Florida v. Georgia

				3
		1	1	believe we have Britt Grant from the
			2	Florida from the Georgia Solicitor
	SUPREME COURT OF S No. 142, Of		3	General's Office as well as Sarah Warren from
			4	the Georgia Solicitor General's Office. I
	STATE OF FLORIDA,)		5	think that's it for Georgia.
	Plaintiff,)) V.		6	MS. GRANT: Yes, your Honor; that's
) STATE OF GEORGIA,)		7	correct.
) Defendants.)		8	SPECIAL MASTER LANCASTER: And will you
	TELEPHONE CONFERENCE	E before SPECIAL MASTER	9	be the principal speaker?
	RALPH I. LANCASTER, held at	t the law offices of Pierce	10	MR. ALLEN: Yes, your Honor; I will.
	Atwood, LLP, at Merrill's W	Wharf, 254 Commercial Street,	11	SPECIAL MASTER LANCASTER: United
	Portland, Maine, on Novembe		12	States?
	10:00 a.m., before Claudett		13	MR. GRAY: Good morning, your Honor.
	Notary Public in and for th APPEARANCES:	ne state of Maine.	14	This is Michael Gray for the United States.
	For the State of Florida:	PHILIP J. PERRY, ESQ.	15	SPECIAL MASTER LANCASTER: Good morning,
		ALLEN C. WINSOR, ESQ. OSVALDO VAZQUEZ, ESQ.	16	Mr. Gray. From my review of the progress
		JOHN S. COOPER, ESQ. ABID R. QURESHI, ESQ.	17	reports, I doubt that there is anything that
	For the State of Georgia:	K. WINN ALLEN, ESQ. BRITT GRANT, ESQ.	18	the United States will want to comment on;
		SARAH HAWKINS WARREN, ESQ. DEVORA W. ALLON, ESQ.	19	but I'm not while I'm not going to call on
	For the U.S.A.:	MICHAEL T. GRAY, ESQ.	20	you directly, if you have anything that you
	Also Present:	JOSHUA D. DUNLAP, ESQ. MARY CLIFFORD	21	want to comment on, please feel free to do
			22	so. Okay?
			23	MR. GRAY: Yes. Thank you.
	THE REPORTING Mason & Lock		24	Mr. ALLEN: Your Honor, I this is
			25	Mr. Allen, again, from Kirkland. I neglected
				THE REPORTING GROUP
				Mason & Lockhart
		2		4
				4
1			1	to mention one of my colleagues who is also
2	PROCEEDINGS		2	to mention one of my colleagues who is also on the phone. Devora Allon is also on. I
2 3	SPECIAL MASTER LA	NCASTER: Good morning,	2 3	to mention one of my colleagues who is also on the phone. Devora Allon is also on. I just wanted to put that on the record.
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Florida v. Georgia

	5		7
1	there is a dispute or has been a dispute	1	SPECIAL MASTER LANCASTER: Yes, please.
2	regarding production of professors' e-mails.	2	MR. PERRY: I apologize.
3	How many professors' e-mails are at issue,	3	If I might respond briefly, it's
4	Florida?	4	our desire to narrow the issues for
5	MR. PERRY: Your Honor, currently the	5	Dr. Georgakakos; so it's not anything like
6	principal professor is Professor Georgakakos	6	the burden that Mr. Allen has identified.
7	from Georgia Tech. There are two others.	7	And that is indeed something we started to do
8	One is retired, Professor Hook; and then	8	and have done to some large extent already.
9	Professor Masters, I believe, from Albany	9	But that's the purpose of the meet and confer
10	State University. I don't believe that any	10	this week in our opinion.
11	of those three issues are yet ripe for	11	SPECIAL MASTER LANCASTER: Thank you.
12	decision by the Court under the terms of the	12	With regard to other written discovery,
13	Case Management Plan, but it's our desire to	13	what's the status regarding Florida's written
14	move very quickly forward on those.	14	discovery responses as to harm? Georgia?
15	We are still awaiting production from	15	MR. ALLEN: Your Honor, regarding
16	Albany State University, so we're not yet	16	Florida's written discovery responses, we
17	sure for Mr. Masters; and we may have some	17	have had some back and forth with Florida
18	doubts as to Professor Hook as well. But as	18	over the past couple months. Florida
19	to Dr. Georgakakos, we believe that a meet	19	supplemented once, I believe, a few months
20	and confer tomorrow or the next day ought to	20	ago; and Georgia continued to believe that
21	make that mature for any resolution we may	21	those supplements were inadequate.
22	need from the Court.	22	We received from Florida new discovery
23	SPECIAL MASTER LANCASTER: Georgia?	23	responses last night, pretty late last night,
23	MR. ALLEN: Your Honor, yes. We'll meet	23	as well as some supplements to some earlier
	and confer with Florida with regard to the	24	discovery responses that were made. To be
25	THE REPORTING GROUP	25	THE REPORTING GROUP
	Mason & Lockhart		Mason & Lockhart
	C C		0
	6		8
1	professors' e-mails. I will say that for us,	1	honest with you, we just got them late last
2	professors' e-mails. I will say that for us, we're going to continue to discuss this with	2	honest with you, we just got them late last night; so we're still in the process of
2 3	professors' e-mails. I will say that for us, we're going to continue to discuss this with Florida; but this presents a different issue	2 3	honest with you, we just got them late last night; so we're still in the process of reviewing them.
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	Telephone Confe	erence	
	9		11
1	supplemental interrogatory responses on the	1	to discuss these issues to take deposition
2	harm that is being suffered and will be	2	testimony from Florida witnesses on this
3	suffered by Florida. And in those responses,	3	issue.
4	we identified more than 300 pages 300	4	And I think you have seen from our
5	separate reports and data sets identifying	5	status report that Florida has objected to
6	harm to species in the river and in the bay.	6	putting up a witness on the harm that might
7	Last night, we identified through more than	7	be suffered by animal and plant species, by
8	100 pages of interrogatory responses	8	economic what economic injury it suffered,
9	additional details. And collectively between	9	what sociological injury it suffered. We do
10	those various efforts we now have something	10	think it's very important that there be a
11	like 400 reports and data sets. We have	11	30(b)(6) witness from the State of Florida
12	identified oysters, six types of crayfish,	12	who will testify to these injuries and that
13	various mussel types, dozens of species of	13	Georgia not be limited to interrogatory
14	freshwater and estuarine fish, many types of	14	responses on this.
15	estuarine phytoplankton, zooplankton, various	15	So I just want to raise that and say
16	types of crabs and shrimp, amphibians,	16	that we do intend to push for an
17	reptiles, and birds, all that are impacted by	17	interrogatory for a 30(b)(6) witness on
18	the reduced flows caused by Georgia's	18	injury issues. I understand that from a
19	upstream consumption.	19	conversation one of my colleagues had last
20	It's our position that we had more than	20	night with Mr. Perry that Florida is willing
21	satisfied the interrogatories prior to this	21	to meet and confer on that; but we very, very
22	production last night of new interrogatory	22	much hope that Florida would reconsider its
23	responses. But I think at this point, it's	23	objections on the 30(b)(6) issue so that we
24	going to be hard to say that we have not	24	can take a deposition of relevant fact
25	reasonably disclosed all of our contentions,	25	witnesses on this issue.
	THE REPORTING GROUP Mason & Lockhart		THE REPORTING GROUP Mason & Lockhart
	10		12
1	10 your Honor.	1	12 SPECIAL MASTER LANCASTER: Mr. Perry?
2	10 your Honor. MR. ALLEN: Your Honor, if I might just	2	12 SPECIAL MASTER LANCASTER: Mr. Perry? MR. PERRY: Your Honor, I think we see
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	Telephone Confe	erence	5
	13		15
1	information. It would be like asking for a	1	We're entitled to probe that through a
2	single 30(b)(6) witness on volumes A through	2	30(b)(6) deposition.
3	C of Encyclopedia Britannica.	3	The second point, your Honor, is it
4	We think there is a way to work through	4	isn't some, like, difficult issue that
5	that. We think there is a way to narrow	5	Florida can't wrap its head around. I mean,
6	these issues so they're specific and factual	6	there are entire agencies in Florida that are
7	and that Georgia can get the type of witness	7	focused on species and animals and things of
8	it needs. I'll add that it already has, I	8	that nature. So this is things that
9	believe, something like 42 noticed	9	employees in Florida do as part of their
10	depositions at this stage, and a number of	10	regular job is they presumably and I
11	the witnesses they have noticed will have	11	believe this is true that they monitor
12	relevant information. But more than that,	12	species in the Apalachicola region and have
13	there are a line of federal cases, several of	13	an understanding as to what might be harming
14	them, that say essentially that in certain	14	them or what might not be harming them.
15	circumstances, a party may properly restrict	15	We're actually asking for factual
16	a Rule 30(b)(6) deposition on the grounds	16	testimony on that. And I don't think it's
17	that information the information sought is	17	overbroad to say identify for us the animal
18	more appropriately discoverable through	18	and plant species you think are being harmed.
19	contention interrogatories.	19	Identify for us what economic injury you
20	Now, as I say, we're not taking the	20	think you're suffering.
20	position that no 30(b)(6) witness will be	20	I understand that there might be some
21	made available. We're asking Georgia to	21	expert testimony components to that. There
22	consider the implications for premature	22	is also certainly factual parts of that and
	expert disclosure and the implications that	23 24	factual testimony that's part of that and
24			factual facts that form the basis of that
25	arise just from the practical question of how THE REPORTING GROUP	25	THE REPORTING GROUP
	Mason & Lockhart		Mason & Lockhart
	14		16
1	can we possibly have somebody testify about	1	expert testimony. And we're entitled as a
2	the breadth of information at issue here?	2	defendant in a case that's been brought
2 3	the breadth of information at issue here? Ultimately when we disclose, according	2 3	defendant in a case that's been brought against us to take discovery on that.
2 3 4	the breadth of information at issue here? Ultimately when we disclose, according to the Court's schedule, our experts, they	2	defendant in a case that's been brought against us to take discovery on that. So we're going to meet and confer with
2 3 4	the breadth of information at issue here? Ultimately when we disclose, according to the Court's schedule, our experts, they will rely on the type of information we have	2 3 4 5	defendant in a case that's been brought against us to take discovery on that. So we're going to meet and confer with Florida on the 30(b)(6) issue. Happy to do
2 3 4	the breadth of information at issue here? Ultimately when we disclose, according to the Court's schedule, our experts, they will rely on the type of information we have supplied to Georgia. They will analyze it.	2 3 4 5	defendant in a case that's been brought against us to take discovery on that. So we're going to meet and confer with Florida on the 30(b)(6) issue. Happy to do that and see if we can reach a compromise
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	Telephone Conf	erence - 11/1		eorgia
	17		19	
1	With a large number of depositions, there is	1	We're happy to meet and confer with	
2	obviously a lot of coordination that has to	2	Florida again. They were just served	
3	go on between witness availability and	3	yesterday. So if Florida has concerns about	
4	counsel availability. But we anticipate	4	the responses, they can raise them; and we'll	
5	expeditiously moving forward with scheduling	5	do the same for the responses we received	
6	any and all remaining depositions that we can	6	from Florida last night. We'll review them.	
7	in the next week or the next two weeks.	7	And if we have concerns, we'll raise them	
8	That's something we very much want to	8	with counsel for Florida.	
9	there's a number on the schedule now; but we	9	(Discussion off the record.)	
10	want to get as many as we can scheduled as	10	SPECIAL MASTER LANCASTER: Just a	
11	soon as possible and work with Florida to	11	minute, please.	
12	schedule whatever depositions they might want	12	MR. PERRY: I apologize. My fault.	
13	to get scheduled as well.	13	SPECIAL MASTER LANCASTER: Okay. Let	t's
14	SPECIAL MASTER LANCASTER: Mr. Perry?	14	go ahead now and give those numbers slowly.	
15	MR. PERRY: Your Honor, we had the same	15	MR. PERRY: I will, your Honor. I	
16	approach. I will say that the availability	16	apologize for moving quickly.	
17	of Dr. Georgakakos's and the other two	17	SPECIAL MASTER LANCASTER: This is	
18	gentlemen's e-mail are important to us in	18	Mr. Perry?	
19	making progress on our depositions; but we	19	MR. PERRY: That's right. Mr. Perry for	
20	are indeed trying to move as quickly as we	20	Florida.	
21	possibly can. Hopefully, we can resolve some	21	Nos. 28, 29, 31, 41, and 42.	
22	of these issues at the meet and confer this	22	SPECIAL MASTER LANCASTER: Thank you	۱.
23	week.	23	MR. PERRY: Thank you.	
24	Also, I note, if I might I know it	24	SPECIAL MASTER LANCASTER: Let me tur	rn
25	may be a little premature; but in the	25	now to third parties. Are there any	
	THE REPORTING GROUP	-	THE REPORTING GROUP	
	Mason & Lockhart		Mason & Lockhart	
	18			
	18		20	
1		1	-	
1 2	interest of full disclosure, since Georgia	1	outstanding concerns regarding the response	
	interest of full disclosure, since Georgia put on the table its interrogatory responses		-	
2	interest of full disclosure, since Georgia put on the table its interrogatory responses last night, we have noted that they declined	2	outstanding concerns regarding the response of the U.S. agencies, the Touhy requests? Florida?	
2 3 4	interest of full disclosure, since Georgia put on the table its interrogatory responses last night, we have noted that they declined to answer a few of the interrogatories. And	2 3	outstanding concerns regarding the response of the U.S. agencies, the Touhy requests? Florida? MR. PERRY: Your Honor, we think the	
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	21		23
1	MR. PERRY: Well, yes, your Honor.	1	SPECIAL MASTER LANCASTER: Well, I think
2	There is a subpoena to Black & Veatch. And	2	the process of selecting a mediator depends
3	they have produced a wide range of documents	3	upon a number of things. First of all, I
4	to us, but not specific e-mails of the type	4	think you need to decide whether you want
5	we have identified in our status report in	5	someone who is an expert in water law or
6	fact, multiple status reports. Atkins, I	6	someone who knows nothing about water law. I
7	believe, is still going to produce documents	7	think that the at first the two states
8	to us. And we're awaiting those.	8	should get together, as you're planning to
9	So there may be some issues that we may	9	do, and see if you can agree on the form of
10	need judicial assistance with. I'm not	10	mediation, No. 1; No. 2, on a specific
11	certain we do though. We may be able to get	11	mediator.
12	what we need from both of those parties, and	12	If you want me involved in that process,
13	so it may be premature to identify that as a	13	I'm happy to get involved. But I think it's
14	genuine problem.	14	better if the two states can agree between
15	SPECIAL MASTER LANCASTER: Mr. Allen?	15	themselves.
16	MR. ALLEN: Your Honor, Georgia, I'm	16	I can make suggestions for mediators,
17	pretty sure, has no outstanding issues with	17	but I prefer not to for obvious reasons. I
18	third parties regarding other issues.	18	think the selection process is important
19	SPECIAL MASTER LANCASTER: Thank you	19	very important; but I'm delighted, and I
20	both.	20	can't overemphasize the fact that I'm
21	Let me just ask well, before I turn	21	delighted to see both the word "settlement"
22	to some final things here, is there anything	22	and the word "mediator" in the reports and to
23	else that you want to raise, Mr. Perry?	23	know that you're moving towards that process
24	MR. PERRY: If I might, your Honor, I	24	because, frankly, your persistent refusal to
25	would note Georgia's point at the end of its	25	narrow the scope of this litigation is going
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	Mason & Lockhart		Mason & Lockhart
	22		24
1	status report about the prospect of	1	to result in astonishing expenses to the
2	mediation. And I will say that we agree that	2	states' taxpayers. And as I have said from
3	it could be helpful to us and to Georgia in	3	the start, if there's anything, any way at
4	particular if our discussions on a potential	4	all any way at all that this can be
5	settlement could be officiated by a sharp and	5	settled, it ought to be done.
6	effective mediator. Our concern is that it	6	So thank you both for making that, and I
7	may take that type of help to actually make	7	hope that your that attempt; and I hope
8	progress. And so we welcome that suggestion.	8	that your meet and confer will be effective.
