

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

-----  
THOMAS KEATHLEY, )  
 )  
 Petitioner, )  
 )  
 v. ) No. 25-6  
 )  
BUDDY AYERS CONSTRUCTION, )  
 )  
INCORPORATED, )  
 )  
 Respondent. )  
-----

Pages: 1 through 78

Place: Washington, D.C.

Date: March 24, 2026

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*

1150 Connecticut Avenue, N.W., Suite 305

Washington, D.C. 20036

(202) 628-4888

[www.hrcreporters.com](http://www.hrcreporters.com)



1 APPEARANCES:  
2 GREGORY G. GARRE, ESQUIRE, Washington, D.C.; on behalf  
3 of the Petitioner.  
4 FREDERICK LIU, Assistant to the Solicitor General,  
5 Department of Justice; Washington, D.C.; for the  
6 United States, as amicus curiae, supporting  
7 vacatur.  
8 WILLIAM M. JAY, ESQUIRE, Washington, D.C.; on behalf  
9 of the 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 GREGORY G. GARRE, ESQ.

4 On behalf of the Petitioner 4

5 ORAL ARGUMENT OF:

6 FREDERICK LIU, ESQ.

7 For the United States, as amicus

8 curiae, supporting vacatur 38

9 ORAL ARGUMENT OF:

10 WILLIAM M. JAY, ESQ.

11 On behalf of the Respondent 53

12 REBUTTAL ARGUMENT OF:

13 GREGORY G. GARRE, ESQ.

14 On behalf of the Petitioner 76

15

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

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 25-6, Keathley versus Buddy Ayers Construction. Mr. Garre.

ORAL ARGUMENT OF GREGORY G. GARRE

ON BEHALF OF THE PETITIONER

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

Judicial estoppel present -- prevents a party from deliberately adopting inconsistent positions to gain an unfair advantage in litigation. Because the doctrine targets intentional inconsistencies, courts have resisted its application when a party's prior position is based on inadvertence or mistake.

The narrow but important question in this case is how to determine when a party's position was inadvertent or intentional in the specific context where a debtor fails to update a form to reflect a new cause of action outside of bankruptcy.

The failure to update -- if the failure to update the form was simply a

1 mistake, then there's no intentional  
2 inconsistency and no basis to invoke judicial  
3 estoppel. The Fifth Circuit applies what  
4 amounts to a conclusive presumption that a  
5 debtor's failure to disclose a cause of action  
6 and update a -- through updating a form is  
7 intentional as long as the debtor knew of the  
8 facts underlying the claim and had a potential  
9 financial motive to shield the asset, something  
10 which exists almost by definition in the case  
11 of any bank -- bankruptcy.

12 That rule flouts the flexibility that  
13 equity ordinarily demands, it grants a windfall  
14 to alleged wrongdoers have no -- who have no  
15 connection to the bankruptcy, and it unfairly  
16 penalizes honest debtors by denying them  
17 redress for real wrongs.

18 This Court should reject the Fifth  
19 Circuit's rule and hold instead that courts  
20 must undertake a holistic analysis of all facts  
21 bearing on a debtor's intent before concluding  
22 that a debtor's failure to update a form  
23 represents an intentional position that no  
24 cause of action exists.

25 Erasing a debtor's claim seeking

1 redress for tortious or other illegal conduct  
2 like Petitioner's personal -- personal injury  
3 action here imposes an enormous cost on  
4 individuals already facing hard times. There's  
5 no basis for taking that extreme step based on  
6 a conclusive presumption that may be entirely  
7 unfounded.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: Mr. Garre, what type  
10 of evidence should be used in your holistic  
11 approach?

12 MR. GARRE: So we would look to all  
13 surrounding circumstances, Your Honor,  
14 objective and subjective. It would include the  
15 debtor's own testimony typically, but that  
16 would just be one factor. You would look at  
17 the sophistication of the debtor, when and --  
18 and the manner in which the debtor updated the  
19 form, whether the debtor told his attorney of  
20 the cause of action, whether creditors objected  
21 when a form was amended, the impact on  
22 creditors or other in the bank -- others in the  
23 bankruptcy, the bankruptcy court's own  
24 findings. These are objective factors that  
25 courts have looked to and can be applied in

1 determining a debtor's actual intent.

2 CHIEF JUSTICE ROBERTS: One factor you  
3 haven't mentioned is, of course, the impact on  
4 the judiciary, the judicial reputation, the  
5 phrases that have traditionally been used here.  
6 All that you've been talking about is between  
7 the two parties to the -- the bankruptcy and  
8 the accident.

9 Where does that factor in? I thought  
10 that was the primary basis for the whole  
11 doctrine of judicial estoppel. You don't want  
12 to put the courts in the position of acting on  
13 the basis of a counterfactual that's --  
14 that's -- that's not true.

15 MR. GARRE: Absolutely, Your Honor.  
16 That's the backbone of judicial estoppel. This  
17 Court and others have talked about playing fast  
18 and loose in the courts -- with the courts and  
19 protecting the integrity of the courts.

20 And what -- what this Court recognized  
21 in New Hampshire is that where the integrity is  
22 impacted is where parties intentionally advance  
23 inconsistent positions in order to gain  
24 advantage in litigation. And to put the courts  
25 in the position of potentially adopting those

1 inconsistent positions is what undermines the  
2 integrity of the courts.

3 CHIEF JUSTICE ROBERTS: I thought it  
4 was more that they proceeded on the basis of a  
5 particular -- not assumption, but what was  
6 shown, and you don't want to put them in a  
7 position of having two different versions of  
8 reality and then proceeding on the basis of one  
9 or the other.

10 MR. GARRE: So I think what -- what  
11 the courts have described it as is the cold  
12 manipulation of the process, Your Honor, and  
13 that happens when an individual intentionally  
14 takes one position, secures an advantage by the  
15 adoption of that position, turns around in a  
16 different proceeding, adopts a different  
17 position, and tries to get a different  
18 advantage.

19 If the individual didn't intentionally  
20 adopt that first position and -- and corrects  
21 it, as happens in the scenario here, where a  
22 debtor is simply unaware -- and, as the amici  
23 former bankruptcy judges indicate, bankruptcy  
24 forms are very confusing. Even with the aid of  
25 counsel, many debtors simply just don't realize

1 that a cause of action is an asset and forms  
2 have to be updated.

3 In that situation, the debtor has made  
4 simply a mistake in failing to update the court  
5 as to the existence of the cause of action.  
6 And, there, the debtor is not actually taking  
7 the position that there is no cause of action  
8 before the bankruptcy court. He simply failed,  
9 because of his mistake, to update a form. So  
10 there is no intentional inconsistency. There's  
11 no playing fast and loose with the courts.  
12 There's no cold manipulation of the judicial  
13 process. And there's no threat to the  
14 integrity of the court.

15 And, conversely, I mean, judicial  
16 estoppel is an extreme measure, and it's  
17 appropriate where there is a threat to the  
18 integrity of the court, but it involves wiping  
19 out a cause of action. And, here, you have a  
20 situation in which courts, without even  
21 engaging in a holistic determination as to the  
22 debtor's actual intent, whether the debtor  
23 simply made a mistake in failing to update a  
24 form, are wiping out a cause of action like  
25 Mr. Keathley's personal injury action here.

1           Respondent's own driver admitted that  
2 his brakes failed and that his truck hit  
3 Mr. Keathley's, and that action has been wiped  
4 out based on a conclusive presumption that the  
5 Fifth Circuit applies that simply because a  
6 debtor has a potential financial motive to  
7 mislead, a debtor's failure to update the  
8 bankruptcy court as to the existence of a cause  
9 of action is an intentional representation.

10           JUSTICE BARRETT: Mr. Garre, can I  
11 interrupt you and ask you a question? This is  
12 an Erie question. This was a diversity suit.  
13 So why does the federal law -- everyone's  
14 assumed that the Fifth Circuit's law of  
15 judicial estoppel applies. Is the Mississippi  
16 law different? And, if not, why doesn't the  
17 Mississippi law control in the diversity suit  
18 under Erie?

19           MR. GARRE: So I -- I think, as I  
20 understand this Court's decision in New  
21 Hampshire versus Maine, the judicial estoppel  
22 doctrine as embraced by this Court is, you  
23 know, a federal common-law-type rule inherent  
24 in the Court's own authority to protect its  
25 proceedings. And so I think that that would be

1 a federal baseline.

2 I mean, state courts have applied it  
3 as well. I -- I think, here, no one has  
4 pointed to any difference in the proceedings.

5 JUSTICE BARRETT: I gather that it's a  
6 matter of some dispute in -- in other circuits,  
7 that courts have struggled with that question.  
8 And I don't want to resolve it here. I don't  
9 think we have to resolve it here. But I  
10 certainly wouldn't want anything we said here  
11 to -- to resolve that question. I mean, I can  
12 see arguments on either side.

13 I think what you're saying might be  
14 kind of a Byrd versus Blue Ridge, the  
15 overriding federal interest overcomes whatever  
16 we might say about the outcome-determinative  
17 prong of Erie. It just seems to me like that  
18 might be something -- I just wanted to know  
19 your reaction about it because it might be  
20 something to avoid.

21 MR. GARRE: So I think the Court, you  
22 know, can and absolutely should reserve that  
23 question for a later day, Your Honor. I'm not  
24 aware of any inconsistency in state or federal  
25 courts in terms of recognizing that judicial

1 estoppel doctrine wouldn't apply in the case of  
2 an honest mistake.

3 JUSTICE JACKSON: Can I -- can --

4 MR. GARRE: You know, I think courts  
5 across the board have focused on, you know,  
6 what they call the cold manipulation of the  
7 courts and the judicial process.

8 JUSTICE BARRETT: Okay. Just one last  
9 question then speaking of just questions to  
10 avoid. Do you see your argument as really kind  
11 of confined to how judicial estoppel plays out  
12 in the bankruptcy context in particular?

13 MR. GARRE: Yes.

14 JUSTICE BARRETT: Or do you see it --  
15 okay.

16 MR. GARRE: Yes.

17 JUSTICE BARRETT: Why?

18 MR. GARRE: Well, that's the  
19 situation, and this has arisen. I mean,  
20 it's -- it's unique in the important respect  
21 is, typically, when judicial estoppel has  
22 applied in other contexts, like New Hampshire  
23 versus Maine, you have a party that's  
24 affirmatively adopted two different positions,  
25 and there's no question what the party, you

1 know, thinks its position is.

2 Here, in the bankruptcy context, where  
3 a debtor has failed to update a form, the --  
4 the position is implied by the failure to  
5 update the -- the form, but the debtor hasn't  
6 actually affirmatively said, I have no cause of  
7 action. Where judicial estoppel is invoked,  
8 there's a presumption in the Fifth Circuit that  
9 the debtor, in fact, made that representation.

10 So -- so the context is different in  
11 important ways. In New Hampshire, this Court,  
12 in -- in outlining general principles that  
13 typically apply, recognized that additional  
14 considerations would be appropriate in specific  
15 factual contexts. So I think the context here  
16 is important.

17 Also, in this context, you have  
18 individuals who, you know, very often are not  
19 particularly sophisticated. You have an  
20 environment, bankruptcy, where forms are  
21 complex. Again, amici former bankruptcy judges  
22 here themselves have talked about the  
23 complexity of the forms. They're confusing even  
24 with the aid of counsel.

25 And so I think that's the situation in

1 particular in this context, where one would be  
2 wary about there was any position at all or  
3 whether a -- a debtor simply made an honest  
4 mistake in failing to update a form.

5 JUSTICE SOTOMAYOR: Mr. Garre, I --  
6 I've been having trouble trying to fit in our  
7 New Hampshire principle to the bankruptcy  
8 context where the bankruptcy, it has not  
9 terminated, meaning in a situation like this  
10 one, where the bankruptcy is still ongoing  
11 because, logically and otherwise, it should be  
12 the bankruptcy court that decides whether to  
13 impose a penalty because doing away with the  
14 personal injury suit deprives the creditors of  
15 a potential source of income for the  
16 bankruptcy.

17 In an ongoing bankruptcy, that's a  
18 draconian effect on the creditors that the  
19 second court would be imposing. So I'm not  
20 sure how equitable estoppel really can play out  
21 on the principles set forth in New Hampshire.  
22 New Hampshire said that the court -- the first  
23 court had to be persuaded to accept that  
24 party's earlier position. But, here, with the  
25 amendment, there was no permanent acceptance of

1 a position by the bankruptcy court.

2 It also, New Hampshire said, a court  
3 has to consider whether the party seeking to  
4 assert an inconsistent position derived an  
5 unfair advantage or imposed an unfair detriment  
6 on the opposing party.

7 But the opposing party here, there's  
8 no unfair -- unfair detriment to the man who  
9 hit your client with a -- with a truck because  
10 he wasn't involved in the bankruptcy, and the  
11 unfair advantage was wiped away once the  
12 disclosure was made in the bankruptcy court.

13 So I'm a little bit -- I've been  
14 perplexed when I started with this how we deal  
15 with that context --

16 MR. GARRE: So -- so --

17 JUSTICE SOTOMAYOR: -- in -- in --  
18 in -- in -- in this special situation where the  
19 bankruptcy has not terminated. There's been no  
20 final determination that the bankruptcy court  
21 was misled in a way that caused detriment to  
22 the bankruptcy process, to its creditors, or to  
23 anyone.

24 MR. GARRE: So I'm not going to  
25 quarrel with anything that would lead to the

1 conclusion that judicial estoppel doesn't wipe  
2 out my client's claim, Your Honor. I think  
3 what I would say, though, is --

4 JUSTICE SOTOMAYOR: No, no, no, but --  
5 but I'm trying to -- maybe this is a question  
6 for your -- for the other side.

7 MR. GARRE: In --

8 JUSTICE SOTOMAYOR: But I'm have --  
9 I've been having a -- a hard time understanding  
10 how this theory works in a situation in which  
11 it's different parties and not the same parties  
12 being misled.

13 MR. GARRE: So, in New Hampshire, the  
14 Court did reference a possibility that either  
15 the first court or the second would be misled.  
16 And I think that's probably the -- the theory  
17 that courts have applied here.

18 I think what Your Honor's question  
19 underscores, though, is that, here, the  
20 bankruptcy court, you have a proceeding  
21 ongoing. The bankruptcy court is well equipped  
22 to take any action it determines is appropriate  
23 to protect other creditors. Other creditors  
24 can stand up as well to sanction conduct that  
25 it believes is misleading or deceitful.

1           And so there's not the need for a sort  
2 of overarching judicial estoppel check here.  
3 And that makes it all the more egregious,  
4 frankly, for the Fifth Circuit to simply  
5 disregard all that and adopt this conclusive  
6 presumption that a debtor is acting with an  
7 intent to, you know, adopt a position that no  
8 cause of action exists and to mislead the  
9 courts.

10           JUSTICE JACKSON: Mr. Garre, can I ask  
11 you, because I'm trying to ascertain your  
12 position with respect to what suffices for  
13 establishing inadvertence or mistake.

14           You've talked about intentional  
15 omissions as they relate to misleading the  
16 courts, but you can imagine a world, I think,  
17 in which the debtor might have an intent to  
18 omit, perhaps to mislead, someone else.

19           So, you know, a debtor who's, say,  
20 contemplating a divorce, they leave off the  
21 claim because they want to have less -- less  
22 exposure in the case if they decide to go  
23 through with the divorce. So it's intentional  
24 but not with the point of misleading the court.

25           How would you say that should be taken

1 into account or should it in regard to figuring  
2 out whether there was inadvertence or mistake?

3 MR. GARRE: So, Justice Jackson, I  
4 think, first of all, that the key is that the  
5 court has to determine that the debtor has made  
6 an intentional -- adopted an intentional  
7 position that no cause of action exists.

8 I -- I think that -- that the  
9 heartland in which judicial estoppel is  
10 invoked, the -- the understanding is that the  
11 debtor is trying to mislead the court to gain  
12 advantage. In your hypothetical, I -- I don't  
13 think that that would invoke the -- the  
14 heartland of judicial estoppel. Nevertheless,  
15 I think judicial estoppel being an equitable  
16 doctrine, considering additional factors, that  
17 could be part of the mix.

18 JUSTICE JACKSON: I'll take it into  
19 account in terms of your holistic view, and so  
20 your -- your argument here is that the Fifth  
21 Circuit's test is too rigid because it doesn't  
22 allow for full consideration of intent or other  
23 factors that could bear on inadvertence or  
24 mistake?

25 MR. GARRE: That's exactly right. I

1 mean, our position is that the inquiry into the  
2 debtor's intent here as to whether they  
3 intentionally adopted a position that no cause  
4 of action exists should be undertaken --

5 JUSTICE JACKSON: But does it matter  
6 that their motive is different? I mean, so, in  
7 my hypothetical, they did intend, they intended  
8 to omit. So it's not inadvertent or mistaken.  
9 What -- what then? I mean, you --

10 MR. GARRE: So I think that -- I'm  
11 sorry, Your Honor.

12 JUSTICE JACKSON: Yeah. No, I'm  
13 just --

14 MR. GARRE: I think that's a good  
15 example where, you know, really, the bankruptcy  
16 judge is in charge of his or her proceedings  
17 and can take appropriate action.

18 In that situation, no doubt the judge  
19 would -- would think it's -- it's improper and  
20 perhaps warrant sanction that the -- that  
21 the -- that the debtor is attempting to hide  
22 his assets from his spouse or others, and so  
23 sanctions might be warranted.

24 I don't think that that's the -- the  
25 typical fact pattern in which judicial estoppel

1 is warranted. But I think what distinguishes  
2 this case is there's just no determination that  
3 the debtor here actually intended to hide  
4 anything from the court.

5 JUSTICE GORSUCH: Mr. Garre, on -- on  
6 that, just to follow up on it, why -- why is  
7 intent to mislead the court essential? I --  
8 I -- you know, I -- I struggle to find that in  
9 New Hampshire. There are gestures in that  
10 direction, but couldn't sometimes a knowing --  
11 knowing -- knowingly misleading the court plus  
12 other factors in equity be enough?

13 MR. GARRE: Yes. And what the  
14 intent --

15 JUSTICE GORSUCH: Well, if that's  
16 true, if that's true, then intent isn't  
17 essential, it -- it's just one factor in your  
18 view, is that right?

19 MR. GARRE: So I agree it's one  
20 factor, but the intent that matters, Your  
21 Honor, is the intent to adopt inconsistent  
22 positions.

23 JUSTICE GORSUCH: Inconsistent  
24 positions. No, I get that.

25 MR. GARRE: Right.

1 JUSTICE GORSUCH: But -- but not  
2 necessarily an intent to mislead the court.

3 MR. GARRE: Right. I mean, there's a  
4 lot of language in the cases about cold  
5 manipulation of the courts, playing fast and  
6 loose.

7 JUSTICE GORSUCH: Yeah.

8 MR. GARRE: But, really, what -- what  
9 I think that the court is driving at is  
10 intentionally adopting inconsistent positions.  
11 And what's different about this case is there's  
12 no -- there's been no actual determination that  
13 the debtor here intentionally adopted --

14 JUSTICE GORSUCH: Yeah, I got you.  
15 Thank you.

16 MR. GARRE: -- the position that  
17 there's no cause of action.

18 CHIEF JUSTICE ROBERTS: Thank you,  
19 counsel.

20 Justice Thomas?

21 Justice Alito?

22 JUSTICE ALITO: Well, I'm a, excuse  
23 me, a little confused by those answers.

24 So what is required is knowledge of  
25 the fact that inconsistent positions are being

1 taken?

2 MR. GARRE: So I think your -- your --  
3 Justice Alito, it -- it's -- it's the fact that  
4 the debtor has taken intentionally inconsistent  
5 positions. So, in the bankruptcy context, by  
6 failing to update the form, a determination  
7 would be made that the debtor, in fact,  
8 adopted -- intended to adopt the position that  
9 no cause of action exists as opposed to simply  
10 making a mistake in failing to update a form  
11 and, when -- when the debtor then goes to a  
12 separate court and advances a cause of action,  
13 he's taken the separate position that the cause  
14 of action exists.

15 And that would be intentionally  
16 inconsistent. But that intentional  
17 inconsistency doesn't arise where a debtor  
18 simply makes a mistake in failing to update a  
19 form. In -- in that -- in that situation, the  
20 debtor isn't adopting any position that he has  
21 no cause of action. He's simply making an  
22 honest mistake. And -- and that's -- so  
23 that's --

24 JUSTICE ALITO: I'm not sure I  
25 understand that, the distinction in this

1 context, but I'll leave it at that.

2 Does the record show why the  
3 bankruptcy attorney did not list this as an  
4 asset?

5 MR. GARRE: It doesn't, Your Honor.  
6 The bankruptcy attorney did, in a sworn  
7 declaration in the record here, say that my  
8 client informed him of it, but he -- it doesn't  
9 explain why he didn't advise the court. I  
10 mean, that's something that potentially could  
11 come out in a holistic inquiry.

12 But I think, here, what matters is --  
13 is the debtor's intent in terms of whether or  
14 not the debtor was attempting to hide it.

15 JUSTICE ALITO: Well, do you think  
16 that -- that the client in a judicial estoppel  
17 situation has -- is to any degree responsible  
18 for the actions of the attorney?

19 MR. GARRE: I don't -- not --  
20 certainly, not in the normal sense that the  
21 court ordinarily would apply the client  
22 responsibility, Your Honor, because the key  
23 here is the -- the debtor's own intent in terms  
24 of whether the debtor was trying to hide  
25 anything because it's the debtor who's going to

1 a different court and asserting his cause of  
2 action.

3 And so I think that that's a factor,  
4 and I think, frankly, the fact that the debtor  
5 here told his attorney promptly after the  
6 accident is a factor that cuts in his favor,  
7 that he wasn't trying to hide anything from the  
8 bankruptcy court. And there are many other  
9 factors that go to that.

10 But what we really want is an  
11 opportunity for a holistic analysis that, under  
12 the Fifth Circuit's rule, we never -- we never  
13 got.

14 JUSTICE ALITO: Would you disagree  
15 with the proposition that where there is a duty  
16 to disclose and a potential financial interest  
17 and the person who has that duty has a  
18 financial interest in not disclosing, that  
19 creates a pretty strong presumption of the --  
20 the requisite intent or knowledge?

21 MR. GARRE: Not in this context, Your  
22 Honor.

23 JUSTICE ALITO: No?

24 MR. GARRE: Because, here, I mean,  
25 again, the -- the brief by the amici former

1 bankruptcy judges themselves, piggybacking --  
2 piggybacking on the American Bankruptcy  
3 Institute's own findings, emphasized that these  
4 forms are confusing, hard to follow, even with  
5 the aid of attorneys.

6           So I think, in this context, where  
7 you're dealing with, you know, by and large,  
8 relatively unsophisticated people who lack  
9 legal training or the like, all of that factors  
10 into the judicial estoppel analysis here.

11           JUSTICE ALITO: There are factors here  
12 that seem perhaps confined to the bankruptcy  
13 situation and to the way in which proceedings  
14 are often conducted in bankruptcy court, which  
15 I think are not always -- it -- it's not always  
16 a forum in which scrupulous compliance -- very  
17 meticulous compliance with all the rules apply.

18           But I don't quite understand why the  
19 bankruptcy attorney didn't disclose. I don't  
20 quite understand why the creditors here had no  
21 interest apparently in having this as an asset  
22 of the estate.

23           MR. GARRE: Well, the creditors were  
24 being --

25           JUSTICE ALITO: Can you explain what's

1 going on? Is it just because this is Chapter  
2 13 and it's not -- it's just handled in a -- in  
3 a -- in a rather informal way?

4 MR. GARRE: So, Your Honor, I mean,  
5 that's part of -- part of it. I mean, here,  
6 the creditors were paid 100 percent on -- on  
7 the plan and ultimately were paid off.

8 If any creditor had any concern about  
9 the payments on the plan or how this asset  
10 would have affected the estate, they could have  
11 taken action in the nearly one year between the  
12 time when Mr. Keathley advised the court of the  
13 cause of action and before his -- his -- his  
14 bankruptcy was completed. And all of that  
15 would be part of the mix here, the fact that no  
16 creditors even complained.

