

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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UNITED STATES FEDERAL : CA Number 13-1021  
TRADE COMMISSION, :  
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Plaintiff, :  
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v. : Washington, D.C.  
 : Tuesday, September 24, 2013  
ARDAGH GROUP, S.A., et al., : 10:04 a.m.  
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**TRANSCRIPT OF PRE-HEARING CONFERENCE  
BEFORE THE HONORABLE BARBARA J. ROTHSTEIN  
UNITED STATES DISTRICT JUDGE**

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**P R O C E E D I N G S**

1  
2 THE DEPUTY CLERK: The matter before the Court,  
3 Civil Action Number 13-1021, the United States Federal Trade  
4 Commission versus Ardagh Group S.A., et al.

5 Counsel, please come forward and identify  
6 yourselves for the record.

7 MR. HASSI: Good morning, Your Honor. I'm Ed  
8 Hassi. I'm with the Federal Trade Commission. With me at  
9 counsel table are Brendan McNamara, Cathy Moscatelli, and  
10 Angelike Mina.

11 THE COURT: Okay, good morning.

12 MR. SCHWED: Good morning, Your Honor. Richard  
13 Schwed of Shearman & Sterling for the Defendant Ardagh  
14 Group, and with me from Shearman & Sterling are Alan Goudiss  
15 and Heather Kafele.

16 MR. EVEN: Good morning, Your Honor. Yonatan Even  
17 with Cravath, Swaine & Moore, for Defendant Saint-Gobain.

18 THE COURT: Well, good morning, counsel.

19 I don't know if you were prepared to address me,  
20 but why don't we start out by my telling you my concerns,  
21 and then you probably can fill me in on your plans.

22 I know we're having a hearing in about a month,  
23 and my concern was just the structure of that hearing and  
24 what you anticipate will take place there, and giving you  
25 some idea of what I would expect in terms of the procedures

1 you will use, and my sort of idiosyncrasies in terms of  
2 conducting a hearing like this.

3 My first concern would be that all exhibits be  
4 pre-marked and pre-admitted. I can't imagine that there  
5 would be any dispute about exhibits at a hearing like this,  
6 but I could be wrong and you can tell me if I am wrong. I  
7 don't want to -- you know, we only have that short period of  
8 time, and I know you're intending to fill it. I don't want  
9 to fill it with arguments about exhibits.

10 Just a word of caution. If it turns out both  
11 sides are using the same exhibit, pick a number, any number.  
12 I don't care whose side it is. Just don't use two different  
13 numbers. It's only going to confuse me, all right? One  
14 number will be enough. If you really can cooperate, you  
15 could number them consecutively, and then it will be very  
16 easy for the clerk and for me.

17 Are there any exhibits that you would like for me  
18 to review in advance that you think might speed things  
19 along? Now, let me just give you an idea of where I am  
20 coming from. I can't review them really in advance because  
21 I'm coming back from a trip just the day before, and I'm not  
22 taking them with me, I can tell you that. But like if you  
23 have some the night before the next day of the hearing you  
24 think it would be good for me to take a look at, keep that  
25 in mind. I'm willing to do so that I sort of have a nodding

1 acquaintance with them before a witness takes the stand.

2           That's my next question. Are there going to be  
3 witnesses? If so, tell me. Tell me how many, both sides.  
4 Will you agree on an order? Will they be here, be ready to  
5 go? If you're going to have witnesses and they are kind of  
6 experts in their field of some kind, I can read CVs faster  
7 than they can tell me what they've done and what they've  
8 published, and where they went to school. You can take me  
9 as far back as high school as long as you put it in writing  
10 because then I can read it really fast.

11           I will throw out an idea, and I assume you're  
12 going to say, yes, there are going to be witnesses. One way  
13 of speeding things along -- I'm not sure it will work here.  
14 I just throw it out to you to think about -- many times in  
15 hearings like this it can be helpful to prepare the direct  
16 in the form of a statement and then have me read the  
17 statement, ask questions if there's something in there I  
18 don't understand, and then just proceed with  
19 cross-examination. Or with a limited direct if there are  
20 charts to show me to help me along. I don't know if that's  
21 helpful or not. Sometimes it is, sometimes it isn't.

22           It is helpful if you think that you've asked for  
23 three days and then all of a sudden you find you're going  
24 five and I don't have those five days, and then directs  
25 would be helpful. But if you're staying within your time

1 and you think it would be easier for me to get it with the  
2 person here and then being able to -- pros and cons. I will  
3 let you decide. I don't feel strongly about it because  
4 sometimes my ability to ask questions of the witness, I  
5 could do even with a written direct. You decide. It may be  
6 acceptable for some witnesses and not others.

