> [1] 54:25  <b>agreement</b> [1] 36:3  <b>ahead</b> [6] 11:18 30:21 37:11 38:25 39:8 45:14</p>	<p><b>AL</b> [2] 1:4,7  <b>ALITO</b> [12] 44:17 45:11,15 46:3 62:10,11,21 63:6,16,18,22 64:2  <b>allegation</b> [1] 16:23  <b>allege</b> [2] 17:17 20:19  <b>alleged</b> [4] 11:12 17:10 24:14 33:2  <b>allegedly</b> [1] 70:13  <b>allow</b> [2] 66:2,21  <b>allowed</b> [2] 17:3 70:18  <b>allows</b> [1] 70:19  <b>alone</b> [5] 5:11 21:14,19 25:10 34:14  <b>already</b> [2] 19:3 63:25  <b>alternative</b> [3] 15:4 32:18 64:12  <b>amicus</b> [4] 2:8 3:11 47:20 64:5  <b>amiss</b> [1] 65:17  <b>ample</b> [1] 20:8  <b>analogy</b> [2] 19:7 69:3  <b>analyses</b> [1] 42:21  <b>analysis</b> [11] 11:21,22 23:19 36:8 37:3 50:6 51:14 53:11 56:24 68:5 69:2  <b>and(c)</b> [1] 24:23  <b>another</b> [2] 33:25 56:16  <b>answer</b> [13] 8:15,25 9:1 10:15 22:7 29:4 39:8 59:12,14 62:13,16,17 63:23  <b>answered</b> [1] 64:10  <b>answering</b> [1] 8:19  <b>answers</b> [1] 32:2  <b>anybody</b> [1] 33:18  <b>anytime</b> [2] 24:18 41:11  <b>anyway</b> [3] 15:6 36:11 50:17  <b>appeal</b> [2] 29:16 30:5  <b>appeals</b> [1] 25:18  <b>appear</b> [1] 7:12  <b>APPEARANCES</b> [1] 2:1  <b>appears</b> [2] 7:13 67:11  <b>application</b> [1] 22:25  <b>applied</b> [1] 61:4  <b>applies</b> [2] 53:11 65:7  <b>apply</b> [5] 7:24 11:21 16:4,13 69:3  <b>applying</b> [1] 61:10  <b>appreciate</b> [1] 34:23  <b>appreciated</b> [1] 55:23  <b>approach</b> [2] 32:16,17  <b>approached</b> [1] 5:16  <b>appropriate</b> [1] 23:21  <b>area</b> [1] 65:3  <b>aren't</b> [1] 49:6  <b>argue</b> [4] 17:22 21:16 40:1 46:10  <b>argued</b> [3] 16:18 21:12 68:11  <b>argues</b> [1] 13:6  <b>arguing</b> [6] 6:7 18:1 33:19,23 45:21,22  <b>argument</b> [26] 1:15 3:2,5,9,</p>	<p>13 4:4,8 6:8,25 9:14 15:25 17:23 20:14 26:7,23 35:13,15 36:25 39:17 43:8 44:22 46:3 47:19 55:9 66:10,14  <b>arguments</b> [3] 4:19,23 6:21  <b>around</b> [1] 57:8  <b>articulate</b> [1] 69:11  <b>artificially</b> [1] 27:2  <b>aside</b> [1] 57:19  <b>asks</b> [1] 59:23  <b>asserted</b> [1] 25:20  <b>assessing</b> [1] 29:23  <b>Assistant</b> [1] 2:6  <b>assume</b> [2] 51:20 68:17  <b>assuming</b> [1] 46:20  <b>attempts</b> [1] 61:25  <b>attribute</b> [1] 67:17  <b>atypical</b> [1] 63:14  <b>authority</b> [5] 19:24 20:8 28:3,7,9  <b>avoid</b> [1] 25:15  <b>aware</b> [1] 25:23</p>	<p>27:19 40:4 54:16 66:24 67:14  <b>bottom</b> [4] 26:13 27:23 29:3 31:16  <b>brief</b> [7] 7:4 25:5 30:14 38:21 44:20 57:1 68:13  <b>briefs</b> [2] 7:4 44:23  <b>bright</b> [1] 11:18  <b>bring</b> [6] 8:3 25:17 28:9,14 63:10,10  <b>broader</b> [4] 9:18 17:7 44:12 70:19  <b>brought</b> [2] 21:13 31:14  <b>business</b> [4] 27:1 31:18 36:1 60:10  <b>businesses</b> [1] 24:5  <b>buy</b> [2] 31:5,6  <b>buyers</b> [1] 48:22</p>
<p style="text-align: center;"><b>2</b></p> <p><b>2020</b> [4] 17:9,12 26:14 29:20  <b>2024</b> [1] 1:12  <b>22-1165</b> [1] 4:4  <b>26</b> [1] 3:8  <b>277</b> [2] 32:8 68:23  <b>278</b> [2] 32:8 68:23</p> <p style="text-align: center;"><b>3</b></p> <p><b>3</b> [1] 49:11  <b>30</b> [2] 39:18,22  <b>30,000-foot</b> [1] 60:7  <b>303</b> [73] 4:22 5:20 7:7 14:7 15:16,18,19 16:12 17:11 18:2,7,12,15 19:2,25 20:15,22 21:2,3,14,19 24:16,23 26:19 27:11,21,25 29:1,18,24 31:21 35:7 36:22,23 38:8,12 40:8 45:2,3,17,23 48:4,5 49:12,14 50:8,12,14,20,23 51:1,21 52:3,7,21 53:12 54:6 56:9 57:19 60:14 61:5 62:18 63:4,9 64:11,20 66:15,18,20 67:5 68:16,21 70:22</p> <p style="text-align: center;"><b>4</b></p> <p><b>4</b> [1] 3:4  <b>40</b> [3] 26:15 27:6 36:1  <b>401</b> [1] 53:2  <b>47</b> [1] 3:12</p>	<p><b>actions</b> [5] 21:13,15 28:14 60:15 65:6  <b>actual</b> [1] 56:12  <b>actually</b> [11] 10:12,23 22:13 23:1,13 24:11 26:17 60:20 68:4,8 69:11  <b>add</b> [1] 68:4  <b>addendum</b> [1] 57:1  <b>adding</b> [2] 46:21 47:1  <b>addition</b> [2] 25:10 61:10  <b>additional</b> [3] 49:22 54:9 66:3  <b>address</b> [2] 64:6 69:8  <b>addressed</b> [1] 38:6  <b>adds</b> [1] 50:1  <b>adequate</b> [1] 32:6  <b>adequately</b> [1] 16:9  <b>adjective</b> [1] 47:1  <b>administering</b> [1] 34:11  <b>administrable</b> [1] 35:6  <b>administrative</b> [1] 28:7  <b>adopt</b> [1] 56:4  <b>adopted</b> [3] 4:14 63:25 67:7  <b>advance</b> [1] 64:7  <b>affect</b> [8] 26:13 27:13,23 29:3 31:16,17 39:22 48:23  <b>affected</b> [1] 24:6  <b>affecting</b> [1] 53:18  <b>affirm</b> [1] 37:23  <b>agency</b> [1] 34:11  <b>agree</b> [11] 10:16 13:24 14:3 18:7 32:4 48:14 56:13 57:11 58:11,14 67:23  <b>agreed</b> [4] 44:18,25 53:21 62:16  <b>agreeing</b> [1] 54:25  <b>agreement</b> [1] 36:3  <b>ahead</b> [6] 11:18 30:21 37:11 38:25 39:8 45:14</p>	<p><b>back</b> [6] 11:15 15:7,9 34:16 36:8 59:9  <b>backup</b> [1] 35:15  <b>backwards</b> [1] 56:24  <b>bankruptcy</b> [3] 27:19,22 39:21  <b>bar</b> [6] 6:18 34:25 36:14 37:22,23 64:7  <b>BARRETT</b> [7] 13:13 24:22 26:3 31:22,24 32:2 66:6  <b>base</b> [2] 16:19 70:15  <b>based</b> [8] 6:25 11:9 20:21 23:20 44:22 68:16 70:8,20  <b>Basic</b> [3] 49:13 52:15 61:19  <b>basically</b> [3] 34:3 56:4,15  <b>basis</b> [2] 46:12 62:18  <b>battlefield</b> [1] 34:4  <b>become</b> [1] 24:12  <b>becomes</b> [1] 33:2  <b>began</b> [1] 30:23  <b>behalf</b> [8] 2:3,5 3:4,7,15 4:9 26:8 66:11  <b>believe</b> [1] 37:14  <b>below</b> [4] 7:4 15:23 28:24 30:7  <b>better</b> [1] 40:8  <b>between</b> [14] 7:22 8:10 10:3 18:10 31:2 41:24 42:4,16 44:24 48:1,15 49:20 53:22 65:22  <b>beyond</b> [4] 37:9 49:17 50:22,22  <b>big</b> [3] 11:16 59:19,24  <b>bisects</b> [1] 26:17  <b>bit</b> [2] 48:21 65:20  <b>blanket</b> [1] 18:1  <b>board</b> [2] 53:4,10  <b>both</b> [9] 9:4 10:2 16:9,16</p>	<p style="text-align: center;"><b>C</b></p> <p><b>call</b> [1] 59:18  <b>called</b> [1] 30:5  <b>calling</b> [1] 59:6  <b>calls</b> [3] 40:18 42:22 69:22  <b>came</b> [1] 1:14  <b>canard</b> [1] 42:13  <b>capacious</b> [1] 33:24  <b>capaciously</b> [1] 33:1  <b>capture</b> [1] 43:16  <b>capturing</b> [2] 42:14 43:17  <b>Cardozo</b> [3] 9:7 19:4 48:10  <b>Case</b> [31] 4:4,12 5:9 7:17 8:9 12:9 18:14 20:19 25:11,12,12,14,15,15 26:11 30:1,4 38:14 44:21 46:15 48:10,11,12,20,22 49:2 69:19 70:8,20 71:2,4  <b>cases</b> [5] 4:12 8:16 13:22,23 65:21  <b>catch-all</b> [1] 43:14  <b>categorical</b> [6] 32:5,16 33:8 37:13 41:1 51:24  <b>categorically</b> [3] 38:7 45:8 60:8  <b>categories</b> [2] 55:11 59:13  <b>category</b> [6] 48:7 55:14,18,20 59:7,8  <b>cause</b> [2] 17:15 60:17  <b>causes</b> [2] 13:19 47:8  <b>CEO</b> [2] 59:17,25  <b>certain</b> [5] 19:9 41:12 42:3,20,21  <b>Certainly</b> [1] 36:10  <b>certification</b> [7] 6:2,11,23 7:2,3,7,12  <b>cetera</b> [1] 18:20  <b>challenged</b> [1] 29:16  <b>change</b> [4] 11:23 27:4 29:20 57:4  <b>changed</b> [1] 62:14  <b>charged</b> [2] 34:11 35:15  <b>Chicago</b> [1] 2:2  <b>CHIEF</b> [36] 4:3,10 7:21 8:24 10:8,16 13:17 21:9,11</p>	
<p style="text-align: center;"><b>6</b></p> <p><b>6</b> [2] 8:8 29:21</p>				