17 There's a debate as -- in -- in the  
18 law as to whether or not there was any interest  
19 available here. I mean, again, as the amici  
20 former bankruptcy judges explained, we don't  
21 think interest was available here. So the  
22 creditors were getting and did get everything  
23 they were entitled to --

24 JUSTICE ALITO: All right. Thank you.

25 MR. GARRE: -- in the bankruptcy.

1 CHIEF JUSTICE ROBERTS: Justice  
2 Sotomayor?

3 JUSTICE SOTOMAYOR: I don't know how  
4 much this law -- personal injury lawsuit would  
5 garner, but the choice for the creditors was an  
6 unknown sum of recovery, some of which would  
7 have been paid to medical injuries and to  
8 supplement lost income versus the security of  
9 having full payment, correct?

10 MR. GARRE: That's -- that's correct,  
11 Your Honor.

12 JUSTICE SOTOMAYOR: And having the  
13 bankruptcy last forever without full payment?

14 MR. GARRE: That's correct. And, you  
15 know, creditors are uniquely situated to  
16 protect their own interests. If they thought  
17 anything wrong had happened or there was a --  
18 they had a stake in the cause of action, they  
19 would have acted here. No creditor objected.

20 JUSTICE SOTOMAYOR: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice Kagan?

22 JUSTICE KAGAN: Mr. Garre, your --  
23 your brief speaks often of bad faith, of  
24 whether the debtor had bad faith in making  
25 these inconsistent representations. Are you

1 equating that -- you haven't spoken of it very  
2 much today. Are you equating it with the kind  
3 of intent that you have been talking about?

4 MR. GARRE: Yes. I mean, the courts  
5 refer to bad faith here in cases from -- here  
6 and there. I mean, we're not suggesting that  
7 this is an inquiry into whether there was an --  
8 an intent to -- to defraud the court or  
9 anything like that. I think what the -- the  
10 doctrine looks to is the intentional  
11 inconsistency and where a litigant makes an  
12 intentional inconsistency to gain an unfair  
13 advantage through the courts.

14 This Court recognized in New Hampshire  
15 that that undermines the integrity of the court  
16 and that that -- that is sort of, you know,  
17 consistent with an intent to mislead the court  
18 often. But we're not suggesting that a finding  
19 of, you know, actual bad faith is -- is  
20 necessary or part of the -- part of the  
21 analysis.

22 JUSTICE KAGAN: But are you suggesting  
23 that this finding of intentional  
24 misrepresentation is necessary? This goes to  
25 Justice Gorsuch's question again --

1 MR. GARRE: Yeah.

2 JUSTICE KAGAN: -- and also to the  
3 Chief Justice's when he opened when he said,  
4 you know, in the end, judicial estoppel is  
5 about the integrity of the courts.

6 And aren't there circumstances in  
7 which, even though you couldn't find that kind  
8 of intentionality on the part of the debtor or  
9 the part of somebody else making the  
10 representations, still, the integrity of the  
11 courts is on the line?

12 MR. GARRE: So I don't think the Court  
13 has to rule that out. I mean, I think the  
14 courts, you know, just as frequently talk about  
15 how judicial estoppel doesn't apply in the case  
16 of inadvertence or mistake. And we think, in  
17 that situation, where a party, because of a  
18 mistake, hasn't intentionally adopted a  
19 particular position, that there is not the same  
20 kind of threat to the judiciary.

21 But this Court doesn't need to say  
22 here that judicial estoppel is never  
23 appropriate in any situation in which a party  
24 makes a mistake. I mean, we think it's an  
25 important factor. The Court recognized it in

1 New Hampshire, other courts have universally  
2 recognized it, and it's particularly important  
3 and applicable in this unique context.

4 JUSTICE KAGAN: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice  
6 Gorsuch?

7 JUSTICE GORSUCH: Very briefly,  
8 Mr. Garre, I -- I -- I take your point that you  
9 don't need to have an intention to mislead the  
10 court. You say, though, an intention to pursue  
11 inconsistent positions is required.

12 I just don't see that in New Hampshire  
13 either. I see you have to take inconsistent  
14 positions, but I'm not sure I see that you have  
15 to intentionally do so. Am I missing something  
16 there?

17 MR. GARRE: So I think, in New  
18 Hampshire, on page 750, it talked about  
19 prohibiting parties from deliberately changing  
20 positions according to the exigencies. I mean,  
21 the Court cited lower court cases like Scarano,  
22 which talked about --

23 JUSTICE GORSUCH: It does cite lower  
24 court cases, but when it -- when it actually  
25 lists the factors, it just says inconsistent

1 positions and deriving an unfair advantage from  
2 them on page 750.

3 MR. GARRE: But then I think the --  
4 I'm sorry, Your Honor.

5 JUSTICE GORSUCH: No, go ahead,  
6 please.

7 MR. GARRE: But then I think, when the  
8 Court later in applying the factors says  
9 that -- that courts have resisted application  
10 in the instance of mistake or --

11 JUSTICE GORSUCH: Yes, inadvertence  
12 and mistake. That we know to be true. That  
13 New Hampshire definitely does say.

14 MR. GARRE: Right.

15 JUSTICE GORSUCH: And I guess that  
16 leads me to this. Judicial estoppel is kind of  
17 an off-branch of equitable estoppel and is a  
18 relatively new invention dating to -- well,  
19 new -- date -- dates to the mid-19th century.  
20 For law, I guess that's new sometimes.

21 And we have exactly one opinion on the  
22 subject, New Hampshire. That's it. We haven't  
23 developed the law very much yet. And I wonder  
24 whether you would be content with the following  
25 ruling and, if not, why not.

1           We've said inadvertence and mistake is  
2 not a basis for judicial estoppel. The Fifth  
3 Circuit glossed that rule with one of its own,  
4 a bright-line rule that it's never inadvertence  
5 and mistake when there's a knowing omission and  
6 there's a motive.

7           Would it be enough to simply say we  
8 don't need a further gloss on inadvertence and  
9 mistake, this is an equitable doctrine, go back  
10 and do it again, looking to what we've said?

11           MR. GARRE: So that would be an  
12 improvement, Your Honor, but I think that what  
13 the court need -- what the -- the Fifth Circuit  
14 needs guidance on is that you really have to  
15 take this holistic analysis in terms of whether  
16 or not there was a mistake, and I, you know --

17           JUSTICE GORSUCH: Yes. I'm -- I'm  
18 giving you that.

19           MR. GARRE: Right.

20           JUSTICE GORSUCH: I'm just simply  
21 saying their bright-line rule on what does and  
22 does not qualify as inadvertence and mistake  
23 is -- is not what we said in New Hampshire, go  
24 back and try again.

25           Maybe -- maybe applying state law,

1 maybe taking cognizance of the bankruptcy  
2 context, all these kinds of additional  
3 concerns, but -- but a very short and succinct  
4 opinion saying look at New Hampshire.

5 MR. GARRE: So I think that that would  
6 be fine. Obviously, the devil's in the  
7 details, Your Honor, but I think what -- what's  
8 critical there is that --

9 JUSTICE GORSUCH: I don't think there  
10 would be many details in what I've outlined.

11 MR. GARRE: The -- that the upshot  
12 would be is that in this instance, if the  
13 courts conclude that a debtor's failure to  
14 update a form was simply an honest mistake that  
15 it generally -- it would be inappropriate to  
16 apply judicial estoppel, and that's -- that's  
17 the baseline.

18 JUSTICE GORSUCH: If it's inadvertent  
19 or mistaken?

20 MR. GARRE: Yes.

21 JUSTICE GORSUCH: Okay. Honest  
22 mistake. Okay. Thank you.

23 CHIEF JUSTICE ROBERTS: Justice  
24 Kavanaugh?

25 JUSTICE KAVANAUGH: Is there any

1 difference between a knowing inconsistency and  
2 an intentional inconsistency? I'm not sure  
3 about your answer to that.

4 MR. GARRE: I don't think so, Your  
5 Honor. But the -- the point that's critical  
6 here is that a court has to determine that when  
7 the debtor failed to update his form, he was  
8 knowingly or intentionally adopting the  
9 position that no cause of action exists, and --  
10 and instead of --

11 JUSTICE KAVANAUGH: So no daylight?  
12 I'm just making sure.

13 MR. GARRE: Well, I mean, I -- look,  
14 in the law, there -- there probably is a  
15 difference between knowing, willingness --

16 JUSTICE KAVANAUGH: Well, in this. I  
17 know in the law.

18 MR. GARRE: -- intentional.

19 JUSTICE KAVANAUGH: In this context,  
20 is there any daylight between a knowing  
21 inconsistency and an intentional inconsistency  
22 as you see it?

23 MR. GARRE: As a practical matter, I  
24 don't think there is. I will say that the  
25 courts have talked about intentional

1 inconsistency. I mean, that's the language  
2 this Court piggy-backed on for the lower court  
3 cases.

4 JUSTICE KAVANAUGH: Well, I think that  
5 creates confusion, as Justice Gorsuch was  
6 talking about.

7 MR. GARRE: Yeah. So, I -- I mean,  
8 I -- I think the intent -- the intent language  
9 is well taken. I mean, if this Court believes  
10 that -- that the knowing language is -- is more  
11 suited to the doctrine, I mean, I think that  
12 would lead to the same conclusion here, and  
13 that's -- that's what we're up here fighting  
14 for.

15 JUSTICE KAVANAUGH: Thank you.

16 MR. GARRE: Thank you, Your Honor.

17 CHIEF JUSTICE ROBERTS: Justice  
18 Barrett?

19 Justice Jackson?

20 JUSTICE JACKSON: So I'm noting that  
21 New Hampshire wasn't a bankruptcy case, and I'm  
22 thinking that maybe judicial estoppel is sort  
23 of a poor fit for this context because, even if  
24 there is an intentional omission, however we  
25 define that, the -- the bankruptcy court has

1 many, many tools, I think -- this is sort of  
2 what Justice Sotomayor was alluding to -- to  
3 solve that problem when it comes to its  
4 attention, and to prevent the estate from  
5 getting this additional asset seems to harm the  
6 creditors in ways that I don't think are  
7 consistent with the way we understand  
8 bankruptcy.

9           So, I mean, in addition to Justice  
10 Gorsuch's solution, I suppose one thing could  
11 be to think about whether judicial estoppel is  
12 really the right remedy here.

13           MR. GARRE: So I -- I -- again, I'm  
14 not going to quarrel with anything that results  
15 in a conclusion that judicial estoppel doesn't  
16 apply. But what -- what I think is important  
17 here is what the bankruptcy -- the bankruptcy  
18 court has control of these proceedings and its  
19 actions or inactions should be an important  
20 factor in determining whether or not judicial  
21 estoppel is appropriate.

22           JUSTICE JACKSON: Do you know if  
23 there's ever a world in which -- is -- is it  
24 after the bankruptcy closes that this  
25 information comes to the bankruptcy court's

1 attention, is there nothing that could be done  
2 at that point, or --

3 MR. GARRE: So it can be reopened.

4 JUSTICE JACKSON: It can be?

5 MR. GARRE: It can be reopened.

6 JUSTICE JACKSON: So there's always an  
7 opportunity to take advantage?

8 MR. GARRE: Right. And I'm not going  
9 to -- I'm not going to make my friend's  
10 argument. What I would say, though, is I think  
11 that the courts have assumed judicial estoppel  
12 is applied here because, on the theory that the  
13 second court is being duped, so to speak, in --  
14 in the sense that there's inconsistent  
15 positions, and so it's -- it's a threat to the  
16 second court, but -- but I think Your Honor's  
17 point is exactly right that the bankruptcy  
18 context is unique and that there's an important  
19 role for the bankruptcy courts --

20 JUSTICE JACKSON: And the second  
21 court's proceed --

22 MR. GARRE: -- and a lot of this can  
23 be resolved.

24 JUSTICE JACKSON: And the second  
25 court's proceedings are sort of completely

1 independent, right?

2 MR. GARRE: Yes.

3 JUSTICE JACKSON: I mean, they're  
4 arising out of facts that have nothing to do  
5 with the bankruptcy.

6 MR. GARRE: Exactly.

7 JUSTICE JACKSON: Right.

8 MR. GARRE: And that -- that  
9 underscores the windfall that the defendant is  
10 getting. The defendant in the second  
11 proceeding has no connection to the bankruptcy,  
12 and yet the defendant walks away scot-free.

13 JUSTICE JACKSON: Thank you.

14 MR. GARRE: And that's not equitable  
15 in any sense.

16 CHIEF JUSTICE ROBERTS: Thank you,  
17 counsel.

18 MR. GARRE: Thank you, Your Honor.

19 CHIEF JUSTICE ROBERTS: Mr. Liu.

20 ORAL ARGUMENT OF FREDERICK LIU  
21 FOR THE UNITED STATES, AS AMICUS CURIAE,  
22 SUPPORTING VACATUR

23 MR. LIU: Thank you, Mr. Chief  
24 Justice, and may it please the Court:

25 Whoops, I spilled the water. That's a

1 first.

2           Judicial estoppel should apply only if  
3 the balance of equities supports it. In New  
4 Hampshire versus Maine, this Court described  
5 factors relevant to that balance.

6           Those factors include whether a party  
7 derived an unfair advantage from the prior  
8 position, whether that position was the product  
9 of inadvertence, and whether judicial estoppel  
10 is consistent with broader public interests.

11           Here, the Fifth Circuit made two  
12 errors. One is the error Petitioner has  
13 focused on this morning. The Fifth Circuit  
14 reduced inadvertence to just two  
15 considerations, thereby failing to consider the  
16 totality of the relevant evidence, including  
17 evidence that Petitioner reasonably believed  
18 that he had no duty to disclose his tort claim  
19 while a damages award was still a long ways  
20 off.

21           But the other error is, in our view,  
22 even more fundamental. The Fifth Circuit  
23 effectively reduced the entire balance of  
24 equities to a single factor, inadvertence,  
25 thereby ignoring the interests of innocent

1 creditors and the bankruptcy's court ability to  
2 undo any unfair advantage. Therefore, the  
3 decision below should be vacated and the case  
4 remanded.

5 I welcome the Court's questions.

6 JUSTICE THOMAS: Mr. Liu, I'd like you  
7 to take a step back to New Hampshire. New  
8 Hampshire was quite a different case from this.  
9 New Hampshire involved litigation between Maine  
10 and New Hampshire over the boundaries.

11 In two earlier cases, New Hampshire  
12 had accepted that the middle of the river was  
13 the boundary, and in the subsequent litigation,  
14 it changed and argued that the boundary was to  
15 the Maine shore.

16 And what the Court said in Justice  
17 Ginsburg's opinion was that you could not, to  
18 your advantage, change positions like that and  
19 hence judicial estoppel.

20 How does that fact pattern allow us to  
21 decide this case based on New Hampshire?

22 MR. LIU: Well, I -- I -- you're right  
23 that the specific context of New Hampshire is  
24 far different from a bankruptcy case whereas  
25 some justices have already mentioned the -- the

1 two proceedings, the bankruptcy case --

2 JUSTICE THOMAS: Well, I'm not as  
3 interested in the bankruptcy case. I'm  
4 interested in the fact that the litigation was  
5 between the same parties, between New Hampshire  
6 and Maine. Here, that you do not have that  
7 mutuality.

8 MR. LIU: That's right. And I -- I --  
9 I -- I -- I think what this points up is that,  
10 for judicial estoppel to apply, the balance of  
11 equities has to support it. And in New  
12 Hampshire versus Maine, I think it was  
13 important to the balance of equities that you  
14 had two co-equal sovereigns that had been  
15 involved in the same litigation many years  
16 prior. That's part of the balance of equities.

17 Our submission here is a court  
18 shouldn't blind itself to the balance of  
19 equities in this context either. I think what  
20 New Hampshire versus Maine teaches is there are  
21 two kind of essential elements of judicial  
22 estoppel. Those are the first two factors.  
23 You've got to have inconsistent statements and  
24 you've got to have the first statement relied  
25 upon by the court.

1           But, beyond that -- and this is on  
2 pages 750 to 756 of the Court's opinion -- it's  
3 a balance-of-equities analysis. You look to  
4 see if one party derived an unfair advantage.  
5 You look to see if the prior position was the  
6 product of inadvertence. You look at the  
7 broader public interest, including the fact  
8 that these were two coequal sovereigns that  
9 were involved in the same case earlier, and you  
10 ask, after considering the entire balance of  
11 equities, whether judicial estoppel is  
12 appropriate.

13           I think what's really wrong about the  
14 Fifth Circuit's decision in this case is, if  
15 you look at Pet. App. 9A, it reduced that  
16 entire balance to just one factor, which is  
17 inadvertence.

18           And then, beyond that, compounding  
19 that error, it turned inadvertence into just  
20 two considerations, knowledge of the facts and  
21 potential motive, which -- which is not a --  
22 a -- a totality analysis of even the one factor  
23 the Fifth Circuit thought it should consider.

24           JUSTICE KAGAN: Mr. Liu, I guess I'm  
25 not sure I understand how what you're saying

1 right now fits with this footnote that you  
2 wrote. This is page 24 in your brief, Footnote  
3 2, where you say we shouldn't talk about  
4 whether inadvertence always precludes judicial  
5 estoppel.

6 And I hear you saying now we should  
7 talk about that. We should say inadvertence is  
8 just one factor. It doesn't always preclude  
9 judicial estoppel. Am -- am I wrong about that  
10 there's a shift here?

11 MR. LIU: I -- I -- I wouldn't say  
12 it's a shift in this sense, and -- and I -- I  
13 think there are two -- two analytical things at  
14 issue. One question is, what goes on the  
15 balance? And we think that is an important  
16 question. The Court should address what goes  
17 on the balance is not just inadvertence but  
18 also unfair advantage, other interests, et  
19 cetera. That's all what goes on the balance.

20 I think there is a separate analytical  
21 question about how those various factors relate  
22 to each other. And what we mean by Footnote 2  
23 is this Court doesn't need to decide whether  
24 one factor, if it exists, is necessarily going  
25 to trump the other factors. We think it's

1 enough for this Court to basically reiterate  
2 what it said in New Hampshire versus Maine,  
3 which is the balance of equities isn't just one  
4 factor, it's all these factors. The Court said  
5 it was non-exhaustive in the end.

6 JUSTICE KAGAN: But do you agree with  
7 this, that in -- even if you had all the intent  
8 in the world, it doesn't necessarily get you  
9 judicial estoppel, and, conversely, even if  
10 there was complete inadvertence, it doesn't  
11 necessarily preclude judicial estoppel?

12 MR. LIU: That is the government's  
13 position. I think that's that second bucket of  
14 analysis. The Court doesn't need to go that  
15 far. I think the Court can just say, look, if  
16 you're a lower court, you should be looking at  
17 all the factors.

18 It may well be that one factor turns  
19 out to be dispositive. After you've -- you've  
20 seen a bunch of cases, maybe you can reach that  
21 conclusion. But, at this -- at this part of  
22 the analysis, you should at least have in full  
23 view all the relevant factors.

24 JUSTICE KAGAN: And is the idea behind  
25 this that everything needs to be filtered

1 through the principal purpose of judicial  
2 estoppel, which is protecting the integrity of  
3 the courts, and that this question of  
4 intentionality may coincide with that principal  
5 purpose but in certain cases may not?

6 MR. LIU: Correct. We -- we -- we  
7 think, certainly, when a party has deliberately  
8 taken a prior position, as opposed to having  
9 taken it by inadvertence, it certainly  
10 heightens the impression that I think judicial  
11 estoppel is trying to avoid, and that  
12 impression is the impression that courts are  
13 just arbitrarily giving a party whatever it  
14 says it wants.

15 But, conversely, there may be cases  
16 where the first party gets a tremendous  
17 advantage even though it took that position  
18 inadvertently, and it doesn't make sense, it  
19 just wouldn't be fair, to allow that party to  
20 obtain a further advantage in the second  
21 proceeding.

22 JUSTICE GORSUCH: Mr. Liu, I -- I take  
23 your point that inadvertence and mistake may  
24 not automatically defeat judicial estoppel.  
25 But I'm also not sure we need to get into what

1 all the factors are or even talk about a  
2 holistic analysis given, as Justice Thomas  
3 pointed out, New Hampshire was -- really could  
4 have been an equitable estoppel case. Forget  
5 about judicial estoppel. And the bankruptcy  
6 context is different. And we have an Erie  
7 problem and all these -- why not just simply  
8 say the factor of -- of inadvertence and  
9 mistake, whatever it means, doesn't mean what  
10 the Fifth Circuit said it meant, good-bye?

11 MR. LIU: That is a sufficient ground  
12 for vacating and remanding. We --

13 JUSTICE GORSUCH: And you have no  
14 problem with that?

15 MR. LIU: We have no problem with  
16 that. We just wanted the Court to be aware,  
17 when it's considering the scope of  
18 inadvertence, that it may not be the be all/end  
19 all of the analysis, that you can't -- you  
20 might not necessarily hang everything in the  
21 case on whether it's inadvertent or not.

22 JUSTICE GORSUCH: We don't even need  
23 to take a view on that, it seems to me. Maybe  
24 some future case, there would be a reason to  
25 make it a bright-line rule. Maybe not, as you

1 say. We don't have to take a position in this  
2 case on that, do we?

3 MR. LIU: That's -- that's right.  
4 And, really, our submission is you -- you don't  
5 need to move the lines you drew in New  
6 Hampshire versus Maine an inch. New Hampshire  
7 versus Maine said inadvertence may be  
8 appropriate to resist -- resist the application  
9 of judicial estoppel if the party's prior  
10 position was the product of inadvertence.  
11 We -- we're happy with -- with -- with that  
12 statement of what the law is.

13 JUSTICE GORSUCH: Thank you.

14 MR. LIU: We dispute the way  
15 inadvertence was defined here.

16 CHIEF JUSTICE ROBERTS: Well, I mean,  
17 New Hampshire against Maine, it's featured  
18 prominently because it's the only thing. I --  
19 I wonder if saying anything about it -- I mean,  
20 it's two sovereign states against each other  
21 and the boundaries, you know, I'm not sure that  
22 we should try to bring it into play any more  
23 than is necessary.

24 MR. LIU: I don't -- I don't really  
25 quibble with that at all. I -- I -- I read New

1 Hampshire versus Maine as setting forth pretty  
2 high-level principles. I mean, the principles  
3 I understand that decision to set forth are the  
4 balance of equities matters and the list of  
5 equities is kind of non-exhaustive, and  
6 inadvertence may be one of those factors.

7 I think, at that level, there's  
8 nothing wrong with taking those principles and  
9 articulating them here. I agree, once you get  
10 into how those principles cash out, you may not  
11 be in a -- in a situation where New Hampshire  
12 versus Maine really speaks to that.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 Justice Thomas?

16 Justice Alito?

17 JUSTICE ALITO: No.

18 JUSTICE SOTOMAYOR: I'm -- I know I'll  
19 have a chance to speak to Justice Gorsuch  
20 later, but --

21 (Laughter.)

22 JUSTICE SOTOMAYOR: -- but you  
23 answered him --

24 JUSTICE GORSUCH: I look forward to  
25 it.

1 JUSTICE SOTOMAYOR: Always.

2 (Laughter.)

3 JUSTICE SOTOMAYOR: I don't know what  
4 you think simply saying they were wrong about  
5 inadvertence would get us because you came up  
6 here and said there were two fundamental errors  
7 and that -- and I thought, in describing the  
8 errors, both times, you -- you said the court  
9 failed to take into account totality of the  
10 circumstances.

11 So it wasn't just merely their failure  
12 to address inadvertence properly. They failed  
13 to do the holistic evaluation of what was the  
14 prejudice to the parties from that  
15 inadvertence. Even if it was deliberate, it  
16 could still -- you -- you've said all these  
17 other things. So I -- I'm not sure --

18 MR. LIU: I -- well, we -- we would  
19 certainly be more satisfied with an opinion  
20 that went further and said inadvertence is not  
21 the only factor. We think that just follows  
22 pretty directly from New Hampshire versus  
23 Maine.