7 I'd like to hear from you if you've made any  
8 allocation of time. Are you splitting it? FTC is  
9 plaintiff, so usually you would get a rebuttal, although I'm  
10 not sure rebuttal really applies to something like this.  
11 But if you're thinking you want a rebuttal, then let's split  
12 the time, and you carefully reserve some time. I think we  
13 should try to keep the time in mind.

14 I will try to give you an hourly day so that you  
15 know how much time you have. I don't believe in chess  
16 clocks. I think they ruin the ambiance of the courtroom,  
17 but I do expect that my clerk will keep time. So I think  
18 you should be thinking of staying within your time limits.

19 Okay, I've given you my concerns. Who wants to  
20 lead off? You look like you're ready to go, counsel.

21 MR. HASSI: Yes, I think I am, Your Honor. Again,  
22 Ed Hassi for the Federal Trade Commission.

23 There are some concerns we have and some issues,  
24 some of which you have already addressed. I wanted to start  
25 out with scheduling. After our discussion with your law

1 clerk, we've had a further discussion about scheduling. We  
2 have some minors changes to the scheduling order. They are  
3 agreed by all parties. We can send in a revised scheduling  
4 order today, and I can walk you through those changes or we  
5 can simply send it in, however Your Honor would like to  
6 proceed.

7 THE COURT: Tell me now, and also send it in.

8 MR. HASSI: Okay. So the changes -- I'm sorry,  
9 I've got a black line here that shows it, which I can hand  
10 up if Your Honor would like --

11 THE COURT: Sure.

12 MR. HASSI: -- to the scheduling order.

13 THE COURT: Thank you.

14 MR. HASSI: So the changes don't start until  
15 page 6, paragraph 21, and that is as we've -- we just  
16 completed expert discovery on Friday. It may be that one or  
17 both parties choose to make Daubert motions, and so we've  
18 built into the schedule a briefing schedule for potential  
19 Daubert motions.

20 THE COURT: But you must know by now whether  
21 you're going to bring Daubert motions. It's not the 27th,  
22 but you must have a pretty good idea. You guys wouldn't  
23 start a brief on the night of the 26th. I know you better.

24 MR. HASSI: Your Honor, I think it's our  
25 expectation that we will bring one or more Daubert motions.

1 We, to be fair, are still evaluating that, but, yes, there  
2 is someone back at the office working on Daubert motions.

3 THE COURT: Why would I think that might be the  
4 case, but let me explore this. You're bringing a Daubert  
5 motion to exclude the expert from this hearing?

6 MR. HASSI: To exclude the expert, some of the  
7 experts or some of the experts' testimony.

8 THE COURT: Now, you're aware that in order to  
9 make that ruling I need to hear from the expert, right?

10 MR. HASSI: Yes, Your Honor. I understand the  
11 Catch 22 involved.

12 THE COURT: Yes. You still think that's a  
13 worthwhile motion to make? Is it because you don't want me  
14 to consider what that expert is saying, is that it?

15 MR. HASSI: I think what our intention is, is to  
16 limit -- there are some opinions that are being offered here  
17 by, for example, experts in the field that are going to say,  
18 "Well, there's a trend, for example, to beer in cans," and  
19 at least one of these experts thinks that he knows better  
20 than the people that are -- the businesspeople that in the  
21 field. It's not based on any methodology, anything  
22 testable. It's just, "Gee, I've done this before, and I  
23 know better than the people that are running these  
24 multimillion dollar businesses."

25 We think that that should be brought to light. I



1 understand it can be brought to light in cross-examination.  
2 The concern we really have here is the limited period of  
3 time that we have before Your Honor, and we thought that if  
4 we could address some of these issues in advance in the form  
5 of a motion, it might help speed things along at the trial.

6 THE COURT: Okay. I can tell you right now that I  
7 probably will not have time to review those motions. I  
8 don't want to -- I don't want to nip in the bud any  
9 wonderful briefs that you're doing, but I'm going to hear  
10 these witnesses anyway.

11 MR. HASSI: Okay.

12 THE COURT: Well, you can give me the -- I'll hear  
13 the witnesses. Just know that I'm not going to be reading  
14 those motions before I hear the witnesses, but I will read  
15 them, and if it's correct that the testimony I've heard  
16 should have been excluded or doesn't qualify as an expert,  
17 then I can do that later on. But in terms of your  
18 timekeeping, that's what I'm trying to help you with.