9	And I called Georgia's counsel yesterday to	9	And I look forward to hearing further on it.
10	begin the process of identifying such a	10	Now, let me say a couple of things in
11	person.	11	closing. First of all, somewhere in here
12	And, your Honor, if you have suggestions	12	there was a reference to one side or the
13	or advice for us on that, we would be very	13	other using speaking objections, which I
14	happy to take your advice and follow through.	14	understand from my litigation experience to
15	SPECIAL MASTER LANCASTER: Well, let me	15	mean that the attorney was suggesting an
16	say, before I ask Georgia to respond, that I	16	answer to the witness. Let me just tell you
17	was pleased to see the word, quote,	17	that I think that is abhorrent. It's a
18	settlement, unquote, in one of the progress	18	practice that I think is terrible, and I
19	reports and the suggestion of mediation. I	19	can't believe that experienced and competent
20	think that came from Georgia. Am I correct?	20	as counsel are in this case, that it's
21	MR. ALLEN: You are correct, your Honor.	21	actually happening. But let me just warn you
22	SPECIAL MASTER LANCASTER: And I now	22	that if it is happening and if it ever gets
23	understand that Florida would entertain mediation as well?	23	brought to my attention, there will be
24		24	consequences that will flow from it or because of it.
25	MR. PERRY: Yes, your Honor. THE REPORTING GROUP	25	THE REPORTING GROUP
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·	l elephone Confe	erence	
	25		27
1	The last thing I would add is that	1	<u>CERTIFICATE</u>
2	and this is overly simplistic; so you will	2	I, Claudette G. Mason, a Notary Public
3	forgive me. But as I read through these	3	in and for the State of Maine, hereby certify
4	progress reports, it appears to me that the	4	that the foregoing 26 pages are a correct
5	meet and confer sessions which you are	5	transcript of my stenographic notes of the
6	holding and which I applaud come up with	6	above-captioned proceedings.
7	different results and different memories from	7	I further certify that I am a
8	the participants. So let me make, again, a	8	disinterested person in the event or outcome
9	very simplistic suggestion. I suggest that	9	of the above-named cause of action.
10	when you have a meet and confer, you have	10	IN WITNESS WHEREOF, I subscribe my hand
11	someone taking notes, and that when you're	11	this 12th day of November, 2015.
12	finished, you have them read aloud and then	12	
13	incorporated in an e-mail. That way when I	13	
14	get the next progress reports, there won't be	14	
15	suggestions that this one said this and this	15	Notary Public
16	one said that; and we don't agree on what we	16	
17	said.	17	
18	Now, again, that's just Lancaster's	18	My Commission Expires
19	simplistic suggestion. You don't have to	19	June 9, 2019.
20	follow it. But I think it will resolve some	20	
21	of the difficulties if you do.	21	
22	Anything else? Florida?	22	
23	MR. PERRY: No, your Honor.	23	
24	SPECIAL MASTER LANCASTER: Georgia?	24	
25	MR. ALLEN: No, your Honor. Thank you	25	
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	Mason & Lockhart		Mason & Lockhart
	26		
1	very much for your time.		
2	SPECIAL MASTER LANCASTER: Josh?		
3	MR. DUNLAP: Nothing.		
4	SPECIAL MASTER LANCASTER: Okay. Thank		
5	you very much, counsel. We appreciate your		
6	help.		
7	MR. PERRY: Thank you.		
8	MR. ALLEN: Thank you.		
9	(The telephone conference was concluded		
10	at 10:25 a.m.)		
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10:00 (p1:13) 22:14 17.4, 17:6° collectively (p9:9) Court's (p1:4) Court's (p1:4) 10:25 (p2:6) agere (a2:2, 2:3), agere (a2:2, 3:, 3), agere (a2:2, 3), agere (a.				• • • •	
10:25 (n): 26:10 12h (n): 27:11 ago (n): 61:12 ago (n): 61:67.20 ago (n): 61:12 20:10.21:12 20:10.22:114 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:11 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61:115 20:00(n): 61:114 20:00(n): 61		••	• • • •	-	
12b m ¹ / ₂ 27:11 202, 2021 and the set of the set o			,	• • •	
142 min 142 min <t< th=""><th></th><th>•</th><th></th><th>-</th><th></th></t<>		•		-	
2 3/2					
2 2:14.25.16 B commerts (p-161:5 2(p-23:0) abad (p-19:14 Abary(p-8.9,516 abad (p-12:14,12.7) abad (p-9.5,911,12.14,12.7) 2015 (p-1:12, 27:11 Allen (p-0-2:16, 22.14, 25.14, 22.15, 23.16, 23.14:2.4) base(p-12:14,12.7) 14:2,0,14.2.4) completing (p-14.16, 12.4, 14:2.7, 14.2.7, 14	142 [1] - 1:1	-	21:8		
agreement(p) formation				3:21, 18:12	CRR [1] - 1:13
2 m - 23:10 ahead (n - 19:14 base (n - 12:14, 14:7 Commission (n - 27:18) 20 00 (n - 6:11 Albany (n - 59, 5:16) base (n - 12:14, 14:7) Commission (n - 27:18) 254 (n - 111 Allen (n - 2:6, 2:24, 3:25, 7:6, 12:4, 12:7) basis (n - 16:25) complete (n - 4:8), 12:14, 12:15 26 (n - 27:14) 20:16, 2:16, 2:24, 13:14 begin (n - 2:24, 16:11, 12:14, 12:15) complete (n - 4:8), 14:14, 12:16 3 ALLEN (n - 3:24) beta (n - 10:23, 16:13, 20:11, 12:17, 12:3, 12:5, 11:11, 11:17, 12:3, 12:3, 12:5, 12:14, 14:16, 16:3, 16:13, 20:12, 12:5, 11:11, 11:17, 12:3, 12:3, 12:5, 12:14, 14:16, 16:3, 16:13, 20:12, 12:2, 12:52, 12:16, 22:1, 25:25, 12:14, 14:16, 17:12, 20:20, 20:20, 20:4 components (n - 16:12, 16:3, 16:13, 20:11, 12:14, 14:16, 16:14, 17:12, 12:14, 14:16, 16:14, 17:12, 12:14, 14:16, 17:12, 12:14, 14:16, 17:12, 12:14, 14:16, 17:12, 12:14, 14:16, 17:12, 12:14, 14:17, 12:14, 14:16, 17:12, 20:20, 20:20, 20:4 components (n - 16:12, 10:3, 19:10, 20:11, 12:14, 14:16, 17:12, 20:12, 20:14, 20:14, 12:14, 14:14, 16:14, 17:12, 12:14, 14:14, 16:14, 17:12, 12:14, 14:14, 16:14, 17:12, 12:14, 14:14, 16:14, 16:14, 17:12, 12:14, 14:14, 16:14, 16:14, 17:1	2	23:14, 25:16	В	comments [1] - 16:15	
20.00 (m) - 6:11 2015 (m) - 1:21 Albary (m) - 5:9, 5:16 aligging (m) - 10:18, 254 (m) - 1:11 Desses (m) - 14:20, 14:23, 14:24 27:18 complete (m) - 42:19 data (m) - 9:5, 9:11, 12:14, 12:15 254 (m) - 1:11 26 (m) - 2:14, 28 (m) - 19:21 Albary (m) - 5:9, 5:16 aligging (m) - 10:18, 20:16, 22:14, 20:16, 22:14, 22:14, 20:16, 22:14, 22:14, 20:16, 22:14, 22:14, 20:16, 22:14, 22:14, 20:16, 22:14, 22:14, 22:14, 20:16, 22:14, 22:14, 22:14, 20:16, 12:24, 13:2, 13:16, 13:22, 13:2, 13:16, 13:2, 13:2, 13:16, 13:2, 12:2, 13:16, 13:2, 12:2, 13:17, 13:16, 15:2, 20:00 (m) - 9:4 Alloany (m - 5:9, 5:10, 20:02, 20:24 data (m) - 9:5, 13:1, 20:07 (m) - 18:18, 20:07 (m) - 18:18, 21:17, 14:11, 16:4, 10:12, 14:14, 16:4, 10:12, 14:14, 16:4, 10:12, 14:14, 16:2, 16:20, 11:14, 14:17, 16:4, 17:22, 18:8, 21:10, 20:14, 12:14, 16:4, 11:15, 12:14, 12:15, 11:15, 12:14, 12:15, 21:10, 20:14, 22:14, 12:15, 11:14, 12:15, 12:14, 12:15, 12:14, 12:14, 12:15, 12:14, 12:15, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14		agreement [1] - 16:12		Commercial [1] - 1:11	D
	2 [1] - 23:10	ahead [1] - 19:14	based [2] - 12:14, 14:7	Commission [1] -	
$ \begin{array}{c} 2019 \ [1] - 27.19 \\ 254 \ [1] - 1211 \\ 25 \ [1] - 27.19 \\ 254 \ [1] - 121 \\ 25 \ [1] - 1921 \\ 25 \ [1] - 1921 \\ 25 \ [1] - 1921 \\ 25 \ [1] - 1921 \\ 25 \ [1] - 1921 \\ 20 \ [1] - 22.4 \\ 20 \ [1] - 1921 \\ 21 \ [2] - 117 \ [2] - 117 \ $	20,000 [1] - 6:11	Albany [2] - 5:9, 5:16	bases [3] - 14:20,	27:18	data [4] - 9:5, 9:11,
	2015 [2] - 1:12, 27:11	alleging [2] - 10:18,	14:23, 14:24	competent [1] - 24:19	12:14, 12:15
$ \begin{array}{c} 254 (n) - 1:11 \\ 26 (n) - 27.4 \\ 26 (n) - 27.4 \\ 3:25, 7.6, 12.4, \\ 3:25, 7.6, 12$	2019 [1] - 27:19		basis [1] - 15:25		date [2] - 8:6, 8:16
$ \begin{array}{c} 26 \ [n] - 274 \\ 28 \ [n] - 1921 \\ 29 \ [n] - 1921 \\ 21 \ [n] - 110 \\ 21 \ [n] - 234 \\ 21 \ [n] - 1921 \\ 21 \ [n] - 110 \\ 21 \ [n] - 234 \\ 21 \ [n] - 1921 \\ 21 \ [n] - 110 \\$				-	deal [1] - 10:9
$ \begin{array}{c} 28 \ (l) - 1921 \\ 29 \ (l) - 1921 \\ 20 \ (l) - 1921 \\ 20 \ (l) - 1921 \\ 30 \ (l) \$					decide [1] - 23:4
$ \begin{array}{c c c c c c c c c c c c c c c c c c c $			• • • •		
$ \begin{array}{c} 10^{-1} 0.00^{-1} \\ \textbf{3} \\ \textbf{3} \\ \textbf{3} \\ \textbf{5} \\ \textbf{3} \\ \textbf{3} \\ \textbf{5} \\ \textbf{3} \\ \textbf{5} \\ \textbf{3} \\ \textbf{3} \\ \textbf{5} \\ \textbf{3} \\ \textbf{5} \\ \textbf{5} \\ \textbf{3} \\ \textbf{5} \\ $					
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	∠ 3[i] = 13.∠1			-	
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	2		•••	-	
$ \begin{array}{c} 30(b)(6(14) - 10:23, \\ 10:25, 11:11, 11:17, \\ 11:23, 12:5, 12:24, 13:2, \\ 12:3, 12:24, 13:2, \\ 12:3, 12:3, 12:5, \\ 16:5, 11:11, 11:17, \\ 11:23, 12:3, 12:5, \\ 12:3, 12:3, 12:5, \\ 16:3, 12:1, 15:2, \\ 16:5, 11:11, 11:12, \\ 16:5, 11:12, 12:11, 12:24, 13:2, \\ 16:5, 11:11, 11:12, 12:24, 13:2, \\ 16:5, 11:11, 11:12, 12:24, 13:2, \\ 16:5, 11:11, 11:12, 12:24, 13:2, 11:12, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:2, 12:24, 13:24, 13:14, 13:16, 15:2, 12:24, 12:3, 12:14, 14:7, 12:24, 13:14, 13:16, 15:2, 12:24, 12:3, 12:24, 13:24, 13:14, 13:16, 15:2, 12:24, 12:3, 12:24, 13:24, 13:16, 15:2, 12:24, 12:3, 12:24, 12:3, 11:21, 14:11, 16:4, 11:24, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 12:14, 14:7, 11:24, 13:16, 15:2, 12:24, 12:3, 12:24, 12:3, 11:21, 14:11, 16:4, 11:24, 13:10, 16:20, 16:25, 12:3, 17:4, 14:7, 11:24, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 12:14, 14:7, 11:124, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 12:14, 14:7, 11:24, 13:10, 16:20, 16:25, 6:18, 7:9, 12:3, 12:14, 14:7, 11:124, 13:16, 12:24; 12:3, 12:14, 14:7, 11:124, 13:16, 13:10, 16:20, 16:25, 12:16, 13:16, 13:10, 16:20, 16:25, 12:16, 13:16$	5				
$ \begin{array}{c} 10.25, 11:11, 11:17, \\ 11:23, 12:3, 12:5, \\ 12:8, 12:42, 13:2, \\ 13:16, 13:21, 15:2, \\ 13:16, 13:21, 15:2, \\ 16:5 \\ 300 [2] - 9:4 \\ 31 [1] - 19:21 \\ \hline \\ $	30/b)/6 [14] 10:22				
$ \begin{array}{c} 11:23, 12:3, 12:5,\\ 12:8, 12:24, 13:2,\\ 13:16, 13:21, 15:2,\\ 16:5\\ 300 [2] - 94,\\ 31 [0] - 19:21\\ amphibians [n] - 9:16\\ analyze [n] - 14:6\\ analyze [n] - 16:7\\ animals [n] - 15:7\\ animals [n] - 15:7\\ animals [n] - 15:7\\ aniswer [n] - 18:4,\\ 22:1 - 13:9, 19:21\\ \hline \end{array} $					
$ \begin{array}{c} 12.8, 12.24, 13.2, \\ 13.16, 13.21, 15.2, \\ 13.16, 13.21, 15.2, \\ 16.5 \\ \textbf{300} [2] - 9.4 \\ \textbf{31} [n] - 19.21 \\ \textbf{4} \\ \textbf{andpti bians [n] - 9.16 \\ \textbf{andpt of [n] - 25.12 \\ \textbf{andpt of [n] - 14.6 \\ \textbf{andpt of [n] - 15.7 \\ \textbf{answer [2] - 13.9, 19.21 \\ \textbf{5} \\ \textbf{5} \\ \textbf{5} \\ \textbf{5} \\ \textbf{10.2 } [n] - 19.21 \\ \textbf{4} \\ \textbf{100} [n] - 42.16 \\ \textbf{andpt of [n] - 15.7 \\ \textbf{answer [2] - 18.4, \\ 24.16 \\ \textbf{andic [n] - 15.7 \\ \textbf{answer [2] - 18.4, \\ 24.16 \\ \textbf{apload [n] - 27.6 \\ \textbf{apload [n] - 27.19 \\ \textbf{6} \\ \textbf{2} \\ \textbf{11.2 } \\ \textbf{12.1 } \\ \textbf{11.1 } \\ \textbf{12.2 } \\ \textbf{12.2 } \\ \textbf{11.1 } \\ \textbf{12.2 } \\ \textbf{11.1 } \\ \textbf{11.2 } \\ \textbf{11.1 } \\ \textbf{12.2 } \\ \textbf{11.1 } \\ \textbf{12.2 } \\ \textbf{11.1 } \\ \textbf{12.2 } \\ \textbf{11.1 } \\ \textbf{11.1 } \\ \textbf{12.2 } \\ \textbf{11.1 } \\ \textbf{11.2 } \\ \textbf{11.2 } \\ \textbf{11.1 } \\ \textbf{11.2 } \\ \textbf{11.2 } \\ \textbf{11.1 } \\ \textbf{11.2 } \\ \textbf$					• · · ·