24 To give one stark example, I mean, New  
25 Hampshire versus Maine --

1 JUSTICE SOTOMAYOR: No, I -- I -- I --  
2 but why did you say yes --

3 MR. LIU: Oh. Well --

4 JUSTICE SOTOMAYOR: -- to an opinion  
5 that basically brings us back here? Because I  
6 can see the Fifth Circuit saying exactly what  
7 it said below. If you know you didn't say it,  
8 it's intentional; it's not inadvertence. So  
9 they've already answered that question.

10 MR. LIU: Yeah. No. So --

11 JUSTICE SOTOMAYOR: And so I'm not  
12 sure --

13 MR. LIU: I don't think they -- so  
14 this is getting to the error, I think, that  
15 this Court should really -- needs to correct  
16 because it is core to the dispute between the  
17 parties, which is this is what -- this is the  
18 real definition -- this is the correct  
19 definition in our view of -- of -- of  
20 inadvertence versus non-inadvertence.

21 We think, in all cases, the relevant  
22 question is, did the party deliberately take  
23 the prior position? In other words, did the  
24 party deliberately choose Position X --

25 JUSTICE SOTOMAYOR: So does it come

1 down to the Fifth Circuit not coming back to us  
2 and saying he told his attorney, but the  
3 attorney didn't tell the court, and you're  
4 responsible for your attorney's errors?

5 MR. LIU: So we do --

6 JUSTICE SOTOMAYOR: Which is what we  
7 usually say.

8 MR. LIU: We do think the attorney is  
9 responsible. The attorney's conduct does bind  
10 the client. And --

11 JUSTICE SOTOMAYOR: And so that's what  
12 the Fifth Circuit basically said here, that the  
13 attorney knew. The attorney didn't say it. So  
14 you -- we're -- we're back to the circle.

15 MR. LIU: Well, here -- here's --  
16 here's -- here are two errors, I think, the --  
17 the Fifth Circuit made just as to inadvertence.  
18 One is it deemed irrelevant -- and this is on  
19 Pet. App. 13a -- any evidence regarding the  
20 attorney's knowledge of whether the duty to  
21 disclose applied in this case. That is a  
22 bucket of relevant evidence that -- relevant  
23 and -- and mainly objective evidence, in our  
24 view, that the Fifth Circuit didn't consider.

25 And the second error is, even with

1 respect to its analysis of the potential motive  
2 that Justice Alito brought up, the Fifth  
3 Circuit's analysis was incomplete. I mean, the  
4 record suggests many reasons why there was no  
5 modification of the plan when this -- when this  
6 tort claim was ultimately disclosed. The fact  
7 is, no matter when you disclosed it, it would  
8 have been years before this claim would have  
9 become an award of damages.

10 JUSTICE SOTOMAYOR: So, in one word,  
11 I'd do a simple opinion that says you have to  
12 look at the totality of the circumstances and  
13 you can't reduce it to the three factors that  
14 you mention alone.

15 MR. LIU: That's right.

16 JUSTICE SOTOMAYOR: That would be my  
17 opinion.

18 MR. LIU: That -- that's right. And  
19 the -- and the Fifth Circuit ignored evidence  
20 relevant to the knowledge of the duty and  
21 ignored evidence pertaining to the potential  
22 motive prong --

23 JUSTICE SOTOMAYOR: All right. Thank  
24 you, counsel.

25 MR. LIU: -- that the Fifth Circuit

1 did consider.

2 CHIEF JUSTICE ROBERTS: Justice Kagan?

3 Justice Gorsuch?

4 Justice Kavanaugh?

5 Justice Barrett?

6 Justice Jackson?

7 Thank you, counsel.

8 Mr. Jay.

9 ORAL ARGUMENT OF WILLIAM M. JAY

10 ON BEHALF OF THE RESPONDENT

11 MR. JAY: Mr. Chief Justice, and may

12 it please the Court:

13 The question the Court agreed to  
14 decide in this case is not about whether there  
15 was a clear inconsistency between the  
16 representations but about whether proof of bad  
17 faith is required before judicial estoppel can  
18 apply. And the answer should be no.

19 Where the same litigant seeks to win a  
20 second victory on grounds that are clearly  
21 inconsistent with the grounds on which he won  
22 the first victory, that undermines the  
23 integrity of the judicial process, and it is  
24 not necessary to also prove that -- as Mr. Liu  
25 just said, that the -- that litigant intended

1 to switch positions all along.

2 I'd like to make basically three basic  
3 points, one about precedent, one about  
4 practicalities, and one about bankruptcy.

5 The first is that there are multiple  
6 cases, not just New Hampshire, also the 19th  
7 century cases that New Hampshire addressed. I  
8 don't think Petitioner's rule can explain any  
9 of them. One key thing that New Hampshire says  
10 is that mistake or inadvertence looks at Time  
11 1, not Time 2. And I -- I think there's been a  
12 lot of inconsistency with the other side's  
13 presentation this morning about whether they  
14 look at Time 1 or Time 2.

15 Second, in practice, as the district  
16 court noted, basically, every litigant facing  
17 judicial estoppel who claims his original  
18 position was a mistake, under the other side's  
19 rule, would just -- just a declaration claiming  
20 a lack of legal understanding or that the  
21 attorney gave bad advice would be enough for a  
22 trial.

23 And, third, although we are not urging  
24 a special rule for bankruptcy cases, as the  
25 other side is, we think that our rule better

1 fits the bankruptcy context anyway.  
2 Petitioner's rule would undermine the full  
3 disclosure of assets on which the bankruptcy  
4 bargain depends.

5 A doctrine, as Judge Easterbrook puts  
6 it, that encourages debtors to be truthful in  
7 their bankruptcy filings will assist creditors  
8 in the long run. That is why our rule does not  
9 deprive creditors of recoveries that they would  
10 otherwise be able to get. District courts  
11 might well exercise their discretion at the  
12 margin in favor of less culpable litigants, but  
13 there's no reason to make bad faith a  
14 prerequisite.

15 I welcome the Court's questions.

16 JUSTICE THOMAS: Is there any  
17 difference between your rule and the Fifth  
18 Circuit's rule?

19 MR. JAY: Not in practice and  
20 certainly -- certainly not in this case.  
21 The -- the one -- if -- if -- if I were writing  
22 the rule for all circumstances, I would say  
23 that the question of benefit, which the Fifth  
24 Circuit describes as part of the inadvertence  
25 or mistake inquiry, I think New Hampshire would

1 put that earlier in the analysis.

2 And the core -- New Hampshire's core  
3 three factors are clear inconsistency, accepted  
4 by the tribunal, and getting some benefit that  
5 would be inequitable for you to keep.

6 And I think that we -- we would put  
7 the -- sort of the financial aspect of the  
8 benefit that the litigant gains from the  
9 bankruptcy in that bucket instead. I don't  
10 think that's a -- that's an analytical point.  
11 I don't think it makes any difference in this  
12 case.

13 So we certainly agree with the Fifth  
14 Circuit that the question is not whether the --  
15 the litigant himself got bad legal advice or  
16 was subjectively aware of the legal duty as  
17 opposed to the facts.

18 JUSTICE THOMAS: New Hampshire also  
19 considered the detriment to the party before  
20 the court in the subsequent litigation. What  
21 is the detriment to your client?

22 MR. JAY: So, in New Hampshire, the  
23 Court said or, in other words, that it's an  
24 either benefit to the party that took the  
25 position or a detriment to the adversary. And

1 I think New Hampshire is unusual, and your  
2 question to my friend earlier about mutuality  
3 gets to this.

4 It is actually unusual for judicial  
5 estoppel to be -- to come up in a second piece  
6 of litigation before the same -- involving the  
7 same parties precisely because the second -- if  
8 it's the same party, they're well positioned to  
9 call the person out for switching positions.

10 In the Philadelphia, Wilmington  
11 Railroad case that New Hampshire discussed, you  
12 know, it's been -- it's been settled since the  
13 1850s that this is primarily a doctrine about  
14 defending the courts' integrity, and for that  
15 reason, mutuality is not required.

16 JUSTICE THOMAS: What's -- how would  
17 you respond to Petitioner's argument that this  
18 is a windfall for your client?

19 MR. JAY: I think it -- it's just the  
20 same point, that the -- the way in which a  
21 court's integrity is preserved through the use  
22 of this doctrine is that the litigant against  
23 whom the inconsistent representation is being  
24 made points it out to the court and so, in --  
25 in that sense, because mutuality isn't

1 required, it is that litigant's standing in for  
2 the court and pointing out that the court is  
3 about to be misled by the common litigant who  
4 took the -- the clearly inconsistent position  
5 in the prior action.

6           So I understand the windfall point,  
7 but I think that's just -- you might say the  
8 same thing about res judicata, collateral  
9 estoppel, that the -- the system cares more  
10 about locking down the first determination and  
11 preventing it from being relitigated rather  
12 than saying, well, the correct answer would be  
13 to side against the second litigant rather than  
14 the first.

15           CHIEF JUSTICE ROBERTS: Well, but it's  
16 not really just relitigation. It's a new  
17 person jumping on to the scene. It does  
18 seem -- in terms of the courts' integrity, it  
19 does seem a little much that the one person  
20 who's getting off is the one who -- whose truck  
21 hit the other guy, right?

22           I mean, it's a lot easier to explain  
23 why that's a bad result than simply the idea  
24 that, oh, there was something else that went on  
25 that the court didn't know about and now you're

1 going to change the -- the natural sense of the  
2 propriety of the result by saying the one  
3 person who we know inflicted harm, according to  
4 the allegations, of course, gets off scot-free.

5 MR. JAY: So I think that's a  
6 consequence, Your Honor, of the fact that if  
7 this comes up, it comes up at a time when it's  
8 too late to reopen the first proceeding. This  
9 goes to a question that Justice Sotomayor  
10 asked, that one of the elements of judicial  
11 estoppel is that the first proceeding has  
12 already resulted in some benefit to the -- to  
13 the common litigant.

14 And so every court of appeals that has  
15 applied New Hampshire to the bankruptcy context  
16 has agreed with the basic proposition in this  
17 case, although I think it's one that Mr. Garre  
18 seems to be disagreeing with, that a  
19 representation to the bankruptcy court that  
20 there is no cause of action is inconsistent  
21 with asserting in a subsequent action that  
22 there is a cause of action, just like asserting  
23 ownership of a piece of property or a -- a  
24 different legal interest, asserting that you  
25 don't own that property in one action is

1 inconsistent with assert -- with trying to  
2 invoke the ownership right in a second action.

3 JUSTICE JACKSON: Yes, it's  
4 inconsistent, but what is the advantage that is  
5 gained from that in this situation?

6 MR. JAY: So the advantage in a -- in  
7 a bankruptcy in which the debtor has an  
8 incentive to minimize assets is the ability to  
9 convince the bankruptcy court that -- so this  
10 is a Chapter 13 case, taking this as an  
11 example, that a Chapter 13 would be just as  
12 much in the creditors' interest as a Chapter 7,  
13 which is always the --

14 JUSTICE JACKSON: I understand. But  
15 the bankruptcy court could convert the  
16 proceeding if that information is brought to  
17 their attention. The creditors apparently in  
18 this case, for whatever reason, said we don't  
19 care.

20 I don't understand what the advantage  
21 is that is being apparently at the heart of  
22 your concern that judicial integrity is  
23 threatened or something in this situation.

24 MR. JAY: The advantage that a  
25 litigant gets is getting -- is convincing the

1 bankruptcy court to confirm the Chapter 13  
2 plan --

3 JUSTICE JACKSON: Not a litigant, this  
4 litigant. In other words, in these  
5 circumstances --

6 MR. JAY: Oh, sure.

7 JUSTICE JACKSON: -- because, as  
8 others have pointed out, we're talking about a  
9 totality of the circumstances, you know,  
10 equitable assessment of whether judicial  
11 estoppel should be applied.

12 MR. JAY: Right. And the facts -- I  
13 mean, if you want me to talk about the facts of  
14 this case, so, in this case, at the time that  
15 the debtor had the cause of action, the debtor  
16 also fell behind on payments and had to -- had  
17 to submit additional amendments to the -- or  
18 modifications to the Chapter 13 plan.

19 And the trustee initially objected to  
20 the first of those amendments and said this  
21 amended plan doesn't leave unsecured creditors  
22 as well off as a Chapter 7.

23 JUSTICE JACKSON: And once the  
24 information was brought to their attention, no  
25 one sought interest, no one thought the plan

1 should change in any way?

2 MR. JAY: So, respectfully, Your  
3 Honor, like, that's a -- that's a distinct  
4 point and I'm happy to address that because  
5 the -- this was brought to the bankruptcy  
6 court's attention such as it was.

7 And if you -- if you look at page 203,  
8 you'll see that the -- the debtors didn't  
9 actually disclose any valuation for this claim.  
10 They didn't change the sum total of their  
11 assets at all.

12 They just listed -- they mentioned the  
13 claim and said unknown. This, of course, was  
14 well into the payment plan. It's after the --  
15 the new confirmation had been granted. And at  
16 that point, I think it's not surprising that  
17 creditors who were receiving this stream of  
18 payments and weren't really told anything about  
19 this cause of action didn't affirmatively seek  
20 reopening of the -- the bankruptcy.

21 JUSTICE JACKSON: I guess my question  
22 is, is it fair to just assume or presume that  
23 by not having this information, an advantage  
24 has been obtained such that it makes sense and  
25 is equitable to preclude the debtor from

1 accessing or having this asset, which could, in  
2 some situations, actually go into the estate  
3 and be a part of the entire bankruptcy? It  
4 just seems very harsh.

5 MR. JAY: So I'm happy to --

6 JUSTICE JACKSON: Yes.

7 MR. JAY: -- I'm happy to answer  
8 the -- the question. Just let me note by my  
9 preface that the -- whether there has been an  
10 advantage gained, I think, as -- as -- this  
11 goes to much of my colloquy with Justice Thomas  
12 earlier -- I think that that's a different  
13 question than the one on which the Court  
14 granted cert. I mean, at the -- the --

15 JUSTICE JACKSON: Well, we certainly  
16 didn't grant cert on the bad faith. You said  
17 that at your original statement, and I took  
18 issue with it. The question the Court granted  
19 cert on, you said, was whether proof of bad  
20 faith is required.

21 MR. JAY: Right.

22 JUSTICE JACKSON: If you look at the  
23 actual question presented, it's whether the  
24 Fifth Circuit's formulation, which is requiring  
25 potential motive for disclosure, was correct.

1           MR. JAY: Right. But, if you --  
2 right. If you look at the last sentence of the  
3 question presented, right, it says that the  
4 reason that the -- that the Fifth Circuit is  
5 wrong is that it doesn't require proof of bad  
6 faith. And that is the -- that is the  
7 fundamental submission that we're making to the  
8 Court, that inadvertence or mistake, as an  
9 exception to the judicial estoppel doctrine,  
10 does not connote proof of bad faith.

11           I mean, it may --

12           JUSTICE BARRETT: Well, Mr. Jay, if  
13 we're talking about protecting the integrity of  
14 the courts, I just want to clarify a factual  
15 point. Am I correct that the bankruptcy court  
16 declined to sanction?

17           MR. JAY: No party asked for  
18 sanctions, Your Honor, so -- so that --

19           JUSTICE BARRETT: The bankruptcy court  
20 knew because this was brought, you know,  
21 your -- the -- let's see. It's my  
22 understanding the bankruptcy court knew about  
23 this because he ultimately did go back to the  
24 bankruptcy court and make the court aware. Am  
25 I right about that?

1           MR. JAY:  There's an amended schedule  
2           that, as I was saying to Justice Jackson,  
3           doesn't disclose the amounts but states that  
4           there is a claim -- for the first time that  
5           there is a claim under -- in the answer to  
6           Question 33 on the schedule.

7           JUSTICE BARRETT:  Maybe this --

8           MR. JAY:  That's after the  
9           confirmation.

10          JUSTICE BARRETT:  And maybe this goes  
11          to Justice Sotomayor's point and Justice  
12          Jackson's point to your friend on the other  
13          side, why isn't the bankruptcy -- in this  
14          context, why wouldn't we expect the bankruptcy  
15          court to be the one to police this?

16          MR. JAY:  I think that no one asked  
17          the bankruptcy court to take any action.  And  
18          it -- I -- it may well be that -- you know, as  
19          I was saying to Justice Jackson, that the  
20          creditors concluded that this late in the  
21          payment plan, it wasn't worth the candle to do  
22          so.

23          And the bankruptcy court -- and this  
24          is to the point that Justice Jackson asked my  
25          friend about.  The bankruptcy court may have

1 tools that it can use in bankruptcy in the  
2 sense of denying a discharge or denying access  
3 to Chapter 13 and forcing the case to be  
4 converted -- converted to Chapter 7 or even  
5 referring to criminal prosecution.

6 But all of those things go to the  
7 bankruptcy itself, rather than to the  
8 consistency of the representations between the  
9 bankruptcy and the -- and a subsequent  
10 proceeding.

11 JUSTICE GORSUCH: Mr. Jay, if we might  
12 zoom out just for a second, judicial estoppel  
13 is an off-branch of equitable estoppel.  
14 Equitable estoppel requires mutuality. Our  
15 judicial estoppel, one case, had mutuality,  
16 where a benefit gained by one party did cause a  
17 detriment to the other, could have been an  
18 equitable estoppel case.

19 This is where we don't have mutuality.  
20 And if -- if judicial estoppel is about  
21 protecting the integrity of the courts, I get  
22 the concern on the one side that there's  
23 perhaps a misrepresentation to bankruptcy  
24 court, subject to all the caveats we've  
25 discussed.

1           But the courts also have a duty and  
2 they're open to claims of personal injury. And  
3 to give your client a windfall would also seem  
4 to have some impact, again zooming out, on the  
5 -- on the integrity of the judicial process and  
6 its accessibility. No?

7           MR. JAY: I don't think so, Your  
8 Honor, any more than -- than issue preclusion  
9 does, which is the Court's --

10           JUSTICE GORSUCH: No, I understand we  
11 have non-issue issue preclusion, and -- and you  
12 -- you alluded to those. But those -- those  
13 doctrines are, again, new and riddled with  
14 exceptions when it comes to non-mutual  
15 collateral estoppel and -- and the like.

16           And -- and --and it does seem to me  
17 like what one -- often we don't do it when it's  
18 just not fair. And here how about, again, if  
19 we're concerned about the integrity of the  
20 judicial process, why isn't one consideration  
21 that your client would just get a plain old  
22 windfall?

23           MR. JAY: So the non-mutuality goes at  
24 least back to the Philadelphia Wilmington  
25 Railroad case in the 1850s, which --

1 JUSTICE GORSUCH: I'll give you --

2 MR. JAY: -- discussed in New  
3 Hampshire, right? So I resist the premise that  
4 -- that it is as new as, for example,  
5 non-mutual issue preclusion. And --

6 JUSTICE GORSUCH: Okay. I take the  
7 point.

8 MR. JAY: Right. And the -- the  
9 significance that we take from the fact that,  
10 as you said, issue -- sorry, judicial estoppel  
11 grows out of equitable estoppel is that  
12 equitable estoppel likewise doesn't have this  
13 state-of-mind requirement. It focuses on the  
14 -- on the --

15 JUSTICE GORSUCH: Not just -- put  
16 aside the state-of-mind requirement. Put that  
17 aside.

18 MR. JAY: Right.

19 JUSTICE GORSUCH: That's not relevant  
20 to my question.

21 MR. JAY: But I think that the reason  
22 that there is no state-of-mind requirement for  
23 equitable estoppel or judicial estoppel is that  
24 -- is that both doctrines focus on the effect.  
25 Equitable estoppel focuses on the effect to one

1 litigant. Judicial estoppel focuses on the  
2 effects on the judicial system.

3 JUSTICE GORSUCH: Yes, and -- and my  
4 question is one of the effects on the judicial  
5 system here is we're closing the courthouse  
6 doors to a good claim and allowing one party  
7 who has engaged in tortious conduct to walk  
8 away scot-free.

9 MR. JAY: We only -- the premise of  
10 your question, Your Honor, that it is a good  
11 claim, is --

12 JUSTICE GORSUCH: Let's assume -- I  
13 know you resist that, but let's just assume  
14 that for one --

15 MR. JAY: I'm not resisting it for the  
16 usual "I don't" -- you know, lawyers don't  
17 concede anything -- reasons.

18 JUSTICE GORSUCH: They never do.

19 (Laughter.)

20 MR. JAY: I'm resisting it because  
21 it's the very premise of judicial estoppel that  
22 we don't look past -- once the first case is  
23 over, we don't look past the accuracy of the  
24 representation in the first case.

25 That's the point. Right? The whole

1 point of the -- of the representation in the  
2 first case, whether it's New Hampshire or -- or  
3 this bankruptcy case or any of the other  
4 judicial estoppel cases, is the representation  
5 that, in this case, I don't have an asset of  
6 this nature.

7 JUSTICE GORSUCH: Thank you.

8 MR. JAY: Right. So I think that --  
9 that Mr. Garre, in his presentation, brought  
10 this, you know, back to the sort of the mantra  
11 of a failure to update a form. I -- I do want  
12 to resist that -- that characterization  
13 because, I mean, again, first the court didn't  
14 grant cert on the clear inconsistency point.

15 You know, there's no -- no  
16 disagreement in the courts of appeals that  
17 where there's a representation that a cause of  
18 action doesn't exist, that's inconsistent with  
19 asserting it. And in this case, there's no  
20 fact -- assertion of a factual lack of  
21 knowledge. In fact, the facts show that the --  
22 that all the facts were known.

23 There's also no dispute about the  
24 obligation to disclose. And this -- this goes  
25 -- this gets to a question I think that Justice

1 Alito asked my friend earlier, that where there  
2 is a duty to disclose, that failing to make a  
3 disclosure is a representation to the courts  
4 that there is nothing to disclose.

5 So because those aren't the questions  
6 before the Court, all I think that the other  
7 side is left with is saying that they resist  
8 the idea that either the attorney knew of the  
9 legal obligation, which in that bankruptcy  
10 court is well established, it's been  
11 established for at least a decade, or that the  
12 attorney failed to give advice on that to the  
13 debtor.

14 And on -- tying together all the  
15 questions about what you might say in an  
16 opinion, we would urge you to say in an opinion  
17 that the bankruptcy -- that attorneys'  
18 representations matter, that a litigant can't  
19 escape judicial estoppel by saying, although my  
20 attorney made this representation to the court  
21 in the first action, that's a mistake because I  
22 didn't understand the consequences of the  
23 choice that my attorney was making.

24 That's fundamentally inconsistent with  
25 the notion of mistake as this Court has used it

1 for well -- well over a century. I think this  
2 is well fleshed out in the Jerman versus  
3 Carlisle McNellie decision that we cite in our  
4 papers. But that cites precedent going well  
5 back to Justice Story, construing a statute  
6 involving mistake or error.

7           Legal mistakes aren't that kind of  
8 mistake, and that -- that type of error is not  
9 what the judicial estoppel doctrine or the  
10 inadvertence or mistake exception to it are  
11 getting at.

12           And I think Justice Jackson had the  
13 hypothetical in the top half of the argument  
14 about the -- the asset being concealed from the  
15 divorce. And I think that the point that I  
16 wanted to make from that is that how is that  
17 example going to come to light and how are --  
18 how are these causes of action that are not  
19 disclosed in bankruptcy and that -- that if,  
20 disclosed, the bankruptcy court could make its  
21 determination about whether they should have  
22 been disclosed sooner and what the consequences  
23 should be, how are they going to come to light  
24 if there is no incentive to litigate the fact  
25 that they didn't come to light sooner?

1           So as the lower courts have  
2 recognized, that apply our rule, not just the  
3 Fifth Circuit but -- but also others --

4           JUSTICE JACKSON: But why does the  
5 incentive have to come from the threat of not  
6 allowing you to pursue the claim? I mean, this  
7 is the point that -- that many have pointed to  
8 or made with respect to all the tools the  
9 bankruptcy court has to sanction an intentional  
10 omission of that nature.

11           MR. JAY: But the -- the tools to  
12 sanction all presuppose that someone's going to  
13 find out about the concealed claim, and the  
14 tools are not useful if the assets don't come  
15 to light. And I think that --

16           JUSTICE JACKSON: Yeah, but you need  
17 to find out about the concealed claim in order  
18 for the claim to be extinguished. I mean,  
19 that's -- that's a necessary condition for  
20 anything to happen.