19 MR. HASSI: I appreciate that.

20 THE COURT: In terms of the timekeeping, I won't  
21 be in a position to exclude anybody before the hearing,  
22 okay?

23 MR. HASSI: Okay, Your Honor.

24 THE COURT: So count on the fact that whoever  
25 you're objecting to will testify, and if I do any excluding

1 of testimony, it will be later on when I have had a chance  
2 to read the briefs. Okay?

3 MR. HASSI: I understand.

4 THE COURT: So it's not going to help you in time,  
5 but it may still help. I didn't mean to say that you  
6 shouldn't pursue. It's just that in terms of timing, it's  
7 not going to happen beforehand, okay?

8 MR. HASSI: Okay. We will keep that in mind in  
9 terms of whether we file or don't file, Your Honor.

10 THE COURT: An updated witness list --

11 MR. HASSI: Witness list, and I think taking into  
12 account what Your Honor has already said this morning, we  
13 have this week to sort of work that out and try to provide  
14 each other with clear indications of who will actually be  
15 called to testify live at the hearing versus, for example,  
16 being submitted by deposition testimony. So that's  
17 scheduled to happen on Friday.

18 Some of these changes, for example, paragraph 23,  
19 these were made previously. In terms of the briefing  
20 schedule, we are just annotating them here. Our brief and  
21 reply will be due on September 30th. We propose to exchange  
22 exhibit lists, copies of exhibits and deposition  
23 designations, instead of on the 30th, on October 2nd, so  
24 moving that back by a couple of days.

25 Paragraph 25 goes to oppositions to Daubert

1 motions.

2 Paragraph 26, we propose to exchange objections  
3 instead of on -- to exhibits and counter deposition  
4 designations, instead of on October 3rd, on October 9th.  
5 And then we have reply briefs on any Daubert motions  
6 scheduled for October 9th.

7 In the post trial briefing -- in paragraph 31, we  
8 corrected the hearing dates and times. And then for the  
9 post trial briefing, what we would propose to do is, since  
10 the trial will continue into that Monday, instead of having  
11 the findings of fact due that Friday, we've pushed them to  
12 the following Monday. And then the reply findings of fact,  
13 instead of October 30th, to November 1st.

14 So those are the proposed changes. As I  
15 mentioned, they are agreed to by all parties.

16 THE COURT: Sounds good to me.

17 MR. HASSI: Okay.

18 THE COURT: I think that is a reasonable schedule,  
19 and if it gives you more time to get everything prepared, so  
20 much the better.

21 MR. HASSI: The parties will submit a proposed  
22 ordered this afternoon.

23 THE COURT: Great. Let me ask you your opinion.  
24 Do you think there is going to be any problem with exhibits?

25 MR. HASSI: I hope not, Your Honor. I think for

1 the most part these are going to be business documents out  
2 of the companies' files and/or third parties' file, so I  
3 hope not.

4 THE COURT: Good.

5 MR. HASSI: I understand with Your Honor's  
6 schedule -- we've already talked about the fact that we  
7 really need to work this out given when the hearing starts  
8 and we don't have -- that this is our opportunity for  
9 pretrial, and so we'll try to resolve that as much as  
10 possible.

11 THE COURT: Okay. Let me make one suggestion  
12 because I've found that's often where the best intentions  
13 can flounder.

14 If you are using the demonstrative exhibits,  
15 charts, things like that with your experts, and you might  
16 because they probably would be helpful to the Court -- if  
17 you're not using -- I say charts, and that's a --

18 MR. HASSI: We hope they will be helpful, Your  
19 Honor.

20 THE COURT: -- that's a give-away of my  
21 generation. If you're using something that you're going to  
22 put on the computer since nobody makes charts anymore, show  
23 it to the other side so that they don't see it for the first  
24 time the morning of and then say, "No, no, that's  
25 inaccurate. Can you make a change?" Since it's usually

1 very difficult to make a change at the last minute, include  
2 those as exhibits that you talk about, okay, so that --

3 MR. HASSI: Okay.

4 THE COURT: It's just a matter of time, you know.  
5 Do you want to waste time saying, no, that should be this  
6 percentage and not that percentage?

7 MR. HASSI: Okay.

8 THE COURT: Just a word of advice.

9 MR. HASSI: Okay.

10 THE COURT: It sounds like you have anticipated  
11 pretty much everything. Is there anything else we need to  
12 talk about?