$\begin{array}{c} 13:16, 13:21, 15:2, \\ 16:5 \\ 300 [2] - 94 \\ 31 [n] - 19:21 \\ \hline \\ \begin{array}{c} 4 \\ 4 \\ 100 [1] - 25:12 \\ amphibias [1] - 9:16 \\ analyze [1] - 14:6 \\ analyze [1] - 14:7 \\ 4t [1] - 19:21 \\ \hline \\ \begin{array}{c} 4 \\ 4 \\ 4t [1] - 19:21 \\ \hline \\ \begin{array}{c} 4 \\ 4 \\ 101 = 217 \\ 4t [1] - 19:21 \\ \hline \\ \begin{array}{c} 4 \\ 4 \\ 101 = 217 \\ 4t [1] - 27:19 \\ \hline \\ \begin{array}{c} 9 \\ 9 \\ 11 - 27:19 \\ \hline \\ \begin{array}{c} 9 \\ 11 - 24:17 \\ animal [1] - 15:7 \\ animal [1] - 15:7 \\ animal [1] - 16:24 \\ 17:4 \\ Apalachicola [2] - 10:8, 15:12 \\ appearances [1] - 27:6 \\ apperances [1] - 27:19 \\ \hline \\ \begin{array}{c} 9 \\ 11 - 27:19 \\ \hline \\ \begin{array}{c} 9 \\ 11 - 27:19 \\ \hline \\ \begin{array}{c} 9 \\ 11 - 27:19 \\ \hline \\ \begin{array}{c} 9 \\ 11 - 27:19 \\ ample and rel [1] - 25:6 \\ apperances [1] - 25:5 \\ approach [1] - 17:16 \\ apperances [1] - 25:5 \\ approach [1] - 17:16 \\ anticles [2] - 10:6, \\ 13:14 \\ artise [1] - 17:16 \\ appropriatel [1] - 25:6 \\ appropriate [1] - 12:10 \\ assistance [1] - 21:10 \\ astinter [1] - 21:6 \\ \hline \end{array} \right) + 21:6 \\ \hline \end{array} \right) $					
$ \begin{array}{c} 16:5 \\ 300 [2] - 9:4 \\ 31 [0] - 19:21 \\ \hline \\ 100 [0] - 9:4 \\ 31 [0] - 19:21 \\ \hline \\ 100 [0] - 25:12 \\ amphibians [0] - 9:12 \\ amphibians [0] - 9:12 \\ amphibians [0] - 14:6 \\ animal [2] - 117, \\ 15:17 \\ animal [2] - 16:19, \\ 16:24, 17:4 \\ \hline \\ 570,000 [1] - 4:16 \\ \hline \\ 9 \\ 9 \\ 9 \\ 10] - 27:19 \\ \hline \\ 9 \\ 10] - 27:19 \\ \hline \\ 9 \\ 10] - 27:19 \\ \hline \\ 115 \\ appleach [1] - 28:5 \\ approach [1] - 17:16 \\ above-ramed [1] - 22:17 \\ Abid [1] - 21:11 \\ abile [1] - 21:11 \\ above-captioned [1] - 22:7 \\ Abid [1] - 21:11 \\ above-captioned [1] - 22:7 \\ Abid [1] - 21:11 \\ above-captioned [1] - 22:7 \\ Abid [1] - 21:11 \\ above-captioned [1] - 22:7 \\ according [1] - 14:3 \\ action [1] - 13:25 \\ articles [2] - 10:6, \\ 10:11 \\ assistance [1] - 21:10 \\ assistance [1] - 21:10 \\ astorishing [1] - 24:4 \\ Atkins [1] - 21:6 \\ \hline \\ Finally [1] - 16:6 \\ THE REPORT ING GROUP \\ \hline \\ black dramed ling [1] - 22:4 \\ \hline \\$			-		-
$ \begin{array}{c} 300 [z] - 9.4 \\ 31 [v] - 19:21 \\ \hline \\ 4 \\ \hline \\ 4 \\ \hline \\ 4 \\ 4 \\ 101 - 19:21 \\ \hline \\ 4 \\ 4 \\ 4 \\ 101 - 19:21 \\ \hline \\ 4 \\ 4 \\ 4 \\ 101 - 19:21 \\ \hline \\ 4 \\ 101 - 19:21 \\ \hline \\ 4 \\ 4 \\ 101 - 19:21 \\ \hline \\ 4 \\ 4 \\ 101 - 19:21 \\ \hline \\ 4 \\ 101 - 27:19 \\ \hline \\ \hline \\ 9 \\ 9 \\ 101 - 27:19 \\ \hline \\ \hline \\ 8 \\ 101 - 27:19 \\ \hline \\ \\ 8 \\ 101 - 27:19 \\ \hline \\ 8 \\ 101 - 27:19 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 27:10 \\ \hline \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ \\ \\ \\ 8 \\ 101 - 10:11 \\ \hline \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\$				conclusions [2] -	
$ \begin{array}{c} 31 (n-19:21 \\ \hline 31 (n-19:21 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 4 \\ \hline 4 \\ \hline 10^{-} 19:21 \\ \hline 5 \\ \hline 7 \\ 7 \\ 7 \\ \hline 9 \\ \hline 10^{-} 27:19 \\ \hline 9 \\ \hline 9 \\ \hline 10^{-} 27:19 \\ \hline 9 \\ \hline 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 9 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 7 \\ 7 \\ 8 \\ 10^{-} 27:19 \\ \hline 9 \\ 10^{-} 27:19 \\ \hline 7 \\ 7 \\ 7 \\ 7 \\ 8 \\ 10^{-} 11:10^{-} 13:12 \\ 10^{-} 13:13 \\ 10^{-} 13:13 \\ 10^{-} 13:14 \\ 7 \\ 7 \\ 7 \\ 7 \\ 8 \\ 8 \\ 10^{-} 11:11 \\ 8 \\ 10^{-} 13:15 \\ 10^{-} 13:15 \\ 10^{-} 11:11 \\ 10^{-} 10:11 \\ 10^{-} 11:17 \\ 10^{-} 13:16 \\ 10^{-} 11 \\ 10^{-} 13:16 \\ 10^{-} 11 \\ 10^{-} 11^{-} 13:16 \\ 10^{-} 11 \\ 10^{-} 11^{-} 110:11 \\ 10^{$				12:14, 14:7	•
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$			Britt [1] - 3:1	conduct [1] - 10:15	
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	31 [1] - 19:21		BRITT [1] - 1:19	confer [14] - 5:20,	
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$		amphibians [1] - 9:16	broad [2] - 12:9, 12:22	5:25, 6:18, 7:9,	17:19, 20:9, 20:19,
$ \begin{array}{c} \mbox{animal} [2] - 11:7, \\ \mbox{400} [2] - 9:11, 12:24 \\ \mbox{41} [1] - 19:21 \\ \mbox{42} [2] - 13:9, 19:21 \\ \mbox{animal} [n] - 15:7 \\ \mbox{animal} [n] - 12:7 \\ \mbox{animal} [n] - 21:7 \\ an$	4	analyze [1] - 14:6	brought [3] - 14:21,		20:22
$ \begin{array}{c} 400 \ z - 9:11, 12:24 \\ 41 \ 11 - 19:21 \\ 42 \ z - 13:9, 19:21 \\ \end{array} \\ \begin{array}{c} 15:17 \\ animals \ 1 - 15:7 \\ answer z - 18:4, \\ 24:16 \\ anticipate g - 18:4, \\ 15:17 \\ apologize g - 7:2, \\ 19:12, 19:12, 19:16 \\ appearances [1] - 27:19 \\ \end{array} \\ \begin{array}{c} 9 \\ 9 \ 1 - 27:19 \\ above-captioned [1] - 21:11 \\ above-captioned [1] - 21:11 \\ above-captioned [1] - 21:11 \\ above-captioned [1] - 27:6 \\ approach [1] - 13:25 \\ articles z - 10:6, \\ 10:11 \\ arise [1] - 13:25 \\ articles z - 10:6, \\ 10:11 \\ assistant [1] - 21:0 \\ atonishing [1] - 24:17 \\ Abid [1] - 27:9 \\ add z - 13:8, 25:1 \\ \end{array} \\ \begin{array}{c} 15:17 \\ animals [1] - 15:7 \\ animals [1] - 16:3 \\ approach [1] - 12:10 \\ assistant [1] - 21:0 \\ atonishing [1] - 21:6 \\ \end{array} \\ \begin{array}{c} 15:17 \\ animals [1] - 10:10 \\ assistant [1] - 21:0 \\ atonishing [1] - 24:16 \\ \end{array} \\ \begin{array}{c} 15:17 \\ animals [1] - 10:10 \\ assistant [1] - 21:0 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ assistant [1] - 21:0 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing [1] - 24:6 \\ \end{array} \\ \begin{array}{c} 10:11 \\ astonishing $		animal [2] - 11:7,	_		desire [2] - 5:13, 7:4
$ \begin{array}{c} 41 (1) - 19:21 \\ 42 (2) - 13:9, 19:21 \\ \hline \\ 570,000 (1) - 4:16 \\ \hline \\ 9 \\ 9 \\ 9 \\ 9 \\ 9 \\ 9 \\ 9 \\ 9 \\ 9$					details [1] - 9:9
$\begin{array}{c c c c c c c c c c c c c c c c c c c $		animals [1] - 15:7			DEVORA [1] - 1:20
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	42 [2] - 13:9, 19:21				
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$. ,		
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	5	-	C		
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	570,000 [1] - 4:16	,	captioned [1] - 27:6	• • • •	_
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$		-	-		
9[1] - 27:19 $19:12, 19:16$ appearances $[1] -$ $2:13$ $18:7, 24:20$ $18:7, 24:20$ $9:19$ $disclose [1] - 14:3disclose [1] - 19:25disclose [1] - 19:25disclose [1] - 9:25disclose [1] - 12:4disclose [1] - 12:4disclose [1] - 10:11corrested [1] - 1:17corrested [1] - 3:7,20:9able [1] - 12:6assistant [1] - 2:10astonishing [1] - 24:4disclose [1] - 10:6claiming [1] - 18:8disclose [1] - 2:4,adl [2] - 13:8, 25:1assistant [1] - 21:6disclose [1] - 24:4disclose $	9				
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$				-	• • •
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	9 [1] - 27:19				
$ \begin{array}{c c c c c c c c c c c c c c c c c c c $		•••			
AFFEARANCES [1] -cutoset [2] - 0.11, 0.10continuit [1] - 0.216.1a.m [2] - 1:13, 26:10 abhorrent [1] - 24:17 Abid [1] - 2:171:15 applaud [1] - 25:6 approciate [1] - 26:5 approach [1] - 17:16 appropriately [1] -13:14, 21:11 certain [3] - 10:10, 13:14, 21:11continuing [1] - 6:17 continuing [1] - 6:17discoverable [1] -ABID [1] - 1:18 able [1] - 21:11 above-captioned [1] -appropriately [1] -27:1 certain [2] - 27:3, 27:7 circumstances [1] -cooper [1] - 2:16 cooper [1] - 2:167:25, 10:16, 10:21, cooper [1] - 2:16above-named [1] - 27:9 according [1] - 14:3 add [2] - 13:8, 25:1assistance [1] - 21:0 assistant [1] - 2:1013:15 cited [1] - 10:6 claiming [1] - 8:8 Claudatie [1] - 10:6 claiming [1] - 8:8 claiming [1] - 2:4,correct [4] - 3:7, 20:920:9 discussion [1] - 19:9 discussion [1] - 22:4add [2] - 13:8, 25:1THE REPORTINGClaudate [2] - 112 claiming [1] - 21:6Atkins [1] - 2:4, claudate [2] - 2:4,27:8	Α				
a.m[2] - 1:13, 26:10 abhorrent [1] - 24:17 Abid [1] - 2:17 ABID [1] - 1:18 able [1] - 21:11 above-captioned [1] - 27:6 $applaud [1] - 25:6$ approach [1] - 17:16 appropriately [1] - 13:18 $13:14, 21:11$ certainly [1] - 15:23 CERTIFICATE [1] - 27:1 certify [2] - 27:3, 27:7 circumstances [1] - 13:15continuing [1] - 6:17 conversation [2] - 11:19, 20:1313:18 discovery [8] - 7:12, 7:14, 7:16, 7:22, 7:25, 10:16, 10:21, 16:3above-captioned [1] - 27:6articles [2] - 10:6, 10:1113:15 circumstances [1] - 13:15COOPER [1] - 1:17 coordination [1] - 22:20, 22:21, 27:4discuss [6] - 6:2, 6:18, 8:21, 11:1, 20:7, 20:9according [1] - 14:3 action [1] - 27:9 add [2] - 13:8, 25:1assistant [1] - 21:0 assistant [1] - 21:6cited [1] - 10:6 claiming [1] - 8:8 claiming [1] - 8:8 claiming [1] - 8:8 claiming [1] - 24:4correspondence [1] - discussions [1] - 22:4 disinterested [1] - 27:8					-
abhorrent $[1] - 24:17$ Abid $[1] - 2:17$ ABID $[1] - 1:18$ able $[1] - 21:11$ abve-captioned $[1] - 27:6$ above-named $[1] - 27:9$ according $[1] - 14:3$ action $[1] - 27:9$ add $[2] - 13:8, 25:1$ applaud $[1] - 25:6$ approximately $[1] - 21:6$ 13:14, 21:11 certainly $[1] - 15:23$ CERTIFICATE $[1] - 15:23$ COOPER $[1] - 12:16$ discovery $[8] - 7:12, 7:14, 7:16, 7:22, 7:14, 7:16, 7:22, 7:14, 7:16, 7:25, 10:16, 10:21, 7:14, 7:16, 7:14, 7:16, 7:25, 10:16, 10:21, 7:14, 7:16, 7:14, 7:16, 7:25, 10:16, 10:21, 7:14, 7:16, 7:25, 10:16, 10:21, 7:14, 7:16, 7:25, 10:16, 10:21, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:12, 7:14, 7:16, 7:14, 7:16, 7:12, 7:14, 7:16, 7:14, 7:16, 7:12, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, 7:14, 7:16, $	a.m [2] - 1:13, 26:10				
Abid $[1] - 2:17$ ABID $[1] - 1:18$ able $[1] - 21:11$ above-captioned $[1] - 27:6$ approximately $[1] - 13:25$ atricles $[2] - 10:6$, $10:11$ certainly $[1] - 15:23$ CERTIFICATE $[1] - 11:19$, $20:13$ $27:11$ certify $[2] - 27:3$, $27:7$ coordination $[1] - 11:17$ $COOPER [1] - 1:177discuss [6] - 6:2, 6:18, 8:21, 11:1, 20:7, 20:9above-named [1] - 27:9according [1] - 14:3action [1] - 27:9add [2] - 13:8, 25:1appreciate [1] - 24:4Atkins [1] - 21:6certainly [1] - 16:3circumstances [1] - 10:11cite [1] - 10:11cite [1] - 10:6claiming [1] - 8:8claiming [1] - 8:8claiming [1] - 24:4claiming [1] - 24:4claiming [1] - 24:4conversation [2] - 11:3coordination [1] - 24:4discussions [1] - 22:4$				continuing [1] - 6:17	