## Official - Subject to Final Review

<p>25:24 26:6,9 27:15 30:20, 22,25 31:13 32:22 39:16 41:22 45:13 46:16 47:13, 22 59:21 60:4,19 61:2,9,13 62:5,8 64:16 66:5 70:24 71:2</p> <p><b>choose</b> [1] 67:15</p> <p><b>circuit</b> [30] 5:15 7:1 14:6, 13 15:3,15,24,25 16:4 17:3 21:18 25:4,6,22 28:24 29: 11 30:4 33:8,12,20 38:1,7 46:11 55:23 56:13 63:24 67:7 69:14 70:10,18</p> <p><b>Circuit's</b> [4] 32:24 56:2,4 68:18</p> <p><b>circumstance</b> [5] 4:16,21 42:6 48:13,24</p> <p><b>circumstances</b> [5] 9:25 20:16 41:17,18 44:16</p> <p><b>cite</b> [1] 56:4</p> <p><b>civil</b> [1] 7:15</p> <p><b>claim</b> [25] 5:6,7 11:9 12:2 17:2,2,4,6,7,7,24 25:17 28: 9 38:9 45:17 47:3,9 52:18 62:4,19 64:12 70:3,17,18, 19</p> <p><b>claims</b> [3] 6:18 36:12 43:1</p> <p><b>clarify</b> [1] 59:2</p> <p><b>class</b> [2] 5:23 62:1</p> <p><b>classic</b> [6] 9:5 19:4 26:11, 18 30:23 31:12</p> <p><b>clear</b> [8] 4:15 5:18 12:19 20:12 28:11 29:23 32:2 34: 9</p> <p><b>clearly</b> [1] 31:18</p> <p><b>client</b> [1] 24:3</p> <p><b>close</b> [1] 8:21</p> <p><b>clue</b> [1] 23:15</p> <p><b>COBERLY</b> [47] 2:2 3:3,14 4:7,8,10 6:4,24 7:9,19 8: 14 9:1,20 10:18 11:2,14,22 13:13 14:3 15:8,14 16:6 18:4,9 19:1,19,23 20:1,20 21:16 22:17,21,24 23:7,9 24:22 25:2 26:5 37:19 38: 17 44:24 53:21 57:12 62: 19 66:10,12 71:1</p> <p><b>Coberly's</b> [1] 36:6</p> <p><b>code</b> [2] 7:14,15</p> <p><b>collapsing</b> [1] 55:8</p> <p><b>colleague</b> [2] 51:12,23</p> <p><b>come</b> [2] 11:1 39:19</p> <p><b>comes</b> [1] 11:2</p> <p><b>coming</b> [2] 59:19,24</p> <p><b>comma</b> [1] 35:24</p> <p><b>comment</b> [1] 30:12</p> <p><b>Commission</b> [3] 21:14 64: 20 67:13</p> <p><b>commodities</b> [1] 24:8</p> <p><b>common</b> [1] 69:20</p> <p><b>companies</b> [5] 24:15 48:5 53:3,12 65:10</p> <p><b>company</b> [27] 10:11,13 11: 17,20 13:9 17:8,15 18:19</p>	<p>22:9 24:4,10 27:15 29:17 31:15 34:10 35:8,25 39:17 40:20 41:1 53:5,5 55:12 66:16,17,18,22</p> <p><b>company's</b> [4] 29:19 53:9, 18 59:17</p> <p><b>compared</b> [2] 28:12 31:11</p> <p><b>complaint</b> [18] 7:3 10:20 11:5,11 12:3,7 14:24 15: 17 18:14 19:8 32:7,8,12 67:25 68:15,23 69:13,15</p> <p><b>complete</b> [4] 26:21 51:20 59:20,22</p> <p><b>complex</b> [1] 24:2</p> <p><b>compliance</b> [4] 6:1,7,9,11</p> <p><b>complied</b> [1] 35:9</p> <p><b>comply</b> [9] 15:20 17:11 18: 11,19 20:10 21:25 27:4 66: 14,18</p> <p><b>complying</b> [1] 42:10</p> <p><b>comport</b> [1] 38:18</p> <p><b>concede</b> [3] 27:9 34:6 40: 11</p> <p><b>conceivable</b> [1] 43:16</p> <p><b>concepts</b> [1] 44:12</p> <p><b>concern</b> [1] 29:5</p> <p><b>conclude</b> [1] 32:10</p> <p><b>concluded</b> [1] 70:3</p> <p><b>condition</b> [1] 53:19</p> <p><b>conducted</b> [1] 44:16</p> <p><b>conferences</b> [1] 16:15</p> <p><b>Congress</b> [7] 4:14 5:2 7: 16 12:24 13:11 14:23 27:7 16 12:24 13:11 14:23 27:7</p> <p><b>connection</b> [3] 48:1,15 49: 4</p> <p><b>consequence</b> [1] 67:18</p> <p><b>consequential</b> [2] 18:21 22:14</p> <p><b>consider</b> [1] 54:8</p> <p><b>conspicuously</b> [1] 67:11</p> <p><b>Construction</b> [2] 9:8 19:5</p> <p><b>contained</b> [3] 23:16,17,18</p> <p><b>contains</b> [1] 23:14</p> <p><b>content</b> [4] 37:2,8,8 70:15</p> <p><b>context</b> [31] 5:12 8:22 11:8 18:2 34:9 36:7,20,22 40: 18 41:5 44:5,11 46:5,5,13 48:2,3 54:1,5 55:13 57:17, 19 58:2,12,19 59:10,17 60: 3 61:11 63:4 70:6</p> <p><b>contexts</b> [3] 29:14 57:20 58:17</p> <p><b>contrast</b> [1] 55:16</p> <p><b>corners</b> [1] 43:21</p> <p><b>Corporate</b> [1] 28:7</p> <p><b>CORPORATION</b> [2] 1:4 4: 5</p> <p><b>correct</b> [13] 7:19 16:5,5 33: 4,9 37:15 39:4 45:5 46:20 54:13,22,23 64:20</p> <p><b>correctly</b> [1] 32:21</p> <p><b>Counsel</b> [16] 7:21 17:20 25:25 26:4 30:20 46:17 47: 17 57:9 60:5 66:8,13 67:</p>	<p>19 68:11 69:10,17 70:25</p> <p><b>count</b> [2] 41:7 54:8</p> <p><b>counts</b> [1] 33:14</p> <p><b>couple</b> [1] 6:5</p> <p><b>course</b> [5] 7:11 12:16 14: 15 23:19 60:15</p> <p><b>COURT</b> [40] 1:1,15 4:11 5: 8,14 7:14 8:19 9:6 12:18 15:13 16:8,16 17:5,6 20: 21,23 21:22 22:3 25:3,6,8, 18,21 26:10 30:13 32:9,14 33:5,18 36:19 38:5 44:25 47:23 60:24 65:4 69:14 70: 2,8,13,22</p> <p><b>Court's</b> [6] 5:24 12:13 28:1 49:5,13 61:24</p> <p><b>courts</b> [12] 8:15 10:1,5 37: 18,24 38:5 40:2,14 57:12, 23,24 69:20</p> <p><b>cover</b> [1] 60:14</p> <p><b>covered</b> [1] 36:23</p> <p><b>covers</b> [1] 24:2</p> <p><b>crater</b> [2] 10:13 11:20</p> <p><b>create</b> [1] 26:24</p> <p><b>criminal</b> [2] 7:13,15</p> <p><b>critical</b> [2] 58:22 59:4</p> <p><b>crossroads</b> [1] 40:4</p> <p><b>curiae</b> [3] 2:8 3:12 47:20</p> <p><b>curiam</b> [1] 30:6</p> <p><b>currently</b> [1] 52:8</p> <p><b>customer</b> [1] 39:19</p> <p><b>customers</b> [5] 16:20,22,25 27:18 70:16</p> <p><b>cut</b> [1] 17:16</p> <p><b>cuts</b> [1] 22:14</p>	<p><b>detect</b> [1] 65:13</p> <p><b>determine</b> [3] 29:13,19 35: 8</p> <p><b>determined</b> [1] 29:15</p> <p><b>determining</b> [3] 27:24 30: 17 36:21</p> <p><b>difference</b> [9] 8:10 41:24 42:4,6,16 43:5 49:20 53: 22 65:22</p> <p><b>different</b> [21] 4:20 5:10 12: 15 13:8,9 17:22 24:2,4,5 41:4 43:11 44:15 49:14,16 54:20 55:2 59:16 60:24 61: 4,5,11</p> <p><b>difficult</b> [1] 13:19</p> <p><b>direction</b> [1] 22:15</p> <p><b>directly</b> [1] 38:6</p> <p><b>director</b> [1] 53:8</p> <p><b>directors</b> [4] 53:4,4,6,10</p> <p><b>disagreement</b> [1] 44:24</p> <p><b>disclose</b> [9] 24:16 35:25 41:7,11 48:6,22 51:6 53: 12 68:8</p> <p><b>disclosed</b> [8] 17:8 24:7,11 26:12 31:11,11 67:5 68:4</p> <p><b>discloses</b> [1] 27:17</p> <p><b>disclosing</b> [4] 26:16 29:8 48:25,25</p> <p><b>disclosure</b> [25] 13:20 20: 15 21:2,3 26:19 29:6,18,24 31:9,10,21 41:19 42:1,23 45:16 48:12,12 49:2 53:2, 6 55:17,18 58:19 65:14 66: 1</p> <p><b>disclosures</b> [5] 40:20 42: 20 43:18 58:3 63:4</p> <p><b>discrete</b> [2] 10:25 59:12</p> <p><b>discussed</b> [1] 9:6</p> <p><b>discusses</b> [1] 23:15</p> <p><b>Discussion</b> [6] 23:18 35:3 38:3 50:6 51:10,14</p> <p><b>discussions</b> [1] 16:11</p> <p><b>dismiss</b> [2] 12:8 69:9</p> <p><b>dismissed</b> [1] 70:8</p> <p><b>dispute</b> [1] 31:1</p> <p><b>distinct</b> [2] 55:11 59:4</p> <p><b>distinction</b> [11] 7:22 18:10 31:2,4,6 55:21,23 58:9,22 59:4 62:7</p> <p><b>district</b> [8] 8:15 15:12 17:5 57:23 69:13,20 70:2,7</p> <p><b>dividends</b> [1] 17:16</p> <p><b>document</b> [8] 7:10 38:20 43:20,21 44:4 59:11,12,13</p> <p><b>documents</b> [1] 43:18</p> <p><b>doing</b> [5] 18:15 19:3 41:2 44:7 55:9</p> <p><b>done</b> [2] 32:12 37:24</p> <p><b>doubles</b> [1] 39:19</p> <p><b>down</b> [4] 15:6,7,10 35:12</p> <p><b>draw</b> [2] 7:22 18:10</p>	<p><b>earlier</b> [1] 63:24</p> <p><b>earnings</b> [1] 40:18</p> <p><b>easily</b> [1] 13:22</p> <p><b>economic</b> [1] 44:5</p> <p><b>either</b> [4] 5:15 24:24 44:9 45:8</p> <p><b>element</b> [8] 5:21 12:1 52: 17,20,22 60:23,25 61:21</p> <p><b>elements</b> [4] 13:3 14:17 47:8 49:16</p> <p><b>eliding</b> [1] 4:24</p> <p><b>elsewhere</b> [2] 31:20 40:12</p> <p><b>emerged</b> [1] 27:5</p> <p><b>employees</b> [2] 65:8,12</p> <p><b>enforce</b> [2] 19:25 44:13</p> <p><b>enforcement</b> [2] 28:11 65: 6</p> <p><b>enforces</b> [1] 64:20</p> <p><b>enforcing</b> [1] 65:22</p> <p><b>engaged</b> [1] 24:5</p> <p><b>enough</b> [3] 8:21 34:15 40: 3</p> <p><b>enshrined</b> [1] 27:7</p> <p><b>entire</b> [9] 4:25 13:6 23:23 45:8 50:9 51:24 55:14,19 66:15</p> <p><b>entirely</b> [1] 61:5</p> <p><b>envision</b> [1] 20:17</p> <p><b>EPA</b> [2] 8:4,11</p> <p><b>EPHRAIM</b> [3] 2:6 3:10 47: 19</p> <p><b>Escobar</b> [1] 9:6</p> <p><b>especially</b> [1] 12:23</p> <p><b>ESQ</b> [4] 3:3,6,10,14</p> <p><b>ESQUIRE</b> [2] 2:2,4</p> <p><b>essential</b> [1] 65:5</p> <p><b>essentially</b> [1] 28:25</p> <p><b>establish</b> [1] 35:17</p> <p><b>established</b> [2] 60:23,25</p> <p><b>ET</b> [3] 1:4,7 18:20</p> <p><b>evaluate</b> [3] 35:4 48:9,19</p> <p><b>evaluated</b> [1] 36:20</p> <p><b>evaluating</b> [1] 22:3</p> <p><b>even</b> [10] 20:3 21:14 28:2 37:5 45:19 49:1,1 50:19 62:22 63:8</p> <p><b>event</b> [1] 29:8</p> <p><b>everybody</b> [1] 33:22</p> <p><b>everything</b> [1] 48:23</p> <p><b>exactly</b> [4] 20:4 24:20 56: 11 60:20</p> <p><b>example</b> [9] 9:5 12:10 19:4 24:3,14 40:4 48:11 53:1 69:1</p> <p><b>except</b> [2] 42:6 46:7</p> <p><b>exception</b> [1] 70:11</p> <p><b>executives</b> [2] 67:21 68:2</p> <p><b>existed</b> [1] 61:16</p> <p><b>existence</b> [2] 17:9 36:12</p> <p><b>existing</b> [1] 60:13</p> <p><b>exists</b> [2] 9:9 18:8</p> <p><b>expand</b> [2] 5:14 62:1</p> <p><b>expansion</b> [1] 61:4</p> <p><b>expect</b> [2] 26:20 51:5</p>
<b>D</b>				
<p><b>D.C</b> [3] 1:11 2:4,7</p> <p><b>DAVID</b> [3] 2:4 3:6 26:7</p> <p><b>day</b> [2] 8:16 27:6</p> <p><b>deal</b> [1] 29:20</p> <p><b>deceptive</b> [1] 66:1</p> <p><b>decide</b> [2] 44:21 56:17</p> <p><b>decided</b> [2] 46:11,12</p> <p><b>deciding</b> [1] 23:6</p> <p><b>decimate</b> [2] 26:15 29:21</p> <p><b>decision</b> [6] 12:19 25:18 28:25 29:12 49:13 56:2</p> <p><b>decisions</b> [2] 61:24,25</p> <p><b>decrease</b> [1] 17:17</p> <p><b>defend</b> [1] 37:14</p> <p><b>defendant</b> [2] 12:8 22:2</p> <p><b>defendants</b> [1] 62:1</p> <p><b>defending</b> [1] 32:24</p> <p><b>define</b> [1] 31:8</p> <p><b>defined</b> [1] 33:1</p> <p><b>defines</b> [1] 27:11</p> <p><b>definition</b> [2] 67:9,16</p> <p><b>deliberately</b> [1] 27:2</p> <p><b>Department</b> [2] 2:7 28:8</p> <p><b>depends</b> [1] 46:4</p> <p><b>described</b> [2] 11:7 15:18</p> <p><b>description</b> [1] 26:21</p> <p><b>designed</b> [1] 34:12</p>				
<b>E</b>				
<p><b>each</b> [3] 11:4,11 65:10</p>				