13 MR. HASSI: There are some housekeeping matters  
14 that I think we would like to address. There is also one, I  
15 think, fairly significant substantive matter that we wanted  
16 to raise with Your Honor as well. I can do those in either  
17 order. The substantive matter may be, in some respect, the  
18 elephant in the room, and so why don't I do that first?

19 And that is, if Your Honor has read Ardgh's brief  
20 that was filed last week, there's an 11th hour suggestion in  
21 that brief that they're going to propose a remedy here, to  
22 sell off four glass plants. That's news to us. It's news  
23 that comes after the close of fact discovery. It comes  
24 after our expert reports were in. It comes after our briefs  
25 were in.

1           Now, Ardagh has known for months that the Federal  
2 Trade Commission has concerns about this transaction.  
3 Indeed, they understood that there were antitrust concerns  
4 when they entered into the transaction.

5           They decided not to address those concerns when  
6 they were in the investigatory stage. They decided not to  
7 address those concerns when they came before the Commission,  
8 and they decided not to address them in a timely fashion so  
9 that we could take fact discovery on that.

10           What they now propose to do is put these plans,  
11 hopes, wants, intentions in front of the Court at trial with  
12 no discovery whatsoever, and to ask you to evaluate that  
13 remedy without us having the opportunity to evaluate it,  
14 without us having the opportunity to take discovery on it,  
15 and without us having the opportunity to give Your Honor our  
16 views on whether that remedy is sufficient. Clearly, at  
17 this point it isn't. I mean, at this point it's just an  
18 intention to sell.

19           They haven't identified a buyer. They haven't  
20 identified how much these are being sold for. They haven't  
21 given us a chance to evaluate what they're proposing to do,  
22 is to sell four plants, two each from two of the companies.  
23 And they say, "Well, that will form a business that will  
24 restore competition in this market."

25           We don't know if those four plants can be combined

1 into a business, and so there are a lot of very serious  
2 questions we have about that. And we don't think that he  
3 gamesmanship that's being played here by waiting until the  
4 11th hour should be addressed at this hearing. We don't  
5 think that that evidence should come in without us having a  
6 chance to have had discovery, and without us having had a  
7 chance to evaluate it, and, frankly, until the facts are  
8 jelled, if you will. I mean, there's not an agreement for  
9 sale here.

10           The parties cite in their briefs three cases in  
11 which remedies have been litigated before. The first of  
12 those, Arch Coal, was a case that the FTC brought. In fact,  
13 it was Ms. Moscatelli's shop that brought it. In that case,  
14 the changes to the proposed transaction were two months  
15 before the case was first filed by the FTC. So they had a  
16 chance to address it in discovery, and they had a chance to  
17 consider it, and the Commission had a chance. When I say  
18 the "Commission," I mean the commissioners had a chance to  
19 evaluate it and vote on it. That hasn't happened here.

20           They cite Franklin Electric. That's a case  
21 involving the DOJ. In Franklin Electric, they changed the  
22 joint venture one day after the DOJ filed. Again, well  
23 before the -- I mean, the discovery period hadn't even  
24 started yet, and so the parties had a chance to address it  
25 and address it in discovery.

1           The final case they cite is Libby, and in Libby  
2 that was the latest of the three. But in Libby, it was one  
3 month into -- one month after the complaint was filed they  
4 made changes. And when I say "made changes," it's not like  
5 here where they're saying, "Gee, we're going to sell these  
6 four plants."

7           They said, "Here's what we're going to do. Here's  
8 the modified agreement. Here's who's involved," and the  
9 parties had a chance to vet that in discovery. Here what  
10 they're saying is --

11           THE COURT: Let me ask you something.

12           MR. HASSI: Yes, Your Honor.

13           THE COURT: What are you asking the Court to do?  
14 Are you asking the Court to just not allow testimony on this  
15 at all?

16           MR. HASSI: Yes, Your Honor. We're asking -- we  
17 can do this as a motion in limine, but we don't think that  
18 evidence of this 11th hour proposal -- it comes after fact  
19 discovery -- should be heard in these proceedings.

20           THE COURT: All right. Let me -- let me play out  
21 a scenario here, okay?

22           MR. HASSI: Yes, Your Honor.

23           THE COURT: It is in the Court's interest not to  
24 render advisory opinions or opinions that are going to be  
25 moot in about a day or two after I render it. Let's say I



1 grant whatever motion, whatever form you're going to bring a  
2 motion in, and I exclude all that evidence. Then I give you  
3 a ruling one way or the other. Obviously if I rule against  
4 the FTC, then the whole thing is moot, but if I rule for the  
5 FTC, then I presume they would come back with the excluded  
6 information and bring the whole thing all over again, right?