21           The question is why, once we find out  
22 about it, the remedy is to say you cannot  
23 pursue that claim, as opposed to some other  
24 solution?

25           MR. JAY: I think the -- the reason is

1 the clear inconsistency and -- and, you know,  
2 this isn't -- this doesn't just come up in the  
3 context of, you know, the -- the good claim  
4 that we're talking about. I mean, this comes  
5 up in all types of bankruptcy actions in which  
6 a party makes a solemn representation to the  
7 bankruptcy court about the amount of property  
8 that they have. And they subsequently turn  
9 around and make representations to another  
10 court that are flatly inconsistent with that,  
11 such that --

12 JUSTICE JACKSON: I understand, but  
13 the equivalent would be that once that happens,  
14 somehow the bankruptcy court could divest the  
15 person of that property, which is not the  
16 answer, right? The answer is they adjust the  
17 bankruptcy proceeding to sanction them  
18 appropriately.

19 MR. JAY: But that -- that's just --  
20 that's just it, Justice Jackson. I think that  
21 once the plan is confirmed and the debtor gets  
22 the discharge, I don't think that the -- my  
23 friend on the other side is correct to say that  
24 the bankruptcy court always has the option to  
25 say, oh, I'm going to take some further action.

1           In a Chapter 13 plan, if the creditors  
2     have been paid off, then the creditors have  
3     been paid off. And I -- and Chapter 13 plan is  
4     time-limited. The bankruptcy court, I think,  
5     doesn't have the free hand that your question  
6     is positing.

7           JUSTICE JACKSON: And should that  
8     factor in, then, to whether or not judicial  
9     estoppel is appropriate? Why couldn't -- in  
10    the totality of the circumstances, maybe in  
11    that situation, you would have judicial  
12    estoppel?

13           MR. JAY: So, I -- I mean, I think our  
14    -- I resist giving a bankruptcy-specific  
15    answer, but I'll -- but I'm happy to give --  
16    give an answer for that question. In every  
17    bankruptcy proceeding -- in every judicial  
18    estoppel case, rather, the question is what is  
19    the benefit that the -- that the common  
20    litigant, you know, between the two actions has  
21    gotten from the first action?

22           And if it's raised early enough that  
23    the -- that the litigant can surrender the  
24    benefit, then there isn't going to be judicial  
25    estoppel. I think that's just baked right into

1 the doctrine. You don't need a  
2 bankruptcy-specific rule to say that because I  
3 think that's part of judicial estoppel, just  
4 like the clarity, like the -- clearness, how  
5 clear the inconsistency between the  
6 representations is, also baked into the  
7 judicial estoppel doctrine.

8 And when there's doubt about whether  
9 a, you know, pro se litigant or something like  
10 that has made such a representation, then  
11 the -- the existing judicial estoppel doctrine  
12 can deal with that.

13 JUSTICE JACKSON: Thank you.

14 MR. JAY: Unless the Court has any  
15 further questions?

16 CHIEF JUSTICE ROBERTS: Justice  
17 Thomas?

18 Justice Alito?

19 Thank you, counsel.

20 MR. JAY: Thank you, Your Honors.

21 CHIEF JUSTICE ROBERTS: Rebuttal,  
22 Mr. Garre?

23 REBUTTAL ARGUMENT OF GREGORY G. GARRE

24 ON BEHALF OF THE PETITIONER

25 MR. GARRE: Thank you, Mr. Chief

1 Justice.

2 We would welcome any ruling setting  
3 aside the Fifth Circuit rule in this case.

4 (Laughter.)

5 MR. GARRE: But we do think it's  
6 important for the Court to say that a holistic  
7 analysis should be undertaken into intent  
8 because I do think that it's likely this case  
9 will end up right back before this Court, as  
10 Justice Sotomayor indicated.

11 And then we would urge the Court to  
12 let the lower courts sort out the particular  
13 facts and circumstances in this case under the  
14 holistic analysis.

15 As to the question presented, the  
16 question presented and the whole petition is  
17 directed right at the Fifth Circuit's rule  
18 here. There's absolutely nothing that prevents  
19 this Court from considering that question,  
20 resolving the circuit split and the Court  
21 should do so.

22 Petitioner disclosed his claim with  
23 more than a year left on the bankruptcy plan in  
24 this case. The bankruptcy court could have  
25 objected, if it thought anything was awry. And

1 any creditor could've come forward and objected  
2 if it thought it was entitled to anything more.  
3 But no one did.

4 And, last, I would just say on the  
5 windfall point, no doctrine of equity would  
6 allow the tort feisor in this case to walk away  
7 Scott free if the debtor here simply made an  
8 honest mistake in failing to update the form.  
9 The Fifth Circuit's decision should be reversed  
10 and the case remanded. Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,  
12 counsel, the case is submitted.

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

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<b>1</b>	<p><b>actions</b> [4] 23:18 36:19 74:5 75:20  <b>actual</b> [4] 9:22 21:12 28:19 63:23  <b>actually</b> [7] 9:6 13:6 20:3 30:24 57:4  62:9 63:2  <b>addition</b> [1] 36:9  <b>additional</b> [5] 13:13 18:16 33:2 36:5  61:17  <b>address</b> [3] 43:16 49:12 62:4  <b>addressed</b> [1] 54:7  <b>adjust</b> [1] 74:16  <b>admitted</b> [1] 10:1  <b>adopt</b> [5] 8:20 17:5,7 20:21 22:8  <b>adopted</b> [6] 12:24 18:6 19:3 21:13 22:  8 29:18  <b>adopting</b> [3] 21:10 22:20 34:8  <b>adoption</b> [1] 8:15  <b>adopts</b> [1] 8:16  <b>advances</b> [1] 22:12  <b>advantage</b> [21] 8:14,18 15:5,11 18:12  28:13 31:1 37:7 39:7 40:2,18 42:4 43:  18 45:17,20 60:4,6,20,24 62:23 63:10  <b>adversary</b> [1] 56:25  <b>advice</b> [3] 54:21 56:15 71:12  <b>advise</b> [1] 23:9  <b>advised</b> [1] 26:12  <b>affected</b> [1] 26:10  <b>affirmatively</b> [3] 12:24 13:6 62:19  <b>after</b> [6] 24:5 36:24 42:10 44:19 62:14  65:8  <b>again</b> [11] 13:21 24:25 26:19 28:25 32:  10,24 36:13 67:4,13,18 70:13  <b>against</b> [4] 47:17,20 57:22 58:13  <b>agree</b> [4] 20:19 44:6 48:9 56:13  <b>agreed</b> [2] 53:13 59:16  <b>ahead</b> [1] 31:5  <b>aid</b> [3] 8:24 13:24 25:5  <b>alito</b> [15] 21:21,22 22:3,24 23:15 24:14,  23 25:11,25 26:24 48:16,17 52:2 71:  1 76:18  <b>all</b> [32] 14:2 17:3,5 18:4 25:9,17 26:14,  24 33:2 43:19 44:4,7,17,23 46:1,7,19  47:25 49:16 50:21 52:23 54:1 55:22  62:11 66:6,24 70:22 71:6,14 73:8,12  74:5  <b>all/end</b> [1] 46:18  <b>allegations</b> [1] 59:4  <b>allow</b> [3] 18:22 40:20 45:19  <b>allowing</b> [2] 69:6 73:6  <b>alluded</b> [1] 67:12  <b>alluding</b> [1] 36:2  <b>alone</b> [1] 52:14  <b>along</b> [1] 54:1  <b>already</b> [3] 40:25 50:9 59:12  <b>also</b> [14] 13:17 15:2 29:2 43:18 45:25  53:24 54:6 56:18 61:16 67:1,3 70:23  73:3 76:6  <b>although</b> [3] 54:23 59:17 71:19  <b>always</b> [8] 25:15,15 37:6 43:4,8 49:1</p>	<p>60:13 74:24  <b>am</b> [5] 30:15 43:9,9 64:15,24  <b>amended</b> [2] 61:21 65:1  <b>amendment</b> [1] 14:25  <b>amendments</b> [2] 61:17,20  <b>american</b> [1] 25:2  <b>amici</b> [4] 8:22 13:21 24:25 26:19  <b>amicus</b> [1] 38:21  <b>amount</b> [1] 74:7  <b>amounts</b> [1] 65:3  <b>an</b> [68] 8:13,14 9:1,16 10:9,12 12:2 13:  19 14:3,17 15:4,4,5 17:6,17 18:6,6,15  21:2 22:21 23:3 24:10 25:21 27:5 28:  7,7,8,11,12,17 29:24 30:9,10 31:1,17  32:9,11 33:14 34:2,21 35:24 36:19  37:6,18 39:7 42:4 43:15 46:4,6 47:6  49:19 50:4 52:9 56:10,23 60:7,10 62:  23 63:9 64:8 65:1 66:13,17 70:5 71:  15,16 73:9 75:16  <b>analysis</b> [15] 24:11 25:10 28:21 32:15  42:3,22 44:14,22 46:2,19 52:1,3 56:1  77:7,14  <b>analytical</b> [3] 43:13,20 56:10  <b>another</b> [1] 74:9  <b>answer</b> [9] 34:3 53:18 58:12 63:7 65:5  74:16,16 75:15,16  <b>answered</b> [2] 48:23 50:9  <b>answers</b> [1] 21:23  <b>any</b> [26] 11:4,24 14:2 16:22 22:20 23:  17 26:8,8,18 29:23 33:25 34:20 38:  15 40:2 47:22 51:19 54:8 55:16 56:  11 62:1,9 65:17 67:8 70:3 76:14 77:2  <b>anyone</b> [1] 15:23  <b>anything</b> [13] 11:10 15:25 20:4 23:25  24:7 27:17 28:9 36:14 47:19 62:18  69:17 73:20 77:25  <b>anyway</b> [1] 55:1  <b>app</b> [2] 42:15 51:19  <b>apparently</b> [3] 25:21 60:17,21  <b>appeals</b> [2] 59:14 70:16  <b>applicable</b> [1] 30:3  <b>application</b> [2] 31:9 47:8  <b>applied</b> [7] 11:2 12:22 16:17 37:12 51:  21 59:15 61:11  <b>applies</b> [2] 10:5,15  <b>apply</b> [11] 12:1 13:13 23:21 25:17 29:  15 33:16 36:16 39:2 41:10 53:18 73:  2  <b>applying</b> [2] 31:8 32:25  <b>appropriate</b> [9] 9:17 13:14 16:22 19:  17 29:23 36:21 42:12 47:8 75:9  <b>appropriately</b> [1] 74:18  <b>arbitrarily</b> [1] 45:13  <b>are</b> [36] 8:24 9:24 13:18,20 20:9 21:25  24:8 25:4,11,14,15 27:15,25 28:2,22  36:6 37:25 41:20,22 43:13 45:12 46:  1 48:3 51:16 53:20 54:5,23 56:3 67:  13 72:10,17,18,18,23 73:14 74:10</p>
<b>2</b>	<p><b>2</b> [4] 43:3,22 54:11,14  <b>203</b> [1] 62:7  <b>24</b> [1] 43:2</p>	
<b>3</b>	<p><b>33</b> [1] 65:6</p>	
<b>7</b>	<p><b>7</b> [3] 60:12 61:22 66:4  <b>750</b> [3] 30:18 31:2 42:2  <b>756</b> [1] 42:2</p>	
<b>9</b>	<p><b>9a</b> [1] 42:15</p>	
<b>A</b>	<p><b>ability</b> [2] 40:1 60:8  <b>able</b> [1] 55:10  <b>about</b> [58] 11:16,19 13:22 14:2 17:14  21:4,11 26:8 28:3 29:5,14 30:18,22  34:3,25 35:6 36:11 42:13 43:3,7,9,21  46:1,5 47:19 49:4 53:14,16 54:3,3,4,  13 57:2,13 58:3,8,10,25 61:8,13 62:  18 64:13,22,25 65:25 66:20 67:18,19  70:23 71:15 72:14,21 73:13,17,22 74:  4,7 76:8  <b>absolutely</b> [2] 11:22 77:18  <b>accept</b> [1] 14:23  <b>acceptance</b> [1] 14:25  <b>accepted</b> [2] 40:12 56:3  <b>access</b> [1] 66:2  <b>accessibility</b> [1] 67:6  <b>accessing</b> [1] 63:1  <b>accident</b> [1] 24:6  <b>according</b> [2] 30:20 59:3  <b>account</b> [3] 18:1,19 49:9  <b>accuracy</b> [1] 69:23  <b>across</b> [1] 12:5  <b>acted</b> [1] 27:19  <b>acting</b> [1] 17:6  <b>action</b> [38] 9:1,5,7,19,24,25 10:3,9 13:  7 16:22 17:8 18:7 19:4,17 21:17 22:9,  12,14,21 24:2 26:11,13 27:18 34:9  58:5 59:20,21,22,25 60:2 61:15 62:  19 65:17 70:18 71:21 72:18 74:25 75:  21</p>	

<p><b>aren't</b> [3] 29:6 71:5 72:7  <b>argued</b> [1] 40:14  <b>argument</b> [8] 12:10 18:20 37:10 38:20  53:9 57:17 72:13 76:23  <b>arguments</b> [1] 11:12  <b>arise</b> [1] 22:17  <b>arisen</b> [1] 12:19  <b>arising</b> [1] 38:4  <b>around</b> [2] 8:15 74:9  <b>articulating</b> [1] 48:9  <b>as</b> [57] 8:11,21,22 9:5,21 10:8,19,22  11:3 12:10 16:24 17:15 19:2 22:9 23:  3 25:21 26:17,18,19 29:14 32:22 34:  22,23 35:5 38:21 41:2 45:8 46:2,25  48:1 51:17 53:24 54:15,24 55:5,24  56:16 60:10,11,12 61:7,22,22 62:6  63:10,10 64:8 65:2,18 68:4,4,10 71:  25 73:1,23 77:9,15  <b>ascertain</b> [1] 17:11  <b>aside</b> [3] 68:16,17 77:3  <b>ask</b> [3] 10:11 17:10 42:10  <b>asked</b> [5] 59:10 64:17 65:16,24 71:1  <b>aspect</b> [1] 56:7  <b>assert</b> [2] 15:4 60:1  <b>asserting</b> [5] 24:1 59:21,22,24 70:19  <b>assertion</b> [1] 70:20  <b>assessment</b> [1] 61:10  <b>asset</b> [8] 9:1 23:4 25:21 26:9 36:5 63:  1 70:5 72:14  <b>assets</b> [5] 19:22 55:3 60:8 62:11 73:  14  <b>assist</b> [1] 55:7  <b>assume</b> [3] 62:22 69:12,13  <b>assumed</b> [2] 10:14 37:11  <b>assumption</b> [1] 8:5  <b>at</b> [32] 14:2 21:9 23:1 33:4 37:2 42:6,  15 43:13 44:16,21,21,22 47:25 48:7  52:12 54:10,14 55:11 59:7 60:21 61:  14 62:7,11,15 63:14,17,22 64:2 67:23  71:11 72:11 77:17  <b>attempting</b> [2] 19:21 23:14  <b>attention</b> [5] 36:4 37:1 60:17 61:24 62:  6  <b>attorney</b> [15] 23:3,6,18 24:5 25:19 51:  2,3,8,13,13 54:21 71:8,12,20,23  <b>attorneys</b> [1] 25:5  <b>attorneys'</b> [1] 71:17  <b>attorney's</b> [3] 51:4,9,20  <b>authority</b> [1] 10:24  <b>automatically</b> [1] 45:24  <b>available</b> [2] 26:19,21  <b>avoid</b> [3] 11:20 12:10 45:11  <b>award</b> [2] 39:19 52:9  <b>aware</b> [4] 11:24 46:16 56:16 64:24  <b>away</b> [4] 14:13 15:11 38:12 69:8  <b>awry</b> [1] 77:25</p> <hr/> <p style="text-align: center;"><b>B</b></p>	<p><b>back</b> [11] 32:9,24 40:7 50:5 51:1,14 64:  23 67:24 70:10 72:5 77:9  <b>bad</b> [13] 27:23,24 28:5,19 53:16 54:21  55:13 56:15 58:23 63:16,19 64:5,10  <b>baked</b> [2] 75:25 76:6  <b>balance</b> [14] 39:3,5,23 41:10,13,16,18  42:10,16 43:15,17,19 44:3 48:4  <b>balance-of-equities</b> [1] 42:3  <b>bankruptcy</b> [95] 8:23,23 9:8 10:8 12:  12 13:2,20,21 14:7,8,10,12,16,17 15:  1,10,12,19,20,22 16:20,21 19:15 22:5  23:3,6 24:8 25:1,2,12,14,19 26:14,20,  25 27:13 33:1 35:21,25 36:8,17,17,24,  25 37:17,19 38:5,11 40:24 41:1,3 46:  5 54:4,24 55:1,3,7 56:9 59:15,19 60:  7,9,15 61:1 62:5,20 63:3 64:15,19,22,  24 65:13,14,17,23,25 66:1,7,9,23 70:  3 71:9,17 72:19,20 73:9 74:5,7,14,17,  24 75:4,17 77:23,24  <b>bankruptcy's</b> [1] 40:1  <b>bankruptcy-specific</b> [2] 75:14 76:2  <b>bargain</b> [1] 55:4  <b>barrett</b> [11] 10:10 11:5 12:8,14,17 35:  18 53:5 64:12,19 65:7,10  <b>based</b> [2] 10:4 40:21  <b>baseline</b> [2] 11:1 33:17  <b>basic</b> [2] 54:2 59:16  <b>basically</b> [5] 44:1 50:5 51:12 54:2,16  <b>basis</b> [3] 8:4,8 32:2  <b>be</b> [70] 9:2 10:25 11:13,18,19 13:14 14:  1,11,19,23 16:15 17:25 18:17 19:4,23  20:12 22:7,15 26:15 31:12,24 32:7,  11 33:6,10,12,15 36:11,19 37:1,3,4,5,  23 40:3 44:16,18,19,25 45:15,19 46:  16,18,18,24 47:7 48:6,11 49:19 52:16  53:18 54:21 55:6,10 56:5 57:5 58:3,  12 59:18 60:11 61:11 63:3 65:15,18  66:3 72:23 73:18 74:13 75:24 77:7  <b>bear</b> [1] 18:23  <b>because</b> [32] 9:9 10:5 11:19 14:11,13  15:9 17:11,21 18:21 23:22,25 24:24  26:1 29:17 35:23 37:12 47:18 49:5  50:5,16 57:7,25 61:7 62:4 64:20,23  69:20 70:13 71:5,21 76:2 77:8  <b>become</b> [1] 52:9  <b>been</b> [22] 10:3 14:6 15:13,19 16:9 21:  12 27:7 28:3 41:14 46:4 52:8 54:11  57:12,12 62:15,24 63:9 66:17 71:10  72:22 75:2,3  <b>before</b> [8] 9:8 26:13 52:8 53:17 56:19  57:6 71:6 77:9  <b>behalf</b> [2] 53:10 76:24  <b>behind</b> [2] 44:24 61:16  <b>being</b> [9] 16:12 18:15 21:25 25:24 37:  13 57:23 58:11 60:21 72:14  <b>believed</b> [1] 39:17  <b>believes</b> [2] 16:25 35:9  <b>below</b> [2] 40:3 50:7</p>	<p><b>benefit</b> [8] 55:23 56:4,8,24 59:12 66:  16 75:19,24  <b>better</b> [1] 54:25  <b>between</b> [13] 26:11 34:1,15,20 40:9 41:  5,5 50:16 53:15 55:17 66:8 75:20 76:  5  <b>beyond</b> [2] 42:1,18  <b>bind</b> [1] 51:9  <b>bit</b> [1] 15:13  <b>blind</b> [1] 41:18  <b>blue</b> [1] 11:14  <b>board</b> [1] 12:5  <b>both</b> [2] 49:8 68:24  <b>boundaries</b> [2] 40:10 47:21  <b>boundary</b> [2] 40:13,14  <b>brakes</b> [1] 10:2  <b>brief</b> [3] 24:25 27:23 43:2  <b>briefly</b> [1] 30:7  <b>bright-line</b> [3] 32:4,21 46:25  <b>bring</b> [1] 47:22  <b>brings</b> [1] 50:5  <b>broader</b> [2] 39:10 42:7  <b>brought</b> [6] 52:2 60:16 61:24 62:5 64:  20 70:9  <b>bucket</b> [3] 44:13 51:22 56:9  <b>bunch</b> [1] 44:20  <b>but</b> [76] 8:5 9:18 11:9 13:5 14:24 15:7  16:4,5,8 17:16,24 19:5 20:1,10,20 21:  1,1,8 22:16 23:1,8,12 24:10 25:18 27:  5 28:18,22 29:21 30:14,24 31:3,7 32:  12 33:3,3,7 34:5 36:16 37:16,16 39:  21 42:1 43:17 44:6,21 45:5,15,25 48:  20,22 50:2 51:2 53:16 55:12 58:7,15  60:4,14 64:1 65:3 66:6 67:1,12 68:21  69:13 72:4 73:3,3,4,11,16 74:12,19  75:15,15 77:5  <b>by</b> [18] 8:14 10:22 13:4 15:1 21:23 22:  5 24:25 25:7 41:25 43:22 45:9 56:4  58:3 59:2 62:23 63:8 66:16 71:19  <b>byrd</b> [1] 11:14</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>call</b> [2] 12:6 57:9  <b>came</b> [1] 49:5  <b>can</b> [23] 10:10 11:11,22 12:3,3 14:20  16:24 17:10,16 19:17 25:25 37:3,4,5,  22 44:15,20 50:6 53:17 54:8 66:1 75:  23 76:12  <b>candle</b> [1] 65:21  <b>cannot</b> [1] 73:22  <b>can't</b> [3] 46:19 52:13 71:18  <b>care</b> [1] 60:19  <b>cares</b> [1] 58:9  <b>carlisle</b> [1] 72:3  <b>case</b> [43] 12:1 17:22 20:2 21:11 29:15  35:21 40:3,8,21,24 41:1,3 42:9,14 46:  4,21,24 47:2 51:21 53:14 55:20 56:  12 57:11 59:17 60:10,18 61:14,14 66:</p>
--	--	--