ABID $[1] - 1:18$ able $[1] - 21:11$ above-captioned $[1] -$ 27:6appropriately $[1] -$ 13:18CERTIFICATE $[1] -$ 27:111:19, 20:137:14, 7:16, 7:22, 7:25, 10:16, 10:21, 16:3above-captioned $[1] -$ 27:6arise $[1] - 13:25$ articles $[2] - 10:6,$ 10:11certify $[2] - 27:3, 27:7$ circumstances $[1] -$ 13:15Cooper $[1] - 2:16$ 7:25, 10:16, 10:21, 16:3above-named $[1] -$ 27:9articles $[2] - 10:6,$ 10:1113:15 circumstances $[1] -$ 13:1517:2 correct $[4] - 3:7,$ 20:98:21, 11:1, 20:7, 20:9according $[1] - 14:3$ action $[1] - 27:9$ add $[2] - 13:8, 25:1$ assistant $[1] - 24:4$ Atkins $[1] - 21:6$ cited $[1] - 10:6$ claiming $[1] - 8:8$ claiming $[1] - 8:8$ claiming $[1] - 24:4$ cited $[1] - 10:6$ claiming $[1] - 24:4$ claiming $[1] - 24:4$ cited $[1] - 10:6$ claiming $[1] - 24:4$ cited $[1] - 10:6$ claiming $[1] - 24:4$ add $[2] - 13:8, 25:1$ assistant $[1] - 21:6$ THE THE REPORTINGassistant $[1] - 2:4,$ assistant $[1] - 2:4,$		appreciate [1] - 26:5	_		discovery [8] - 7:12,
Able $[1] = 21:10$ appropriately $[1] =$ 13:1827:1Cooper $[1] = 2:16$ 7:25, 10:16, 10:21, 16:3able $[1] = 21:11$ 13:18certify $[2] = 27:3, 27:7$ circumstances $[1] =$ Cooper $[1] = 2:16$ 7:25, 10:16, 10:21, 16:3above-captioned $[1] =$ 27:6arise $[1] = 13:25$ articles $[2] = 10:6,$ 10:11circumstances $[1] =$ 13:15coordination $[1] =$ 22:20, 22:21, 27:4discuss $[6] = 6:2, 6:18,$ 8:21, 11:1, 20:7, 20:9according $[1] = 14:3$ action $[1] = 27:9$ add $[2] = 13:8, 25:1$ assistant $[1] = 2:10$ astonishing $[1] = 24:4$ cited $[1] = 10:6$ claiming $[1] = 8:8$ claiming $[1] = 8:8$ claiming $[1] = 24:4$ Coorespondence $[1] =$ discussions $[1] = 22:4$ disinterested $[1] =$		approach [1] - 17:16	CERTIFICATE [1] -	11:19, 20:13	7:14, 7:16, 7:22,
$\begin{array}{c} \text{abive} [1] - 21:11 \\ \text{above-captioned} [1] - \\ 27:6 \\ \text{above-named} [1] - \\ 27:9 \\ \text{according} [1] - 14:3 \\ \text{action} [1] - 27:9 \\ \text{add} [2] - 13:8, 25:1 \end{array} \begin{array}{c} 13:18 \\ 13:18 \\ \text{arise} [1] - 13:25 \\ \text{articles} [2] - 10:6, \\ 10:11 \\ \text{assistance} [1] - 10:11 \\ \text{cite} [1] - 10:11 \\ \text{cite} [1] - 10:11 \\ \text{assistant} [1] - 21:10 \\ \text{astonishing} [1] - 21:10 \\ \text{astonishing} [1] - 24:4 \\ \text{Atkins} [1] - 21:6 \end{array} \begin{array}{c} \text{certify} [2] - 27:3, 27:7 \\ \text{circumstances} [1] - \\ 13:15 \\ \text{circumstances} [1] - \\ 17:2 \\ \text{correct} [4] - 3:7, \\ 20:9 \\ \text{Discussion} [1] - 19:9 \\ \text{discussions} [1] - 19:9 \\ \text{discussions} [1] - 22:4 \\ \text{disinterested} [1] - \\ 27:8 \\ \end{array}$		appropriately [1] -	27:1		7:25, 10:16, 10:21,
$\begin{array}{c} \text{arise [1] - 13:25} \\ \text{above-named [1] -} \\ 27:6 \\ \text{above-named [1] -} \\ 27:9 \\ \text{according [1] - 14:3} \\ \text{action [1] - 27:9} \\ \text{add [2] - 13:8, 25:1} \end{array} \qquad \begin{array}{c} \text{arise [1] - 13:25} \\ \text{arise [1] - 10:6} \\ \text{arise [1] - 10:11} \\ \text{cite [1] - 10:11} \\ \text{cite [1] - 10:6} \\ \text{correct [4] - 3:7, 20:9} \\ \text{Discussion [1] - 19:9} \\ \text{discussions [1] - 22:4} \\ \text{discussions [1] - 22:4} \\ \text{disinterested [1] - 22:4} \\ \text{disinterested [1] - 27:8} \\ \text{disinterested [1] - 27:8} \\ \end{array}$		13:18	certify [2] - 27:3, 27:7		16:3
27.6articles $[2] - 10.6$, $10:11$ 13:1517:28:21, 11:1, 20:7, 20:9according $[1] - 14:3$ action $[1] - 27:9$ add $[2] - 13:8, 25:1$ articles $[2] - 10.6$, $10:11$ 13:1517:28:21, 11:1, 20:7, 20:9action $[1] - 27:9$ add $[2] - 13:8, 25:1$ assistance $[1] - 21:10$ astonishing $[1] - 24:4$ Atkins $[1] - 21:6$ cite $[1] - 10:6$ cite $[1] - 10:6$ claiming $[1] - 8:8$ Claudette $[2] - 14:3$ attackassistant $[1] - 22:4$ discussions $[1] - 22:4$ discussions $[1] - 22:4$		arise [1] - 13:25	circumstances [1] -		discuss [6] - 6:2, 6:18,
$ \begin{array}{c cccc} above-named [1] - \\ 27:9 \\ according [1] - 14:3 \\ action [1] - 27:9 \\ add [2] - 13:8, 25:1 \end{array} \begin{array}{c ccccccccccccccccccccccccccccccccccc$			13:15		
27.9assistance $[1] - 21:10$ cited $[1] - 10:6$ 22:20, 22:21, 27:4Discussion $[1] - 19:9$ action $[1] - 27:9$ assistant $[1] - 2:10$ claiming $[1] - 8:8$ correspondence $[1] - 10:6$ correspondence $[1] - 10:6$ add $[2] - 13:8, 25:1$ astonishing $[1] - 24:4$ Claudotte $[n] - 1:13$ correspondence $[1] - 10:6$ correspondence $[1] - 10:6$ Atkins $[1] - 21:6$ THEREPORTINGGROUPel $[7] - 2:4$,correspondence $[1] - 27:8$		•••	cite [1] - 10:11		
according [1] - 14.3 action [1] - 27:9 add [2] - 13:8, 25:1assistant [1] - 2:10 astonishing [1] - 24:4 THE REPORTING GROUP the reporting GROUP el [7] - 2:4,correspondence [1] - discussions [1] - 22:4 disinterested [1] - 27:8					Discussion [1] - 19:9
action [1] - 27:9 astonishing [1] - 24:1 Claudefte [2] - 1:13 disinterested [1] - 21:8 add [2] - 13:8, 25:1 Atkins [1] - 21:6 THE REPORTING GROUP el [7] - 2:4, 27:8	-				
add [2] - 13:8, 25:1 Atkins [1] - 21:6 THE REPORTING GROUP el [7] - 2:4, 27:8			Claudatta m = 1.13	4.4.4	
	add [2] - 13:8, 25:1			ROUP	
				ei [/] - 2.4,	

dispute [2] - 5:1	13:24, 14:18, 15:22,	full [1] - 18:1	high [1] - 20:14	8:5, 8:16, 8:18, 9:1,
document [5] - 4:7,	16:1, 23:5	· · · · · · · · · · · · · · · · · · ·	history [1] - 6:15	9:8, 9:22, 11:13,
4:11, 4:21, 16:20,	experts [3] - 10:17,	G	holding [1] - 25:6	11:17, 18:2, 18:17,
20:20	12:16, 14:4	<u> </u>	honest [1] - 8:1	18:22
documents [5] - 4:17,	Expires [1] - 27:18	general [2] - 10:9,	Honor [37] - 2:5, 2:6,	involved [2] - 23:12,
6:6, 20:6, 21:3, 21:7	extent [1] - 7:8	10:12	2:7, 2:14, 2:20, 2:23,	23:13
done [4] - 4:13, 7:8,		General's [2] - 3:3, 3:4	3:6, 3:10, 3:13, 3:24,	issue [19] - 5:3, 6:3,
14:23, 24:5	F	gentlemen's [1] -	4:9, 4:22, 5:5, 5:24,	6:4, 6:13, 6:15, 6:21,
doubt [1] - 3:17		17:18	6:24, 7:15, 8:23,	8:10, 8:12, 8:17,
doubts [1] - 5:18	fact [4] - 10:15, 11:24,	genuine [1] - 21:14	10:1, 10:2, 10:20,	10:19, 10:24, 11:3,
down [1] - 10:17	21:6, 23:20	Georgakakos [5] -	12:2, 14:14, 15:3,	11:23, 11:25, 14:2,
dozens [1] - 9:13	facts [1] - 15:25	5:6, 5:19, 6:8, 6:10,	16:23, 17:15, 18:13,	15:4, 16:5, 16:8,
Dr [7] - 5:19, 6:5, 6:8,	factual [10] - 13:6,	7:5	19:15, 20:4, 20:17,	18:9
6:10, 6:22, 7:5,	14:19, 14:22, 14:23,	Georgakakos's [1] -	21:1, 21:16, 21:24,	issues [17] - 5:11, 7:4,
17:17	15:15, 15:23, 15:24,	17:17	22:12, 22:21, 22:25,	10:9, 10:12, 10:18,
drill [1] - 10:17	15:25, 16:12	georgia [1] - 5:23	25:23, 25:25	10:24, 11:1, 11:18,
DUNLAP [2] - 1:22,	fashion [1] - 8:12 fault [1] - 19:12	GEORGIA [1] - 1:6	Hook [2] - 5:8, 5:18	12:18, 13:6, 14:19, 16:17, 17:22, 18:6,
26:3		Georgia [27] - 1:19,	hope [4] - 11:22,	16:17, 17:22, 18:6, 21:9, 21:17, 21:18
Dunlap [1] - 2:9	federal [1] - 13:13	2:22, 2:24, 3:2, 3:4, 3:5, 4:8, 5:7, 7:14	16:16, 24:7	21.0, 21.17, 21.10
duplicative [1] - 18:18	felt [1] - 16:8 few [3] - 7:19, 18:4,	3:5, 4:8, 5:7, 7:14, 7:20, 8:12, 10:21,	hopefully [1] - 17:21	J
-	20:7	11:13, 12:12, 12:22,	hoping [1] - 18:9	J
E	final [2] - 4:10, 21:22	13:7, 13:22, 14:6,	1	job [1] - 15:10
e-mail [3] - 6:4, 17:18,	finished [1] - 25:12	14:13, 14:22, 16:7,	I	JOHN [1] - 1:17
25:13	first [5] - 12:11, 14:17,	18:1, 21:16, 22:3,	identified [7] - 6:6,	John [1] - 2:16
e-mails [6] - 5:2, 5:3,	23:3, 23:7, 24:11	22:16, 22:20, 25:24	7:6, 9:4, 9:7, 9:12,	Josh [2] - 2:9, 26:2
6:1, 6:9, 6:11, 21:4	fish [1] - 9:14	Georgia's [6] - 6:12,	12:17, 21:5	JOSHUA [1] - 1:22
economic [4] - 11:8,	FLORIDA [1] - 1:3	9:18, 14:9, 14:25,	identify [3] - 15:17,	judicial [1] - 21:10
12:17, 15:19	Florida [40] - 1:16,	21:25, 22:9	15:19, 21:13	June [1] - 27:19
effective [2] - 22:6,	2:13, 2:15, 3:2, 4:15,	given [1] - 6:14	identifying [3] - 8:7,	
24:8	5:4, 5:25, 6:3, 6:19,	Grant [1] - 3:1	9:5, 22:10	K
efforts [1] - 9:10	7:17, 7:18, 7:22, 8:8,	GRANT [3] - 1:19, 2:7,	impacted [1] - 9:17	
efforts [1] - 9:10 Ellis [1] - 2:25		3:6	implicated [1] - 12:18	Kirkland [2] - 2:25,
Ellis [1] - 2:25 employees [1] - 15:9	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2,	3:6 GRAY [3] - 1:21, 3:13,	implicated [1] - 12:18 implicating [1] - 14:10	3:25
Ellis [1] - 2:25	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20,	3:6 GRAY [3] - 1:21, 3:13, 3:23	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] -	3:25 Kistenmacher [2] -
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24	3:25 Kistenmacher [2] - 6:5, 6:22
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10,	3:25 Kistenmacher [2] -
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8,	3:25 Kistenmacher [2] - 6:5, 6:22
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19	3:25 Kistenmacher [2] - 6:5, 6:22
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10	3:25 Kistenmacher [2] - 6:5, 6:22
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1,	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's [3] - 7:13,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] -	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] -
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16,	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's [3] - 7:13, 7:16, 8:15	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5,	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18,	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's [3] - 7:13, 7:16, 8:15 flow [1] - 24:24	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7,	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20,	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's [3] - 7:13, 7:16, 8:15	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14,	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's [3] - 7:13, 7:16, 8:15 flow [1] - 24:24 flows [1] - 9:18	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11,	$\begin{array}{l} 7:17,\ 7:18,\ 7:22,\ 8:8,\\ 8:21,\ 9:3,\ 10:6,\\ 10:18,\ 10:22,\ 11:2,\\ 11:5,\ 11:11,\ 11:20,\\ 11:22,\ 14:20,\ 14:21,\\ 15:5,\ 15:6,\ 15:9,\\ 16:5,\ 17:11,\ 18:21,\\ 19:2,\ 19:3,\ 19:6,\\ 19:8,\ 19:20,\ 20:3,\\ 20:25,\ 22:23,\ 25:22\\ \hline \textbf{Florida's}\ [3] -\ 7:13,\\ 7:16,\ 8:15\\ \textbf{flow}\ [1] -\ 24:24\\ \textbf{flows}\ [1] -\ 9:18\\ \textbf{focus}\ [1] -\ 16:15\\ \end{array}$	$3:6 \\ GRAY [3] - 1:21, 3:13, \\ 3:23 \\ Gray [1] - 3:14 \\ gray [1] - 3:16 \\ grounds [1] - 13:16 \\ \\ \hline H \\ hand [1] - 27:10 \\ happy [6] - 6:19, 16:5, \\ 16:14, 19:1, 22:14, \\ 23:13 \\ hard [2] - 9:24, 16:25 \\ \hline \end{cases}$	<pre>implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20</pre>	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14	$\begin{array}{l} 7:17,\ 7:18,\ 7:22,\ 8:8,\\ 8:21,\ 9:3,\ 10:6,\\ 10:18,\ 10:22,\ 11:2,\\ 11:5,\ 11:11,\ 11:20,\\ 11:22,\ 14:20,\ 14:21,\\ 15:5,\ 15:6,\ 15:9,\\ 16:5,\ 17:11,\ 18:21,\\ 19:2,\ 19:3,\ 19:6,\\ 19:8,\ 19:20,\ 20:3,\\ 20:25,\ 22:23,\ 25:22\\ \hline \textbf{Florida's}\ [3] -\ 7:13,\\ 