7 MR. HASSI: Well, Your Honor, I think in light of  
8 the fact that this is a 13(B) proceeding, and that what  
9 we're asking Your Honor to do here is to preserve the status  
10 quo pending the trial, before the FTC and before the  
11 Commission, I'm not sure that that's correct. In other  
12 words, if there is a remedy to be fashioned, the Commission  
13 ought to have a chance to fashion that remedy.

14 What we're asking Your Honor to do is to decide  
15 are there serious and substantial questions going to this  
16 transaction such that I should require the parties -- that  
17 Your Honor should require the parties to preserve the status  
18 quo, and that's all we're asking here. Whether that remedy,  
19 the sale of those four plants and the possible buyer that  
20 they may or may not come up with -- and they're just  
21 starting to talk to buyers -- whether that remedy suffices  
22 can be addressed, if necessary, in a merits trial. And I  
23 think that depends on whether they get to a deal and whether  
24 they get to a buyer, et cetera. But we don't think that  
25 these proceedings should be held up, or that Your Honor

1 should be deciding -- with no evidence, frankly. I mean, if  
2 you look at their brief, there's not a footnote, there's not  
3 a citation to any evidence. This is just they're going to  
4 put somebody on the stand who says either: "Here's what we  
5 intend to do," or, "Here's what we've done in the weeks  
6 since discovery has closed." We think we're severely  
7 prejudiced by that, Your Honor.

8 THE COURT: Okay. Did you want to address --  
9 well, I'll tell you what, let's address this now from the  
10 other side, and then we'll go into your housekeeping  
11 matters.

12 MR. HASSI: Very well, Your Honor.

13 THE COURT: Okay.

14 MR. SCHWED: Thank you, Your Honor. Richard  
15 Schwed for Ardagh Group.

16 I think maybe I can start by backing up and  
17 explaining the revised transaction that we've proposed, and  
18 this isn't something that's a gambit. It's not an 11th hour  
19 strategy. Basically, since this case was filed, we've been  
20 trying to come up with the FTC to a consensual arrangement.  
21 We have not been able to do that. We've discussed a number  
22 plants. We have not been able to reach an agreement. We  
23 finally decided that there was not going to be time or  
24 ability to get that done, and that we would unilaterally  
25 agree to divest four of the plants that were going to be

1 part of the combined entity, two that we already own and two  
2 that we're purchasing.

3           This is relevant -- I'm not sure how much Your  
4 Honor -- since you've been recently reassigned to this  
5 case -- has gotten into the -- what the case is all about,  
6 but essentially the fundamental question in this case is  
7 whether glass bottles compete with other forms of packaging,  
8 and, in particular, the most important is cans for beer and  
9 plastics for spirits, alcohol. There is a fundamental  
10 question that that brings up which is sort of the starting  
11 point of all cases, which is what is the product market.

12           We strongly believe that we can win this on the  
13 definition of the product market. That's the exact same  
14 case that -- the exact same product market issue that was  
15 addressed by the Supreme Court in Continental Can 50 years  
16 ago, and by this court about 25 years ago in the O-I  
17 Brockway case and by the FTC, where both courts have said  
18 that cans and glass are in the same product market. It is a  
19 rare case when you have a merger case and there's a relevant  
20 product market, and there's a Supreme Court case and a  
21 binding case that have said that the product market that the  
22 FTC is claiming is not the right product market, and, in  
23 fact, the FTC Commission itself has found that that is not  
24 the right product market.

25           Now, the revised transaction we are proposing is

1 one that addresses the question: Well, what if Your Honor  
2 does not agree with us on the product market? Because it is  
3 our view that there is not going to be a diminution in  
4 competition with this transaction even in the revised  
5 product market, even if their product market is correct.  
6 But out of an abundance of caution, what we have done is  
7 agreed to sell these four plants which we believe  
8 100 percent addresses the concerns that have been raised by  
9 the Commission.

10 There are three plants that make beer. Those  
11 plants combined have -- their beer sales that they have made  
12 in this past year are 110 percent of what Ardgh's beer sales  
13 were itself. So in other words, we're selling more than our  
14 own beer business effectively. And so the combined entity  
15 will have less beer business than just one of the two -- the  
16 bigger of the two entities had before the transaction.