<p>3,15,18 67:25 69:22,24 70:2,3,5,19 75:18 77:3,8,13,24 cases [14] 21:4 28:5 30:21,24 35:3 40: 11 44:20 45:5,15 50:21 54:6,7,24 70: 4 cash [1] 48:10 cause [25] 9:1,5,7,19,24 10:8 13:6 17: 8 18:7 19:3 21:17 22:9,12,13,21 24:1 26:13 27:18 34:9 59:20,22 61:15 62: 19 66:16 70:17 caused [1] 15:21 causes [1] 72:18 caveats [1] 66:24 century [3] 31:19 54:7 72:1 cert [4] 63:14,16,19 70:14 certain [1] 45:5 certainly [9] 11:10 23:20 45:7,9 49:19 55:20,20 56:13 63:15 cetera [1] 43:19 chance [1] 48:19 change [4] 40:18 59:1 62:1,10 changed [1] 40:14 changing [1] 30:19 chapter [11] 26:1 60:10,11,12 61:1,18, 22 66:3,4 75:1,3 characterization [1] 70:12 charge [1] 19:16 check [1] 17:2 chief [19] 8:3 21:18 27:1,21 29:3 30:5 33:23 35:17 38:16,19,23 47:16 48:13 53:2,11 58:15 76:16,21,25 choice [2] 27:5 71:23 choose [1] 50:24 circle [1] 51:14 circuit [23] 10:5 13:8 17:4 32:3,13 39: 11,13,22 42:23 46:10 50:6 51:1,12,17, 24 52:19,25 55:24 56:14 64:4 73:3 77:3,20 circuits [1] 11:6 circuit's [8] 10:14 18:21 24:12 42:14 52:3 55:18 63:24 77:17 circumstances [8] 29:6 49:10 52:12 55:22 61:5,9 75:10 77:13 cite [2] 30:23 72:3 cited [1] 30:21 cites [1] 72:4 claim [18] 16:2 17:21 39:18 52:6,8 62: 9,13 65:4,5 69:6,11 73:6,13,17,18,23 74:3 77:22 claiming [1] 54:19 claims [2] 54:17 67:2 clarify [1] 64:14 clarity [1] 76:4 clear [5] 53:15 56:3 70:14 74:1 76:5 clearly [2] 53:20 58:4 clearness [1] 76:4 client [9] 15:9 23:8,16,21 51:10 56:21 57:18 67:3,21</p>	<p>client's [1] 16:2 closes [1] 36:24 closing [1] 69:5 coequal [1] 42:8 co-equal [1] 41:14 cognizance [1] 33:1 coincide [1] 45:4 cold [4] 8:11 9:12 12:6 21:4 collateral [2] 58:8 67:15 colloquy [1] 63:11 come [9] 23:11 50:25 57:5 72:17,23, 25 73:5,14 74:2 comes [6] 36:3,25 59:7,7 67:14 74:4 coming [1] 51:1 common [3] 58:3 59:13 75:19 common-law-type [1] 10:23 complained [1] 26:16 complete [1] 44:10 completed [1] 26:14 completely [1] 37:25 complex [1] 13:21 complexity [1] 13:23 compliance [2] 25:16,17 compounding [1] 42:18 concealed [3] 72:14 73:13,17 concede [1] 69:17 concern [3] 26:8 60:22 66:22 concerned [1] 67:19 concerns [1] 33:3 conclude [1] 33:13 concluded [1] 65:20 conclusion [4] 16:1 35:12 36:15 44:21 conclusive [2] 10:4 17:5 condition [1] 73:19 conduct [3] 16:24 51:9 69:7 conducted [1] 25:14 confined [2] 12:11 25:12 confirm [1] 61:1 confirmation [2] 62:15 65:9 confirmed [1] 74:21 confused [1] 21:23 confusing [3] 8:24 13:23 25:4 confusion [1] 35:5 connection [1] 38:11 connote [1] 64:10 consequence [1] 59:6 consequences [2] 71:22 72:22 consider [5] 15:3 39:15 42:23 51:24 53:1 consideration [2] 18:22 67:20 considerations [3] 13:14 39:15 42:20 considered [1] 56:19 considering [4] 18:16 42:10 46:17 77: 19 consistency [1] 66:8 consistent [3] 28:17 36:7 39:10 construing [1] 72:5 contemplating [1] 17:20</p>	<p>content [1] 31:24 context [24] 12:12 13:2,10,15,17 14:1, 8 15:15 22:5 23:1 24:21 25:6 30:3 33: 2 34:19 35:23 37:18 40:23 41:19 46: 6 55:1 59:15 65:14 74:3 contexts [2] 12:22 13:15 control [2] 10:17 36:18 conversely [3] 9:15 44:9 45:15 convert [1] 60:15 converted [2] 66:4,4 convince [1] 60:9 convincing [1] 60:25 core [3] 50:16 56:2,2 correct [10] 27:9,10,14 45:6 50:15,18 58:12 63:25 64:15 74:23 corrects [1] 8:20 could [15] 18:17,23 23:10 26:10 36:10 37:1 40:17 46:3 49:16 60:15 63:1 66: 17 72:20 74:14 77:24 couldn't [3] 20:10 29:7 75:9 counsel [8] 8:25 13:24 21:19 38:17 48: 14 52:24 53:7 76:19 course [2] 59:4 62:13 courthouse [1] 69:5 courts [34] 8:2,11 9:11,20 11:2,7,25 12:4,7 16:17 17:9,16 21:5 28:4,13 29: 5,11,14 30:1 31:9 33:13 34:25 37:11, 19 45:3,12 55:10 64:14 66:21 67:1 70:16 71:3 73:1 77:12 courts' [2] 57:14 58:18 court's [11] 10:20,24 36:25 37:21,25 40:5 42:2 55:15 57:21 62:6 67:9 creates [2] 24:19 35:5 creditor [2] 26:8 27:19 creditors [22] 14:14,18 15:22 16:23,23 25:20,23 26:6,16,22 27:5,15 36:6 40: 1 55:7,9 60:17 61:21 62:17 65:20 75: 1,2 creditors' [1] 60:12 criminal [1] 66:5 critical [2] 33:8 34:5 culpable [1] 55:12 curiae [1] 38:21 cuts [1] 24:6</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p>damages [2] 39:19 52:9 date [1] 31:19 dates [1] 31:19 dating [1] 31:18 day [1] 11:23 daylight [2] 34:11,20 deal [2] 15:14 76:12 dealing [1] 25:7 debate [1] 26:17 debtor [35] 8:22 9:3,6,22 10:6 13:3,5,9 14:3 17:6,17,19 18:5,11 19:21 20:3 21:13 22:4,7,11,17,20 23:14,24,25 24:</p>
--	--	--

<p>4 27:24 29:8 34:7 60:7 61:15,15 62:25 71:13 74:21  <b>debtors</b> [3] 8:25 55:6 62:8  <b>debtor's</b> [6] 9:22 10:7 19:2 23:13,23 33:13  <b>decade</b> [1] 71:11  <b>deceitful</b> [1] 16:25  <b>decide</b> [4] 17:22 40:21 43:23 53:14  <b>decides</b> [1] 14:12  <b>decision</b> [5] 10:20 40:3 42:14 48:3 72:3  <b>declaration</b> [2] 23:7 54:19  <b>declined</b> [1] 64:16  <b>deemed</b> [1] 51:18  <b>defeat</b> [1] 45:24  <b>defendant</b> [3] 38:9,10,12  <b>defending</b> [1] 57:14  <b>define</b> [1] 35:25  <b>defined</b> [1] 47:15  <b>definitely</b> [1] 31:13  <b>definition</b> [2] 50:18,19  <b>defraud</b> [1] 28:8  <b>degree</b> [1] 23:17  <b>deliberate</b> [1] 49:15  <b>deliberately</b> [4] 30:19 45:7 50:22,24  <b>denying</b> [2] 66:2,2  <b>depends</b> [1] 55:4  <b>deprive</b> [1] 55:9  <b>deprives</b> [1] 14:14  <b>derived</b> [3] 15:4 39:7 42:4  <b>deriving</b> [1] 31:1  <b>described</b> [2] 8:11 39:4  <b>describes</b> [1] 55:24  <b>describing</b> [1] 49:7  <b>details</b> [2] 33:7,10  <b>determination</b> [7] 9:21 15:20 20:2 21:12 22:6 58:10 72:21  <b>determine</b> [2] 18:5 34:6  <b>determines</b> [1] 16:22  <b>determining</b> [1] 36:20  <b>detriment</b> [7] 15:5,8,21 56:19,21,25 66:17  <b>developed</b> [1] 31:23  <b>devil's</b> [1] 33:6  <b>did</b> [11] 16:14 19:7 23:3,6 26:22 50:2,22,23 53:1 64:23 66:16  <b>didn't</b> [15] 8:19 23:9 25:19 50:7 51:3,13,24 58:25 62:8,10,19 63:16 70:13 71:22 72:25  <b>difference</b> [5] 11:4 34:1,15 55:17 56:11  <b>different</b> [16] 8:7,16,16,17 10:16 12:24 13:10 16:11 19:6 21:11 24:1 40:8,24 46:6 59:24 63:12  <b>directed</b> [1] 77:17  <b>direction</b> [1] 20:10  <b>directly</b> [1] 49:22  <b>disagree</b> [1] 24:14</p>	<p><b>disagreeing</b> [1] 59:18  <b>disagreement</b> [1] 70:16  <b>discharge</b> [2] 66:2 74:22  <b>disclose</b> [9] 24:16 25:19 39:18 51:21 62:9 65:3 70:24 71:2,4  <b>disclosed</b> [6] 52:6,7 72:19,20,22 77:22  <b>disclosing</b> [1] 24:18  <b>disclosure</b> [4] 15:12 55:3 63:25 71:3  <b>discretion</b> [1] 55:11  <b>discussed</b> [3] 57:11 66:25 68:2  <b>dispositive</b> [1] 44:19  <b>dispute</b> [4] 11:6 47:14 50:16 70:23  <b>disregard</b> [1] 17:5  <b>distinct</b> [1] 62:3  <b>distinction</b> [1] 22:25  <b>distinguishes</b> [1] 20:1  <b>district</b> [2] 54:15 55:10  <b>diversity</b> [2] 10:12,17  <b>divest</b> [1] 74:14  <b>divorce</b> [3] 17:20,23 72:15  <b>do</b> [21] 12:10,14 23:15 30:15 32:10 36:22 38:4 41:6 44:6 47:2 49:13 51:5,8 52:11 65:21 67:17 69:18 70:11 77:5,8,21  <b>doctrine</b> [14] 10:22 12:1 18:16 28:10 32:9 35:11 55:5 57:13,22 64:9 72:9 76:1,7,11  <b>doctrines</b> [2] 67:13 68:24  <b>does</b> [17] 10:13 19:5 23:2 30:23 31:13 32:21,22 40:20 50:25 51:9 55:8 58:17,19 64:10 67:9,16 73:4  <b>doesn't</b> [23] 10:16 16:1 18:21 22:17 23:5,8 29:15,21 36:15 43:8,23 44:8,10,14 45:18 46:9 61:21 64:5 65:3 68:12 70:18 74:2 75:5  <b>doing</b> [1] 14:13  <b>done</b> [1] 37:1  <b>don't</b> [43] 8:6,25 11:8,8 18:12 19:24 23:19 25:18,19 26:20 27:3 29:12 30:9,12 32:8 33:9 34:4,24 36:6 46:22 47:1,4,24,24 49:3 50:13 54:8 56:9,11 59:25 60:18,20 66:19 67:7,17 69:16,16,22,23 70:5 73:14 74:22 76:1  <b>doors</b> [1] 69:6  <b>doubt</b> [2] 19:18 76:8  <b>down</b> [2] 51:1 58:10  <b>draconian</b> [1] 14:18  <b>drew</b> [1] 47:5  <b>driver</b> [1] 10:1  <b>driving</b> [1] 21:9  <b>duped</b> [1] 37:13  <b>duty</b> [8] 24:15,17 39:18 51:20 52:20 56:16 67:1 71:2</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>each</b> [2] 43:22 47:20  <b>earlier</b> [7] 14:24 40:11 42:9 56:1 57:2</p>	<p>63:12 71:1  <b>early</b> [1] 75:22  <b>easier</b> [1] 58:22  <b>easterbrook</b> [1] 55:5  <b>effect</b> [3] 14:18 68:24,25  <b>effectively</b> [1] 39:23  <b>effects</b> [2] 69:2,4  <b>egregious</b> [1] 17:3  <b>either</b> [6] 11:12 16:14 30:13 41:19 56:24 71:8  <b>elements</b> [2] 41:21 59:10  <b>else</b> [3] 17:18 29:9 58:24  <b>embraced</b> [1] 10:22  <b>emphasized</b> [1] 25:3  <b>encourages</b> [1] 55:6  <b>end</b> [3] 29:4 44:5 77:9  <b>engaged</b> [1] 69:7  <b>engaging</b> [1] 9:21  <b>enough</b> [5] 20:12 32:7 44:1 54:21 75:22  <b>entire</b> [4] 39:23 42:10,16 63:3  <b>entitled</b> [1] 26:23  <b>environment</b> [1] 13:20  <b>equating</b> [2] 28:1,2  <b>equipped</b> [1] 16:21  <b>equitable</b> [15] 14:20 18:15 31:17 32:9 38:14 46:4 61:10 62:25 66:13,14,18 68:11,12,23,25  <b>equities</b> [10] 39:3,24 41:11,13,16,19 42:11 44:3 48:4,5  <b>equity</b> [1] 20:12  <b>equivalent</b> [1] 74:13  <b>erie</b> [4] 10:12,18 11:17 46:6  <b>error</b> [7] 39:12,21 42:19 50:14 51:25 72:6,8  <b>errors</b> [5] 39:12 49:6,8 51:4,16  <b>escape</b> [1] 71:19  <b>essential</b> [3] 20:7,17 41:21  <b>established</b> [2] 71:10,11  <b>establishing</b> [1] 17:13  <b>estate</b> [4] 25:22 26:10 36:4 63:2  <b>estoppel</b> [76] 9:16 10:15,21 12:1,11,21 13:7 14:20 16:1 17:2 18:9,14,15 19:25 23:16 25:10 29:4,15,22 31:16,17 32:2 33:16 35:22 36:11,15,21 37:11 39:2,9 40:19 41:10,22 42:11 43:5,9 44:9,11 45:2,11,24 46:4,5 47:9 53:17 54:17 57:5 58:9 59:11 61:11 64:9 66:12,13,14,15,18,20 67:15 68:10,11,12,23,23,25 69:1,21 70:4 71:19 72:9 75:9,12,18,25 76:3,7,11  <b>et</b> [1] 43:18  <b>evaluation</b> [1] 49:13  <b>even</b> [17] 8:24 9:20 13:23 25:4 26:16 29:7 35:23 39:22 42:22 44:7,9 45:17 46:1,22 49:15 51:25 66:4  <b>ever</b> [1] 36:23  <b>every</b> [4] 54:16 59:14 75:16,17</p>
---	--	--

<p><b>everyone's</b> [1] 10:13  <b>everything</b> [3] 26:22 44:25 46:20  <b>evidence</b> [7] 39:16,17 51:19,22,23 52:19,21  <b>exactly</b> [5] 18:25 31:21 37:17 38:6 50:6  <b>example</b> [5] 19:15 49:24 60:11 68:4 72:17  <b>exception</b> [2] 64:9 72:10  <b>exceptions</b> [1] 67:14  <b>excuse</b> [1] 21:22  <b>exercise</b> [1] 55:11  <b>exigencies</b> [1] 30:20  <b>exist</b> [1] 70:18  <b>existence</b> [2] 9:5 10:8  <b>existing</b> [1] 76:11  <b>exists</b> [7] 17:8 18:7 19:4 22:9,14 34:9 43:24  <b>expect</b> [1] 65:14  <b>explain</b> [4] 23:9 25:25 54:8 58:22  <b>explained</b> [1] 26:20  <b>exposure</b> [1] 17:22  <b>extinguished</b> [1] 73:18  <b>extreme</b> [1] 9:16</p>	<p><b>figuring</b> [1] 18:1  <b>filings</b> [1] 55:7  <b>filtered</b> [1] 44:25  <b>final</b> [1] 15:20  <b>financial</b> [4] 10:6 24:16,18 56:7  <b>find</b> [5] 20:8 29:7 73:13,17,21  <b>finding</b> [2] 28:18,23  <b>findings</b> [1] 25:3  <b>fine</b> [1] 33:6  <b>first</b> [22] 8:20 14:22 16:15 18:4 39:1 41:22,24 45:16 53:22 54:5 58:10,14 59:8,11 61:20 65:4 69:22,24 70:2,13 71:21 75:21  <b>fit</b> [2] 14:6 35:23  <b>fits</b> [2] 43:1 55:1  <b>flatly</b> [1] 74:10  <b>fleshed</b> [1] 72:2  <b>focus</b> [1] 68:24  <b>focused</b> [2] 12:5 39:13  <b>focuses</b> [3] 68:13,25 69:1  <b>follow</b> [2] 20:6 25:4  <b>following</b> [1] 31:24  <b>follows</b> [1] 49:21  <b>footnote</b> [3] 43:1,2,22  <b>for</b> [47] 11:23 14:15 16:6,6 17:1,4,12 18:22 23:18 24:11 27:5 31:20 32:2 35:2,14,23 37:19 38:21 41:10 44:1 46:12 51:4 54:21,24 55:22 56:5 57:4,9,14,18 58:1 60:18 62:9 63:25 64:17 65:4 66:12 68:4,22 69:14,15 71:11 72:1 73:18,19 75:16 77:6  <b>forcing</b> [1] 66:3  <b>forever</b> [1] 27:13  <b>forget</b> [1] 46:4  <b>form</b> [11] 9:9,24 13:3,5 14:4 22:6,10,19 33:14 34:7 70:11  <b>former</b> [4] 8:23 13:21 24:25 26:20  <b>forms</b> [5] 8:24 9:1 13:20,23 25:4  <b>formulation</b> [1] 63:24  <b>forth</b> [3] 14:21 48:1,3  <b>forum</b> [1] 25:16  <b>forward</b> [1] 48:24  <b>frankly</b> [2] 17:4 24:4  <b>frederick</b> [1] 38:20  <b>free</b> [1] 75:5  <b>frequently</b> [1] 29:14  <b>friend</b> [5] 57:2 65:12,25 71:1 74:23  <b>friend's</b> [1] 37:9  <b>from</b> [22] 19:22 20:4 24:7 28:5 30:19 31:1 36:4 39:7 40:8,24 49:14,22 56:8 58:11 60:5 62:25 68:9 72:14,16 73:5 75:21 77:19  <b>full</b> [5] 18:22 27:9,13 44:22 55:2  <b>fundamental</b> [3] 39:22 49:6 64:7  <b>fundamentally</b> [1] 71:24  <b>further</b> [5] 32:8 45:20 49:20 74:25 76:15  <b>future</b> [1] 46:24</p>	<p style="text-align: center;"><b>G</b></p> <p><b>g</b> [1] 76:23  <b>gain</b> [2] 18:11 28:12  <b>gained</b> [3] 60:5 63:10 66:16  <b>gains</b> [1] 56:8  <b>garner</b> [1] 27:5  <b>garre</b> [71] 8:10 10:10,19 11:21 12:4,13,16,18 14:5 15:16,24 16:7,13 17:10 18:3,25 19:10,14 20:5,13,19,25 21:3,8,16 22:2 23:5,19 24:21,24 25:23 26:4,25 27:10,14,22 28:4 29:1,12 30:8,17 31:3,7,14 32:11,19 33:5,11,20 34:4,13,18,23 35:7,16 36:13 37:3,5,8,22 38:2,6,8,14,18 59:17 70:9 76:22,23,25 77:5  <b>gather</b> [1] 11:5  <b>gave</b> [1] 54:21  <b>general</b> [1] 13:12  <b>generally</b> [1] 33:15  <b>gestures</b> [1] 20:9  <b>get</b> [10] 8:17 20:24 26:22 44:8 45:25 48:9 49:5 55:10 66:21 67:21  <b>gets</b> [6] 45:16 57:3 59:4 60:25 70:25 74:21  <b>getting</b> [8] 26:22 36:5 38:10 50:14 56:4 58:20 60:25 72:11  <b>ginsburg's</b> [1] 40:17  <b>give</b> [6] 49:24 67:3 68:1 71:12 75:15,16  <b>given</b> [1] 46:2  <b>giving</b> [3] 32:18 45:13 75:14  <b>gloss</b> [1] 32:8  <b>glossed</b> [1] 32:3  <b>go</b> [9] 17:22 24:9 31:5 32:9,23 44:14 63:2 64:23 66:6  <b>goes</b> [10] 22:11 28:24 43:14,16,19 59:9 63:11 65:10 67:23 70:24  <b>going</b> [14] 15:24 23:25 26:1 36:14 37:8,9 43:24 59:1 72:4,17,23 73:12 74:25 75:24  <b>good</b> [4] 19:14 69:6,10 74:3  <b>good-bye</b> [1] 46:10  <b>gorsuch</b> [35] 20:5,15,23 21:1,7,14 30:6,7,23 31:5,11,15 32:17,20 33:9,18,21 35:5 45:22 46:13,22 47:13 48:19,24 53:3 66:11 67:10 68:1,6,15,19 69:3,12,18 70:7  <b>gorsuch's</b> [2] 28:25 36:10  <b>got</b> [5] 21:14 24:13 41:23,24 56:15  <b>gotten</b> [1] 75:21  <b>government's</b> [1] 44:12  <b>grant</b> [2] 63:16 70:14  <b>granted</b> [3] 62:15 63:14,18  <b>gregory</b> [1] 76:23  <b>ground</b> [1] 46:11  <b>grounds</b> [2] 53:20,21  <b>grows</b> [1] 68:11</p>
<p style="text-align: center;"><b>F</b></p> <p><b>facing</b> [1] 54:16  <b>fact</b> [16] 13:9 19:25 21:25 22:3,7 24:4 26:15 40:20 41:4 42:7 52:6 59:6 68:9 70:20,21 72:24  <b>factor</b> [16] 20:17,20 24:3,6 29:25 36:20 39:24 42:16,22 43:8,24 44:4,18 46:8 49:21 75:8  <b>factors</b> [20] 18:16,23 20:12 24:9 25:9,11 30:25 31:8 39:5,6 41:22 43:21,25 44:4,17,23 46:1 48:6 52:13 56:3  <b>facts</b> [8] 38:4 42:20 56:17 61:12,13 70:21,22 77:13  <b>factual</b> [3] 13:15 64:14 70:20  <b>failed</b> [7] 9:8 10:2 13:3 34:7 49:9,12 71:12  <b>failing</b> [8] 9:4,23 14:4 22:6,10,18 39:15 71:2  <b>failure</b> [5] 10:7 13:4 33:13 49:11 70:11  <b>fair</b> [3] 45:19 62:22 67:18  <b>faith</b> [10] 27:23,24 28:5,19 53:17 55:13 63:16,20 64:6,10  <b>far</b> [2] 40:24 44:15  <b>fast</b> [2] 9:11 21:5  <b>favor</b> [2] 24:6 55:12  <b>featured</b> [1] 47:17  <b>federal</b> [5] 10:13,23 11:1,15,24  <b>fell</b> [1] 61:16  <b>fifth</b> [30] 10:5,14 13:8 17:4 18:20 24:12 32:2,13 39:11,13,22 42:14,23 46:10 50:6 51:1,12,17,24 52:2,19,25 55:17,23 56:13 63:24 64:4 73:3 77:3,17  <b>fighting</b> [1] 35:13</p>	<p style="text-align: center;">Heritage Reporting Corporation</p>	<p style="text-align: right;">everyone's - grows</p>