## Official - Subject to Final Review

<p><b>expectations</b> [1] 51:9  <b>explain</b> [1] 11:24  <b>expressly</b> [2] 54:17 60:8  <b>extend</b> [2] 60:13,17  <b>extensive</b> [1] 5:19  <b>extent</b> [5] 6:16 38:4 40:25  54:6 55:2</p>	<p><b>forward-looking</b> [7] 6:18,  19 12:12 19:9,11 23:2 70:  5  <b>fought</b> [1] 15:23  <b>found</b> [3] 16:8 25:9 70:13  <b>four</b> [2] 24:4 43:21  <b>fourth</b> [1] 22:13  <b>framed</b> [1] 10:23  <b>framework</b> [1] 40:8  <b>framing</b> [1] 34:3  <b>frankly</b> [1] 34:19  <b>fraud</b> [7] 26:24 28:9 43:16  44:2,11,16 46:7  <b>fraudulent</b> [2] 5:7 26:18  <b>FREDERICK</b> [48] 2:4 3:6  26:6,7,9 28:5,17,23 30:24  31:7 32:1,21 33:4,17 34:2,  17,23 35:14 36:2,10,15,18  37:1,6,12,25 38:15,22 39:6,  11,14 40:7,17,22,24 41:14  42:5 43:13 44:17 45:6 46:  1,19,23 47:2,5,12 62:13 64:  22</p>	<p><b>Grundfest</b> [1] 13:21  <b>guess</b> [7] 10:7 17:25 20:12  40:21,23 41:3 53:21  <b>guidance</b> [3] 39:4,5 64:6</p>	<p>43:22 63:7,11 64:3 67:1  68:12,19 69:5  <b>identifying</b> [1] 19:13  <b>ignores</b> [1] 48:2  <b>Illinois</b> [1] 2:2  <b>imagine</b> [1] 33:12  <b>immunity</b> [6] 5:19 18:2,10  19:21 20:2,4  <b>IMO</b> [4] 17:9,12 26:14 29:  20  <b>impact</b> [7] 17:13,15,25 19:  10,12 24:8,9  <b>implied</b> [3] 5:13 12:25 61:6  <b>implying</b> [1] 60:10  <b>import</b> [1] 6:17  <b>importance</b> [1] 12:20  <b>important</b> [13] 12:5,22 13:  2 14:5 23:11,15,24 27:4  29:15 34:5 35:20,22 38:3  <b>included</b> [1] 24:14  <b>includes</b> [2] 51:13 67:10  <b>including</b> [2] 22:24 25:21  <b>income</b> [1] 27:14  <b>incomplete</b> [3] 68:1 69:1,4  <b>incorrect</b> [1] 14:9  <b>increasing</b> [1] 8:11  <b>Indeed</b> [1] 15:14  <b>independent</b> [1] 14:7  <b>independently</b> [1] 30:1  <b>indicated</b> [1] 60:9  <b>individual</b> [4] 37:16 45:9  51:21 53:8  <b>inflated</b> [1] 27:2  <b>information</b> [12] 16:24,25  24:17 26:20 27:3 30:17 41:  12 48:6 59:6,7 65:16 67:4  <b>INFRASTRUCTURE</b> [2] 1:  3 4:5  <b>initial</b> [2] 50:12,13  <b>initio</b> [1] 50:19  <b>instance</b> [5] 8:17 11:24 12:  11 19:2 55:12  <b>instinct</b> [1] 38:23  <b>institutional</b> [1] 28:13  <b>intended</b> [1] 43:14  <b>intending</b> [1] 43:15  <b>intentionally</b> [1] 66:1  <b>interesting</b> [1] 68:13  <b>interests</b> [1] 64:7  <b>interpret</b> [2] 7:14 41:10  <b>interpreted</b> [1] 10:1  <b>intersect</b> [1] 9:8  <b>investigate</b> [1] 65:13  <b>investor</b> [7] 22:10 26:20  43:22 51:8 59:18,18,23  <b>investors</b> [8] 16:15 18:22  28:13 30:18 34:12 51:5,20  66:22  <b>invoke</b> [3] 12:11,11,13  <b>involve</b> [1] 44:1  <b>involved</b> [1] 5:10  <b>involves</b> [1] 26:11  <b>involving</b> [1] 5:7  <b>isn't</b> [6] 6:6 13:10 29:16 31:</p>	<p>23 41:12 60:16  <b>issue</b> [13] 7:18 8:5 15:12  23:6 25:5 35:2 38:12 48:  13 53:23 56:5,17 60:20,21  <b>It'll</b> [1] 34:20  <b>Item</b> [59] 4:22 5:20 6:16 14:  7 15:16,18,19 16:12 17:11  18:2,7,12,14 19:2 20:15,22  21:1,2,19 24:16 26:19 27:  11,21,25 29:1,18,24 31:21  35:7 36:22,23 38:8 40:8  45:17 48:4,5 49:11,12,14  50:8 51:21 52:3,7,21 53:2,  11 54:6 56:9 62:18 63:4  64:11,20 66:14,18,20 67:5  68:16,21 70:22  <b>itself</b> [5] 6:7,12 23:14 49:  15 52:7</p>
<p style="text-align: center;"><b>F</b></p> <p><b>face</b> [1] 68:6  <b>faced</b> [1] 60:21  <b>faces</b> [1] 60:21  <b>fact</b> [18] 4:17,21 8:21 9:23  10:5 12:15,18 14:21 17:9,  10 23:17 24:7 28:20 30:14  36:4 39:18 54:4 68:3  <b>factory</b> [1] 48:25  <b>facts</b> [3] 16:19 29:18 48:20  <b>factual</b> [4] 16:25 48:1,14  70:14  <b>factually</b> [1] 16:22  <b>fails</b> [1] 45:24  <b>failure</b> [4] 15:19 18:11 45:  16 66:14  <b>failures</b> [2] 20:9,9  <b>fairly</b> [2] 14:2 56:3  <b>fall</b> [1] 8:4  <b>false</b> [2] 45:9,10  <b>far</b> [6] 5:3 14:11 25:23 40:5  63:23 70:19  <b>favor</b> [1] 16:2  <b>federal</b> [1] 6:13  <b>feel</b> [1] 55:8  <b>fell</b> [1] 27:5  <b>few</b> [3] 18:21 26:13 65:8  <b>fight</b> [2] 38:23 39:1  <b>figure</b> [1] 53:22  <b>file</b> [3] 42:7 55:13 66:16  <b>filing</b> [3] 7:7 21:5 34:10  <b>filings</b> [3] 7:10 16:12 23:17  <b>finally</b> [1] 12:24  <b>Finance</b> [1] 28:8  <b>financial</b> [9] 24:10 30:10  33:7 38:2,3 46:13 53:18  56:10 67:3  <b>Fine</b> [1] 63:16  <b>first</b> [15] 4:4 6:6,14 8:13 10:  18 14:4 16:10 19:1 29:2  31:13 36:25 52:6 54:21 55:  25 61:14  <b>fits</b> [2] 61:17,20  <b>five</b> [1] 60:1  <b>flow</b> [1] 13:2  <b>flung</b> [1] 40:5  <b>flyspeck</b> [1] 35:23  <b>follow</b> [3] 42:21 45:12 67:  15  <b>followed</b> [1] 69:19  <b>following</b> [1] 11:18  <b>force</b> [1] 65:7  <b>form</b> [5] 9:18 35:9 59:10,11  62:18  <b>forms</b> [2] 43:16 65:10  <b>forward</b> [1] 14:12</p>	<p><b>free-floating</b> [1] 40:9  <b>friend</b> [2] 36:5 37:4  <b>full</b> [2] 53:10 65:7  <b>function</b> [1] 66:21  <b>functionally</b> [1] 67:6  <b>further</b> [5] 8:7 26:2 47:14  60:9 67:19  <b>furtherance</b> [1] 34:25  <b>future</b> [4] 6:16 11:18 12:6  22:11</p>	<p style="text-align: center;"><b>H</b></p> <p><b>half</b> [1] 31:17  <b>half-truth</b> [14] 8:12,18 17:2  26:12,18 27:8,10 30:23 31:  12 46:14 55:16 61:15,18  64:13  <b>half-truths</b> [10] 7:22 15:5,  15 16:9 31:3 34:7 42:15  54:16 56:8 64:1  <b>Halliburton</b> [3] 60:22,22  61:19  <b>happen</b> [3] 19:15 35:25 36:  11  <b>happens</b> [4] 14:15 21:2,4  42:11  <b>happy</b> [1] 5:24  <b>harbor</b> [5] 6:19 12:11 22:  25 23:4,14  <b>hard</b> [1] 7:24  <b>hear</b> [2] 4:3,19  <b>heard</b> [2] 66:24 69:10  <b>hearing</b> [1] 49:24  <b>held</b> [9] 14:6 15:4 16:16 21:  18 24:19 25:19 33:6,19 38:  7  <b>help</b> [6] 34:18,20,24 36:14  37:22 43:21  <b>helpful</b> [2] 37:9,23  <b>helping</b> [1] 34:25  <b>high</b> [1] 39:15  <b>higher</b> [2] 24:11 52:15  <b>highlighted</b> [1] 46:2  <b>hold</b> [1] 33:20  <b>holding</b> [6] 13:9 17:8,15  24:3,10 44:7  <b>holistic</b> [1] 53:16  <b>Honor</b> [24] 6:5,12,25 7:20 8:  14 9:2,21 11:3 14:4 18:4  20:7 21:17 23:1,10 25:7  49:10 50:4,24 51:18 52:5  55:10 56:1 64:9 66:12  <b>hoping</b> [1] 15:2  <b>however</b> [2] 32:9,25  <b>hundred</b> [1] 65:8  <b>hypothetical</b> [8] 8:25 11:  16 22:8 27:16 31:13 33:21  39:16 67:20</p>	<p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [2] 17:12 47:24  <b>identification</b> [3] 53:7,15  57:14  <b>identified</b> [10] 11:4 12:2,7  15:15 19:8 20:18 21:24 23:  12 32:11 68:10  <b>identifies</b> [5] 8:17,18 10:  20 12:14 20:25  <b>identify</b> [15] 14:14,24 20:5  21:18 23:25 31:24 34:15</p>	<p style="text-align: center;"><b>J</b></p> <p><b>JACKSON</b> [22] 15:1 17:21  18:6,16 20:11 30:19,21 40:  21,23 41:14,21 42:24 43:4  47:16 53:20 54:13,18,20  55:1,5,22 66:7  <b>Jackson's</b> [1] 22:7  <b>January</b> [1] 1:12  <b>Janus</b> [1] 61:24  <b>judicially</b> [2] 5:13 12:24  <b>Junius</b> [2] 9:7 19:5  <b>jurisprudence</b> [1] 61:7  <b>Justice</b> [170] 2:7 4:3,11 6:1,  20 7:6,17,21 8:24 9:7,12  10:6,16,21 11:13,15 13:13,  17 15:1,2,11,22 17:19,21  18:6,16 19:4,18,21,24 20:  11 21:8,9,10,11 22:6,7,20,  23 23:5,8 24:22 25:24 26:  1,2,3,6,10 27:16 28:2,15,  18,23 30:19,20,21,22,25  31:13,22,23,24 32:2,20 33:  5,11,22 34:4,13,18,20,24  35:10,19 36:2,13,16,24 37:  2,7,18 38:10,16,22,25 39:3,  7,12,24 40:11,21,23 41:14,  21,22 42:24 43:4 44:17 45:  11,13,15 46:2,16,18,19,25  47:4,5,11,13,15,16,23 49:6,  18 50:10,16 51:3,15 52:2,  11 53:20 54:12,18,20 55:1,  5,22 57:9,11,16,18,22 58:4,  8,11,15,20,24 59:1,21 60:4,  19 61:2,9,13 62:5,8,8,10,  11,21 63:6,16,18,22 64:2,  16,16,18,19,22 65:15 66:4,  5,5,7 70:12,24 71:2  <b>Justice's</b> [2] 10:8 32:22</p>
<p style="text-align: center;"><b>G</b></p> <p><b>General</b> [3] 2:6 23:23 40:  25  <b>General's</b> [1] 32:15  <b>generality</b> [2] 24:12 42:3  <b>generally</b> [3] 38:11,14 57:  24  <b>gets</b> [3] 46:14 56:24 63:22  <b>getting</b> [1] 39:15  <b>give</b> [11] 18:7,24 20:15 27:  24 38:8 43:1 47:9 51:2,2  52:25 64:11  <b>given</b> [2] 8:22 68:25  <b>giving</b> [1] 31:4  <b>Gorsuch</b> [30] 26:2 36:2,13,  16,24 37:2,7,18 38:10,16,  22,25 39:3,7,12,24 40:11  47:15 57:9,11,16,18,22 58:  4,8,11,15,20,24 59:1  <b>got</b> [1] 14:5  <b>government</b> [8] 5:17 6:6  13:5 23:22 33:9 58:15 66:  24 69:18  <b>government's</b> [4] 6:8 37:  13 40:25 53:25  <b>governmental</b> [1] 44:6  <b>grant</b> [1] 49:25  <b>granted</b> [2] 62:14,22  <b>granularity</b> [1] 40:15  <b>greater</b> [1] 65:24</p>	<p style="text-align: center;"><b>G</b></p>	<p style="text-align: center;"><b>I</b></p>	<p style="text-align: center;"><b>I</b></p>	<p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [18] 9:12 10:6,21  11:13,15 13:17 21:8,10 22:  6,20,23 23:5,8 32:20 33:5,  11,22 34:4  <b>KAVANAUGH</b> [18] 19:18,</p>