7:16,\ 8:15\\ \textbf{flow}\ [1] -\ 24:24\\ \textbf{flows}\ [1] -\ 9:18\\ \textbf{focus}\ [1] -\ 16:15\\ \textbf{focused}\ [1] -\ 15:7\\ \end{array}$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2,	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] -	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11,	$\begin{array}{l} 7:17,\ 7:18,\ 7:22,\ 8:8,\\ 8:21,\ 9:3,\ 10:6,\\ 10:18,\ 10:22,\ 11:2,\\ 11:5,\ 11:11,\ 11:20,\\ 11:22,\ 14:20,\ 14:21,\\ 15:5,\ 15:6,\ 15:9,\\ 16:5,\ 17:11,\ 18:21,\\ 19:2,\ 19:3,\ 19:6,\\ 19:8,\ 19:20,\ 20:3,\\ 20:25,\ 22:23,\ 25:22\\ \hline \textbf{Florida's}\ [3]-\ 7:13,\\ 7:16,\ 8:15\\ \textbf{flow}\ [1]-\ 24:24\\ \textbf{flows}\ [1]-\ 9:18\\ \textbf{focus}\ [1]-\ 16:15\\ \textbf{focused}\ [1]-\ 15:7\\ \textbf{folder}\ [1]-\ 6:6\\ \end{array}$	$3:6 \\ GRAY [3] - 1:21, 3:13, \\ 3:23 \\ Gray [1] - 3:14 \\ gray [1] - 3:16 \\ grounds [1] - 13:16 \\ \\ \hline H \\ hand [1] - 27:10 \\ happy [6] - 6:19, 16:5, \\ 16:14, 19:1, 22:14, \\ 23:13 \\ hard [2] - 9:24, 16:25 \\ harm [5] - 7:14, 9:2, \\ 9:6, 11:6, 14:20 \\ \\ \hline \end{array}$	$\begin{array}{l} \mbox{implicated [1] - 12:18} \\ \mbox{implicating [1] - 14:10} \\ \mbox{implications [2] - 13:23, 13:24} \\ \mbox{important [7] - 8:10,} \\ \mbox{8:13, 11:10, 16:8,} \\ \mbox{17:18, 23:18, 23:19} \\ \mbox{IN [1] - 27:10} \\ \mbox{inadequate [1] - 7:21} \\ \mbox{inadequate [1] - 7:21} \\ \mbox{indeed [3] - 7:7,} \\ \mbox{14:11, 17:20} \\ \mbox{indicate [1] - 4:25} \\ \mbox{information [7] - 12:15, 13:1, 13:12,} \\ \end{array}$	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14,	$\begin{array}{l} 7:17,\ 7:18,\ 7:22,\ 8:8,\\ 8:21,\ 9:3,\ 10:6,\\ 10:18,\ 10:22,\ 11:2,\\ 11:5,\ 11:11,\ 11:20,\\ 11:22,\ 14:20,\ 14:21,\\ 15:5,\ 15:6,\ 15:9,\\ 16:5,\ 17:11,\ 18:21,\\ 19:2,\ 19:3,\ 19:6,\\ 19:8,\ 19:20,\ 20:3,\\ 20:25,\ 22:23,\ 25:22\\ \hline \textbf{Florida's}\ [3] -\ 7:13,\\ 7:16,\ 8:15\\ \hline \textbf{flow}\ [1] -\ 24:24\\ \hline \textbf{flows}\ [1] -\ 9:18\\ \hline \textbf{focus}\ [1] -\ 16:15\\ \hline \textbf{focused}\ [1] -\ 15:7\\ \hline \textbf{folder}\ [1] -\ 6:6\\ \hline \textbf{follow}\ [2] -\ 22:14,\\ \end{array}$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13,	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15	$\begin{array}{l} 7:17,\ 7:18,\ 7:22,\ 8:8,\\ 8:21,\ 9:3,\ 10:6,\\ 10:18,\ 10:22,\ 11:2,\\ 11:5,\ 11:11,\ 11:20,\\ 11:22,\ 14:20,\ 14:21,\\ 15:5,\ 15:6,\ 15:9,\\ 16:5,\ 17:11,\ 18:21,\\ 19:2,\ 19:3,\ 19:6,\\ 19:8,\ 19:20,\ 20:3,\\ 20:25,\ 22:23,\ 25:22\\ \hline \textbf{Florida's}\ [3] -\ 7:13,\\ 7:16,\ 8:15\\ \hline \textbf{flow}\ [1] -\ 24:24\\ \hline \textbf{flows}\ [1] -\ 9:18\\ \hline \textbf{focus}\ [1] -\ 16:15\\ \hline \textbf{focused}\ [1] -\ 15:7\\ \hline \textbf{folder}\ [1] -\ 6:6\\ \hline \textbf{follow}\ [2] -\ 22:14,\\ 25:20\\ \end{array}$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14	$\label{eq:spectral_series} \begin{array}{l} \mbox{implicated } [1] - 12:18 \\ \mbox{implications } [2] - 14:10 \\ \mbox{implications } [2] - 13:23, 13:24 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{important } [7] - 7:21 \\ \mbox{indeed } [3] - 7:7, \\ 14:11, 17:20 \\ \mbox{indeed } [3] - 7:7, \\ 14:11, 17:20 \\ \mbox{indicate } [1] - 4:25 \\ \mbox{information } [7] - 12:15, 13:1, 13:12, \\ 13:17, 14:2, 14:5 \\ \mbox{injuries } [1] - 11:12 \\ \end{array}$	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8	$\begin{array}{l} 7:17,\ 7:18,\ 7:22,\ 8:8,\\ 8:21,\ 9:3,\ 10:6,\\ 10:18,\ 10:22,\ 11:2,\\ 11:5,\ 11:11,\ 11:20,\\ 11:22,\ 14:20,\ 14:21,\\ 15:5,\ 15:6,\ 15:9,\\ 16:5,\ 17:11,\ 18:21,\\ 19:2,\ 19:3,\ 19:6,\\ 19:8,\ 19:20,\ 20:3,\\ 20:25,\ 22:23,\ 25:22\\ \hline \textbf{Florida's}\ [3] -\ 7:13,\\ 7:16,\ 8:15\\ \hline \textbf{flow}\ [1] -\ 24:24\\ \hline \textbf{flows}\ [1] -\ 24:24\\ \hline \textbf{flows}\ [1] -\ 9:18\\ \hline \textbf{focused}\ [1] -\ 15:7\\ \hline \textbf{folder}\ [1] -\ 15:7\\ \hline \textbf{folder}\ [1] -\ 15:7\\ \hline \textbf{folder}\ [1] -\ 6:6\\ \hline \textbf{follow}\ [2] -\ 22:14,\\ 25:20\\ \hline \textbf{foregoing}\ [1] -\ 27:4\\ \end{array}$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20	$\label{eq:spectral_set} \begin{array}{l} \mbox{implicated } [1] - 12:18 \\ \mbox{implications } [2] - 13:23, 13:24 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{ind} [1] - 27:10 \\ \mbox{indequate } [1] - 7:21 \\ \mbox{incorporated } [1] - 25:13 \\ \mbox{indeed } [3] - 7:7, \\ 14:11, 17:20 \\ \mbox{indicate } [1] - 4:25 \\ \mbox{information } [7] - 12:15, 13:1, 13:12, \\ 13:17, 14:2, 14:5 \\ \mbox{injuries } [1] - 11:12 \\ \mbox{injury } [8] - 8:8, 8:11, \\ \end{array}$	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16	$\begin{array}{l} 7:17, \ 7:18, \ 7:22, \ 8:8,\\ 8:21, \ 9:3, \ 10:6,\\ 10:18, \ 10:22, \ 11:2,\\ 11:5, \ 11:11, \ 11:20,\\ 11:22, \ 14:20, \ 14:21,\\ 15:5, \ 15:6, \ 15:9,\\ 16:5, \ 17:11, \ 18:21,\\ 19:2, \ 19:3, \ 19:6,\\ 19:8, \ 19:20, \ 20:3,\\ 20:25, \ 22:23, \ 25:22\\ \hline \textbf{Florida's } [3] - \ 7:13,\\ \ 7:16, \ 8:15\\ \hline \textbf{flow} \ [1] - \ 24:24\\ \hline \textbf{flows} \ [1] - \ 24:24\\ \hline \textbf{flows} \ [1] - \ 9:18\\ \hline \textbf{focused} \ [1] - \ 15:7\\ \hline \textbf{folder} \ [1] - \ 15:7\\ \hline \textbf{folder} \ [1] - \ 15:7\\ \hline \textbf{folder} \ [1] - \ 22:14,\\ \ 25:20\\ \hline \textbf{foregoing} \ [1] - \ 27:4\\ \hline \textbf{forgive} \ [1] - \ 25:3\\ \end{array}$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5	$\label{eq:spectral_series} \begin{array}{l} \mbox{implicated } [1] - 12:18 \\ \mbox{implications } [2] - 13:23, 13:24 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{important } [7] - 8:10, \\ 8:13, 11:10, 16:8, \\ 17:18, 23:18, 23:19 \\ \mbox{important } [7] - 7:21 \\ \mbox{indequate } [1] - 7:7, \\ 14:11, 17:20 \\ \mbox{indecate } [1] - 4:25 \\ \mbox{information } [7] - 12:15, 13:1, 13:12, \\ 13:17, 14:2, 14:5 \\ \mbox{injuries } [1] - 11:12 \\ \mbox{injuries } [1] - 11:12 \\ \mbox{injury } [8] - 8:8, 8:11, \\ 10:12, 10:24, 11:8, \\ \end{array}$	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] -
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16 expect [1] - 4:9	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's $[3] - 7:13$, 7:16, 8:15 flow $[1] - 24:24$ flows $[1] - 24:24$ flows $[1] - 16:15$ focused $[1] - 15:7$ folder $[1] - 6:6$ follow $[2] - 22:14$, 25:20 foregoing $[1] - 27:4$ forgive $[1] - 25:3$ form $[2] - 15:25, 23:9$ forth $[1] - 7:17$ fortunate $[1] - 2:10$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5 hear [1] - 16:14	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5 injuries [1] - 11:12 injury [8] - 8:8, 8:11, 10:12, 10:24, 11:8, 11:9, 11:18, 15:19 instead [1] - 12:7 intend [1] - 11:16	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 L LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] - 25:18
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16 expect [1] - 4:9 expeditiously [1] -	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's $[3] - 7:13$, 7:16, 8:15 flow $[1] - 24:24$ flows $[1] - 24:24$ flows $[1] - 16:15$ focused $[1] - 16:15$ focused $[1] - 15:7$ folder $[1] - 6:6$ follow $[2] - 22:14$, 25:20 foregoing $[1] - 27:4$ forgive $[1] - 25:3$ form $[2] - 15:25, 23:9$ forth $[1] - 7:17$ fortunate $[1] - 2:10$ forward $[3] - 5:14$,	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5 hear [1] - 16:14 hearing [1] - 24:9	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5 injuries [1] - 11:12 injury [8] - 8:8, 8:11, 10:12, 10:24, 11:8, 11:9, 11:18, 15:19 instead [1] - 12:7 intend [1] - 11:16 interest [1] - 18:1	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] - 25:18 large [2] - 7:8, 17:1
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16 expect [1] - 4:9 expeditiously [1] - 17:5	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's $[3] - 7:13$, 7:16, 8:15 flow $[1] - 24:24$ flows $[1] - 24:24$ flows $[1] - 9:18$ focuse $[1] - 16:15$ focused $[1] - 15:7$ folder $[1] - 6:6$ follow $[2] - 22:14$, 25:20 foregoing $[1] - 27:4$ forgive $[1] - 25:3$ form $[2] - 15:25, 23:9$ forth $[1] - 7:17$ fortunate $[1] - 2:10$ forward $[3] - 5:14$, 17:5, 24:9	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5 hear [1] - 16:14 hearing [1] - 24:9 held [1] - 1:10	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5 injuries [1] - 11:12 injury [8] - 8:8, 8:11, 10:12, 10:24, 11:8, 11:9, 11:18, 15:19 instead [1] - 12:7 intend [1] - 11:16 interest [1] - 18:1 interrogatories [4] -	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] - 25:18 large [2] - 7:8, 17:1 larger [1] - 6:8
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16 expect [1] - 4:9 expeditiously [1] - 17:5 expenses [1] - 24:14 experience [1] - 24:14	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's $[3] - 7:13$, 7:16, 8:15 flow $[1] - 24:24$ flows $[1] - 9:18$ focus $[1] - 16:15$ focus $d[1] - 16:15$ focus $d[1] - 15:7$ folder $[1] - 6:6$ follow $[2] - 22:14$, 25:20 foregoing $[1] - 27:4$ forgive $[1] - 25:3$ form $[2] - 15:25, 23:9$ forth $[1] - 7:17$ fortunate $[1] - 2:10$ forward $[3] - 5:14$, 17:5, 24:9 frankly $[1] - 23:24$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5 hear [1] - 16:14 hearing [1] - 24:9 held [1] - 1:10 help [2] - 22:7, 26:6	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5 injuries [1] - 11:12 injury [8] - 8:8, 8:11, 10:12, 10:24, 11:8, 11:9, 11:18, 15:19 instead [1] - 12:7 intend [1] - 11:16 interest [1] - 18:1 interrogatories [4] - 9:21, 10:7, 13:19,	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] - 25:18 large [2] - 7:8, 17:1 larger [1] - 6:8 last [15] - 4:7, 7:23,
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16 expect [1] - 4:9 expeditiously [1] - 17:5 expenses [1] - 24:1 experience [1] - 24:14 experienced [1] - 24:19	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's $[3] - 7:13$, 7:16, 8:15 flow $[1] - 24:24$ flows $[1] - 9:18$ focus $[1] - 16:15$ focused $[1] - 15:7$ folder $[1] - 6:6$ follow $[2] - 22:14$, 25:20 foregoing $[1] - 27:4$ forgive $[1] - 25:3$ form $[2] - 15:25, 23:9$ forth $[1] - 7:17$ fortunate $[1] - 2:10$ forward $[3] - 5:14$, 17:5, 24:9 frankly $[1] - 23:24$ free $[1] - 3:21$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5 hear [1] - 16:14 hearing [1] - 24:9 held [1] - 1:10 help [2] - 22:7, 26:6 helpful [1] - 22:3	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5 injuries [1] - 11:12 injury [8] - 8:8, 8:11, 10:12, 10:24, 11:8, 11:9, 11:18, 15:19 instead [1] - 12:7 intend [1] - 11:16 interest [1] - 18:1 interrogatories [4] - 9:21, 10:7, 13:19, 18:4	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] - 25:18 large [2] - 7:8, 17:1 larger [1] - 6:8