<p>guess [4] 31:15,20 42:24 62:21 guidance [1] 32:14 guy [1] 58:21</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p>had [17] 14:23 25:20 26:8 27:17,18,24 39:18 40:12 41:14,14 44:7 61:15,16, 16 62:15 66:15 72:12 half [1] 72:13 hampshire [49] 10:21 12:22 13:11 14: 7,21,22 15:2 16:13 20:9 28:14 30:1, 12,18 31:13,22 32:23 33:4 35:21 39: 4 40:7,8,9,10,11,21,23 41:5,12,20 44: 2 46:3 47:6,6,17 48:1,11 49:22,25 54: 6,7,9 55:25 56:18,22 57:1,11 59:15 68:3 70:2 hampshire's [1] 56:2 hand [1] 75:5 handled [1] 26:2 hang [1] 46:20 happen [1] 73:20 happened [1] 27:17 happens [3] 8:13,21 74:13 happy [5] 47:11 62:4 63:5,7 75:15 hard [2] 16:9 25:4 harm [2] 36:5 59:3 harsh [1] 63:4 has [38] 9:3 10:3,6 11:3 12:19,21 13:3 14:8 15:3,19 18:5,5 22:4,20 23:17 24: 17,17 29:13 34:6 35:25 36:18 38:11 39:12 41:11 45:7 59:11,14,16 60:7 62:24 63:9 69:7 71:25 73:9 74:24 75: 20 76:10,14 hasn't [2] 13:5 29:18 have [65] 8:11 9:2,19 11:2,7,9 12:5,23 13:6,17,19,22 16:8,17,20 17:17,21 26: 10,10 27:7,19 28:3 30:1,9,13,14 31:9, 21 32:14 34:25 37:11 38:4 40:25 41: 6,23,24 44:22 46:4,6,13,15 47:1 48: 19 52:8,8,11 61:8 65:25 66:17,19 67: 1,4,11 68:12 70:5 72:21 73:1,5,7 74: 8 75:2,2,5,11 77:24 haven't [2] 28:1 31:22 having [9] 8:7 14:6 16:9 25:21 27:9,12 45:8 62:23 63:1 he [13] 9:8 15:10 22:20 23:8,9 24:7 29: 3,3 34:7 39:18 51:2 53:21 64:23 hear [1] 43:6 heart [1] 60:21 heartland [2] 18:9,14 heightens [1] 45:10 hence [1] 40:19 her [1] 19:16 here [55] 8:21 9:19,25 11:3,8,9,10 13: 2,15,22 14:24 15:7 16:17,19 17:2 18: 20 19:2 20:3 21:13 23:7,12,23 24:5, 24 25:10,11,20 26:5,15,19,21 27:19 28:5,5 29:22 34:6 35:12,13 36:12,17</p>	<p>37:12 39:11 41:6,17 43:10 47:15 48: 9 49:6 50:5 51:12,15,16 67:18 69:5 77:18 here's [2] 51:15,16 he's [2] 22:13,21 hide [5] 19:21 20:3 23:14,24 24:7 high-level [1] 48:2 him [2] 23:8 48:23 himself [1] 56:15 his [18] 9:9 10:2,2 19:16,22,22 24:1,5, 6 26:13,13,13 34:7 39:18 51:2 54:17 70:9 77:22 hit [3] 10:2 15:9 58:21 holistic [9] 9:21 18:19 23:11 24:11 32: 15 46:2 49:13 77:6,14 honest [5] 12:2 14:3 22:22 33:14,21 honor [21] 8:12 11:23 16:2 19:11 20: 21 23:5,22 24:22 26:4 27:11 31:4 32: 12 33:7 34:5 35:16 38:18 59:6 62:3 64:18 67:8 69:10 honors [1] 76:20 honor's [2] 16:18 37:16 how [19] 12:11 14:20 15:14 16:10 17: 25 26:9 27:3 29:15 40:20 42:25 43: 21 48:10 57:16 67:18 72:16,17,18,23 76:4 however [1] 35:24 hypothetical [3] 18:12 19:7 72:13</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p>i'd [3] 40:6 52:11 54:2 idea [3] 44:24 58:23 71:8 if [48] 8:19 10:16 17:22 20:15,16 26:8 27:16 31:25 33:12,18 35:9,23 36:22 39:2 42:4,5,14 43:24 44:7,9,15 47:9, 19 49:15 50:7 55:21,21,21 57:7 59:6 60:16 61:13 62:7,7 63:22 64:1,2,12 66:11,20,20 67:18 72:19,24 73:14 75: 1,22 77:25 ignored [2] 52:19,21 ignoring [1] 39:25 i'll [5] 18:18 23:1 48:18 68:1 75:15 i'm [38] 11:23 14:19 15:13,24 16:5,8 17:11 19:10,12 21:22 22:24 30:14 31: 4 32:17,17,20 34:2,12 35:20,21 36:13 37:8,9 41:2,3 42:24 45:25 47:21 48: 18 49:17 50:11 62:4 63:5,7 69:15,20 74:25 75:15 imagine [1] 17:16 impact [1] 67:4 implied [1] 13:4 important [11] 12:20 13:11,16 29:25 30:2 36:16,19 37:18 41:13 43:15 77: 6 impose [1] 14:13 imposed [1] 15:5 imposing [1] 14:19 impression [3] 45:10,12,12</p>	<p>improper [1] 19:19 improvement [1] 32:12 inactions [1] 36:19 inadvertence [38] 17:13 18:2,23 29:16 31:11 32:1,4,8,22 39:9,14,24 42:6,17, 19 43:4,7,17 44:10 45:9,23 46:8,18 47:7,10,15 48:6 49:5,12,15,20 50:8, 20 51:17 54:10 55:24 64:8 72:10 inadvertent [3] 19:8 33:18 46:21 inadvertently [1] 45:18 inappropriate [1] 33:15 incentive [3] 60:8 72:24 73:5 inch [1] 47:6 include [1] 39:6 including [2] 39:16 42:7 income [2] 14:15 27:8 incomplete [1] 52:3 inconsistency [16] 9:10 11:24 22:17 28:11,12 34:1,2,21,21 35:1 53:15 54: 12 56:3 70:14 74:1 76:5 inconsistent [23] 8:1 15:4 20:21,23 21: 10,25 22:4,16 27:25 30:11,13,25 37: 14 41:23 53:21 57:23 58:4 59:20 60: 1,4 70:18 71:24 74:10 independent [1] 38:1 indicate [1] 8:23 indicated [1] 77:10 individual [2] 8:13,19 individuals [1] 13:18 inequitable [1] 56:5 inflicted [1] 59:3 informal [1] 26:3 information [4] 36:25 60:16 61:24 62: 23 informed [1] 23:8 inherent [1] 10:23 initially [1] 61:19 injuries [1] 27:7 injury [4] 9:25 14:14 27:4 67:2 innocent [1] 39:25 inquiry [4] 19:1 23:11 28:7 55:25 instance [2] 31:10 33:12 instead [2] 34:10 56:9 institute's [1] 25:3 integrity [16] 8:2 9:14,18 28:15 29:5, 10 45:2 53:23 57:14,21 58:18 60:22 64:13 66:21 67:5,19 intend [1] 19:7 intended [4] 19:7 20:3 22:8 53:25 intent [21] 9:22 17:7,17 18:22 19:2 20: 7,14,16,20,21 21:2 23:13,23 24:20 28: 3,8,17 35:8,8 44:7 77:7 intention [2] 30:9,10 intentional [17] 9:10 10:9 17:14,23 18: 6,6 22:16 28:10,12,23 34:2,18,21,25 35:24 50:8 73:9 intentionality [2] 29:8 45:4 intentionally [10] 8:13,19 19:3 21:10,</p>
--	---	--

<p>13 22:4,15 29:18 30:15 34:8  <b>interest</b> [10] 11:15 24:16,18 25:21 26:18,21 42:7 59:24 60:12 61:25  <b>interested</b> [2] 41:3,4  <b>interests</b> [4] 27:16 39:10,25 43:18  <b>interrupt</b> [1] 10:11  <b>into</b> [15] 18:1,18 19:1 25:10 28:7 42:19 45:25 47:22 48:10 49:9 62:14 63:2 75:25 76:6 77:7  <b>invention</b> [1] 31:18  <b>invoke</b> [2] 18:13 60:2  <b>invoked</b> [2] 13:7 18:10  <b>involved</b> [4] 15:10 40:9 41:15 42:9  <b>involves</b> [1] 9:18  <b>involving</b> [2] 57:6 72:6  <b>irrelevant</b> [1] 51:18  <b>isn't</b> [8] 20:16 22:20 44:3 57:25 65:13 67:20 74:2 75:24  <b>issue</b> [6] 43:14 63:18 67:8,11 68:5,10  <b>its</b> [9] 10:24 13:1 15:22 32:3 36:3,18 52:1 67:6 72:20  <b>it's</b> [56] 9:16 11:5 12:20,20 16:11 17:23 19:8,19,19 20:17,19 22:3,3 23:25 25:15 26:2,2 29:24 30:2 32:4 33:18 37:15,15 42:2 43:12,25 44:4 46:17,21 47:17,18,20 50:8,8 56:23 57:8,12,12,19 58:15,16,22 59:7,17 60:3 62:14,16 63:23 64:21 67:17 69:21 70:2 71:10 75:22 77:5,8  <b>itself</b> [2] 41:18 66:7  <b>i've</b> [4] 14:6 15:13 16:9 33:10</p>	<p><b>judiciary</b> [1] 29:20  <b>jumping</b> [1] 58:17  <b>just</b> [55] 8:25 11:17,18 12:8,9 19:13 20:2,6,17 26:1,2 29:14 30:12,25 32:20 34:12 39:14 42:16,19 43:8,17 44:3,15 45:13,19 46:7,16 49:11,21 51:17 53:25 54:6,19,19 57:19 58:7,16 59:22 60:11 62:12,22 63:4,8 64:14 66:12 67:18,21 68:15 69:13 73:2 74:2,19,20 75:25 76:3  <b>justices</b> [1] 40:25  <b>justice's</b> [1] 29:3</p>	<p><b>less</b> [3] 17:21,21 55:12  <b>let</b> [2] 63:8 77:12  <b>let's</b> [3] 64:21 69:12,13  <b>level</b> [1] 48:7  <b>light</b> [4] 72:17,23,25 73:15  <b>like</b> [17] 9:24 11:17 12:22 14:9 25:9 28:9 30:21 40:6,18 54:2 59:22 62:3 67:15,17 76:4,4,9  <b>likely</b> [1] 77:8  <b>likewise</b> [1] 68:12  <b>line</b> [1] 29:11  <b>lines</b> [1] 47:5  <b>list</b> [2] 23:3 48:4  <b>listed</b> [1] 62:12  <b>lists</b> [1] 30:25  <b>litigant</b> [18] 28:11 53:19,25 54:16 56:8,15 57:22 58:3,13 59:13 60:25 61:3,4 69:1 71:18 75:20,23 76:9  <b>litigants</b> [1] 55:12  <b>litigant's</b> [1] 58:1  <b>litigate</b> [1] 72:24  <b>litigation</b> [6] 40:9,13 41:4,15 56:20 57:6  <b>little</b> [3] 15:13 21:23 58:19  <b>liu</b> [27] 38:19,20,23 40:6,22 41:8 42:24 43:11 44:12 45:6,22 46:11,15 47:3,14,24 49:18 50:3,10,13 51:5,8,15 52:15,18,25 53:24  <b>locking</b> [1] 58:10  <b>logically</b> [1] 14:11  <b>long</b> [2] 39:19 55:8  <b>look</b> [15] 33:4 34:13 42:3,5,6,15 44:15 48:24 52:12 54:14 62:7 63:22 64:2 69:22,23  <b>looking</b> [2] 32:10 44:16  <b>looks</b> [2] 28:10 54:10  <b>loose</b> [2] 9:11 21:6  <b>lost</b> [1] 27:8  <b>lot</b> [4] 21:4 37:22 54:12 58:22  <b>lower</b> [6] 30:21,23 35:2 44:16 73:1 77:12</p>
<b>K</b>		
<p><b>jackson</b> [36] 12:3 17:10 18:3,18 19:5,12 35:19,20 36:22 37:4,6,20,24 38:3,7,13 53:6 60:3,14 61:3,7,23 62:21 63:6,15,22 65:2,19,24 72:12 73:4,16 74:12,20 75:7 76:13  <b>jackson's</b> [1] 65:12  <b>jay</b> [38] 53:8,9,11 55:19 56:22 57:19 59:5 60:6,24 61:6,12 62:2 63:5,7,21 64:1,12,17 65:1,8,16 66:11 67:7,23 68:2,8,18,21 69:9,15,20 70:8 73:11,25 74:19 75:13 76:14,20  <b>jerman</b> [1] 72:2  <b>judge</b> [3] 19:16,18 55:5  <b>judges</b> [4] 8:23 13:21 25:1 26:20  <b>judicata</b> [1] 58:8  <b>judicial</b> [72] 9:12,15 10:15,21 11:25 12:7,11,21 13:7 16:1 17:2 18:9,14,15 19:25 23:16 25:10 29:4,15,22 31:16 32:2 33:16 35:22 36:11,15,20 37:11 39:2,9 40:19 41:10,21 42:11 43:4,9 44:9,11 45:1,10,24 46:5 47:9 53:17,23 54:17 57:4 59:10 60:22 61:10 64:9 66:12,15,20 67:5,20 68:10,23 69:1,2,4,21 70:4 71:19 72:9 75:8,11,17,24 76:3,7,11</p>	<p><b>kagan</b> [9] 27:21,22 28:22 29:2 30:4 42:24 44:6,24 53:2  <b>kavanaugh</b> [8] 33:24,25 34:11,16,19 35:4,15 53:4  <b>keathley</b> [1] 26:12  <b>keathley's</b> [2] 9:25 10:3  <b>keep</b> [1] 56:5  <b>key</b> [3] 18:4 23:22 54:9  <b>kind</b> [9] 11:14 12:10 28:2 29:7,20 31:16 41:21 48:5 72:7  <b>kinds</b> [1] 33:2  <b>knew</b> [4] 51:13 64:20,22 71:8  <b>know</b> [40] 10:23 11:18,22 12:4,5 13:1,18 17:7,19 19:15 20:8 25:7 27:3,15 28:16,19 29:4,14 31:12 32:16 34:17 36:22 47:21 48:18 49:3 50:7 57:12 58:25 59:3 61:9 64:20 65:18 69:13,16 70:10,15 74:1,3 75:20 76:9  <b>knowing</b> [7] 20:10,11 32:5 34:1,15,20 35:10  <b>knowingly</b> [2] 20:11 34:8  <b>knowledge</b> [6] 21:24 24:20 42:20 51:20 52:20 70:21  <b>known</b> [1] 70:22</p>	<p><b>locking</b> [1] 58:10  <b>logically</b> [1] 14:11  <b>long</b> [2] 39:19 55:8  <b>look</b> [15] 33:4 34:13 42:3,5,6,15 44:15 48:24 52:12 54:14 62:7 63:22 64:2 69:22,23  <b>looking</b> [2] 32:10 44:16  <b>looks</b> [2] 28:10 54:10  <b>loose</b> [2] 9:11 21:6  <b>lost</b> [1] 27:8  <b>lot</b> [4] 21:4 37:22 54:12 58:22  <b>lower</b> [6] 30:21,23 35:2 44:16 73:1 77:12</p>
<b>L</b>		
	<p><b>lack</b> [3] 25:8 54:20 70:20  <b>language</b> [4] 21:4 35:1,8,10  <b>large</b> [1] 25:7  <b>last</b> [3] 12:8 27:13 64:2  <b>late</b> [2] 59:8 65:20  <b>later</b> [3] 11:23 31:8 48:20  <b>laughter</b> [4] 48:21 49:2 69:19 77:4  <b>law</b> [12] 10:13,14,16,17 26:18 27:4 31:20,23 32:25 34:14,17 47:12  <b>lawsuit</b> [1] 27:4  <b>lawyers</b> [1] 69:16  <b>lead</b> [2] 15:25 35:12  <b>leads</b> [1] 31:16  <b>least</b> [3] 44:22 67:24 71:11  <b>leave</b> [3] 17:20 23:1 61:21  <b>left</b> [2] 71:7 77:23  <b>legal</b> [7] 25:9 54:20 56:15,16 59:24 71:9 72:7</p>	<p><b>made</b> [13] 9:3,23 13:9 14:3 15:12 18:5 22:7 39:11 51:17 57:24 71:20 73:8 76:10  <b>maine</b> [16] 10:21 12:23 39:4 40:9,15 41:6,12,20 44:2 47:6,7,17 48:1,12 49:23,25  <b>mainly</b> [1] 51:23  <b>make</b> [10] 37:9 45:18 46:25 54:2 55:13 64:24 71:2 72:16,20 74:9  <b>makes</b> [7] 17:3 22:18 28:11 29:24 56:11 62:24 74:6  <b>making</b> [7] 22:10,21 27:24 29:9 34:12 64:7 71:23  <b>man</b> [1] 15:8</p>
<b>M</b>		

<p>manipulation [4] 8:12 9:12 12:6 21:5  <b>mantra</b> [1] 70:10  <b>many</b> [8] 8:25 24:8 33:10 36:1,1 41:15  <b>52:4 73:7</b>  <b>margin</b> [1] 55:12  <b>matter</b> [5] 11:6 19:5 34:23 52:7 71:18  <b>matters</b> [3] 20:20 23:12 48:4  <b>may</b> [14] 38:24 44:18 45:4,5,15,23 46:  18 47:7 48:6,10 53:11 64:11 65:18,  25  <b>maybe</b> [11] 16:5 32:25,25 33:1 35:22  44:20 46:23,25 65:7,10 75:10  <b>mcnellie</b> [1] 72:3  <b>me</b> [7] 11:17 21:23 31:16 46:23 61:13  63:8 67:16  <b>mean</b> [41] 9:15 11:2,11 12:19 19:1,6,9  21:3 23:10 24:24 26:4,5,19 28:4,6 29:  13,24 30:20 34:13 35:1,7,9,11 36:9  38:3 43:22 46:9 47:16,19 48:2 49:24  52:3 58:22 61:13 63:14 64:11 70:13  73:6,18 74:4 75:13  <b>meaning</b> [1] 14:9  <b>means</b> [1] 46:9  <b>meant</b> [1] 46:10  <b>measure</b> [1] 9:16  <b>medical</b> [1] 27:7  <b>mention</b> [1] 52:14  <b>mentioned</b> [2] 40:25 62:12  <b>merely</b> [1] 49:11  <b>meticulous</b> [1] 25:17  <b>mid-19th</b> [1] 31:19  <b>middle</b> [1] 40:12  <b>might</b> [11] 11:13,16,18,19 17:17 19:23  46:20 55:11 58:7 66:11 71:15  <b>minimize</b> [1] 60:8  <b>mislead</b> [8] 10:7 17:8,18 18:11 20:7  21:2 28:17 30:9  <b>misleading</b> [4] 16:25 17:15,24 20:11  <b>misled</b> [4] 15:21 16:12,15 58:3  <b>misrepresentation</b> [2] 28:24 66:23  <b>missing</b> [1] 30:15  <b>mississippi</b> [2] 10:15,17  <b>mistake</b> [34] 9:4,9,23 12:2 14:4 17:13  18:2,24 22:10,18,22 29:16,18,24 31:  10,12 32:1,5,9,16,22 33:14,22 45:23  46:9 54:10,18 55:25 64:8 71:21,25  72:6,8,10  <b>mistaken</b> [2] 19:8 33:19  <b>mistakes</b> [1] 72:7  <b>mix</b> [2] 18:17 26:15  <b>modification</b> [1] 52:5  <b>modifications</b> [1] 61:18  <b>more</b> [9] 8:4 17:3 35:10 39:22 47:22  49:19 58:9 67:8 77:23  <b>morning</b> [2] 39:13 54:13  <b>motive</b> [7] 10:6 19:6 32:6 42:21 52:1,  22 63:25  <b>move</b> [1] 47:5</p>	<p><b>much</b> [6] 27:4 28:2 31:23 58:19 60:12  63:11  <b>multiple</b> [1] 54:5  <b>mutuality</b> [7] 41:7 57:2,15,25 66:14,15,  19  <b>my</b> [17] 16:2 19:7 23:7 37:9 52:16 57:  2 62:21 63:8,11 64:21 65:24 68:20  69:3 71:1,19,23 74:22</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>natural</b> [1] 59:1  <b>nature</b> [2] 70:6 73:10  <b>nearly</b> [1] 26:11  <b>necessarily</b> [5] 21:2 43:24 44:8,11 46:  20  <b>necessary</b> [5] 28:20,24 47:23 53:24  73:19  <b>need</b> [12] 17:1 29:21 30:9 32:8,13 43:  23 44:14 45:25 46:22 47:5 73:16 76:  1  <b>needs</b> [3] 32:14 44:25 50:15  <b>never</b> [5] 24:12,12 29:22 32:4 69:18  <b>nevertheless</b> [1] 18:14  <b>new</b> [57] 10:20 12:22 13:11 14:7,21,22  15:2 16:13 20:9 28:14 30:1,12,17 31:  13,18,19,20,22 32:23 33:4 35:21 39:3  40:7,7,9,10,11,21,23 41:5,11,20 44:2  46:3 47:5,6,17,25 48:11 49:22,24 54:  6,7,9 55:25 56:2,18,22 57:1,11 58:16  59:15 62:15 67:13 68:2,4 70:2  <b>no</b> [57] 9:7,10,11,12,13 11:3 12:25 13:  6 14:25 15:8,19 16:4,4,4 17:7 18:7  19:3,12,18 20:2,24 21:12,12,17 22:9,  21 24:23 25:20 26:15 27:19 31:5 34:  9,11 38:11 39:18 46:13,15 48:17 50:  1,10 52:4,7 53:18 55:13 59:20 61:24,  25 64:17 65:16 67:6,10 68:22 70:15,  15,19,23 72:24  <b>non-exhaustive</b> [2] 44:5 48:5  <b>non-inadvertence</b> [1] 50:20  <b>non-issue</b> [1] 67:11  <b>non-mutual</b> [2] 67:14 68:5  <b>non-mutuality</b> [1] 67:23  <b>normal</b> [1] 23:20  <b>not</b> [88] 8:5 9:6 10:16 11:23 13:18 14:  8,19 15:19,24 16:11 17:1,24 19:8 21:  1 22:24 23:3,14,19,20 24:18,21 25:15,  15 26:2,18 28:6,18 29:19 30:14 31:  25,25 32:2,16,22,23 34:2 36:14,20 37:  8,9 38:14 40:17 41:2,6 42:21,25 43:  17 45:5,24,25 46:7,18,20,21,25 47:21  48:10 49:17,20 50:8,11 51:1 53:14,  24 54:6,11,23 55:8,19,20 56:14 57:15  58:16 61:3 62:16,23 64:10 67:18 68:  15,19 69:15 72:8,18 73:2,5,14 74:15  75:8  <b>note</b> [1] 63:8  <b>noted</b> [1] 54:16</p>	<p><b>nothing</b> [5] 37:1 38:4 48:8 71:4 77:18  <b>noting</b> [1] 35:20  <b>notion</b> [1] 71:25  <b>now</b> [3] 43:1,6 58:25</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>objected</b> [3] 27:19 61:19 77:25  <b>objective</b> [1] 51:23  <b>obligation</b> [2] 70:24 71:9  <b>obtain</b> [1] 45:20  <b>obtained</b> [1] 62:24  <b>obviously</b> [1] 33:6  <b>off</b> [8] 17:20 26:7 39:20 58:20 59:4 61:  22 75:2,3  <b>off-branch</b> [2] 31:17 66:13  <b>often</b> [5] 13:18 25:14 27:23 28:18 67:  17  <b>oh</b> [4] 50:3 58:24 61:6 74:25  <b>okay</b> [5] 12:8,15 33:21,22 68:6  <b>old</b> [1] 67:21  <b>omission</b> [3] 32:5 35:24 73:10  <b>omissions</b> [1] 17:15  <b>omit</b> [2] 17:18 19:8  <b>on</b> [65] 8:4,8 10:4 11:12 12:5 14:18,21  15:6 18:23 20:5,5,6 25:2 26:1,6,6,9  29:8,11 30:18 31:2,21 32:8,14,21 35:  2 37:12 39:13 40:21 42:1 43:14,17,  19 46:21,23 47:2 51:18 53:10,20,21  55:3 58:17,24 61:16 63:13,16,19 65:  6,12 66:22 67:4,5 68:13,14,24,25 69:  1,2,4 70:14 71:12,14 74:23 76:24 77:  23  <b>once</b> [7] 15:11 48:9 61:23 69:22 73:21  74:13,21  <b>one</b> [50] 8:8,14 11:3 12:8 14:1,10 20:  17,19 26:11 31:21 32:3 36:10 39:12  42:4,16,22 43:8,14,24 44:3,18 48:6  49:24 51:18 52:10 54:3,3,4,9 55:21  58:19,20 59:2,10,17,25 61:25,25 63:  13 65:15,16 66:15,16,22 67:17,20 68:  25 69:4,6,14  <b>ongoing</b> [3] 14:10,17 16:21  <b>only</b> [4] 39:2 47:18 49:21 69:9  <b>open</b> [1] 67:2  <b>opened</b> [1] 29:3  <b>opinion</b> [10] 31:21 33:4 40:17 42:2 49:  19 50:4 52:11,17 71:16,16  <b>opportunity</b> [2] 24:11 37:7  <b>opposed</b> [4] 22:9 45:8 56:17 73:23  <b>opposing</b> [2] 15:6,7  <b>option</b> [1] 74:24  <b>or</b> [61] 8:9 11:24 12:14 14:2 15:5,22  16:15,25 17:13 18:1,2,22,23 19:8,16,  22 23:13 24:20 25:9 26:9,18 27:17  28:8,20 29:8,16 31:10 32:16 33:19  34:8 36:19,20 37:2 46:1,21 54:10,14,  20 55:25 56:15,23,25 59:23 60:23 61:  17 62:22 63:1 64:8 66:2,4 68:23 70:2,</p>
---	---	--