17 THE COURT: Are you going to do that even if the  
18 Court rules with you?

19 MR. SCHWED: Well, we are going to enter into a  
20 definitive purchase agreement because we recognize time is  
21 short, and we don't have time, necessarily, to wait for the  
22 Court to issue a ruling, and, then, if things don't go our  
23 way, to circle back and then complete this transaction and  
24 get this deal closed by the drop-dead date of mid-January.  
25 So what we have decided to do in order to make sure that

1 this can all be done in time, is to enter into binding  
2 agreements that are -- obviously they have to be contingent  
3 on the transaction closing because we can't sell what we  
4 don't own, but the binding agreements -- a single binding  
5 agreement with them to buy the four plants, and then  
6 immediately upon closing the transaction, those four plants  
7 will be transferred to the buyer.

8 THE COURT: So if I rule in your favor about the  
9 market question, you will still go ahead with this plan?

10 MR. SCHWED: We will still go ahead with it.  
11 That's the situation we've agreed to be in.

12 THE COURT: Don't you think that the FTC should  
13 get a crack at what you're planning? You're telling me it's  
14 definitive. What I heard from counsel was that they don't  
15 even know that you have a binding contract.

16 MR. SCHWED: Well we don't yet have a binding  
17 contract. We're in negotiations. They've known for --  
18 they've known for two weeks now that we are -- the identity  
19 of the four plants we are planning to sell. Since then,  
20 they have deposed our CEO and asked him extensively about  
21 the plans to sell the four plants. They have deposed our  
22 chairman who is running the process and asked him  
23 extensively about the plans to sell the plants. It was the  
24 primary focus of the deposition. There is nothing else that  
25 they have identified to us that they need that prevents them

1 from -- they're saying that we want try this without giving  
2 them a chance to put on their case about it, but they've  
3 known about -- they have detailed information about each of  
4 these four plants that they've had for a long time.

5 THE COURT: Two weeks?

6 MR. SCHWED: No. I'm saying the detailed  
7 information about the four plants they've had for months.  
8 In other words, we've given them plant by plant detail in  
9 the whole discovery process, even before the lawsuit was  
10 filed. They have had plant by plant detail, and they have  
11 known about the exact contours of the transaction, the exact  
12 four plants, for two weeks.

13 Now, two weeks may not sound like a lot, but that  
14 ends up putting them about five weeks before the hearing,  
15 and a number of the cases that are cited by both sides in  
16 this were decided in the entire case, from the date it was  
17 filed until the date of the hearing, was between five and  
18 eight weeks. So it's not -- in the context of maybe a  
19 five-year litigation, something that's five weeks before the  
20 actual hearing date may sound like the 11th hour, but in the  
21 context of lawsuits that often take five, six, seven, eight  
22 weeks, five weeks before the hearing gives them plenty of  
23 time to address what is really only one sub-issue of the  
24 case. It a doesn't affect the product market analysis, it  
25 doesn't affect the geographic market analysis, it only

1 affects the question of the harm to competition and --

2 THE COURT: Only?

3 MR. SCHWED: I'm sorry?

4 THE COURT: Only affects the harm to --

5 MR. SCHWED: Well, just in terms of the amount of  
6 analysis. In other words, what I'm saying, Your Honor, is  
7 that there have been entire cases, from product market  
8 through the end of the case, that have been tried in six  
9 weeks.

10 THE COURT: Let me ask you something. Do you  
11 think there is a chance that if the commissioners had your  
12 current plan in front of them they might come out with a  
13 different result?

14 MR. SCHWED: We don't know. The FTC, frankly, has  
15 gone radio silent on us. We had originally proposed this as  
16 a settlement and never got an answer, so we don't know what  
17 the Commission would do. Frankly, I wish we could explore  
18 that, but the problem we have here is we have a mid-January  
19 drop-dead date. This transaction will terminate, and our  
20 ability to purchase the company will end by mid-January. So  
21 we don't have the luxury of time to explore that question.

22 THE COURT: Okay. Let me hear from --

23 MR. SCHWED: If I may just add one more point?

24 THE COURT: Yes.

25 MR. SCHWED: The arguments Mr. Hassi made are the

1 exact same arguments that were made in Arch Coal, which was  
2 they're trying to fashion their own remedy. They're trying  
3 to take the job of the Commission by deciding which plants  
4 get sold. They can't change the transaction. And this  
5 Court said, "I'm not going to get involved in a fiction.  
6 I'm not going to hear a case about a transaction that is no  
7 longer the transaction that's being proposed."