Ellis [1] - 2:25 employees [1] - 15:9 Encyclopedia [1] - 13:3 end [1] - 21:25 ends [1] - 20:7 entertain [1] - 22:23 entire [1] - 15:6 entitled [2] - 15:1, 16:1 ESQ [11] - 1:16, 1:16, 1:17, 1:17, 1:18, 1:19, 1:19, 1:20, 1:20, 1:21, 1:22 essentially [3] - 12:11, 12:23, 13:14 estuarine [2] - 9:14, 9:15 event [1] - 27:8 exactly [1] - 12:16 expect [1] - 4:9 expeditiously [1] - 17:5 expenses [1] - 24:14 experience [1] - 24:14	7:17, 7:18, 7:22, 8:8, 8:21, 9:3, 10:6, 10:18, 10:22, 11:2, 11:5, 11:11, 11:20, 11:22, 14:20, 14:21, 15:5, 15:6, 15:9, 16:5, 17:11, 18:21, 19:2, 19:3, 19:6, 19:8, 19:20, 20:3, 20:25, 22:23, 25:22 Florida's $[3] - 7:13$, 7:16, 8:15 flow $[1] - 24:24$ flows $[1] - 9:18$ focus $[1] - 16:15$ focus $d[1] - 16:15$ focus $d[1] - 15:7$ folder $[1] - 6:6$ follow $[2] - 22:14$, 25:20 foregoing $[1] - 27:4$ forgive $[1] - 25:3$ form $[2] - 15:25, 23:9$ forth $[1] - 7:17$ fortunate $[1] - 2:10$ forward $[3] - 5:14$, 17:5, 24:9 frankly $[1] - 23:24$	3:6 GRAY [3] - 1:21, 3:13, 3:23 Gray [1] - 3:14 gray [1] - 3:16 grounds [1] - 13:16 H hand [1] - 27:10 happy [6] - 6:19, 16:5, 16:14, 19:1, 22:14, 23:13 hard [2] - 9:24, 16:25 harm [5] - 7:14, 9:2, 9:6, 11:6, 14:20 harmed [3] - 12:17, 14:25, 15:18 harming [2] - 15:13, 15:14 HAWKINS [1] - 1:20 head [1] - 15:5 hear [1] - 16:14 hearing [1] - 24:9 held [1] - 1:10 help [2] - 22:7, 26:6 helpful [1] - 22:3	implicated [1] - 12:18 implicating [1] - 14:10 implications [2] - 13:23, 13:24 important [7] - 8:10, 8:13, 11:10, 16:8, 17:18, 23:18, 23:19 IN [1] - 27:10 inadequate [1] - 7:21 incorporated [1] - 25:13 indeed [3] - 7:7, 14:11, 17:20 indicate [1] - 4:25 information [7] - 12:15, 13:1, 13:12, 13:17, 14:2, 14:5 injuries [1] - 11:12 injury [8] - 8:8, 8:11, 10:12, 10:24, 11:8, 11:9, 11:18, 15:19 instead [1] - 12:7 intend [1] - 11:16 interest [1] - 18:1 interrogatories [4] - 9:21, 10:7, 13:19,	3:25 Kistenmacher [2] - 6:5, 6:22 knows [1] - 23:6 LANCASTER [39] - 1:10, 2:3, 2:8, 2:18, 2:21, 3:8, 3:11, 3:15, 4:4, 4:20, 4:23, 5:23, 6:23, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 14:15, 16:10, 16:18, 17:14, 18:11, 19:10, 19:13, 19:17, 19:22, 19:24, 20:16, 20:23, 21:15, 21:19, 22:15, 22:22, 23:1, 25:24, 26:2, 26:4 Lancaster's [1] - 25:18 large [2] - 7:8, 17:1 larger [1] - 6:8 last [15] - 4:7, 7:23, 8:1, 8:4, 8:14, 8:19,

9 of 12 sheets

Mason & Lockhart

The Reporting Group (207) 797-6040

		-			-
195, 25:1 Merriffs (µ) - 111 Notry (µ - 114, 272, 27:15 parties (µ - 1125, 22, 21:12, 21:17, 21:14, 272, 27:15 parties (µ - 1125, 22; 21:12, 21:17, 21:14, 272, 27:15 parties (µ - 1125, 22; 21:12, 21:17, 21:14, 272, 27:15 prote (µ - 22:15, 22:14, 21:14, 21:14, 21:13, 15:14, 27:14, 15:13, 15:14, 16:14; (µ - 21:16) notes (µ - 22:16, 21:12, 27:15, 27:16, 27:19, 27:15, 27:16, 27:19, 27:15, 27:16, 27:19, 27:15, 27:16, 27:19, 27:15, 27:16, 27:19, 27:15, 27:16, 27:19, 27:15, 27:16, 27:19, 27:15, 27:19, 27:15, 27:16, 27:19, 27:15, 27:19, 27:15, 27:19, 27:15, 27:19, 27:15, 27:19, 27:14, 27:14, 27:13, 27:11 notes (µ - 12:26, 11:17, 17:16, 17:14, 19:06, 11:16, 12:14, 27:13, 17:14, 17:16, 19:06, 19:06, 17:14, 27:14, 27:14, 27:13, 27:11 notes (µ - 12:26, 11:17, 17:16, 19:06, 11:16, 22:14, 22:16, 22:14, 22:26, 22:14	11.10 18.3 18.12	mention $[1] = 1.1$	Nos 111 - 10:21	14.0	presumably 141 -
Iate pro-613, 723, 81 MICHAEL pr. 121, Michight pr. 126, 236 MICHAEL pr. 121, moto pr. 1724, 236 2025, 2112, 21:8, proty pr. 416, 121, 236 prote pr. 723, 2117, proto pr. 1724, 2011, 21:25 Ister pr. 120, 2012 73, 8 23, 102, 116, 1414, 1513, 1514, 1614, 1513, 1514, 122, 124 27.15, moto pr. 1724, 2011, 21:25, not pr. 124, 2011, 21:25, not pr. 124, 2013, 212, 21:16, proto pr. 126, 1120, 1610, 1714, proto pr. 1220, 1120, 1610, 1714, proto pr. 1220, 1120, 1610, 1714, proto pr. 1220, 1131, 112, 112, 1121, 1131, 112, 1121, 114, 1141, 1151, 114, 1144, 1141, 1141, 1142, 1145, 11610, 114, 1145, 11610, 114, 124, 1145, 11410, 114, 1145, 1141, 1141, 1145, 11410, 114, 1145, 1141, 1141, 1145, 1141, 1141, 1145, 1141, 1141, 1145, 1141, 1141, 1145, 11410, 1144, 1145, 11410, 114, 1145, 11410, 1144, 1145, 11410, 1					
8:1 Michael (h: 314) notes (h: -1724, 2011, 225, 2014, 2011, 225, 2014, 2011, 225, 2014, 2014, 226, 2014, 226, 2014, 2014, 2015, 2014, 2014, 2015, 2014, 2014, 2015, 2014, 2014, 2014, 2015, 2014,				•	
Iaw (p) 140 (p) 140 (p) 140 (p) 141 (p) 162 (p) party (p) 1315 (p) profer (p) 1316 (p) 1316 (p) 1315 (p) profer (p) 1316 (p) </th <th></th> <th></th> <th></th> <th></th> <th></th>					
23.6 might(m) - 64, 6-24, leasting - 610, 2012 might(m) - 64, 6-24, leasting - 610, 2012 motes(m) - 613, motes(m) - 2511, 275, leasting - 716, 8-27, 1724, motion of motion might - 23.6, 26.3 pers(m) - 17.18, motes(m) - 23.6, 26.3 pers(m) - 17.18, motes(m) - 23.6, 26.3 pers(m) - 17.18, motes(m) - 12.5, 112, 275, leasting - 17.18, 27.14 probe (m) - 10.24, 1122, 1610, 1714, 1918, 1919, 21.23 probe (m) - 10.24, 1122, 1610, 1714, 1918, 1919, 21.23 probe (m) - 12.0, 113, 1120, 1610, 1714, 1918, 1919, 21.23 probe (m) - 12.0, 113, 1120, 1610, 1714, 1918, 1919, 21.23 probe (m) - 12.0, 113, 1120, 1610, 1714, 1918, 1919, 21.23 M 7.18, 7.19, motes(m) - 12.14 motes(m) - 10.25, 177, 179, 23.3, mumbers(m) - 10.24 173, 179, 173, 179, motes(m) - 12.14 problem (m) - 12.0, 173, 179, 23.3, mumbers(m) - 10.23 173, 179, 23.3, mumbers(m) - 10.23 173, 179, 23.3, mumbers(m) - 10.23 174, 179, 23.3, mumbers(m) - 10.23 174, 179, 23.3, mumbers(m) - 10.23 174, 179, 23.3, 276, 227, 252, 252, 152.3, 175, 151, 1919, 1922, 2713 174, 179, 179, 175, 175, 1813, 1912, 175, 1819, 1922, 2713 174, 179, 174, 174, 1811, 1910, 175, 172, 175, 1813, 1912, 175, 1813, 1912, 277, 185, 281, 177, 1843, 271, 171, 182, 175, 1813, 1912, 175, 1813, 1912, 174, 1811, 1910, 175, 172, 181, 181, 1912, 174, 1811, 1910, 175, 172, 181, 1914, 1922, 183, 217, 1714, 221, 1914, 121, 155, 141, 174, 1811, 1910, 175, 172, 174, 174, 174, 1811, 1910, 174, 174, 174, 174, 174, 1811, 1910, 174, 174, 174, 1811, 174,					
least p 610, 2012 7.5, 8.23, 102, 116, 144, 1653, 154, 1543, 154, 1554, 1712, 1724, 1524, 1712, 1724, 1714, 1553, 1544, 1553, 1544, 1524, 1712, 1724, 1724, 1864, 1713, 2016 percy p 418, 121, 121, 120, 1610, 1714, 121, 120, 1610, 1714, 124, 121, 120, 1610, 1714, 127, 1120, 1610, 1714, 124, 121, 120, 1610, 1714, 127, 1120, 1610, 1714, 124, 121, 121, 123, 114, 121, 121, 124, 121, 124, 121, 121		– • • •			
legal (n) = 210 14:14, 15:13, 15:14, 15:21, 17:12, 17:24, 17:24, 15:21, 17:12, 17:24, 15:21, 17:12, 17:24, 15:21, 17:12, 17:24, 15:21, 17:12, 17:24, 15:21, 17:13, 15:14, 10:06 (n) = 23:26, 10:01:02 (n) = 10:25 notice (n) = 10:14 19:23, 20:4, 21:4, 21:4, 22:0, 22:1, 21:4, 22:0, 22:1, 21:5, 12:14, 12:1, 16:1, 11:19, 12:1, 16:1, 21:5, 21:14, 22:1, 16:1, 16:1, 11:14, 16:11, 16:21, 11:14, 16:12, 17:21, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12:14, 12		• • • •		-	
letting (j): -4:15 15:21; 17:12; 17:24, 21:24 20:3 4:20:617, 8:22, 17:18, 22:114 17:12, 17:12, 17:24, 19:18, 19:19, 21:23 Inited (j): -11:13 mind (j): -20:10					• • • •
	_				
Immed (i) = 11:13 Ine (i) = 13:13 Ine (i) = 13:11 Ine (i) = 13:12 Ine (_				• • • •
Ine [] 1-12:13 minute [] - 19:11 13:11 PERKY [] 2] - 1:16, proceedings [] - 27:6 LLP [] - 1:11 months [] - 61:6, 7:18, 7:19 number [] - 13:10, 12:2, 21:4, 22:0, 22:3, 12:2, 16:11, 17:15, 12:3, 22:4, 22:10, 22:3, 22:3, 22:3, 22:4, 22:10, 22:3, 22:3, 22:3, 22:3, 22:4, 22:10, 22:3, 2		mind [1] - 20:10			
Intigation pr 23.25, 24.14 monitor (n) - 15.11 monitor (n) - 15.11 November (n) - 11.2, 55, 62.47, 22, 82.3, 12.2, 16.11, 17.15, 19.12, 22.8, 23.13, 31.5 25.13 PROCEEDINGS (n) - 2.2 PROCEEDINGS (n) - 2.2 M moring (n) - 2.0, 2.5, 25.13 norming (n) - 2.0, 2.5, 31.5 norming (n) - 2.0, 2.5, 31.5 10.14, 22.10, 23.2, 31.5 22.14, 22.0, 2.11, 10.14, 22.10, 23.2, 31.6, 11.21, 22.23, 31.3, 31.6 PROCEEDINGS (n) - 2.2 22.2 produce (n) - 8.2, 10.14, 22.10, 23.2, 23.12, 23.16, 23.20, 20.7 23.12, 23.16, 23.20, 20.12, 23.20, 23.16, 23.20, 21.13, 23.20, 21.14, 22.14, 22.0, 23.16, 23.20, 21.13, 21.14, 21.14, 13.16, 41. 23.12, 41.24, 21.14, 2				PERRY [22] - 1:16,	-
$ \begin{array}{c c c c c c c c c c c c c c c c c c c $	litigation [2] - 23:25,		November [2] - 1:12,	2:5, 2:14, 2:20, 4:21,	
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	_	months [3] - 6:16,		5:5, 6:24, 7:2, 8:23,	
N 2:12, 2:23, 3:13, 3:15 numbers (n - 19:14 19:23, 20:4, 21:1, 21:24, 22:25, 25:3, 20:7 23:12, 23:16, 23:23 M 3:15 numbers (n - 19:14 19:23, 20:4, 21:1, 21:24, 22:25, 25:3, 20:7 23:12, 23:16, 23:23 mail (n - 64, 17:18, mail (n - 64, 17:18, 6:1, 6:9, 6:11, 21:4, 4:12, 12:4, 22:4, 2:20, 22:3, 3:10, 3:13, 3:23, 4:9, 4:13, 3:10, 3:13, 3:23, 4:9, 4:14, 2:16, 2:1, 2:14, 2:14, 2:14, 2:14, 2:14, 2:14, 2:16, 2:1, 2:14, 2:14, 2:16, 2:1, 2:14, 2:14, 2:16, 2:1, 2:14, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:14, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:16, 2:1, 2:26, 2:52, 3; 2:25, 1:16, 1:1:10, 2:16, 2:16, 2:1, 2:26, 2:52, 3; 2:25, 1:16, 1:1:10, 2:16, 2:16, 2:1, 2:26, 2:52, 3; 2:25, 1:16, 1:1:10, 2:26, 2:26, 2:23, 2:25, 2:26, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:23, 2:25, 2:16, 2:1, 2:26, 2:52, 3:16, 0; 1:17, 1:19, 1:16, 1:16, 1:18, 2:16, 2:17, 2:26, 2:23, 2:25, 1:16, 1:17, 1:19, 1:16, 1:	LLP [1] - 1:11	7:18, 7:19	number [4] - 13:10,	12:2, 16:11, 17:15,	process [7] - 8:2,
M 3:15 most [1] - 20:5 most [1] - 21:4 most [1] - 11:3 most [1] - 21:4 most [1] - 11:3 most [1] - 12:4 most [1] - 22:4 most [1] - 12:2 most [1] - 12:2	look [2] - 8:20, 24:9	morning [6] - 2:3, 2:5,	17:1, 17:9, 23:3	19:12, 19:15, 19:19,	16:14, 22:10, 23:2,
most (i) - 20:5 moving (i) - 17:5, 0 26:7 21:7 mail (i) - 64, 17:18, moving (i) - 17:5, 0 person (i) - 23:4, 21:3 mail (i) - 11:2, 19:16, 29:23, 0 0 person (i) - 23:4, producing (i) - 4:7, Maine (i) - 11:2, 19:16, 29:23, 0 0 0 0 0 0 12:3 producing (i) - 4:7, 4:10, 4:12, 4:19, 10:6, 12:2, 14:14, Phil(i) - 2:14 Phil(i) - 2:14 Phil(i) - 2:14 Professor (i) - 5:6, 10:6, 13:8, 3:13, 3:24, 39, 11:6, 12:11, 16:2, 13, 16:4, 11:6, 12:11, 16:2, 12, 12:14, 12:1, 11:10, 11:6, 13:3, 13:22, 12:2, 12:10, 11:10, 11:10, 13:10, 11:10, 13:10, 11:10, 11:10, 13:15, 14:16, 13:11, 16:12, 11:11, 13:16, 14:11, 13:13, 16:4, 11:11:1, 13:16, 14:1, 13:1, 14:11, 13:11, 14:11, 14:11, 14:11, 14:11,		2:12, 2:23, 3:13,	numbers [1] - 19:14	19:23, 20:4, 21:1,	23:12, 23:18, 23:23
mail (b) - 64, 17:18, 25:13 moving 1 - 51:4, 17.20, moving (b) - 514, 17.20, moving (b) - 52, 53, 61:1, 21:4, 27:3 persistent (t) - 23:24, persistent (t) - 23:24, persistent (t) - 23:24, persistent (t) - 23:24, persistent (t) - 23:4, persistent (t) - 23:4,	M	3:15			produce [2] - 12:5,