<p>2,3 71:11 72:6,9,10 73:8 75:8 76:9  <b>oral</b> [2] 38:20 53:9  <b>order</b> [1] 73:17  <b>ordinarily</b> [1] 23:21  <b>original</b> [2] 54:17 63:17  <b>other</b> [29] 8:9 11:6 12:22 16:6,23,23  18:22 20:12 24:8 30:1 39:21 43:18,  22,25 47:20 49:17 50:23 54:12,18,25  56:23 58:21 61:4 65:12 66:17 70:3  71:6 73:23 74:23  <b>others</b> [3] 19:22 61:8 73:3  <b>otherwise</b> [2] 14:11 55:10  <b>our</b> [13] 14:6 19:1 39:21 41:17 47:4 50:  19 51:23 54:25 55:8 66:14 72:3 73:2  75:13  <b>out</b> [25] 9:19,24 10:4 12:11 14:20 16:2  18:2 23:11 29:13 38:4 44:19 46:3 48:  10 57:9,24 58:2 61:8 66:12 67:4 68:  11 72:2 73:13,17,21 77:12  <b>outcome-determinative</b> [1] 11:16  <b>outlined</b> [1] 33:10  <b>outlining</b> [1] 13:12  <b>over</b> [3] 40:10 69:23 72:1  <b>overarching</b> [1] 17:2  <b>overcomes</b> [1] 11:15  <b>overriding</b> [1] 11:15  <b>own</b> [7] 10:1,24 23:23 25:3 27:16 32:3  59:25  <b>ownership</b> [2] 59:23 60:2</p>	<p><b>personal</b> [4] 9:25 14:14 27:4 67:2  <b>persuaded</b> [1] 14:23  <b>pertaining</b> [1] 52:21  <b>pet</b> [2] 42:15 51:19  <b>petition</b> [1] 77:16  <b>petitioner</b> [4] 39:12,17 76:24 77:22  <b>petitioner's</b> [3] 54:8 55:2 57:17  <b>philadelphia</b> [2] 57:10 67:24  <b>piece</b> [2] 57:5 59:23  <b>piggy-backed</b> [1] 35:2  <b>piggybacking</b> [2] 25:1,2  <b>plain</b> [1] 67:21  <b>plan</b> [13] 26:7,9 52:5 61:2,18,21,25 62:  14 65:21 74:21 75:1,3 77:23  <b>play</b> [2] 14:20 47:22  <b>playing</b> [2] 9:11 21:5  <b>plays</b> [1] 12:11  <b>please</b> [3] 31:6 38:24 53:12  <b>plus</b> [1] 20:11  <b>point</b> [21] 17:24 30:8 34:5 37:2,17 45:  23 56:10 57:20 58:6 62:4,16 64:15  65:11,12,24 68:7 69:25 70:1,14 72:  15 73:7  <b>pointed</b> [4] 11:4 46:3 61:8 73:7  <b>pointing</b> [1] 58:2  <b>points</b> [3] 41:9 54:3 57:24  <b>police</b> [1] 65:15  <b>poor</b> [1] 35:23  <b>positing</b> [1] 75:6  <b>position</b> [36] 8:7,14,15,17,20 9:7 13:1,  4 14:2,24 15:1,4 17:7,12 18:7 19:1,3  21:16 22:8,13,20 29:19 34:9 39:8,8  42:5 44:13 45:8,17 47:1,10 50:23,24  54:18 56:25 58:4  <b>positioned</b> [1] 57:8  <b>positions</b> [15] 8:1 12:24 20:22,24 21:  10,25 22:5 30:11,14,20 31:1 37:15  40:18 54:1 57:9  <b>possibility</b> [1] 16:14  <b>potential</b> [7] 10:6 14:15 24:16 42:21  52:1,21 63:25  <b>potentially</b> [1] 23:10  <b>practical</b> [1] 34:23  <b>practicalities</b> [1] 54:4  <b>practice</b> [2] 54:15 55:19  <b>precedent</b> [2] 54:3 72:4  <b>precisely</b> [1] 57:7  <b>preclude</b> [3] 43:8 44:11 62:25  <b>precludes</b> [1] 43:4  <b>preclusion</b> [3] 67:8,11 68:5  <b>preface</b> [1] 63:9  <b>prejudice</b> [1] 49:14  <b>premise</b> [3] 68:3 69:9,21  <b>prerequisite</b> [1] 55:14  <b>presentation</b> [2] 54:13 70:9  <b>presented</b> [4] 63:23 64:3 77:15,16  <b>preserved</b> [1] 57:21  <b>presume</b> [1] 62:22</p>	<p><b>presumption</b> [4] 10:4 13:8 17:6 24:19  <b>presuppose</b> [1] 73:12  <b>pretty</b> [3] 24:19 48:1 49:22  <b>prevent</b> [1] 36:4  <b>preventing</b> [1] 58:11  <b>prevents</b> [1] 77:18  <b>primarily</b> [1] 57:13  <b>principal</b> [2] 45:1,4  <b>principle</b> [1] 14:7  <b>principles</b> [6] 13:12 14:21 48:2,2,8,10  <b>prior</b> [7] 39:7 41:16 42:5 45:8 47:9 50:  23 58:5  <b>pro</b> [1] 76:9  <b>probably</b> [2] 16:16 34:14  <b>problem</b> [4] 36:3 46:7,14,15  <b>proceed</b> [1] 37:21  <b>proceeded</b> [1] 8:4  <b>proceeding</b> [11] 8:8,16 16:20 38:11 45:  21 59:8,11 60:16 66:10 74:17 75:17  <b>proceedings</b> [7] 10:25 11:4 19:16 25:  13 36:18 37:25 41:1  <b>process</b> [7] 8:12 9:13 12:7 15:22 53:  23 67:5,20  <b>product</b> [3] 39:8 42:6 47:10  <b>prohibiting</b> [1] 30:19  <b>prominently</b> [1] 47:18  <b>promptly</b> [1] 24:5  <b>prong</b> [2] 11:17 52:22  <b>proof</b> [4] 53:16 63:19 64:5,10  <b>properly</b> [1] 49:12  <b>property</b> [4] 59:23,25 74:7,15  <b>proposition</b> [2] 24:15 59:16  <b>propriety</b> [1] 59:2  <b>prosecution</b> [1] 66:5  <b>protect</b> [3] 10:24 16:23 27:16  <b>protecting</b> [3] 45:2 64:13 66:21  <b>prove</b> [1] 53:24  <b>public</b> [2] 39:10 42:7  <b>purpose</b> [2] 45:1,5  <b>pursue</b> [3] 30:10 73:6,23  <b>put</b> [5] 8:6 56:1,6 68:15,16  <b>puts</b> [1] 55:5</p>
<b>P</b>		
<p><b>page</b> [4] 30:18 31:2 43:2 62:7  <b>pages</b> [1] 42:2  <b>paid</b> [5] 26:6,7 27:7 75:2,3  <b>papers</b> [1] 72:4  <b>part</b> [13] 18:17 26:5,5,15 28:20,20 29:  8,9 41:16 44:21 55:24 63:3 76:3  <b>particular</b> [5] 8:5 12:12 14:1 29:19 77:  12  <b>particularly</b> [2] 13:19 30:2  <b>parties</b> [7] 16:11,11 30:19 41:5 49:14  50:17 57:7  <b>party</b> [22] 12:23,25 15:3,6,7 29:17,23  39:6 42:4 45:7,13,16,19 50:22,24 56:  19,24 57:8 64:17 66:16 69:6 74:6  <b>party's</b> [2] 14:24 47:9  <b>past</b> [2] 69:22,23  <b>pattern</b> [2] 19:25 40:20  <b>payment</b> [4] 27:9,13 62:14 65:21  <b>payments</b> [3] 26:9 61:16 62:18  <b>penalty</b> [1] 14:13  <b>people</b> [1] 25:8  <b>percent</b> [1] 26:6  <b>perhaps</b> [4] 17:18 19:20 25:12 66:23  <b>permanent</b> [1] 14:25  <b>perplexed</b> [1] 15:14  <b>person</b> [6] 24:17 57:9 58:17,19 59:3  74:15</p>	<p><b>personal</b> [4] 9:25 14:14 27:4 67:2  <b>persuaded</b> [1] 14:23  <b>pertaining</b> [1] 52:21  <b>pet</b> [2] 42:15 51:19  <b>petition</b> [1] 77:16  <b>petitioner</b> [4] 39:12,17 76:24 77:22  <b>petitioner's</b> [3] 54:8 55:2 57:17  <b>philadelphia</b> [2] 57:10 67:24  <b>piece</b> [2] 57:5 59:23  <b>piggy-backed</b> [1] 35:2  <b>piggybacking</b> [2] 25:1,2  <b>plain</b> [1] 67:21  <b>plan</b> [13] 26:7,9 52:5 61:2,18,21,25 62:  14 65:21 74:21 75:1,3 77:23  <b>play</b> [2] 14:20 47:22  <b>playing</b> [2] 9:11 21:5  <b>plays</b> [1] 12:11  <b>please</b> [3] 31:6 38:24 53:12  <b>plus</b> [1] 20:11  <b>point</b> [21] 17:24 30:8 34:5 37:2,17 45:  23 56:10 57:20 58:6 62:4,16 64:15  65:11,12,24 68:7 69:25 70:1,14 72:  15 73:7  <b>pointed</b> [4] 11:4 46:3 61:8 73:7  <b>pointing</b> [1] 58:2  <b>points</b> [3] 41:9 54:3 57:24  <b>police</b> [1] 65:15  <b>poor</b> [1] 35:23  <b>positing</b> [1] 75:6  <b>position</b> [36] 8:7,14,15,17,20 9:7 13:1,  4 14:2,24 15:1,4 17:7,12 18:7 19:1,3  21:16 22:8,13,20 29:19 34:9 39:8,8  42:5 44:13 45:8,17 47:1,10 50:23,24  54:18 56:25 58:4  <b>positioned</b> [1] 57:8  <b>positions</b> [15] 8:1 12:24 20:22,24 21:  10,25 22:5 30:11,14,20 31:1 37:15  40:18 54:1 57:9  <b>possibility</b> [1] 16:14  <b>potential</b> [7] 10:6 14:15 24:16 42:21  52:1,21 63:25  <b>potentially</b> [1] 23:10  <b>practical</b> [1] 34:23  <b>practicalities</b> [1] 54:4  <b>practice</b> [2] 54:15 55:19  <b>precedent</b> [2] 54:3 72:4  <b>precisely</b> [1] 57:7  <b>preclude</b> [3] 43:8 44:11 62:25  <b>precludes</b> [1] 43:4  <b>preclusion</b> [3] 67:8,11 68:5  <b>preface</b> [1] 63:9  <b>prejudice</b> [1] 49:14  <b>premise</b> [3] 68:3 69:9,21  <b>prerequisite</b> [1] 55:14  <b>presentation</b> [2] 54:13 70:9  <b>presented</b> [4] 63:23 64:3 77:15,16  <b>preserved</b> [1] 57:21  <b>presume</b> [1] 62:22</p>	<p><b>presumption</b> [4] 10:4 13:8 17:6 24:19  <b>presuppose</b> [1] 73:12  <b>pretty</b> [3] 24:19 48:1 49:22  <b>prevent</b> [1] 36:4  <b>preventing</b> [1] 58:11  <b>prevents</b> [1] 77:18  <b>primarily</b> [1] 57:13  <b>principal</b> [2] 45:1,4  <b>principle</b> [1] 14:7  <b>principles</b> [6] 13:12 14:21 48:2,2,8,10  <b>prior</b> [7] 39:7 41:16 42:5 45:8 47:9 50:  23 58:5  <b>pro</b> [1] 76:9  <b>probably</b> [2] 16:16 34:14  <b>problem</b> [4] 36:3 46:7,14,15  <b>proceed</b> [1] 37:21  <b>proceeded</b> [1] 8:4  <b>proceeding</b> [11] 8:8,16 16:20 38:11 45:  21 59:8,11 60:16 66:10 74:17 75:17  <b>proceedings</b> [7] 10:25 11:4 19:16 25:  13 36:18 37:25 41:1  <b>process</b> [7] 8:12 9:13 12:7 15:22 53:  23 67:5,20  <b>product</b> [3] 39:8 42:6 47:10  <b>prohibiting</b> [1] 30:19  <b>prominently</b> [1] 47:18  <b>promptly</b> [1] 24:5  <b>prong</b> [2] 11:17 52:22  <b>proof</b> [4] 53:16 63:19 64:5,10  <b>properly</b> [1] 49:12  <b>property</b> [4] 59:23,25 74:7,15  <b>proposition</b> [2] 24:15 59:16  <b>propriety</b> [1] 59:2  <b>prosecution</b> [1] 66:5  <b>protect</b> [3] 10:24 16:23 27:16  <b>protecting</b> [3] 45:2 64:13 66:21  <b>prove</b> [1] 53:24  <b>public</b> [2] 39:10 42:7  <b>purpose</b> [2] 45:1,5  <b>pursue</b> [3] 30:10 73:6,23  <b>put</b> [5] 8:6 56:1,6 68:15,16  <b>puts</b> [1] 55:5</p>
<b>Q</b>		
<p><b>qualify</b> [1] 32:22  <b>quarrel</b> [2] 15:25 36:14  <b>question</b> [39] 10:11,12 11:7,11,23 12:  9,25 16:5,18 28:25 43:14,16,21 45:3  50:9,22 53:13 55:23 56:14 57:2 59:9  62:21 63:8,13,18,23 64:3 65:6 68:20  69:4,10 70:25 73:21 75:5,16,18 77:  15,16,19  <b>questions</b> [6] 12:9 40:5 55:15 71:5,15  76:15  <b>quibble</b> [1] 47:25  <b>quite</b> [3] 25:18,20 40:8</p>	<p><b>qualify</b> [1] 32:22  <b>quarrel</b> [2] 15:25 36:14  <b>question</b> [39] 10:11,12 11:7,11,23 12:  9,25 16:5,18 28:25 43:14,16,21 45:3  50:9,22 53:13 55:23 56:14 57:2 59:9  62:21 63:8,13,18,23 64:3 65:6 68:20  69:4,10 70:25 73:21 75:5,16,18 77:  15,16,19  <b>questions</b> [6] 12:9 40:5 55:15 71:5,15  76:15  <b>quibble</b> [1] 47:25  <b>quite</b> [3] 25:18,20 40:8</p>	<p><b>qualify</b> [1] 32:22  <b>quarrel</b> [2] 15:25 36:14  <b>question</b> [39] 10:11,12 11:7,11,23 12:  9,25 16:5,18 28:25 43:14,16,21 45:3  50:9,22 53:13 55:23 56:14 57:2 59:9  62:21 63:8,13,18,23 64:3 65:6 68:20  69:4,10 70:25 73:21 75:5,16,18 77:  15,16,19  <b>questions</b> [6] 12:9 40:5 55:15 71:5,15  76:15  <b>quibble</b> [1] 47:25  <b>quite</b> [3] 25:18,20 40:8</p>
<b>R</b>		

<p> <b>railroad</b> [2] 57:11 67:25  <b>raised</b> [1] 75:22  <b>rather</b> [5] 26:3 58:11,13 66:7 75:18  <b>reach</b> [1] 44:20  <b>reaction</b> [1] 11:19  <b>read</b> [1] 47:25  <b>real</b> [1] 50:18  <b>reality</b> [1] 8:8  <b>realize</b> [1] 8:25  <b>really</b> [15] 12:10 14:20 19:15 21:8 24:10 32:14 36:12 42:13 46:3 47:4,24 48:12 50:15 58:16 62:18  <b>reason</b> [7] 46:24 55:13 57:15 60:18 64:4 68:21 73:25  <b>reasonably</b> [1] 39:17  <b>reasons</b> [2] 52:4 69:17  <b>rebuttal</b> [2] 76:21,23  <b>receiving</b> [1] 62:17  <b>recognized</b> [5] 13:13 28:14 29:25 30:2 73:2  <b>recognizing</b> [1] 11:25  <b>record</b> [3] 23:2,7 52:4  <b>recoveries</b> [1] 55:9  <b>recovery</b> [1] 27:6  <b>reduce</b> [1] 52:13  <b>reduced</b> [3] 39:14,23 42:15  <b>refer</b> [1] 28:5  <b>reference</b> [1] 16:14  <b>referring</b> [1] 66:5  <b>regard</b> [1] 18:1  <b>regarding</b> [1] 51:19  <b>reiterate</b> [1] 44:1  <b>relate</b> [2] 17:15 43:21  <b>relatively</b> [2] 25:8 31:18  <b>relevant</b> [8] 39:5,16 44:23 50:21 51:22,22 52:20 68:19  <b>relied</b> [1] 41:24  <b>relitigated</b> [1] 58:11  <b>relitigation</b> [1] 58:16  <b>remanded</b> [1] 40:4  <b>remanding</b> [1] 46:12  <b>remedy</b> [2] 36:12 73:22  <b>reopen</b> [1] 59:8  <b>reopened</b> [2] 37:3,5  <b>reopening</b> [1] 62:20  <b>representation</b> [12] 10:9 13:9 57:23 59:19 69:24 70:1,4,17 71:3,20 74:6 76:10  <b>representations</b> [7] 27:25 29:10 53:16 66:8 71:18 74:9 76:6  <b>require</b> [1] 64:5  <b>required</b> [6] 21:24 30:11 53:17 57:15 58:1 63:20  <b>requirement</b> [3] 68:13,16,22  <b>requires</b> [1] 66:14  <b>requiring</b> [1] 63:24  <b>requisite</b> [1] 24:20  <b>res</b> [1] 58:8 </p>	<p> <b>reserve</b> [1] 11:22  <b>resist</b> [7] 47:8,8 68:3 69:13 70:12 71:7 75:14  <b>resisted</b> [1] 31:9  <b>resisting</b> [2] 69:15,20  <b>resolve</b> [3] 11:8,9,11  <b>resolved</b> [1] 37:23  <b>resolving</b> [1] 77:20  <b>respect</b> [4] 12:20 17:12 52:1 73:8  <b>respectfully</b> [1] 62:2  <b>respond</b> [1] 57:17  <b>respondent</b> [1] 53:10  <b>respondent's</b> [1] 10:1  <b>responsibility</b> [1] 23:22  <b>responsible</b> [3] 23:17 51:4,9  <b>result</b> [2] 58:23 59:2  <b>resulted</b> [1] 59:12  <b>results</b> [1] 36:14  <b>riddled</b> [1] 67:13  <b>ridge</b> [1] 11:14  <b>right</b> [36] 18:25 20:18,25 21:3 26:24 31:14 32:19 36:12 37:8,17 38:1,7 40:22 41:8 43:1 47:3 52:15,18,23 58:21 60:2 61:12 63:21 64:1,2,3,25 68:3,8,18 69:25 70:8 74:16 75:25 77:9,17  <b>rigid</b> [1] 18:21  <b>river</b> [1] 40:12  <b>roberts</b> [15] 8:3 21:18 27:1,21 30:5 33:23 35:17 38:16,19 47:16 48:13 53:2 58:15 76:16,21  <b>role</b> [1] 37:19  <b>rule</b> [20] 10:23 24:12 29:13 32:3,4,21 46:25 54:8,19,24,25 55:2,8,17,18,22 73:2 76:2 77:3,17  <b>rules</b> [1] 25:17  <b>ruling</b> [2] 31:25 77:2  <b>run</b> [1] 55:8 </p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p> <b>said</b> [27] 11:10 13:6 14:22 15:2 29:3 32:1,10,23 40:16 44:2,4 46:10 47:7 49:6,8,16,20 50:7 51:12 53:25 56:23 60:18 61:20 62:13 63:16,19 68:10  <b>same</b> [12] 16:11 29:19 35:12 41:5,15 42:9 53:19 57:6,7,8,20 58:8  <b>sanction</b> [6] 16:24 19:20 64:16 73:9,12 74:17  <b>sanctions</b> [2] 19:23 64:18  <b>satisfied</b> [1] 49:19  <b>say</b> [30] 11:16 16:3 17:19,25 23:7 29:21 30:10 31:13 32:7 34:24 37:10 43:3,7,11 44:15 46:8 47:1 50:2,7 51:7,13 55:22 58:7 71:15,16 73:22 74:23,25 76:2 77:6  <b>saying</b> [15] 11:13 32:21 33:4 42:25 43:6 47:19 49:4 50:6 51:2 58:12 59:2 65:2,19 71:7,19  <b>says</b> [6] 30:25 31:8 45:14 52:11 54:9 </p>	<p> <b>64:3</b>  <b>scarano</b> [1] 30:21  <b>scenario</b> [1] 8:21  <b>scene</b> [1] 58:17  <b>schedule</b> [2] 65:1,6  <b>scope</b> [1] 46:17  <b>scot-free</b> [3] 38:12 59:4 69:8  <b>scrupulous</b> [1] 25:16  <b>se</b> [1] 76:9  <b>second</b> [17] 14:19 16:15 37:13,16,20,24 38:10 44:13 45:20 51:25 53:20 54:15 57:5,7 58:13 60:2 66:12  <b>secures</b> [1] 8:14  <b>security</b> [1] 27:8  <b>see</b> [12] 11:12 12:10,14 30:12,13,14 34:22 42:4,5 50:6 62:8 64:21  <b>seek</b> [1] 62:19  <b>seeking</b> [1] 15:3  <b>seeks</b> [1] 53:19  <b>seem</b> [5] 25:12 58:18,19 67:3,16  <b>seems</b> [5] 11:17 36:5 46:23 59:18 63:4  <b>seen</b> [1] 44:20  <b>sense</b> [9] 23:20 37:14 38:15 43:12 45:18 57:25 59:1 62:24 66:2  <b>sentence</b> [1] 64:2  <b>separate</b> [3] 22:12,13 43:20  <b>set</b> [2] 14:21 48:3  <b>setting</b> [2] 48:1 77:2  <b>settled</b> [1] 57:12  <b>shift</b> [2] 43:10,12  <b>shore</b> [1] 40:15  <b>short</b> [1] 33:3  <b>should</b> [24] 11:22 14:11 17:25 18:1 19:4 36:19 39:2 40:3 42:23 43:6,7,16 44:16,22 47:22 50:15 53:18 61:11 62:1 72:21,23 75:7 77:7,21  <b>shouldn't</b> [2] 41:18 43:3  <b>show</b> [2] 23:2 70:21  <b>shown</b> [1] 8:6  <b>side</b> [8] 11:12 16:6 54:25 58:13 65:13 66:22 71:7 74:23  <b>side's</b> [2] 54:12,18  <b>significance</b> [1] 68:9  <b>simple</b> [1] 52:11  <b>simply</b> [17] 8:22,25 9:4,8,23 10:5 14:3 17:4 22:9,18,21 32:7,20 33:14 46:7 49:4 58:23  <b>since</b> [1] 57:12  <b>single</b> [1] 39:24  <b>situated</b> [1] 27:15  <b>situation</b> [17] 9:3,20 12:19 13:25 14:9 15:18 16:10 19:18 22:19 23:17 25:13 29:17,23 48:11 60:5,23 75:11  <b>situations</b> [1] 63:2  <b>so</b> [82] 8:10 9:9 10:13,19,25 11:21 13:10,10,15,25 14:19 15:13,16,16,24 16:13 17:1,19,23 18:3,19 19:6,8,10,22 </p>
---	---	---