8 Thank you.

9 THE COURT: Thank you. Wait, that's what the  
10 Court said in Arch Coal?

11 MR. SCHWED: In Arch Coal, yes, Your Honor.

12 THE COURT: Okay.

13 MR. SCHWED: Thank you, Your Honor.

14 THE COURT: Let me hear back from Mr. Hassi.

15 MR. HASSI: Your Honor, I will start with Arch  
16 Coal and some of the differences.

17 The difference here for Arch Coal is, the Arch  
18 Coal court found it was integral to the deal, and it was  
19 done in good faith.

20 And the Libby court -- it cited the Libby court.  
21 In its footnote 27 of the Libby court opinion, they talk  
22 about the good faith of the parties in an effort to resolve  
23 the FTC's concerns.

24 Dropping these facts on us the night before the  
25 CEO's deposition, which is already being taken after the



1 close of discovery, that's not in good faith, Your Honor.  
2 This isn't a good-faith effort to resolve this.

3 In terms of the questions that the commissioners  
4 would have, if -- our website has a whole section on  
5 divestitures and what a party has to do to try and satisfy  
6 the Commission on divestitures, and one of the main issues  
7 is, who is the buyer? How are they funded? Can they make  
8 this a go?

9 And then we talked to customers, and I will tell  
10 you -- this was announced on Friday to the public -- we've  
11 been hearing from customers already. They don't like this.  
12 So we haven't had a chance to vet that, and the Commission  
13 hasn't had a chance to vet that.

14 THE COURT: All right. I'm going to ask Mr.  
15 Schwed the same question. I will probably get a different  
16 answer, but I am concerned.

17 Mr. Hassi, do you believe there is still some  
18 benefit to be gained from -- let's say I exclude everything  
19 about the sale to -- the four different sales or the  
20 divestiture, whatever you would call it -- I exclude that  
21 and I don't hear any testimony on that, which is quite  
22 likely what I'm going to do because it doesn't sound like  
23 you are prepared to respond to it. If I did that, is there  
24 anything to be gained from going ahead with the rest of the  
25 hearing and getting a ruling from me on the market, the

1 geography, the whole thing?

2 MR. HASSI: There absolutely is, Your Honor.

3 THE COURT: Okay.

4 MR. HASSI: We think the product market issue is  
5 an important one here. We don't think it's a close call,  
6 but we do think if Your Honor takes a hard look at that, it  
7 would be helpful to the parties.

8 THE COURT: Okay.

9 What you think, Mr. Schwed?

10 MR. SCHWED: Your Honor, as a --

11 THE COURT: You had better come to the podium.

12 MR. SCHWED: Your Honor, we certainly don't want  
13 to put off the hearing because, as I've mentioned, we're  
14 basically running up against the clock. From the date of  
15 the hearing until the date that this deal must close, we  
16 have roughly three months, a little less from the last day  
17 of hearings.

18 We recognize that the parties are going to spend a  
19 week or so -- a little bit more -- submitting briefs, and  
20 then Your Honor has to decide weighty issues and will  
21 take -- you know, will need some time in order to do that.  
22 These are not things that can be decided on the spot  
23 overnight. So we recognize that all of this is going to  
24 take time, and, then, potentially, whichever side loses is  
25 going to try to take an emergency appeal up to the D.C.

1 Circuit. So we don't have the luxury of putting this off.  
2 I guess, in an ideal world, we would say let's delay this  
3 hearing, get some more time. But our view is that whatever  
4 needs to be done -- so the first answer is, yes, we need to  
5 have a hearing. And then so the question is, what can be  
6 covered in that hearing. Our view is that, whatever needs  
7 to be done in order to have the FTC probe this deal can be  
8 done in three weeks.

9 All of this -- in the CCC case, which is the most  
10 recent case that was before this court, the entire discovery  
11 record took about three weeks, and that was over Christmas.  
12 So our view is, there's a minimal amount that needs to be  
13 done in order to vet this process. They are in contact with  
14 the customers. They can talk to the customers, and there's  
15 no reason that this can't be fully teed up by this -- by the  
16 start of the hearing.

17 THE COURT: Let me talk to the side that's going  
18 to be doing the discovery.

19 Speaking with all due speed -- and don't tell me  
20 it's going to take six months because if you tell me it is  
21 going to take six months, I won't believe you -- how long  
22 would you need to do the discovery on the four transactions  
23 they are talking about?