25:13 mails (6) - 5:2, 5:3, 6:1, 6:9, 6:11, 21:4 Maine (a) - 1:12, 1:14, 27:3 moving (a) - 17:5, 9:16, 23:23 objection (a) - 11:23, 9:16; 23:2, 23:4; 3:10, 3:13, 3:23, 4:9, 4:21, 5:5, 5:24, 6:24, 7:2, 7:15, 8:23, 10:2, 10:5, 12:2, 14:14, 11:23, 13:5, 244, 22:0, 22:3, 3:10, 3:13, 3:23, 4:9, 4:21, 5:5, 5:24, 6:24, 7:2, 7:15, 8:23, 10:2, 10:5, 12:2, 14:14, 11:13, 15:6, 14:1, 15:13, 19:12, 10:5, 12:2, 14:14, 11:13, 15:6, 14:14:13, 16:16, 17:19, 10:15, 16:13, 19:12, 19:15, 19:19, 19:23, 17:15, 18:13, 19:12, 19:15, 19:19, 19:23, 17:15, 18:13, 19:12, 10:4, 12:4, 12:4, 22:7, 26:5, 22:25, 19:16, 12:10, 11:10, 11:11, 11:1, 11:10, 16:10, 16:18, 11:19, 14:21, 14:13, 11:19, 14:21, 14:14, 11:19, 14:21, 14:14, 11:10, 11:10, 11:11, 11:10, 11:11, 11:10, 11:11, 11:10, 11:11, 11:10, 11:11, 11:10, 11:11,		most [1] - 20:5	0		21:7
mails [6]: 5:2, 5:3, 6:1, 6:9, 6:11, 21:4, 27:3 19:16, 23:23 objections [2]: 11:23, 24:13 27:8 producing [1]: 4:16 Maine [3]: 1:12, 1:14, 27:3 19:16, 23:23 0bjections [2]: 11:23, 24:13 27:8 perspective [2]: 4:13, 0bvious [1]: 23:17 producing [1]: 4:16 Management [1]: - 5:13 7:7, 7:15, 8:23, 10:2, 10:5, 12:2, 14:14, Mary [1]: -2:9 0bjections [2]: 11:23, 12:16, 21:2, 22:3, 31:0, 31:3, 32:3, 4:9, 4:21, 5:5, 5:24, 6:24, 0bvious [1]: -2:16 27:8 producing [1]: -4:16 Margement [1]: - 5:13 7:7, 7:15, 8:3, 13:0; 12, 11:15, 11:13, 11:12, Mary [1]: -2:9 0bjections [2]: 11:13, 11:6 0F [3]: 11:1, 13:1, 16 0bvious [1]: -2:16, 0vious [1]: -2:16, 0vious [1]: -2:16, 0vious [1]: -2:16, 0vious [1]: -2:16 0bvious [1]: -2:16, 0vious [1]: -2:16, 0vious [1]: -2:16 0F [3]: 11:1, 13:1, 16 9:16 <td></td> <td>move [2] - 5:14, 17:20</td> <td></td> <td>-</td> <td>produced [2] - 20:5,</td>		move [2] - 5:14, 17:20		-	produced [2] - 20:5,
6:1. 6:9, 6:11, 21:4 Maine [g], -1:12, 1:4, 27:3 MR [a], -2:5, 2:6, 2:14, 220, 2:23, 3:0, 3:13, 3:23, 4:9, 4:21, 5:5, 5:24, 6:24, 7:2, 7:15, 8:23, 102, 7:2, 7:15, 8:23, 102, 7:15, 8:13, 19:12, 7:15, 8:14, 19:10, 7:16, 21:12, 7:16, 11:14, 19:10, 7:16, 21:12, 7:16, 11:14, 19:10, 7:16, 11:14, 19:10, 7:17, 11:14, 19:12, 7:16, 11:14, 19:10, 7:17, 11:14, 19:12, 7:16, 11:14				-	
Maine [s] - 1:12, 1:14, 27:3 2:14, 2:20, 2:23, 3:10, 3:13, 3:23, 4:9, 5:13 obligation [n] - 10:23, obvious [n] - 23:17 6:12 4:10, 4:12, 4:19, 4:21, 55, 5:24, 6:24, 9:0vious [n] - 17:2, odds [n] - 20:7 manager [n] - 2:9 10:5, 12:2, 14:14, 7:2, 7:15, 18:13, 19:12, Masreg [n] - 12:3 7:15, 18:13, 19:12, 13:15, 19:19, 19:23, Masreg [n] - 11:3, 27:2 10:5, 12:2, 14:14, 7:25, 7:25, 25:23, 25:25, 12:15, 15:19, 19:19, 19:23, 17:15, 18:13, 19:12, 13:15, 19:19, 19:23, Masreg [n] - 5:3, 24:4, 23:28, 2:18, 2:21, 23:28, 2:18, 2:21, 3:6:3, 7:1, 7:11, 8:22, 10:4, 12:1, 14:13, 10:4, 12:1, 14:13, 13:6, 11:19, 14:21, 18:17, 10:4, 12:4, 12:15, 10:16, 16:18, 11:19, 14:21, 18:17, 11:14, 11:16, 11:62, 22:22, 23:1, 25:24, 23:25, 23:1, 25:24, 23:25, 23:1, 25:24, 23:25, 23:1, 25:24, 23:25, 23:1, 25:24, 23:26, 37:1, 7:11, 8:22, 11:15, 21:19, 22:15, 22:22, 23:1, 25:24, 23:26, 37:1, 7:11, 8:22, 10:4, 12:1, 14:13, 11:19, 14:21, 18:17, 10:16, 16:8 ned [n] - 27:9 nature [n] - 5:13 masters [n] - 5:17 masters [n] - 5:17 mature [n] - 5:21 med [alor n] - 7:22, 9:22 med [alor n] - 7:22, 9:22 mature [n] - 5:2, 0; 0; 10:10, 10:16 med [n] - 5:22, 0; 0; 12:11, 2:3, 18:2, 20:14 med [alor n] - 2:24, 23:14, 23:24 med [alor n] - 2:24, 23:14		19:16, 23:23	_		producing [1] - 4:16
27.3 Anagement [1] 3:10, 3:13, 3:23, 4:9, 5:13 obvious [1] - 23:17 obvious [1] - 1:16 phi(1] - 2:14 4:21, 5:2, 5:15, 6:14, 9:22, 16:21, 20:20 Management [1] - 2:9 7:2, 7:15, 8:23, 10:2, Mary [1] - 2:9 7:15, 8:13, 19:12, 10:5, 12:2, 14:14, Mary [1] - 1:3 7:16, 18:11, 16:23, 11:15, 18:13, 19:12, 20:4, 20:17, 21:1, 20:3, 28, 2:18, 22:1, 20:4, 20:17, 21:1, 20:3, 28, 2:18, 22:1, 20:4, 20:24, 22:21, 20:4, 20:17, 21:1, 20:3, 28, 2:18, 22:1, 20:4, 20:25, 25:25, Masters [1] - 5:9 Phi(1] [1] - 2:14 Phi(1] - 2:14 9:22, 16:21, 20:20 Master [1] - 1:9 10:5, 12:2, 14:14, 11:15, 14:13, 15:44, 20:3, 20:7, 26:8 Offices [1] - 20:7 phytoplantton [1] - 9:15 professors [1] - 6:7 Master [1] - 2:9 20:4, 20:17, 21:1, 20:22, 23:22, 25:25, 11:19, 14:21, 14:13, 11:19, 14:21, 18:17, 10:4, 12:1, 14:13, 11:19, 14:21, 18:17, 10:4, 12:1, 14:13, 11:19, 14:21, 15:8, 21:15, 24:15 Plaintiff [1] - 1:4 professors [1] - 6:20 Master [1] - 5:9 named [1] - 27:9 named [1] - 27:9 named [1] - 27:9 path [1] - 1:16 prose [1] - 1:16 matter [1] - 5:2 named [1] - 27:9 named [1] - 27:9 named [1] - 27:9 position [8] - 8:4, 20:1, 20:20, 20:24, 21:17 position [8] - 8:4, 20:1, 20:20, 20:24, 21:17 profer [1] - 23:17 put[6] - 1:16, 21:27, 20:15, 22:12 Masters [1] - 5:9 named [1] - 27:9, natror [1] - 5:18 need [4] - 5:22, 20:14, 20:20, 20:24, 22:14, 20:21 <		MR [41] - 2:5, 2:6,			production [11] - 4:7,
Management (i) 4:21, 55, 524, 6:24, 7:2, 7:15, 8:23, 10:2, 10:5, 152, 24, 6:24, 7:2, 7:15, 8:23, 10:2, 10:5, 152, 14:14, 7:2, 7:15, 8:23, 10:2, 10:5, 152, 14:14, 16:16, 11, 16:23, 17:15, 8:13, 19:12, 19:15, 19:19, 19:23, 17:15, 18:13, 19:12, 19:15, 19:19, 19:23, 20:4, 20:17, 21:1, 20:20, 42:0; 17, 11:1, 22:25, 25:23, 25:25, 20:10 PHILIP (n - 1:16 phone (n - 2:15, 2:25, 4:24, 4:24, 7:2, 7:15, 8:23, 10:2, 10:5, 152, 16:10, 17:16, 10:16, 16:17, 16:18, 17:19, 19:12, 19:11, 19:19, 19:12, 19:15, 19:19, 19:23, 20:4, 20:17, 21:1, 22:25, 25:23, 25:25, 25:15, 25:16 PHILIP (n - 1:16 phone (n - 2:15, 2:25, 4:14, 10:16, 16:17, 10:16, 16:18, 11:19, 14:22, 18:11, 22:15, 22:12, 23:25, 25:25, 25:15, 25:16 PHILIP (n - 1:16 phone (n - 2:16), 10:16, 10:17, 15:18, 10:10, 11:17, 15:18, 10:10, 11:16, 22:25, 16:16, 17:19, 22:15, 25:16, 23, 26:27, 26:8 PHILIP (n - 1:16 phone (n - 2:17), 10:16, 16:17, 10:16, 16:17, 10:16, 16:17, 10:16, 16:17, 10:16, 16:17, 10:16, 16:18, 11:19, 14:21, 18:17, 12:18, 24:12, 25:15, 25:16, 23; 25:25, 25:15, 25:16, 23; 25:25, 25:12, 25:15, 25:16, 23:22; 23:1, 25:24, 10:10, 10:16, 16:18, 10:10; 10:17, 12:16, 11:16, 10:16; 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:16, 10:17, 10:16, 10:17, 10:16, 10:16, 10:17, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16, 10:17, 10:16,			_	-	4:10, 4:12, 4:19,
5:13 7:2, 7:15, 8:23, 10:2, 10:5, 12:2, 14:14, MARY (i) - 1:23 odds (i) - 20:7 (i) - 5:12, 2:14; 1:4, 14:16, 16:11, 16:23, MASTER [sig] - 1:23 phone (g) - 2:15, 2:25, 4:2 professor (i) - 5:6 Professor (i) - 5:6 MASTER [sig] - 1:23 14:16, 16:11, 16:23, 17:15, 18:13, 19:12, 19:15, 19:19, 19:23, 20:4, 20:17, 21:14, 22:25, 25:23, 25:25, 22:25, 25:23, 25:25, 22:25, 25:23, 25:25, 22:25, 25:23, 25:26, 10:4, 12:1, 14:13, 14:21, 14:13, 14:21, 14:13, 11:19, 14:21, 18:17, 10:4, 12:1, 14:13, 11:19, 14:21, 18:17, 10:16, 16:8, 11:19, 22:1, 22:22, 23:1, 25:24, 23:22, 23:1, 25:24, 23:11, 23:24, 11:19, 22:15, 22:22, 23:1, 25:24, 23:11, 23:24, 11:19, 22:16, 23:25, 11:19, 22:16, 23:25, 11:19, 22:16, 11:19, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:16, 12:119, 22:17, 13:21, 12:25, 12:11, 11:16, 16:8, 11:19, 12:20, 12:10, 12:24, 12:26, 12:7, 13:21, 12:20, 12:10, 13:25, 12:10, 13:25, 12:11, 13:23, 17:25, 21:13, 13:23, 17:25, 21:13, 13:23, 17:25, 21:13, 13:23, 17:25, 21:13, 13:23, 17:25, 21:13, 13:23, 17:25, 11:13, 13:23, 17:25, 12:13, 13:23, 17:25, 12:13, 13:24, 12:25, 12:13, 13:25, 12:13, 13:25, 12:13, 13:24, 12:25, 12:13, 13:25, 12:13, 13:25, 12:13, 13:24, 12:25, 12:13, 13:25, 12:13, 13:25, 12					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $			• • •		
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$\begin{array}{c c c c c c c c c c c c c c c c c c c $					-
$\begin{array}{c} 3:8, 3:11, 3:15, 4:4, \\ 4:20, 4:23, 5:23, \\ 4:20, 4:23, 5:23, \\ 4:20, 4:23, 5:23, \\ 26:3, 26:7, 26:8 \\ \textbf{MS} [z] - 2:7, 3:6 \\ \textbf{multiple} [t] - 21:6 \\ \textbf{mussel} [t] - 9:13 \\ \textbf{must} [t] - 14:22 \\ 19:24, 20:16, 20:23, \\ 21:15, 22:19, 22:24, 23:10 \\ \textbf{mature} [t] - 5:9 \\ \textbf{mature} [t] - 5:9 \\ \textbf{mature} [t] - 5:21 \\ \textbf{mediation} [a] - 22:6 \\ \textbf{mediation} [a] - 5:20 , 17:7 \\ 20:15, 25:14 \\ \textbf{might} [2] - $					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
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$\begin{array}{c c c c c c c c c c c c c c c c c c c $	21:15, 21:19, 22:15,		-		
$\begin{array}{c c c c c c c c c c c c c c c c c c c $		named [1] - 27:9			
Masters $[1] - 5:9$ masters $[1] - 5:17$ mature $[1] - 5:21$ mean $[4] - 12:12,$ $14:21, 15:5, 24:15$ mediation $[4] - 22:2,$ $22:19, 22:24, 23:10$ mediator $[4] - 22:6,$ mediator $[4] - 22:6,$ mediator $[4] - 22:6,$ mediator $[1] - 23:16$ mediator $[1] - 23:16$ mediator $[1] - 5:19, 5:24,$ $6:18, 7:9, 11:21,$ $16:4, 16:13, 17:22,$ $18:8, 19:1, 24:8,$ $25:5, 25:10$ 23:25 $23:25$ $23:26$ 21:17 overbroad $[1] - 15:17$ overbroad $[1] - 15:17$ overbroad $[1] - 15:17$ overemphasize $[1] - 23:27$ practical $[2] - 12:20,$ $13:25$ possible $[1] - 17:11$ possibly $[2] - 14:1,$ $17:21$ potential $[1] - 22:4$ potential $[1] - 22:4$ practical $[2] - 12:20,$ $13:25$ push $[1] - 11:16$ $push [1] - 11:16push [1] - 22:17push [1] - 11:16push [1] - 11:16push [1] - 12:13, 16push [1] - 12:13, 16push [1] - 12:13, 16push [1] - 12:13, 16push [1] - 12:13, 16:13, 17:22, 11:20, 18:3, 19:6push [1] - 12:13, 13:3, 19:6$			••••		• • • • •
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	Masters [1] - 5:9				-
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	masters [1] - 5:17	nature [1] - 15:8		• • • •	•
mean [4] - 12:12, 10:16, 16:8 23:20 potential [1] - 22:4 putting [1] - 11:6 14:21, 15:5, 24:15 need [4] - 5:22, 21:10, 21:12, 23:4 need [4] - 5:22, 21:10, 23:20 potential [1] - 22:4 practical [2] - 12:20, 13:25 mediator [4] - 22:6, neglected [1] - 3:25 new [2] - 7:22, 9:22 predicates [1] - 16:12 predicates [1] - 16:12 predicate [1] - 16:12 quickly [4] - 5:14, mediators [1] - 23:16 new [2] - 7:22, 9:22 next [5] - 5:20, 17:7, pages [4] - 4:17, 9:4, predicates [1] - 8:19 quote [1] - 22:17 meet [13] - 5:19, 5:24, 20:15, 25:14 night [12] - 7:23, 8:2, st, 8:14, 8:19, 8:25, 9:8, 27:4 part [2] - 15:9, 15:24 present [1] - 11:16 part [2] - 15:9, 15:24 part [2] - 15:9, 15:24 part [2] - 15:9, 15:24 present [1] - 12:13, 13:23, 17:25, 21:13 present [1] - 11:20 participants [1] - 25:8 participants [1] - 25:8 present [1] - 14:7 R 25:5, 25:10 18:3, 19:6 18:3, 19:6 22:4 0100000000000000000000000000000000000		necessary [3] - 10:15,			-
$\begin{array}{c c c c c c c c c c c c c c c c c c c $,		•	potential [1] - 22:4	
mediation [4] - 22:2, 22:19, 22:24, 23:10 21:12, 23:4 needs [1] - 13:8 neglected [1] - 3:25 neglected [1] - 3:25 new [2] - 7:22, 9:22 oysters [1] - 9:12 13:25 practice [1] - 24:18 predicate [1] - 16:12 prefer [1] - 23:17 Q mediator [4] - 22:6, 23:2, 23:11, 23:22 neglected [1] - 3:25 new [2] - 7:22, 9:22 pages [4] - 4:17, 9:4, 9:8, 27:4 predicate [1] - 16:12 prefer [1] - 23:17 quickly [4] - 5:14, 17:20, 18:10, 19:16 meet [13] - 5:19, 5:24, 6:18, 7:9, 11:21, 16:4, 16:13, 17:22, 18:8, 19:1, 24:8, 25:5, 25:10 night [12] - 7:23, 8:2, 9:7, 9:22, 11:20, 18:3, 19:6 pages [4] - 4:17, 9:4, 9:8, 27:4 premature [4] - 12:13, 9:8, 27:4 quickly [4] - 5:14, 17:20, 18:10, 19:16 pages [4] - 4:17, 9:4, 9:8, 27:4 premature [4] - 12:13, 13:23, 17:25, 21:13 QURESHI [1] - 1:18 Qureshi [1] - 2:17 participants [1] - 25:8 particular [2] - 6:7, 25:5, 25:10 present [1] - 14:7 R					