<p>20:19 21:24 22:2,5,22 24:3 25:6 26:4, 21 29:12 30:15,17 32:11 33:5 34:4, 11 35:7,20 36:9,13 37:3,6,13,15 49: 11,17 50:8,10,11,13,25 51:5,11,13 52: 10 56:13,22 57:24 58:6 59:5,14 60:6, 9 61:14 62:2 63:5 64:18,18 65:22 67: 7,23 68:3 70:8 71:5 73:1 75:13 77:21</p> <p><b>solemn</b> [1] 74:6</p> <p><b>solution</b> [2] 36:10 73:24</p> <p><b>solve</b> [1] 36:3</p> <p><b>some</b> [10] 11:6 27:6 40:25 46:24 56:4 59:12 63:2 67:4 73:23 74:25</p> <p><b>somebody</b> [1] 29:9</p> <p><b>somehow</b> [1] 74:14</p> <p><b>someone</b> [1] 17:18</p> <p><b>someone's</b> [1] 73:12</p> <p><b>something</b> [7] 11:18,20 23:10 30:15 58:24 60:23 76:9</p> <p><b>sometimes</b> [2] 20:10 31:20</p> <p><b>sooner</b> [2] 72:22,25</p> <p><b>sophisticated</b> [1] 13:19</p> <p><b>sorry</b> [3] 19:11 31:4 68:10</p> <p><b>sort</b> [8] 17:1 28:16 35:22 36:1 37:25 56:7 70:10 77:12</p> <p><b>sotomayor</b> [24] 14:5 15:17 16:4,8 27:2, 3,12,20 36:2 48:18,22 49:1,3 50:1,4, 11,25 51:6,11 52:10,16,23 59:9 77:10</p> <p><b>sotomayor's</b> [1] 65:11</p> <p><b>sought</b> [1] 61:25</p> <p><b>source</b> [1] 14:15</p> <p><b>sovereign</b> [1] 47:20</p> <p><b>sovereigns</b> [2] 41:14 42:8</p> <p><b>speak</b> [2] 37:13 48:19</p> <p><b>speaking</b> [1] 12:9</p> <p><b>speaks</b> [2] 27:23 48:12</p> <p><b>special</b> [2] 15:18 54:24</p> <p><b>specific</b> [2] 13:14 40:23</p> <p><b>spilled</b> [1] 38:25</p> <p><b>split</b> [1] 77:20</p> <p><b>spoken</b> [1] 28:1</p> <p><b>spouse</b> [1] 19:22</p> <p><b>stake</b> [1] 27:18</p> <p><b>stand</b> [1] 16:24</p> <p><b>standing</b> [1] 58:1</p> <p><b>stark</b> [1] 49:24</p> <p><b>started</b> [1] 15:14</p> <p><b>state</b> [3] 11:2,24 32:25</p> <p><b>statement</b> [3] 41:24 47:12 63:17</p> <p><b>statements</b> [1] 41:23</p> <p><b>state-of-mind</b> [3] 68:13,16,22</p> <p><b>states</b> [3] 38:21 47:20 65:3</p> <p><b>statute</b> [1] 72:5</p> <p><b>step</b> [1] 40:7</p> <p><b>still</b> [4] 14:10 29:10 39:19 49:16</p> <p><b>story</b> [1] 72:5</p> <p><b>stream</b> [1] 62:17</p> <p><b>strong</b> [1] 24:19</p> <p><b>struggle</b> [1] 20:8</p>	<p><b>struggled</b> [1] 11:7</p> <p><b>subject</b> [2] 31:22 66:24</p> <p><b>subjectively</b> [1] 56:16</p> <p><b>submission</b> [3] 41:17 47:4 64:7</p> <p><b>submit</b> [1] 61:17</p> <p><b>subsequent</b> [4] 40:13 56:20 59:21 66: 9</p> <p><b>subsequently</b> [1] 74:8</p> <p><b>succinct</b> [1] 33:3</p> <p><b>such</b> [4] 62:6,24 74:11 76:10</p> <p><b>suffices</b> [1] 17:12</p> <p><b>sufficient</b> [1] 46:11</p> <p><b>suggesting</b> [3] 28:6,18,22</p> <p><b>suggests</b> [1] 52:4</p> <p><b>suit</b> [3] 10:12,17 14:14</p> <p><b>suited</b> [1] 35:11</p> <p><b>sum</b> [2] 27:6 62:10</p> <p><b>supplement</b> [1] 27:8</p> <p><b>support</b> [1] 41:11</p> <p><b>supporting</b> [1] 38:22</p> <p><b>supports</b> [1] 39:3</p> <p><b>suppose</b> [1] 36:10</p> <p><b>sure</b> [11] 14:20 22:24 30:14 34:2,12 42:25 45:25 47:21 49:17 50:12 61:6</p> <p><b>surprising</b> [1] 62:16</p> <p><b>surrender</b> [1] 75:23</p> <p><b>switch</b> [1] 54:1</p> <p><b>switching</b> [1] 57:9</p> <p><b>sworn</b> [1] 23:6</p> <p><b>system</b> [3] 58:9 69:2,5</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>take</b> [17] 16:22 18:18 19:17 30:8,13 32: 15 37:7 40:7 45:22 46:23 47:1 49:9 50:22 65:17 68:6,9 74:25</p> <p><b>taken</b> [8] 17:25 22:1,4,13 26:11 35:9 45:8,9</p> <p><b>takes</b> [1] 8:14</p> <p><b>taking</b> [4] 9:6 33:1 48:8 60:10</p> <p><b>talk</b> [5] 29:14 43:3,7 46:1 61:13</p> <p><b>talked</b> [5] 13:22 17:14 30:18,22 34:25</p> <p><b>talking</b> [5] 28:3 35:6 61:8 64:13 74:4</p> <p><b>teaches</b> [1] 41:20</p> <p><b>tell</b> [1] 51:3</p> <p><b>terminated</b> [2] 14:9 15:19</p> <p><b>terms</b> [6] 11:25 18:19 23:13,23 32:15 58:18</p> <p><b>test</b> [1] 18:21</p> <p><b>than</b> [9] 47:23 58:12,13,23 63:13 66:7 67:8,8 77:23</p> <p><b>thank</b> [21] 21:15,18 26:24 27:20 30:4 33:22 35:15,16 38:13,16,18,23 47:13 48:13 52:23 53:7 70:7 76:13,19,20, 25</p> <p><b>that's</b> [57] 12:18,23 13:25 14:17 16:16 18:25 19:14,24 20:15,16 22:22,23 23: 10 24:3 26:5 27:10,10,14 31:20,22 33:16,16 34:5 35:1,13,13 38:14,25</p>	<p>41:8,16 43:19 44:13 47:3,3 51:11 52: 15,18 56:10,10 58:7,23 59:5 62:3,3 63:12 65:8 68:19 69:25 70:18 71:21, 24 73:19,19 74:19,20 75:25 76:3</p> <p><b>their</b> [9] 19:6 27:16 32:21 49:11 55:7, 11 60:17 61:24 62:10</p> <p><b>them</b> [5] 8:6 31:2 48:9 54:9 74:17</p> <p><b>themselves</b> [2] 13:22 25:1</p> <p><b>then</b> [13] 8:8 12:9 19:9 20:16 22:11 31: 3,7 42:18 75:2,8,24 76:10 77:11</p> <p><b>theory</b> [3] 16:10,16 37:12</p> <p><b>there</b> [50] 9:6,7,10,17 14:2,25 18:2 20: 9 24:8,15 25:11 26:18 27:17 28:6,7 29:6,19 30:16 32:16 33:8,9,25 34:14, 14,20,24 35:24 37:1 41:20 43:13,20 44:10 45:15 46:24 49:6 52:4 53:14 54:5 55:16 58:24 59:20,22 63:9 65:4, 5 68:22 71:1,4 72:24 75:24</p> <p><b>thereby</b> [2] 39:15,25</p> <p><b>therefore</b> [1] 40:2</p> <p><b>there's</b> [32] 9:10,12,13 12:25 13:8 15: 7,19 17:1 20:2 21:3,11,12,17 26:17 32:5,6 36:23 37:6,14,18 43:10 48:7 54:11 55:13 65:1 66:22 70:15,17,19, 23 76:8 77:18</p> <p><b>these</b> [10] 25:3 27:25 33:2 36:18 42:8 44:4 46:7 49:16 61:4 72:18</p> <p><b>they</b> [30] 8:4 12:6 17:15,20,21,22 19:2, 7,7 26:10,23 27:16,18,18 49:4,12 50: 13 54:13 55:9 62:10,12,12 69:18 71: 7 72:21,23,25 74:8,8,16</p> <p><b>they're</b> [4] 13:23 38:3 57:8 67:2</p> <p><b>they've</b> [1] 50:9</p> <p><b>thing</b> [4] 36:10 47:18 54:9 58:8</p> <p><b>things</b> [3] 43:13 49:17 66:6</p> <p><b>thinking</b> [1] 35:22</p> <p><b>thinks</b> [1] 13:1</p> <p><b>third</b> [1] 54:23</p> <p><b>thomas</b> [10] 21:20 40:6 41:2 46:2 48: 15 55:16 56:18 57:16 63:11 76:17</p> <p><b>those</b> [13] 21:23 39:6 41:22 43:21 48: 6,8,10 61:20 66:6 67:12,12,12 71:5</p> <p><b>though</b> [6] 16:3,19 29:7 30:10 37:10 45:17</p> <p><b>thought</b> [6] 8:3 27:16 42:23 49:7 61: 25 77:25</p> <p><b>threat</b> [5] 9:13,17 29:20 37:15 73:5</p> <p><b>threatened</b> [1] 60:23</p> <p><b>three</b> [3] 52:13 54:2 56:3</p> <p><b>through</b> [4] 17:23 28:13 45:1 57:21</p> <p><b>time</b> [9] 16:9 26:12 54:10,11,14,14 59: 7 61:14 65:4</p> <p><b>time-limited</b> [1] 75:4</p> <p><b>times</b> [1] 49:8</p> <p><b>today</b> [1] 28:2</p> <p><b>together</b> [1] 71:14</p> <p><b>told</b> [3] 24:5 51:2 62:18</p> <p><b>too</b> [2] 18:21 59:8</p>
---	--	---

<p><b>took</b> <sup>[4]</sup> 45:17 56:24 58:4 63:17  <b>tools</b> <sup>[5]</sup> 36:1 66:1 73:8,11,14  <b>top</b> <sup>[1]</sup> 72:13  <b>tort</b> <sup>[2]</sup> 39:18 52:6  <b>tortious</b> <sup>[1]</sup> 69:7  <b>total</b> <sup>[1]</sup> 62:10  <b>totality</b> <sup>[6]</sup> 39:16 42:22 49:9 52:12 61:9 75:10  <b>training</b> <sup>[1]</sup> 25:9  <b>tremendous</b> <sup>[1]</sup> 45:16  <b>trial</b> <sup>[1]</sup> 54:22  <b>tribunal</b> <sup>[1]</sup> 56:4  <b>tries</b> <sup>[1]</sup> 8:17  <b>trouble</b> <sup>[1]</sup> 14:6  <b>truck</b> <sup>[3]</sup> 10:2 15:9 58:20  <b>true</b> <sup>[3]</sup> 20:16,16 31:12  <b>trump</b> <sup>[1]</sup> 43:25  <b>trustee</b> <sup>[1]</sup> 61:19  <b>truthful</b> <sup>[1]</sup> 55:6  <b>try</b> <sup>[2]</sup> 32:24 47:22  <b>trying</b> <sup>[8]</sup> 14:6 16:5 17:11 18:11 23:24 24:7 45:11 60:1  <b>turn</b> <sup>[1]</sup> 74:8  <b>turned</b> <sup>[1]</sup> 42:19  <b>turns</b> <sup>[2]</sup> 8:15 44:18  <b>two</b> <sup>[17]</sup> 8:7 12:24 39:11,14 40:11 41:1,14,21,22 42:8,20 43:13,13 47:20 49:6 51:16 75:20  <b>tying</b> <sup>[1]</sup> 71:14  <b>type</b> <sup>[1]</sup> 72:8  <b>types</b> <sup>[1]</sup> 74:5  <b>typical</b> <sup>[1]</sup> 19:25  <b>typically</b> <sup>[2]</sup> 12:21 13:13</p>	<p><b>unsophisticated</b> <sup>[1]</sup> 25:8  <b>unusual</b> <sup>[2]</sup> 57:1,4  <b>up</b> <sup>[12]</sup> 16:24 20:6 35:13 41:9 49:5 52:2 57:5 59:7,7 74:2,5 77:9  <b>update</b> <sup>[13]</sup> 9:4,9,23 10:7 13:3,5 14:4 22:6,10,18 33:14 34:7 70:11  <b>updated</b> <sup>[1]</sup> 9:2  <b>upon</b> <sup>[1]</sup> 41:25  <b>upshot</b> <sup>[1]</sup> 33:11  <b>urge</b> <sup>[2]</sup> 71:16 77:11  <b>urging</b> <sup>[1]</sup> 54:23  <b>us</b> <sup>[4]</sup> 40:20 49:5 50:5 51:1  <b>use</b> <sup>[2]</sup> 57:21 66:1  <b>used</b> <sup>[1]</sup> 71:25  <b>useful</b> <sup>[1]</sup> 73:14  <b>usual</b> <sup>[1]</sup> 69:16  <b>usually</b> <sup>[1]</sup> 51:7</p>	<p><b>we</b> <sup>[67]</sup> 11:9,10,16 15:14 24:10,12,12 26:20 29:16,24 31:12,21,22 32:7,23 35:24 36:7 43:3,6,7,15,22,25 45:6,6,6,25 46:6,12,15,16,22 47:1,2,11,14,22 49:18,18,21 50:21 51:5,6,8 54:23,25 56:6,6,13 59:3 60:18 63:15 65:14 66:11,19 67:10,17 68:9 69:9,22,23 71:16 72:3 73:21 77:2,5,11  <b>welcome</b> <sup>[3]</sup> 40:5 55:15 77:2  <b>well</b> <sup>[34]</sup> 11:3 12:18 16:21,24 20:15 21:22 23:15 25:23 31:18 34:13,16 35:4,9 40:22 41:2 44:18 47:16 49:18 50:3 51:15 55:11 57:8 58:12,15 61:22 62:14 63:15 64:12 65:18 71:10 72:1,1,2,4  <b>went</b> <sup>[2]</sup> 49:20 58:24  <b>were</b> <sup>[12]</sup> 25:23 26:6,7,22,23 42:8,9 49:4,6 55:21 62:17 70:22  <b>we're</b> <sup>[12]</sup> 28:6,18 35:13 47:11 51:14,14 61:8 64:7,13 67:19 69:5 74:4  <b>weren't</b> <sup>[1]</sup> 62:18  <b>we've</b> <sup>[3]</sup> 32:1,10 66:24  <b>what</b> <sup>[59]</sup> 8:1,5,10,10 11:13 12:6,25 16:3,18 17:12 19:9,9 20:1,13 21:8,8,24 23:12 24:10 28:9 32:10,12,13,21,23 33:7,10 35:13 36:2,16,16,17 37:10 40:16 41:9,19 42:25 43:14,16,19,22 44:2 45:25 46:9 47:12 49:3,13 50:6,17 51:6,11 56:20 60:4,20 67:17 71:15 72:9,22 75:18  <b>whatever</b> <sup>[4]</sup> 11:15 45:13 46:9 60:18  <b>what's</b> <sup>[5]</sup> 21:11 25:25 33:7 42:13 57:16  <b>when</b> <sup>[23]</sup> 8:13 12:21 15:14 22:11,11 26:12 29:3,3 30:24,24 31:7 32:5 34:6 36:3 45:7 46:17 52:5,5,7 59:7 67:14,17 76:8  <b>where</b> <sup>[23]</sup> 8:21 9:17 13:2,7,20 14:1,8,10 15:18 19:15 22:17 24:15 25:6 28:11 29:17 43:3 45:16 48:11 53:19 66:16,19 70:17 71:1  <b>whereas</b> <sup>[1]</sup> 40:24  <b>whether</b> <sup>[35]</sup> 9:22 14:3,12 15:3 18:2 19:2 23:13,24 26:18 27:24 28:7 31:24 32:15 36:11,20 39:6,8,9 42:11 43:4,23 46:21 51:20 53:14,16 54:13 56:14 61:10 63:9,19,23 70:2 72:21 75:8 76:8  <b>which</b> <sup>[34]</sup> 9:20 16:10 17:17 18:9 19:25 25:13,14,16 27:6 29:7,23 30:22 36:23 42:16,21,21 44:3 45:2 50:17 51:6 53:21 55:3,23 57:20 60:7,13 63:1,13,24 67:9,25 71:9 74:5,15  <b>while</b> <sup>[1]</sup> 39:19  <b>who</b> <sup>[10]</sup> 13:18 15:8 24:17 25:8 54:17 58:3,20 59:3 62:17 69:7  <b>whole</b> <sup>[2]</sup> 69:25 77:16  <b>whom</b> <sup>[1]</sup> 57:23</p>
<p style="text-align: center;"><b>U</b></p> <p><b>ultimately</b> <sup>[3]</sup> 26:7 52:6 64:23  <b>unaware</b> <sup>[1]</sup> 8:22  <b>under</b> <sup>[5]</sup> 10:18 24:11 54:18 65:5 77:13  <b>undermine</b> <sup>[1]</sup> 55:2  <b>undermines</b> <sup>[3]</sup> 8:1 28:15 53:22  <b>underscores</b> <sup>[2]</sup> 16:19 38:9  <b>understand</b> <sup>[13]</sup> 10:20 22:25 25:18,20 36:7 42:25 48:3 58:6 60:14,20 67:10 71:22 74:12  <b>understanding</b> <sup>[4]</sup> 16:9 18:10 54:20 64:22  <b>undertaken</b> <sup>[2]</sup> 19:4 77:7  <b>undo</b> <sup>[1]</sup> 40:2  <b>unfair</b> <sup>[11]</sup> 15:5,5,8,8,11 28:12 31:1 39:7 40:2 42:4 43:18  <b>unique</b> <sup>[3]</sup> 12:20 30:3 37:18  <b>uniquely</b> <sup>[1]</sup> 27:15  <b>united</b> <sup>[1]</sup> 38:21  <b>universally</b> <sup>[1]</sup> 30:1  <b>unknown</b> <sup>[2]</sup> 27:6 62:13  <b>unless</b> <sup>[1]</sup> 76:14  <b>unsecured</b> <sup>[1]</sup> 61:21</p>	<p style="text-align: center;"><b>V</b></p> <p><b>vacated</b> <sup>[1]</sup> 40:3  <b>vacating</b> <sup>[1]</sup> 46:12  <b>vacatur</b> <sup>[1]</sup> 38:22  <b>valuation</b> <sup>[1]</sup> 62:9  <b>various</b> <sup>[1]</sup> 43:21  <b>versions</b> <sup>[1]</sup> 8:7  <b>versus</b> <sup>[16]</sup> 10:21 11:14 12:23 27:8 39:4 41:12,20 44:2 47:6,7 48:1,12 49:22,25 50:20 72:2  <b>very</b> <sup>[9]</sup> 8:24 13:18 25:16 28:1 30:7 31:23 33:3 63:4 69:21  <b>victory</b> <sup>[2]</sup> 53:20,22  <b>view</b> <sup>[7]</sup> 18:19 20:18 39:21 44:23 46:23 50:19 51:24</p> <p style="text-align: center;"><b>W</b></p> <p><b>walk</b> <sup>[1]</sup> 69:7  <b>walks</b> <sup>[1]</sup> 38:12  <b>want</b> <sup>[8]</sup> 8:6 11:8,10 17:21 24:10 61:13 64:14 70:11  <b>wanted</b> <sup>[3]</sup> 11:18 46:16 72:16  <b>wants</b> <sup>[1]</sup> 45:14  <b>warrant</b> <sup>[1]</sup> 19:20  <b>warranted</b> <sup>[2]</sup> 19:23 20:1  <b>wary</b> <sup>[1]</sup> 14:2  <b>was</b> <sup>[56]</sup> 8:4,5 10:12 14:2,25 15:11,12,21 18:2 23:14,24 26:14,18,21 27:5,17 28:7 32:16 33:14 34:7 35:5 36:2 39:8,19 40:8,12,14,17 41:4,12 42:5 44:5,10 46:3 47:10,15 49:13,15 52:3,4,6 53:15 54:18 56:16 58:24 61:24 62:5,6,13 63:19,25 64:20 65:2,19 71:23 77:25  <b>wasn't</b> <sup>[5]</sup> 15:10 24:7 35:21 49:11 65:21  <b>water</b> <sup>[1]</sup> 38:25  <b>way</b> <sup>[7]</sup> 15:21 25:13 26:3 36:7 47:14 57:20 62:1  <b>ways</b> <sup>[3]</sup> 13:11 36:6 39:19</p>	

<p><b>whoops</b> <sup>[1]</sup> 38:25  <b>who's</b> <sup>[3]</sup> 17:19 23:25 58:20  <b>whose</b> <sup>[1]</sup> 58:20  <b>why</b> <sup>[21]</sup> 10:13,16 12:17 20:6,6 23:2,9  25:18,20 31:25 46:7 50:2 52:4 55:8  58:23 65:13,14 67:20 73:4,21 75:9  <b>will</b> <sup>[3]</sup> 34:24 55:7 77:9  <b>william</b> <sup>[1]</sup> 53:9  <b>willingness</b> <sup>[1]</sup> 34:15  <b>wilmington</b> <sup>[2]</sup> 57:10 67:24  <b>win</b> <sup>[1]</sup> 53:19  <b>windfall</b> <sup>[5]</sup> 38:9 57:18 58:6 67:3,22  <b>wipe</b> <sup>[1]</sup> 16:1  <b>wiped</b> <sup>[2]</sup> 10:3 15:11  <b>wiping</b> <sup>[2]</sup> 9:18,24  <b>with</b> <sup>[57]</sup> 8:24 9:11 11:7 13:24 14:13,  24 15:9,9,14,15,25 17:6,12,23,24 24:  15 25:4,7,17 28:2,17 31:24 32:3 36:7,  14 38:5 39:10 43:1 44:6 45:4 46:14,  15 47:11,11,11,25 48:8 49:19 51:25  53:21 54:12 56:13 59:16,18,21 60:1,  1 63:11,18 67:13 70:18 71:7,24 73:8  74:10 76:12 77:22  <b>without</b> <sup>[2]</sup> 9:20 27:13  <b>won</b> <sup>[1]</sup> 53:21  <b>wonder</b> <sup>[2]</sup> 31:23 47:19  <b>word</b> <sup>[1]</sup> 52:10  <b>words</b> <sup>[3]</sup> 50:23 56:23 61:4  <b>works</b> <sup>[1]</sup> 16:10  <b>world</b> <sup>[3]</sup> 17:16 36:23 44:8  <b>worth</b> <sup>[1]</sup> 65:21  <b>would</b> <sup>[53]</sup> 10:25 13:14 14:1,19 15:25  16:3,15 17:25 18:13 19:19,19 22:7,  15 23:21 24:14 26:10,15 27:4,6,19  31:24 32:7,11 33:5,10,12,15 35:12  37:10 46:24 49:5,18 52:7,8,16 54:19,  21 55:2,9,22,25 56:5,6 57:16 58:12  60:11 67:3,21 71:16 74:13 75:11 77:  2,11  <b>wouldn't</b> <sup>[5]</sup> 11:10 12:1 43:11 45:19  65:14  <b>writing</b> <sup>[1]</sup> 55:21  <b>wrong</b> <sup>[6]</sup> 27:17 42:13 43:9 48:8 49:4  64:5  <b>wrote</b> <sup>[1]</sup> 43:2</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p><b>x</b> <sup>[1]</sup> 50:24</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yeah</b> <sup>[7]</sup> 19:12 21:7,14 29:1 35:7 50:  10 73:16  <b>year</b> <sup>[2]</sup> 26:11 77:23  <b>years</b> <sup>[2]</sup> 41:15 52:8  <b>yes</b> <sup>[12]</sup> 12:13,16 20:13 28:4 31:11 32:  17 33:20 38:2 50:2 60:3 63:6 69:3  <b>yet</b> <sup>[2]</sup> 31:23 38:12  <b>you'll</b> <sup>[1]</sup> 62:8</p>	<p><b>your</b> <sup>[56]</sup> 8:12 11:19,23 12:10 15:9 16:  2,6,18 17:11 18:12,19,20,20 19:11 20:  17,20 22:2,2 23:5,22 24:21 26:4 27:  11,22,23 30:8 31:4 32:12 33:7 34:3,4  35:16 37:16 38:18 40:18 43:2 45:23  51:4 55:17 56:21 57:1,18 59:6 60:22  62:2 63:17 64:18,21 65:12 67:3,7,21  69:10,10 75:5 76:20  <b>you're</b> <sup>[7]</sup> 11:13 25:7 40:22 42:25 44:  16 51:3 58:25  <b>you've</b> <sup>[6]</sup> 17:14 41:23,24 44:19,19 49:  16</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>zoom</b> <sup>[1]</sup> 66:12  <b>zooming</b> <sup>[1]</sup> 67:4</p>
---	--