## Official - Subject to Final Review

<p>21,24 31:23 34:13,18,20, 24 35:10,19 51:15 52:2,11 64:18,19,22 65:15 66:4</p> <p><b>kept</b> [1] 27:1</p> <p><b>kind</b> [12] 8:15 9:4 12:18 13:10 18:8,23 20:6 22:3 27:8 29:11 35:11 69:2</p> <p><b>known</b> [9] 26:13,21 27:12 29:2,5 51:6 52:9 53:13,17</p> <p><b>Ks</b> [1] 69:25</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>L.P</b> [4] 1:7 2:5 3:8 26:8</p> <p><b>language</b> [8] 11:6,6 43:11 44:13 53:23 54:9 57:2,4</p> <p><b>larger</b> [1] 53:9</p> <p><b>last</b> [1] 46:2</p> <p><b>Laughter</b> [3] 34:22 39:2 64:25</p> <p><b>law</b> [3] 14:13 38:1 40:12</p> <p><b>laws</b> [2] 6:14 7:13</p> <p><b>lead</b> [1] 30:9</p> <p><b>least</b> [5] 31:2 35:13 38:17 49:23 60:12</p> <p><b>leave</b> [1] 67:22</p> <p><b>leaves</b> [1] 18:20</p> <p><b>led</b> [1] 17:17</p> <p><b>left</b> [2] 5:2 19:10</p> <p><b>legal</b> [1] 38:20</p> <p><b>lengthy</b> [1] 23:19</p> <p><b>level</b> [8] 24:11 37:3,20 38:18 39:15 40:14 42:3 60:7</p> <p><b>liability</b> [13] 4:20 5:8,16 18:8,24 20:3,16 22:5 23:3 25:9 43:10 44:1 51:2</p> <p><b>liable</b> [3] 24:19 44:8 62:1</p> <p><b>light</b> [6] 9:24 31:14 41:17 51:21 57:6 59:14</p> <p><b>likely</b> [5] 23:9 27:13 29:9 52:9,10</p> <p><b>limit</b> [3] 8:7 28:21 56:23</p> <p><b>limited</b> [2] 56:3 65:3</p> <p><b>limits</b> [1] 9:16</p> <p><b>LINDA</b> [5] 2:2 3:3,14 4:8 66:10</p> <p><b>line</b> [4] 26:14 27:23 29:3 31:16</p> <p><b>lines</b> [2] 8:6 10:7</p> <p><b>list</b> [9] 18:18 22:13 53:3 67:21,21 68:1,25 69:4,21</p> <p><b>listing</b> [2] 59:25 69:16</p> <p><b>lists</b> [2] 22:12 68:1</p> <p><b>litigation</b> [1] 65:5</p> <p><b>loath</b> [2] 5:14 7:14</p> <p><b>long</b> [4] 24:1 38:20 49:7 67:4</p> <p><b>long-settled</b> [1] 61:21</p> <p><b>longstanding</b> [1] 57:6</p> <p><b>look</b> [8] 31:9,10 35:7 38:20 46:6 56:16,25 68:22</p> <p><b>looked</b> [2] 44:14 70:2</p> <p><b>looking</b> [4] 35:16 39:4 44:12 60:6</p> <p><b>lose</b> [4] 15:6,9 26:25 28:3</p>	<p><b>lost</b> [1] 69:13</p> <p><b>lot</b> [1] 8:19</p> <p><b>lower</b> [8] 29:9 37:18,20,23 38:19 40:2 57:12,23</p> <p><b>lowering</b> [1] 8:12</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>MACQUARIE</b> [2] 1:3 4:5</p> <p><b>made</b> [15] 6:2 9:24,25 11:10 14:22 16:14 23:22 28:10 30:12 31:20 35:15 41:18 43:18,23 48:3</p> <p><b>major</b> [1] 24:4</p> <p><b>maker</b> [1] 44:7</p> <p><b>management</b> [4] 5:1 16:15 35:3 66:23</p> <p><b>Management's</b> [1] 23:18</p> <p><b>managers</b> [2] 29:7,23</p> <p><b>managers'</b> [1] 42:21</p> <p><b>many</b> [10] 4:12 13:8 17:22 24:2,6 30:12,14,14 65:13 70:4</p> <p><b>market</b> [3] 29:21 43:19,23</p> <p><b>match</b> [1] 8:20</p> <p><b>material</b> [28] 4:17,21 9:22 26:19,22 29:25 30:17 31:15,18,19 35:20 45:2 46:8,22 47:1,2,7 48:23 49:7,8,12,24 50:3,23,25 52:10 53:12 54:3</p> <p><b>materiality</b> [5] 30:9 43:2 49:14,17 52:14</p> <p><b>materially</b> [1] 27:22</p> <p><b>matter</b> [7] 1:14 9:4 10:3 32:5 40:6 48:8 49:4</p> <p><b>McDOWELL</b> [44] 2:6 3:10 47:18,19,22 49:10 50:4,13,24 51:4,18 52:5,13 54:12,19,23 55:4,10 56:1 57:10,16,21 58:2,6,10,13,18,21,25 59:3,23 60:19 61:8,12 62:6,17,24 63:11,17,21 64:9,21 65:1,18</p> <p><b>MD&amp;A</b> [31] 9:17 21:4 22:8 23:23 24:1,7 30:11,12 32:5,11 35:3,11,16 38:2 42:7 45:8 48:3 50:14,14 51:6,16,18,24 52:25 55:13 56:11 59:10 66:16,19,20 67:3</p> <p><b>MD&amp;A's</b> [2] 50:6 63:12</p> <p><b>meager</b> [2] 28:11 64:23</p> <p><b>mean</b> [13] 9:13 10:6,22 16:1 24:3 31:5 39:7,25 41:11 52:3 56:11 61:3 65:19</p> <p><b>meaning</b> [2] 14:1 51:13</p> <p><b>means</b> [2] 21:3 64:4</p> <p><b>meant</b> [1] 30:11</p> <p><b>meet</b> [1] 52:6</p> <p><b>mention</b> [1] 68:14</p> <p><b>mentioned</b> [3] 7:3 61:6 63:24</p> <p><b>mere</b> [1] 28:20</p> <p><b>messing</b> [1] 44:8</p> <p><b>might</b> [13] 7:23 9:10 11:25</p>	<p>12:10,12 19:12,17 20:18 21:15 37:5 39:24 46:6 49:2</p> <p><b>mind</b> [2] 5:3 13:11</p> <p><b>misleading</b> [93] 4:18 5:1,21 6:2,8,10 9:11,18 10:1,4,14 11:10,12 12:17 13:21,23 14:8,22,25 16:17,24 18:13 20:5 21:1,6,21,23 22:18 24:12 26:12 28:16,19,21 30:10 31:21 33:3,7,15 34:42:2,18,25 44:9 45:4,9,10,20,23 46:4,7,9,13,14 49:1,3 50:9 51:16,19,22 52:1,19 53:7,9,15,16 54:11,15 55:20 56:10 59:8 60:3 62:23,25,25 63:3,5,9,19 66:16 67:2,23 68:6,20,24 69:7 70:1,7,14</p> <p><b>misled</b> [1] 26:22</p> <p><b>misrepresentation</b> [1] 25:19</p> <p><b>misses</b> [1] 39:16</p> <p><b>misstated</b> [1] 38:1</p> <p><b>MOAB</b> [11] 1:7 2:5 3:8 4:6 5:16 6:24 16:18 26:8 66:24 68:11 69:11</p> <p><b>model</b> [1] 67:13</p> <p><b>moment</b> [1] 12:23</p> <p><b>month</b> [1] 10:13</p> <p><b>morning</b> [2] 4:4 44:22</p> <p><b>most</b> [2] 13:22 67:21</p> <p><b>motion</b> [1] 69:9</p> <p><b>move</b> [2] 12:8 14:16</p> <p><b>moving</b> [1] 38:11</p> <p><b>Ms</b> [43] 4:7,10 6:4,24 7:9,19 8:14 9:1,20 10:18 11:2,14,22 13:13 14:3 15:8,14 16:6 18:4,9 19:1,19,23 20:1,20 21:16 22:17,21,24 23:7,9 24:22 25:2 26:5 36:5 37:19 38:16 44:24 53:21 57:12 62:19 66:12 71:1</p> <p><b>much</b> [5] 17:7 18:15 19:3 22:13 68:4</p> <p><b>multiple</b> [4] 13:8 37:15 45:7 49:16</p> <p><b>must</b> [2] 11:4 14:14</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>narrative</b> [9] 5:1 6:10 13:6 23:20 38:3 50:6,9 51:13 63:13</p> <p><b>narrow</b> [6] 13:16 14:2 17:1 33:23 39:9 44:25</p> <p><b>narrowly</b> [1] 33:1</p> <p><b>nation</b> [1] 69:21</p> <p><b>nature</b> [3] 18:17 20:14,21</p> <p><b>near</b> [1] 26:16</p> <p><b>nearby</b> [1] 48:25</p> <p><b>nearly</b> [1] 31:17</p> <p><b>necessarily</b> [2] 25:3 59:8</p> <p><b>necessary</b> [8] 4:17 9:23</p>	<p>14:20,21 29:19 43:25 47:3 54:14</p> <p><b>need</b> [8] 7:18 45:4,6 48:14 49:3 67:17 69:3,5</p> <p><b>needed</b> [1] 32:11</p> <p><b>needing</b> [1] 54:10</p> <p><b>needs</b> [7] 9:3 14:9 29:24 33:2,25 68:9 70:23</p> <p><b>negative</b> [2] 17:13 60:1</p> <p><b>Neither</b> [1] 68:14</p> <p><b>never</b> [3] 34:8 42:11 46:11</p> <p><b>new</b> [5] 8:2,5,10 61:14 62:4</p> <p><b>news</b> [1] 17:16</p> <p><b>next</b> [4] 10:13 11:20 59:20,24</p> <p><b>Ninth</b> [1] 38:7</p> <p><b>None</b> [1] 4:22</p> <p><b>note</b> [1] 7:1</p> <p><b>nothing</b> [2] 50:22 63:14</p> <p><b>notion</b> [2] 68:9 70:21</p> <p><b>nuanced</b> [2] 32:17 57:25</p> <p><b>number</b> [2] 45:2 63:7</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>object</b> [2] 58:16 67:8</p> <p><b>objectively</b> [1] 29:17</p> <p><b>obviously</b> [1] 16:1</p> <p><b>occur</b> [3] 29:9 52:9 55:12</p> <p><b>offense</b> [1] 44:1</p> <p><b>offer</b> [1] 40:10</p> <p><b>offered</b> [1] 32:17</p> <p><b>offering</b> [6] 43:18,20,20,22,23 44:4</p> <p><b>oftentimes</b> [1] 52:15</p> <p><b>oil</b> [2] 8:8 29:21</p> <p><b>Okay</b> [3] 26:4 36:5 49:25</p> <p><b>old</b> [1] 62:3</p> <p><b>omission</b> [69] 4:15,20 5:20,22 6:3 8:9 9:11,17 11:9 12:2 13:19,22 14:20 15:16,18 16:18 17:2,25 24:23 25:20 26:22 27:9,21 28:4,17,20 29:4,14 31:8,19 33:3,13 34:14 35:1 36:20 41:24 42:1,8,13 45:2 46:22 47:7 48:2,9,16,19 49:8 50:2,7,11,19,21,22,23,25 52:1,3,4,20 53:6 55:11 59:7 64:14 67:6,9,16 70:7,15,21</p> <p><b>omissions</b> [22] 7:23 18:2,7 19:25 28:16,18 30:8 31:3 33:6 34:7 35:5,21 37:10 39:10 41:5 42:18,25 46:5,8,12 54:16 60:14</p> <p><b>omit</b> [4] 9:22 51:7 53:13 55:18</p> <p><b>omits</b> [2] 26:19 53:5</p> <p><b>omitted</b> [13] 4:17,21 8:21 9:9 10:4,12 12:18 14:21 17:1 26:14 54:3,8 55:14</p> <p><b>omitting</b> [3] 29:25 44:9 60:1</p> <p><b>Omnicare</b> [2] 12:13,19</p> <p><b>Once</b> [5] 12:5 43:19,23 52:11,13</p>	<p>11,13</p> <p><b>one</b> [26] 4:16 5:1,18 7:23 10:25 17:14 19:6 20:17 23:24 25:16 26:17 27:6,21 30:15 37:14 40:8 51:7,24 52:17,22 53:5,14,15 64:13,14 67:22</p> <p><b>ones</b> [1] 28:13</p> <p><b>online</b> [1] 8:3</p> <p><b>only</b> [9] 14:20 28:6 35:6 38:5 47:1 57:10 59:14 69:16,22</p> <p><b>opacity</b> [1] 46:1</p> <p><b>opinion</b> [7] 6:15 12:14,16 55:24 56:5 60:21 70:6</p> <p><b>opportunities</b> [1] 28:12</p> <p><b>opportunity</b> [2] 12:8 69:8</p> <p><b>opposed</b> [1] 65:23</p> <p><b>opposite</b> [2] 22:15 24:20</p> <p><b>opposition</b> [3] 7:5 44:20 68:13</p> <p><b>oral</b> [8] 1:14 3:2,5,9 4:8 16:10 26:7 47:19</p> <p><b>orally</b> [1] 16:14</p> <p><b>order</b> [4] 9:23 39:20 47:8 69:2</p> <p><b>ordinary</b> [1] 51:12</p> <p><b>other</b> [26] 13:3 14:13,17,22 22:22 28:10 33:15 35:13 36:12 37:4 38:5,5 40:10 43:6 47:8 50:1 53:8,15 55:18 56:19,19,21 57:7,19 58:17 61:22</p> <p><b>others</b> [1] 70:6</p> <p><b>otherwise</b> [8] 45:20 46:4,9,14 62:23,25 63:9,19</p> <p><b>out</b> [12] 5:2 10:11 13:18 18:18,21 19:10 27:16 30:3 41:9 53:22 67:22 70:12</p> <p><b>outcome</b> [1] 24:9</p> <p><b>outside</b> [1] 58:12</p> <p><b>over</b> [2] 28:3 43:24</p> <p><b>over-reading</b> [1] 61:23</p> <p><b>oversells</b> [1] 39:18</p> <p><b>own</b> [3] 63:1,1,3</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>PAGE</b> [2] 3:2 57:1</p> <p><b>pages</b> [7] 13:7,7,7 30:13,14 69:23,24</p> <p><b>paints</b> [1] 10:10</p> <p><b>panel</b> [1] 30:6</p> <p><b>paragraph</b> [4] 11:17 12:6 67:25 68:25</p> <p><b>paragraphs</b> [7] 10:9 15:17 32:7,13 68:15,22,23</p> <p><b>part</b> [14] 7:7 8:13 12:21 26:25 30:11 41:15,16 46:3 54:21,24 55:5,6 59:10 63:19</p> <p><b>partial</b> [1] 26:18</p> <p><b>partially</b> [1] 18:19</p> <p><b>particular</b> [8] 29:14 34:11 35:2,16 46:9 48:6 55:17 59:6</p>
---	---	--	---	--