22:19, 22:24, 23:10 needs [1] - 13:8 practice [1] - 24:18 mediator [4] - 22:6, neglected [1] - 3:25 p 23:2, 23:11, 23:22 new [2] - 7:22, 9:22 peges [4] - 4:17, 9:4, preficiate [1] - 16:12 mediators [1] - 23:16 next [5] - 5:20, 17:7, pages [4] - 4:17, 9:4, prejudge [1] - 8:19 meet [13] - 5:19, 5:24, 20:15, 25:14 pages [4] - 4:17, 9:4, prejudge [1] - 8:19 fill (12] - 7:23, 8:2, part [2] - 15:9, 15:24 part [2] - 15:9, 15:24 present [1] - 12:13, 16:4, 16:13, 17:22, 8:4, 8:14, 8:19, 8:25, 9:7, 9:22, 11:20, participants [1] - 25:8 present [1] - 14:7 R 25:5, 25:10 18:3, 19:6 22:4 0.00000000000000000000000000000000000			-		Q
23:2, 23:11, 23:22 new [2] - 7:22, 9:22 prefer [1] - 23:17 prefer [1] - 23:17 mediators [1] - 23:16 next [5] - 5:20, 17:7, pages [4] - 4:17, 9:4, prefer [1] - 23:17 meet [13] - 5:19, 5:24, 20:15, 25:14 9:8, 27:4 premature [4] - 12:13, 13:23, 17:25, 21:13 6:18, 7:9, 11:21, night [12] - 7:23, 8:2, 8:4, 8:14, 8:19, 8:25, 9:7, 9:22, 11:20, participants [1] - 25:8 present [1] - 14:7 QURESHI [1] - 2:17 18:8, 19:1, 24:8, 9:7, 9:22, 11:20, 18:3, 19:6 22:4 Present [1] - 14:7 R				practice [1] - 24:18	
23:2, 23:11, 23:22 new [2] - 7:22, 9:22 prefer [1] - 23:17 17:20, 18:10, 19:16 mediators [1] - 23:16 next [5] - 5:20, 17:7, pages [4] - 4:17, 9:4, prejudge [1] - 8:19 quote [1] - 22:17 meet [13] - 5:19, 5:24, 20:15, 25:14 9:8, 27:4 premature [4] - 12:13, 13:23, 17:25, 21:13 QURESHI [1] - 1:18 6:18, 7:9, 11:21, night [12] - 7:23, 8:2, part [2] - 15:9, 15:24 participants [1] - 25:8 present [1] - 1:22 Qureshi [1] - 2:17 18:8, 19:1, 24:8, 9:7, 9:22, 11:20, particular [2] - 6:7, present [1] - 14:7 R 25:5, 25:10 18:3, 19:6 22:4 0.00000000000000000000000000000000000			Р	predicate [1] - 16:12	
meet [13] - 5:19, 5:24, 20:15, 25:14 9:8, 27:4 premature [4] - 12:13, QURESHI [1] - 1:18 6:18, 7:9, 11:21, night [12] - 7:23, 8:2, 9:8, 27:4 part [2] - 15:9, 15:24 premature [4] - 12:13, QURESHI [1] - 1:18 16:4, 16:13, 17:22, 8:4, 8:14, 8:19, 8:25, 9:7, 9:22, 11:20, particular [2] - 6:7, Present [1] - 1:4:7 R 25:5, 25:10 18:3, 19:6 22:4 0.00000000000000000000000000000000000				prefer [1] - 23:17	
6:18, 7:9, 11:21, 16:4, 16:13, 17:22, 18:8, 19:1, 24:8, 25:5, 25:10 night [12] - 7:23, 8:2, 8:4, 8:14, 8:19, 8:25, 9:7, 9:22, 11:20, 18:3, 19:6 part [2] - 15:9, 15:24 participants [1] - 25:8 particular [2] - 6:7, 22:4 13:23, 17:25, 21:13 Present [1] - 1:22 present [1] - 1:22 Qureshi [1] - 2:17			· -		
16:4, 16:13, 17:22, 8:4, 8:14, 8:19, 8:25, 18:8, 19:1, 24:8, 9:7, 9:22, 11:20, 25:5, 25:10 18:3, 19:6					
18:8, 19:1, 24:8, 9:7, 9:22, 11:20, particular [2] - 6:7, present [1] - 14:7 R 25:5, 25:10 18:3, 19:6 22:4 cmconts [2] - 6:3,		-	-		Qureshi [1] - 2:17
25:5, 25:10 18:3, 19:6 22:4 procents [2] - 6:3,					
$\mathbf{H}_{\mathbf{I}} = \mathbf{D}_{\mathbf{I}} = $			-	-	R
				ROUP [2] - 6:3,	raiso (5) 11.15 16.0
					10.3 [0] - 11.13, 10.3,
Mason & Lockhart 10 of 12		M		art	10 of 12

raye ว เบ ว บเ ว

10 of 12 sheets

4

19:4, 19:7, 21:23 RALPH [1] - 1:10 range [1] - 21:3 rather [1] - 16:9 reach [2] - 16:6, 16:11 read [2] - 25:3, 25:12 real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25 reasons [1] - 23:17	8:16, 8:18, 9:1, 9:3, 9:8, 9:23, 10:5, 11:14, 14:17, 18:2, 19:4, 19:5 restrict [1] - 13:15 result [1] - 24:1 results [1] - 25:7 retain [1] - 10:16	sociological [1] - 11:9 Solicitor [2] - 3:2, 3:4 solve [1] - 14:8 someone [3] - 23:5, 23:6, 25:11 somewhere [3] - 6:11,	subject [1] - 18:8 subpoena [1] - 21:2 subscribe [1] - 27:10 substantial [1] - 8:11 suffered [5] - 9:2, 9:3, 11:7, 11:8, 11:9	23:7, 23:14 type [5] - 12:7, 13:7, 14:5, 21:4, 22:7 types [5] - 9:12, 9:13, 9:14, 9:16, 12:10
RALPH [1] - 1:10 range [1] - 21:3 rather [1] - 16:9 reach [2] - 16:6, 16:11 read [2] - 25:3, 25:12 real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25	9:8, 9:23, 10:5, 11:14, 14:17, 18:2, 19:4, 19:5 restrict [1] - 13:15 result [1] - 24:1 results [1] - 25:7	Solicitor [2] - 3:2, 3:4 solve [1] - 14:8 someone [3] - 23:5, 23:6, 25:11 somewhere [3] - 6:11,	subpoena [1] - 21:2 subscribe [1] - 27:10 substantial [1] - 8:11 suffered [5] - 9:2, 9:3,	type [5] - 12:7, 13:7, 14:5, 21:4, 22:7 types [5] - 9:12, 9:13,
range [1] - 21:3 rather [1] - 16:9 reach [2] - 16:6, 16:11 read [2] - 25:3, 25:12 real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25	11:14, 14:17, 18:2, 19:4, 19:5 restrict [1] - 13:15 result [1] - 24:1 results [1] - 25:7	solve [1] - 14:8 someone [3] - 23:5, 23:6, 25:11 somewhere [3] - 6:11,	subscribe [1] - 27:10 substantial [1] - 8:11 suffered [5] - 9:2, 9:3,	14:5, 21:4, 22:7 types [5] - 9:12, 9:13,
rather [1] - 16:9 reach [2] - 16:6, 16:11 read [2] - 25:3, 25:12 real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25	19:4, 19:5 restrict [1] - 13:15 result [1] - 24:1 results [1] - 25:7	someone [3] - 23:5, 23:6, 25:11 somewhere [3] - 6:11,	substantial [1] - 8:11 suffered [5] - 9:2, 9:3,	types [5] - 9:12, 9:13,
reach [2] - 16:6, 16:11 read [2] - 25:3, 25:12 real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25	restrict [1] - 13:15 result [1] - 24:1 results [1] - 25:7	23:6, 25:11 somewhere [3] - 6:11,	suffered [5] - 9:2, 9:3,	
read [2] - 25:3, 25:12 real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25	result [1] - 24:1 results [1] - 25:7	somewhere [3] - 6:11,		3.14, 3.10, 12.10
real [1] - 8:11 really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25	results [1] - 25:7			
really [1] - 10:17 reason [1] - 18:5 reasonably [1] - 9:25				
reason [1] - 18:5 reasonably [1] - 9:25	retain 1 - 10:10	10:13, 24:11	suffering [2] - 10:25,	U
reasonably [1] - 9:25		soon [1] - 17:11	15:20	U.S [2] - 20:2, 20:21
	retired [1] - 5:8	sooner [1] - 16:9	sufficient [2] - 8:6,	U.S.A [1] - 1:21
reasons [1] - 23.17	review [2] - 3:16, 19:6	sorts [1] - 12:18	8:17	ultimately [1] - 14:3
	reviewing [1] - 8:3	sought [2] - 13:17,	suggest [1] - 25:9	under [2] - 5:12, 12:8
received [5] - 4:14,	ripe [1] - 5:11	20:6	suggesting [1] - 24:15	
7:22, 8:6, 8:18, 19:5	river [1] - 9:6	speaker [2] - 2:19, 3:9	suggestion [4] - 22:8,	united [1] - 3:11
reconsider [1] - 11:22	RMR [1] - 1:13	speaking [1] - 24:13	22:19, 25:9, 25:19	UNITED [1] - 1:1
record [2] - 4:3, 19:9	rounds [1] - 8:25	SPECIAL [39] - 1:9,	suggestions [3] -	United [4] - 3:14, 3:18,
reduced [1] - 9:18	Rule [1] - 13:16	2:3, 2:8, 2:18, 2:21,	22:12, 23:16, 25:15	20:5, 20:8
reference [1] - 24:12		3:8, 3:11, 3:15, 4:4,	suit [1] - 14:21	University [2] - 5:10,
refusal [1] - 23:24	S	4:20, 4:23, 5:23,	supplemental [1] - 9:1	5:16
regard [2] - 5:25, 7:12	• • • •	6:23, 7:1, 7:11, 8:22,	supplemented [1] -	unquote [1] - 22:18
regarding [7] - 5:2,	Sarah [1] - 3:3	10:4, 12:1, 14:13,	7:19	up [4] - 10:23, 11:6,
6:5, 7:13, 7:15, 20:1,	SARAH [1] - 1:20	14:15, 16:10, 16:18,	supplements [2] -	12:24, 25:6
20:24, 21:18	satisfied [1] - 9:21	17:14, 18:11, 19:10,	7:21, 7:24	upstream [2] - 9:19,
region [2] - 10:8,	schedule [5] - 14:4,	19:13, 19:17, 19:22,	supplied [1] - 14:6	14:25
15:12	16:25, 17:9, 17:12,	19:24, 20:16, 20:23,	SUPREME [1] - 1:1	usage [1] - 14:25
regular [1] - 15:10	20:18	21:15, 21:19, 22:15,		
related [1] - 12:10	scheduled [2] - 17:10,	22:22, 23:1, 25:24,	Т	V
relevant [5] - 11:24,	17:13	26:2, 26:4		
13:12, 18:7, 18:16,	scheduling [3] -	species [8] - 9:6, 9:13,	table [1] - 18:2	various [3] - 9:10,
18:24	16:19, 17:5, 20:22	10:10, 11:7, 12:16,	taxpayers [1] - 24:2	9:13, 9:15
rely [1] - 14:5	scope [1] - 23:25	15:7, 15:12, 15:18	Tech [1] - 5:7	Vazquez [1] - 2:16
remaining [1] - 17:6	second [3] - 10:19,	specific [9] - 6:6, 8:8,	telephone [2] - 1:9,	VAZQUEZ [1] - 1:17
remember [2] - 6:5,	12:20, 15:3	10:8, 10:17, 10:21,	26:9	Veatch [1] - 21:2
18:25	see [5] - 12:2, 16:6,	12:15, 13:6, 21:4,	terms [1] - 5:12	view [1] - 16:7
report [3] - 11:5, 21:5,	22:17, 23:9, 23:21	23:10	terrible [1] - 24:18	volume [2] - 6:9,
22:1	seeking [2] - 14:18,	specifically [1] - 8:7	testify [2] - 11:12, 14:1	12:25
reports [10] - 3:17,	14:19	specifications [2] -	testimony [7] - 11:2,	volumes [1] - 13:2
4:25, 9:5, 9:11,	selecting [1] - 23:2	12:8, 12:22	12:13, 14:18, 15:16,	
12:14, 21:6, 22:19,	selection [1] - 23:18	specificity [1] - 10:14	15:22, 15:24, 16:1	W
23:22, 25:4, 25:14	separate [1] - 9:5	stage [1] - 13:10	THE [1] - 1:1	
reptiles [1] - 9:17	served [3] - 10:25,	start [3] - 2:8, 2:13,	themselves [1] - 23:15	warn [1] - 24:21
requests [3] - 4:8,	18:19, 19:2	24:3	third [3] - 19:25,	WARREN [1] - 1:20
16:13, 20:2	sessions [1] - 25:5	started [1] - 7:7	20:24, 21:18	Warren [1] - 3:3
required [1] - 10:14	sets [3] - 9:5, 9:11,	STATE [2] - 1:3, 1:6	three [3] - 5:11, 6:7,	water [3] - 14:25, 23:5,
requires [1] - 20:12	12:15	State [8] - 1:14, 1:16,	8:25	23:6
resolution [1] - 5:21	settled [1] - 24:5	1:19, 4:15, 5:10,	threshold [1] - 8:12	week [8] - 6:20, 7:10,
	settlement [3] - 22:5,	5:16, 11:11, 27:3	today [5] - 4:6, 4:10,	14:12, 16:16, 17:7,
resolve [3] - 17:21,	22:18, 23:21	States [5] - 3:12, 3:14,	4:17, 4:22, 18:23	17:23, 18:8, 20:15
18:9, 25:20	several [1] - 13:13	3:18, 20:5, 20:8	together [1] - 23:8	weeks [1] - 17:7
resolved [1] - 6:16	sharp [1] - 22:5	states [2] - 23:7, 23:14	tomorrow [1] - 5:20	welcome [1] - 22:8
respect [3] - 6:22, 8:7,	shrimp [1] - 9:16	STATES [1] - 1:1		Wharf [1] - 1:11
10:9	side [1] - 24:12	states' [1] - 24:2	tonight [1] - 16:22	WHEREOF [1] - 27:10
respects [1] - 12:23		status [5] - 7:13, 11:5,	Touhy [1] - 20:2	wide [1] - 21:3
respond [8] - 6:25,	significant [3] - 6:13,	21:5, 21:6, 22:1	towards [1] - 23:23	willing [1] - 11:20
7:3, 10:3, 14:16,	6:21, 12:25	stenographic [1] -	transcript [1] - 27:5	WINN [1] - 1:19
18:12, 18:15, 18:17,	simplistic [3] - 25:2,	27:5	trouble [1] - 18:20	Winn [1] - 2:24
22:16	25:9, 25:19		true [1] - 15:11	WINSOR [1] - 1:16
responding [1] -	single [1] - 13:2	still [4] - 5:15, 8:2,	trying [2] - 17:20,	Winsor [1] - 2:16
18:23	sitting [2] - 18:14,	20:7, 21:7	20:18	
	18:22	Street [1] - 1:11	turn [2] - 19:24, 21:21	witness [11] - 10:23,
response [1] - 20:1				11.6 11.11 11.17
response [1] - 20:1 responses [17] - 7:14,	six [2] - 6:16, 9:12	stronaly 141 - 10.22	BOUP - 5:7, 10:5,	11:6, 11:11, 11:17, 12:5, 12:24, 13:2
response [1] - 20:1		stronaly 141 - 10.22		11:6, 11:11, 11:17, 12:5, 12:24, 13:2,

	_
13:7, 13:21, 17:3, 24:16 WITNESS [1] - 27:10 witnesses [3] - 11:2, 11:25, 13:11 word [3] - 22:17, 23:21, 23:22 wrap [1] - 15:5 written [5] - 7:12, 7:13, 7:16, 8:15, 10:21	
Y	
yesterday [2] - 19:3, 22:9	
Z	
zooplankton [1] - 9:15	

THE REPORTING GROUP

Mason & Lockhart