## Official - Subject to Final Review

<p><b>particularity</b> <sup>[1]</sup> 44:3  <b>particularized</b> <sup>[1]</sup> 32:10  <b>particularly</b> <sup>[1]</sup> 64:4  <b>PARTNERS</b> <sup>[4]</sup> 1:7 2:5 3:8 26:8  <b>parts</b> <sup>[6]</sup> 17:23 27:19 31:2 39:20 55:18 69:21  <b>party</b> <sup>[1]</sup> 54:3  <b>pass</b> <sup>[2]</sup> 23:8,10  <b>passed</b> <sup>[1]</sup> 61:16  <b>past</b> <sup>[1]</sup> 38:12  <b>penalize</b> <sup>[3]</sup> 5:20 20:9 65:13  <b>penalties</b> <sup>[2]</sup> 65:24 66:3  <b>per</b> <sup>[1]</sup> 30:6  <b>percent</b> <sup>[5]</sup> 26:15 27:6 36:1 39:18,22  <b>performance</b> <sup>[1]</sup> 17:14  <b>perhaps</b> <sup>[2]</sup> 20:17 65:21  <b>permit</b> <sup>[4]</sup> 4:24 5:5  <b>persisting</b> <sup>[1]</sup> 66:13  <b>perspective</b> <sup>[1]</sup> 66:23  <b>Petitioner</b> <sup>[2]</sup> 49:21,21  <b>Petitioners</b> <sup>[1]</sup> 1:5 2:3 3:4,15 4:9 26:12,24 27:9 47:25 61:23 66:11  <b>Petitioners'</b> <sup>[1]</sup> 26:23  <b>phone</b> <sup>[1]</sup> 59:17  <b>phrase</b> <sup>[1]</sup> 46:2  <b>pick</b> <sup>[1]</sup> 47:24  <b>picture</b> <sup>[2]</sup> 10:10,14  <b>place</b> <sup>[2]</sup> 32:19 65:14  <b>placement</b> <sup>[1]</sup> 35:24  <b>plaintiff</b> <sup>[8]</sup> 8:17 14:14 19:12 20:25 21:5 67:1 69:4,19  <b>plaintiffs</b> <sup>[1]</sup> 17:17  <b>plead</b> <sup>[7]</sup> 18:13 19:12 21:5 38:13 43:2,2 62:3  <b>pleaded</b> <sup>[6]</sup> 16:9 18:14 35:17 67:24 69:12 70:13  <b>pleading</b> <sup>[10]</sup> 11:7 19:16 22:1,22 56:20,22,25 57:2,5 68:20  <b>pleadings</b> <sup>[1]</sup> 16:11  <b>please</b> <sup>[3]</sup> 4:11 26:10 47:23  <b>pled</b> <sup>[1]</sup> 18:25  <b>PLSRA</b> <sup>[1]</sup> 57:13  <b>plural</b> <sup>[3]</sup> 10:23 11:5,6  <b>point</b> <sup>[4]</sup> 30:3 56:19 60:24 69:5  <b>pointed</b> <sup>[2]</sup> 27:16 70:12  <b>pointing</b> <sup>[1]</sup> 13:18  <b>points</b> <sup>[2]</sup> 18:18 61:13  <b>portion</b> <sup>[1]</sup> 13:25  <b>positing</b> <sup>[1]</sup> 23:2  <b>position</b> <sup>[11]</sup> 32:3,24 33:9 37:13 50:25 51:23 52:20 53:25 56:11,14 63:25  <b>positive</b> <sup>[1]</sup> 60:1  <b>possibility</b> <sup>[1]</sup> 24:7  <b>possibly</b> <sup>[1]</sup> 18:24  <b>potential</b> <sup>[1]</sup> 28:10</p>	<p><b>potentially</b> <sup>[1]</sup> 22:24  <b>powers</b> <sup>[1]</sup> 5:19  <b>practice</b> <sup>[2]</sup> 7:24 69:20  <b>precedent</b> <sup>[2]</sup> 30:6 56:13  <b>precedential</b> <sup>[1]</sup> 56:5  <b>preceding</b> <sup>[1]</sup> 32:12  <b>predicate</b> <sup>[1]</sup> 13:5  <b>prediction</b> <sup>[1]</sup> 17:12  <b>presented</b> <sup>[8]</sup> 31:1 38:6 39:9 46:10 60:12 64:4,10,12  <b>press</b> <sup>[1]</sup> 40:18  <b>presumably</b> <sup>[1]</sup> 25:17  <b>presumption</b> <sup>[1]</sup> 61:20  <b>pretty</b> <sup>[3]</sup> 13:16,22 18:21  <b>price</b> <sup>[3]</sup> 17:18 27:1,5  <b>principal</b> <sup>[1]</sup> 9:14  <b>principle</b> <sup>[1]</sup> 61:3  <b>prior</b> <sup>[1]</sup> 61:6  <b>private</b> <sup>[11]</sup> 5:13,23 12:25 21:13 27:7 28:14 45:17 60:10,13,15 65:4  <b>probably</b> <sup>[1]</sup> 23:2  <b>problem</b> <sup>[4]</sup> 21:17 39:6,14 40:24  <b>proceed</b> <sup>[3]</sup> 17:3 70:19,20  <b>proceeding</b> <sup>[2]</sup> 17:5 70:17  <b>process</b> <sup>[1]</sup> 22:2  <b>processors</b> <sup>[2]</sup> 8:2,11  <b>Professor</b> <sup>[1]</sup> 13:21  <b>promulgated</b> <sup>[1]</sup> 44:14  <b>property</b> <sup>[2]</sup> 26:16 48:24  <b>prophylactic</b> <sup>[1]</sup> 29:12  <b>proposing</b> <sup>[2]</sup> 57:14 58:1  <b>prospects</b> <sup>[1]</sup> 10:11  <b>protect</b> <sup>[1]</sup> 34:12  <b>protected</b> <sup>[2]</sup> 6:17 23:3  <b>protections</b> <sup>[1]</sup> 29:12  <b>provide</b> <sup>[6]</sup> 24:13,17 55:17 64:6 65:16 66:18  <b>provided</b> <sup>[2]</sup> 12:2 29:11  <b>provides</b> <sup>[1]</sup> 68:1  <b>provision</b> <sup>[4]</sup> 23:14 43:15 44:15 57:6  <b>PSLRA</b> <sup>[14]</sup> 4:15 5:2,15 11:3,3,5 13:12 22:1 23:25 37:5,15 57:24 61:1 62:2  <b>PSLRA's</b> <sup>[3]</sup> 12:21 56:20 57:5  <b>public</b> <sup>[4]</sup> 21:4 34:10,10,10  <b>pure</b> <sup>[15]</sup> 28:18 31:3,8 41:5,24 42:8,8,12 46:12,21 47:7 50:2 54:16 55:11 67:6  <b>purely</b> <sup>[1]</sup> 33:20  <b>purport</b> <sup>[1]</sup> 57:4  <b>purported</b> <sup>[1]</sup> 68:15  <b>purpose</b> <sup>[1]</sup> 66:21  <b>purposes</b> <sup>[1]</sup> 21:7  <b>pursuant</b> <sup>[1]</sup> 65:23  <b>pursue</b> <sup>[2]</sup> 20:8 66:3  <b>put</b> <sup>[6]</sup> 29:18 32:23 43:19 57:19 59:9 63:3</p>	<p><b>Qs</b> <sup>[1]</sup> 69:25  <b>qualifies</b> <sup>[1]</sup> 52:4  <b>qualify</b> <sup>[1]</sup> 40:5  <b>question</b> <sup>[33]</sup> 6:22 8:15 9:2 10:8,19 20:2 32:23 38:6 39:9 41:23 44:18,19,21,25 45:15 46:10 57:10 59:12,15 60:3,12 62:12,13,15,15,16,22 63:20,23 64:4,5,10,19  <b>questions</b> <sup>[4]</sup> 5:25 8:20 28:1 49:5  <b>Quick</b> <sup>[1]</sup> 64:19  <b>quintessential</b> <sup>[1]</sup> 25:12  <b>quite</b> <sup>[2]</sup> 20:7 28:11  <b>quo</b> <sup>[1]</sup> 14:12</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>rather</b> <sup>[1]</sup> 61:10  <b>ratify</b> <sup>[1]</sup> 38:24  <b>reach</b> <sup>[1]</sup> 7:18  <b>reached</b> <sup>[1]</sup> 25:22  <b>read</b> <sup>[8]</sup> 38:17 55:6 56:3,8 57:5 61:25 62:2,24  <b>readiness</b> <sup>[2]</sup> 27:3 29:20  <b>reading</b> <sup>[1]</sup> 63:14  <b>real</b> <sup>[1]</sup> 42:12  <b>realistic</b> <sup>[1]</sup> 65:11  <b>really</b> <sup>[10]</sup> 7:5 30:4 32:22 34:8 35:11,22 41:15 42:13 44:23 59:11  <b>reason</b> <sup>[4]</sup> 27:23 29:22 34:19 51:4  <b>reasonable</b> <sup>[5]</sup> 26:20 30:17 51:5,8,19  <b>reasonably</b> <sup>[5]</sup> 27:13 29:3,9 52:9,10  <b>reasoning</b> <sup>[1]</sup> 56:3  <b>reasons</b> <sup>[4]</sup> 6:5 11:19 23:24 37:15  <b>REBUTTAL</b> <sup>[3]</sup> 3:13 66:9,10  <b>recast</b> <sup>[1]</sup> 25:14  <b>recasting</b> <sup>[1]</sup> 5:5  <b>recognized</b> <sup>[5]</sup> 5:8 25:8  <b>record</b> <sup>[1]</sup> 32:3  <b>red</b> <sup>[1]</sup> 57:1  <b>redress</b> <sup>[1]</sup> 27:8  <b>reduces</b> <sup>[1]</sup> 41:1  <b>refer</b> <sup>[2]</sup> 45:18 68:24  <b>referenced</b> <sup>[2]</sup> 32:6 69:18  <b>referred</b> <sup>[3]</sup> 15:18 64:23 67:19  <b>refers</b> <sup>[1]</sup> 66:20  <b>reg</b> <sup>[1]</sup> 58:23  <b>regard</b> <sup>[1]</sup> 44:6  <b>regarded</b> <sup>[1]</sup> 45:3  <b>regime</b> <sup>[1]</sup> 42:20  <b>registered</b> <sup>[1]</sup> 65:10  <b>registration</b> <sup>[1]</sup> 55:15  <b>regulated</b> <sup>[1]</sup> 54:3  <b>regulation</b> <sup>[13]</sup> 8:11 24:14 40:16 41:6,19 42:22,22 48:8,13,17,21 53:2 59:5</p>	<p><b>regulations</b> <sup>[3]</sup> 8:5 24:6,8  <b>regulatory</b> <sup>[1]</sup> 42:19  <b>reject</b> <sup>[2]</sup> 33:16 61:25  <b>related</b> <sup>[1]</sup> 6:22  <b>relating</b> <sup>[2]</sup> 6:16 16:19  <b>releases</b> <sup>[1]</sup> 40:19  <b>relevant</b> <sup>[3]</sup> 27:11 30:16 63:13  <b>reliance</b> <sup>[3]</sup> 60:23 61:20,21  <b>relied</b> <sup>[1]</sup> 30:7  <b>reluctant</b> <sup>[1]</sup> 60:17  <b>rely</b> <sup>[3]</sup> 7:1 25:6 56:7  <b>relying</b> <sup>[4]</sup> 54:25 61:14,15 68:17  <b>remains</b> <sup>[1]</sup> 22:21  <b>remand</b> <sup>[3]</sup> 16:4 36:11 56:16  <b>remedies</b> <sup>[1]</sup> 28:10  <b>remedy</b> <sup>[1]</sup> 7:15  <b>remember</b> <sup>[1]</sup> 14:5  <b>render</b> <sup>[5]</sup> 46:8 53:7,9,14,16  <b>rendered</b> <sup>[8]</sup> 10:4,14 16:17 33:6,14 34:1 41:10 51:25  <b>renders</b> <sup>[7]</sup> 31:19 41:3 42:1 50:8 54:1 55:19 56:9  <b>repeatedly</b> <sup>[1]</sup> 65:4  <b>repeating</b> <sup>[1]</sup> 32:22  <b>repleaded</b> <sup>[1]</sup> 13:23  <b>report</b> <sup>[1]</sup> 41:3  <b>represent</b> <sup>[1]</sup> 28:14  <b>representations</b> <sup>[1]</sup> 20:22  <b>require</b> <sup>[5]</sup> 10:2 21:22 37:16 40:14 57:13  <b>required</b> <sup>[24]</sup> 4:22 24:16 26:19 29:6 35:7 36:4 37:5 40:16,20 41:2,11,25 43:9,25 45:16 49:23 51:11 54:4 55:6 67:4,10,20 68:3 70:22  <b>requirement</b> <sup>[19]</sup> 4:25 7:11 11:8 13:1 14:16 18:15 19:13,20 22:16,18 24:21 33:24 35:12 36:23 58:1 64:3,8 67:9 68:7  <b>requirements</b> <sup>[4]</sup> 12:22 22:1,22 25:16  <b>requires</b> <sup>[11]</sup> 11:3 12:17 37:17 41:6 42:20 44:2 48:5 52:7 53:3,12 54:6  <b>requiring</b> <sup>[2]</sup> 41:19 48:22  <b>resolved</b> <sup>[1]</sup> 4:13  <b>resources</b> <sup>[2]</sup> 28:12 65:3  <b>respect</b> <sup>[12]</sup> 6:21 13:8 14:18 20:2,23 37:24 44:4 53:23 54:12 61:8 63:21 64:5  <b>respectfully</b> <sup>[1]</sup> 15:8  <b>respond</b> <sup>[1]</sup> 43:7  <b>responded</b> <sup>[1]</sup> 59:25  <b>Respondent</b> <sup>[6]</sup> 2:5,9 3:7,12 26:8 47:21  <b>Respondents</b> <sup>[1]</sup> 1:8  <b>response</b> <sup>[9]</sup> 19:22 20:1 50:15 64:24 65:2</p>	<p><b>rest</b> <sup>[1]</sup> 22:5  <b>restrict</b> <sup>[1]</sup> 57:4  <b>result</b> <sup>[3]</sup> 11:23 24:21 25:22  <b>results</b> <sup>[1]</sup> 24:10  <b>revealing</b> <sup>[1]</sup> 66:13  <b>revenue</b> <sup>[2]</sup> 26:15 39:19  <b>revenues</b> <sup>[1]</sup> 27:14  <b>review</b> <sup>[4]</sup> 44:18 62:14,16,22  <b>reviewing</b> <sup>[1]</sup> 65:9  <b>revive</b> <sup>[1]</sup> 70:10  <b>rights</b> <sup>[1]</sup> 60:10  <b>rise</b> <sup>[10]</sup> 8:1,13 18:7,24 20:16 38:8 43:1 47:9 51:2 64:11  <b>road</b> <sup>[1]</sup> 19:6  <b>roadmap</b> <sup>[1]</sup> 26:24  <b>roads</b> <sup>[2]</sup> 19:5 26:16  <b>ROBERTS</b> <sup>[23]</sup> 4:3 7:21 8:24 21:9,11 25:24 26:6 30:20,22,25 45:13 46:16 47:13 59:21 60:4 61:2,9 62:5,8 64:16 66:5 70:24 71:2  <b>role</b> <sup>[1]</sup> 34:24  <b>rooted</b> <sup>[1]</sup> 4:23  <b>rosy</b> <sup>[3]</sup> 10:10,14 12:6  <b>routinely</b> <sup>[1]</sup> 65:12  <b>Rule</b> <sup>[37]</sup> 4:14 5:9 11:6 13:15 14:1,9 16:2,5 20:23 21:20 24:18 27:4 29:20 31:9 35:6,8 42:9 43:16,17 44:14 52:17 56:23 57:3,7 61:10,17 62:2,18 64:11 65:5,23,25 66:23,25 67:12,14 68:18  <b>rules</b> <sup>[2]</sup> 32:14 34:12  <b>ruling</b> <sup>[3]</sup> 12:13 20:21 33:10</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>safe</b> <sup>[5]</sup> 6:19 12:11 22:25 23:4,14  <b>safeguards</b> <sup>[1]</sup> 13:4  <b>sales</b> <sup>[6]</sup> 8:1,4,11,13 22:12 27:17  <b>same</b> <sup>[12]</sup> 10:7 11:23 27:10,20,25 32:18 34:8 53:11 54:1 61:3,10 62:12  <b>same-subject</b> <sup>[1]</sup> 40:9  <b>satisfied</b> <sup>[3]</sup> 14:16 22:16 49:8  <b>satisfies</b> <sup>[2]</sup> 12:1 50:8  <b>satisfy</b> <sup>[4]</sup> 19:17 22:18 52:22 54:9  <b>saying</b> <sup>[1]</sup> 60:25  <b>saying</b> <sup>[23]</sup> 9:15 10:24 20:4 28:19 30:23 38:20 41:5 43:8 46:21,23 49:7,11,20,21,23 50:5,18 54:5 55:25 61:17 62:20 63:2 64:10  <b>says</b> <sup>[10]</sup> 8:13 11:17 14:19 22:9 24:18 41:16 43:10 54:2 56:8 59:18</p>
	<p><b>Q</b></p> <hr/> <p><b>Q&amp;A</b> <sup>[1]</sup> 59:13</p>			

## Official - Subject to Final Review

<p><b>scenario</b> [2] 18:23 42:17  <b>scheme</b> [2] 5:7 25:15  <b>scienter</b> [7] 44:2,2 47:6,7 49:15,25 52:16  <b>scope</b> [2] 35:21 56:23  <b>SEC</b> [16] 5:19 16:12 19:22 20:8 28:3,6,10 43:15 44:14 53:1 61:16 65:6,8,16,24 66:3  <b>SEC's</b> [1] 65:3  <b>Second</b> [32] 7:1 14:6 15:3, 15,23,24,25 16:4 17:3 21:18 25:4,6,22 28:24 29:11 30:4 32:24 33:8,12,19 38:1 46:11 55:23 56:2,4,13 63:24 67:7 68:18 69:14 70:10,18  <b>secondly</b> [1] 6:15  <b>Section</b> [20] 21:14 43:6,7, 10,17,25 45:18 53:24 54:2, 9,13,15 55:14 65:23 67:11, 12,14,14,16,16  <b>securities</b> [8] 6:14 7:10,13 8:16 22:5 40:12 42:14 62:4  <b>see</b> [7] 9:18 42:3 44:23 50:1,10 53:20 66:22  <b>seek</b> [2] 28:9 65:25  <b>seeking</b> [5] 5:17,18 14:18 18:1 20:4  <b>seem</b> [3] 18:21 36:5,25  <b>seemed</b> [1] 49:22  <b>seems</b> [9] 10:14 28:19 29:22 38:18 41:8 43:7 46:25 53:25 60:11  <b>sellers</b> [1] 48:22  <b>send</b> [2] 34:16 36:8  <b>sense</b> [3] 44:5,6 66:2  <b>sentence</b> [6] 30:15 35:24 59:20,22 67:25 68:25  <b>sentences</b> [2] 10:9 37:16  <b>separate</b> [1] 7:10  <b>series</b> [1] 42:15  <b>set</b> [2] 10:8,9  <b>seven</b> [1] 32:13  <b>SG</b> [2] 18:17 32:4  <b>shall</b> [1] 11:11  <b>she's</b> [3] 37:8,25 38:4  <b>shouldn't</b> [2] 37:10,21  <b>show</b> [2] 33:14 52:14  <b>shows</b> [1] 5:2  <b>side</b> [3] 35:13 37:4 56:21  <b>side's</b> [1] 40:10  <b>significant</b> [2] 13:25 17:13  <b>significantly</b> [1] 27:13  <b>similar</b> [1] 55:7  <b>similarity</b> [1] 10:2  <b>simply</b> [9] 14:23 15:18 20:4 24:13 42:7,9 62:3 65:11 70:20  <b>since</b> [1] 61:16  <b>single</b> [2] 51:17 63:8  <b>situation</b> [2] 8:12 18:25  <b>six</b> [1] 32:13</p>	<p><b>size</b> [1] 35:21  <b>sky</b> [1] 35:21  <b>slightly</b> [2] 53:1 62:4  <b>Solicitor</b> [2] 2:6 32:15  <b>someone</b> [1] 65:15  <b>sometimes</b> [1] 13:18  <b>somewhere</b> [3] 25:19 40:15,16  <b>sorry</b> [2] 15:3 40:23  <b>sort</b> [6] 7:22 22:4 33:23 48:7 55:24 60:6  <b>SOTOMAYOR</b> [9] 6:20 7:6, 17 15:2,11,22 17:19 64:17 70:12  <b>speaks</b> [1] 54:16  <b>special</b> [1] 12:18  <b>specific</b> [44] 5:3 6:21 12:5, 20 14:14 15:14,20 16:7,19 18:13 19:8,14 21:1,6,25 23:11 24:1,13 25:16 31:25 36:7,7 37:3 39:25 40:3,13, 14 41:19 43:17 57:13,25, 25 67:1,2 68:9,12,19,24 69:15,21,24 70:8,11,14  <b>specifically</b> [5] 7:16 11:4 17:11 23:17 51:22  <b>specificity</b> [10] 9:5 10:3 12:4 37:20 38:19 39:15 42:18 43:3,24 51:11  <b>specify</b> [1] 11:11  <b>speculative</b> [1] 65:20  <b>speech</b> [2] 5:10 25:10  <b>staff</b> [2] 28:11 65:16  <b>standard</b> [12] 27:24 29:10 36:9 49:14 50:8 56:20,22, 25 57:2,6 58:12,16  <b>standards</b> [1] 52:7  <b>standing</b> [1] 21:19  <b>started</b> [2] 39:17 58:7  <b>state</b> [6] 9:22 43:9,9 45:24 54:3 68:16  <b>stated</b> [9] 4:22 7:16 44:10 45:25 54:4,7 55:6 67:10 70:4  <b>statement</b> [126] 4:18,25 5:4,22 6:2,7,8,9,10,12,15 7:25 8:18,20 9:3,10 10:4,19, 22,25 11:4,8,11,25 12:1,5, 16,21 13:1,4,6,10,12,20,23 14:8,14,15,25 15:20 18:13, 17 19:8,13,14,19 20:5 21:1, 6,6,21,23,24 22:4,19 23:1, 2,11,21 27:10 30:13,16 32:5,6,25 33:2,7,10,15,25 34:15 35:12 36:7,21 38:2,4 40:5 41:9,12,13 42:2 45:20 46:4,6,9 48:1,9,15,19 49:22 50:5,12,14,15,20,21, 23 51:1,11,13,17,25 52:24 53:9,16 54:11 55:15,19 56:10 57:14 62:23 63:7,8,12, 13,19 67:2,2,23,24 68:6,9, 24 69:6,8,25  <b>statement's</b> [1] 36:4</p>	<p><b>statements</b> [55] 6:19 8:23 9:17,24 10:24 11:10 12:12, 14,15 13:20 14:22 15:21 16:7,8,10,14,16,21,23 23:16,22 27:20 30:10 31:20, 25 32:10 35:2,5,16 37:17, 17 40:19 41:2 42:19,25 44:4,8 45:3,10,23 46:13 51:22 54:15 63:8,15 67:3 68:12, 20 69:15,17 70:3,5,6,9,12  <b>STATES</b> [5] 1:1,16 2:8 3:11 47:20  <b>status</b> [1] 14:11  <b>statute</b> [2] 41:9,15  <b>statutory</b> [1] 23:4  <b>step</b> [1] 59:9  <b>still</b> [1] 29:10  <b>stock</b> [4] 17:18 27:1,5 43:19  <b>Stoneridge</b> [1] 61:24  <b>stored</b> [1] 24:8  <b>straightforward</b> [1] 53:1  <b>Stratte-McClure</b> [7] 30:5, 8 33:5 56:6,7,17 68:18  <b>streets</b> [2] 9:8,10  <b>strict</b> [1] 44:1  <b>strictly</b> [1] 44:8  <b>strikes</b> [1] 7:23  <b>subject</b> [15] 5:22 9:4 10:3 27:11,12,20,25 34:5,8,9 35:4 36:22 40:6 48:8 49:4  <b>subjects</b> [1] 24:2  <b>submitted</b> [2] 71:3,5  <b>Subsection</b> [5] 54:19 56:23 57:3,7 64:14  <b>subsections</b> [2] 24:24 64:15  <b>subsidiaries</b> [3] 13:9 17:14 24:5  <b>subsidiary</b> [1] 24:9  <b>substantial</b> [1] 26:25  <b>substantive</b> [1] 61:9  <b>substantively</b> [1] 56:22  <b>sue</b> [1] 54:2  <b>suggest</b> [3] 16:2 23:21 49:22  <b>suggested</b> [2] 51:12,23  <b>suggesting</b> [1] 56:21  <b>suggestion</b> [1] 36:6  <b>suggests</b> [4] 13:21 37:4, 19 38:17  <b>supplement</b> [1] 65:6  <b>supplier</b> [3] 27:18,22 39:21  <b>support</b> [1] 45:17  <b>supporting</b> [3] 2:8 3:12 47:21  <b>supports</b> [1] 68:8  <b>suppose</b> [4] 17:21 27:18 48:21 59:17  <b>supposed</b> [1] 43:21  <b>SUPREME</b> [3] 1:1,15 30:13</p>	<p style="text-align: center;"><b>T</b></p> <p><b>table</b> [1] 32:23  <b>talks</b> [2] 18:19 54:10  <b>tantamount</b> [2] 66:25 67:8  <b>tasked</b> [2] 8:19 65:9  <b>tells</b> [1] 9:21  <b>tens</b> [1] 65:9  <b>terms</b> [4] 23:5 34:3 63:1,3  <b>test</b> [2] 36:21 40:9  <b>text</b> [15] 4:13,13,15,23,24 5:5 9:13,14,19,20,21 10:2,23 14:19 20:23  <b>textual</b> [1] 23:15  <b>theme</b> [1] 13:15  <b>themselves</b> [1] 7:11  <b>theories</b> [1] 64:12  <b>theory</b> [12] 28:6 46:15 56:8 61:15,15,18 64:13,14 67:7 68:16 69:10,12  <b>there's</b> [13] 8:10 14:8 20:14 23:13 32:25 33:1 36:3 41:6 43:10 51:10 63:14,18 70:21  <b>therein</b> [1] 54:15  <b>they've</b> [1] 31:20  <b>third</b> [2] 9:9 26:17  <b>THOMAS</b> [18] 6:1 26:1 28:2,15,18,24 46:18,19,25 47:4,5,11 49:6,18 50:10,16 51:3 62:9  <b>though</b> [5] 6:12 21:14 28:19 49:1 57:12  <b>thousands</b> [1] 65:9  <b>three</b> [3] 22:9,12,14  <b>threshold</b> [1] 52:16  <b>tie</b> [1] 15:19  <b>tied</b> [4] 12:21 18:12 27:25 35:1  <b>tight</b> [2] 47:25 49:3  <b>Today</b> [4] 4:19 17:5,6 23:6  <b>took</b> [2] 11:5 44:21  <b>tool</b> [1] 35:22  <b>topic</b> [1] 8:21  <b>topics</b> [2] 13:8 41:20  <b>tracks</b> [1] 57:2  <b>transcripts</b> [1] 69:22  <b>treating</b> [1] 4:25  <b>tree</b> [2] 29:1,13  <b>trend</b> [7] 19:11 29:2,5 31:17,18 52:8 60:2  <b>trends</b> [15] 18:20 19:9 22:9, 12 26:13,21 27:12 31:16 51:6 53:13,17 54:7 59:19, 24 60:1  <b>true</b> [1] 13:25  <b>truth</b> [1] 27:5  <b>trying</b> [4] 20:13 49:18,19 53:22  <b>Tuesday</b> [1] 1:12  <b>turns</b> [1] 10:11  <b>two</b> [15] 9:8,10 15:21 16:6, 7 19:5 26:16 32:1 42:4 54:1 55:2,8 61:12 64:12 70:</p>	<p>11  <b>type</b> [2] 35:21 62:4  <b>typically</b> [1] 10:5</p> <p style="text-align: center;"><b>U</b></p> <p><b>ultimately</b> [1] 17:16  <b>uncertainties</b> [5] 27:12 51:7 53:13,18 54:7  <b>uncertainty</b> [3] 26:14 29:7 52:8  <b>under</b> [32] 5:9 6:13 9:25 21:13,20 23:3 24:16,24 25:9, 17,21 27:20 28:5,6 35:7 36:8 40:13 41:17 42:19 45:5,7,17,17 49:13 52:15 55:17 61:4 62:2 64:13,15 65:5,25  <b>underlying</b> [1] 30:4  <b>understand</b> [24] 9:13 20:13 22:7 32:20 33:24 36:24 38:12 41:4,21 45:1,18,22 49:19 50:16,17 52:23 55:1, 7 57:22 58:4,8 59:1,14 60:2  <b>understanding</b> [1] 23:20  <b>understood</b> [6] 9:15 10:15 37:19 57:13,23,24  <b>undertook</b> [1] 29:13  <b>uniformly</b> [1] 37:19  <b>UNITED</b> [5] 1:1,15 2:8 3:11 47:20  <b>unlawful</b> [1] 9:22  <b>unless</b> [2] 7:16 18:12  <b>unpublished</b> [1] 56:2  <b>unreasonable</b> [1] 29:17  <b>up</b> [7] 27:17 31:4 44:8 45:12 47:24 59:19,24  <b>urge</b> [2] 34:25 36:19  <b>useful</b> [2] 36:17 39:5</p> <p style="text-align: center;"><b>V</b></p> <p><b>vacate</b> [3] 16:3 56:15 70:23  <b>vacated</b> [1] 14:10  <b>value</b> [1] 48:23  <b>variation</b> [1] 13:14  <b>various</b> [1] 18:20  <b>vary</b> [1] 48:20  <b>versus</b> [1] 4:5  <b>view</b> [1] 41:1  <b>viewed</b> [1] 33:8  <b>violate</b> [1] 20:9  <b>violated</b> [1] 42:9  <b>violates</b> [1] 5:20  <b>violating</b> [1] 51:8  <b>violation</b> [13] 14:6 21:19 29:1 31:8,10 38:8 49:12 52:21 56:9 62:18 64:11 66:2 68:21  <b>violations</b> [1] 65:14  <b>voluntary</b> [7] 40:19 42:17 48:11 49:2 58:3,18 69:17</p> <p style="text-align: center;"><b>W</b></p> <p><b>wanted</b> [2] 56:19 59:2</p>
--	--	--	--	---

**Washington** <sup>[3]</sup> 1:11 2:4,7  
**waters** <sup>[1]</sup> 35:12  
**way** <sup>[14]</sup> 17:4,24 21:3 31:1  
 32:14 44:9 48:18 52:24 56:  
 18 57:8 60:24 62:4 63:17,  
 23  
**ways** <sup>[4]</sup> 5:16 9:16 45:7 69:  
 12  
**week** <sup>[1]</sup> 11:20  
**weighed** <sup>[1]</sup> 12:24  
**welcome** <sup>[2]</sup> 28:1 49:5  
**Whenever** <sup>[2]</sup> 5:8 41:1  
**Whereupon** <sup>[1]</sup> 71:4  
**whether** <sup>[10]</sup> 14:7 21:20 22:  
 3 29:1,8,13 35:8 45:16 60:  
 13 68:7  
**whichever** <sup>[1]</sup> 32:14  
**whole** <sup>[8]</sup> 6:10 35:11 42:12  
 50:7 51:16,19 52:25 66:21  
**will** <sup>[8]</sup> 8:13 14:12 22:2 48:  
 14 51:5,20 59:8 65:12  
**willing** <sup>[1]</sup> 34:6  
**wisely** <sup>[1]</sup> 44:20  
**withholding** <sup>[1]</sup> 27:3  
**within** <sup>[10]</sup> 32:11 45:10 51:  
 17 55:15,19 56:13 61:18,  
 20 63:10 67:3  
**without** <sup>[2]</sup> 5:21 33:14  
**won** <sup>[2]</sup> 15:11,12  
**wondering** <sup>[1]</sup> 39:12  
**word** <sup>[3]</sup> 5:3 13:11 19:21  
**words** <sup>[2]</sup> 43:6 67:10  
**work** <sup>[2]</sup> 18:15 19:3  
**world** <sup>[2]</sup> 41:25 42:12  
**worth** <sup>[1]</sup> 43:22  
**worthless** <sup>[1]</sup> 44:19  
**writes** <sup>[1]</sup> 41:8

---

**Y**

---

**year** <sup>[3]</sup> 59:20,25 65:10