24 MR. HASSI: Your Honor, I'm not sure I can answer  
25 that question and the reason is, is because a very important

1 part of what the FTC wants to consider here -- and, again,  
2 it's public, it's on our website -- is the identity of the  
3 buyer. Who is going to run these plants? How are these  
4 four plants going to fit together? Who is going to manage  
5 them? How well-capitalized are they?

6 THE COURT: Well, they have binding contracts  
7 ready to go, so they could tell you today. Probably as soon  
8 as I get out of here, they'll tell you who the buyers are.

9 Right? Am I right, Mr. Schwed?

10 MR. SCHWED: No. We are still negotiating with  
11 buyers. We have identified to the FTC who will be managing  
12 the plants. Since this is an open courtroom, I won't say  
13 who it is, but we have identified to the FTC the type of  
14 buyer, that it is somebody who has got industrial experience  
15 and exactly who will be running the plants.

16 THE COURT: No, no. But you haven't told them who  
17 the buyers are? Please get to the microphone.

18 MR. SCHWED: Yes, Your Honor. We're still  
19 negotiating with two to three buyers.

20 THE COURT: Then they can't do their discovery in  
21 three weeks. You don't even have a definitive name for them  
22 to do discovery from or ask about. That's not reasonable,  
23 is it?

24 MR. SCHWED: Well, Your Honor, I think if you look  
25 at what discovery needs to be done, I think, frankly, the

1 identity of the buyer is a bit of a red herring here in the  
2 sense that the key question is: Do the divestiture of these  
3 plants satisfy their concerns about the power in the market  
4 that they are claiming that Ardagh will have? So we are now  
5 saying that Ardagh is going to have a new company that has  
6 less beer business than VNA had before. It's going to have  
7 a capacity in spirits that -- or it's giving away enough  
8 capacity that they basically will be a competitor that  
9 replaces Ardagh in the market.

10 THE COURT: Let me tell you right now, I do not  
11 believe that that can be thoroughly investigated in the  
12 three weeks between now and my hearing. I just don't see  
13 it. I just don't think the negotiations are far enough  
14 along the line, and I don't think it's fair to the other  
15 side to ask them to do that.

16 So given what I have heard today, I would not be  
17 considering that factor in my decision. I just do not  
18 believe that you would both be in a position to present to  
19 me -- I don't think the FTC would be in a position in three  
20 weeks to present their side or their opinion about whether  
21 this really is an adequate cure to their concern about  
22 competition.

23 My sole question at this point, given that I don't  
24 think I am going into -- I can't go into that. I think it  
25 would be premature and precipitous for me to even look at

1 that.

2 My question to both of you is -- look, I would  
3 love to have the hearing, set the days aside, sounds very  
4 interesting. I've got nothing else to do those three days.  
5 I'm all yours. On the other hand, as I sort of led into  
6 this, if this is going possibly to be a remedy that would  
7 resolve the situation, why am I going through all this about  
8 market, and geography, and all of this if, indeed, the  
9 divestiture would solve the problem of the competitive  
10 concerns that the FTC has? As I say, it is an interesting  
11 question, and I'm sure I'll enjoy good briefing, but, you  
12 know, I do have other cases that I probably could be  
13 attending to in those three days.

14 I'm just concerned that we're going to go through  
15 all of this, you'll get a ruling from me, and then you are  
16 going to have to go through this anyway. You are going to  
17 have to go through it. I mean, you already have a plan that  
18 you think, at least based on what I have heard today, would  
19 satisfy there concerns. Why not give them a crack at taking  
20 a look at it?

21 MR. SCHWED: Well, Your Honor, we would be more  
22 than happy to have the Commission agree that this satisfies  
23 their concerns and to make this all go away. Obviously,  
24 we're willing to do that deal. We've come out publicly and  
25 said it. We've said it to this Court.

1           The problem is that it's been a good two weeks  
2 since we proposed those four plants to the FTC staff, and we  
3 have not heard one way or the other whether they view those  
4 four plants as being sufficient. And so we just can't,  
5 frankly -- in my client's interest, I can't just sit back  
6 and say we're going to wait forever for the FTC to decide  
7 whether this is enough because their time is going to come  
8 and go.

9           THE COURT: Okay.

10          Mr. Hassi, let me ask you this.

11          MR. HASSI: Yes, Your Honor.

12          THE COURT: I'm not buying into the fact that two  
13 weeks is enough for you to give a decision about whether the  
14 FTC is satisfied or not satisfied. I think I can tell what  
15 your answer is going to be, which is that you need more  
16 information, you need to do some discovery, and you need to  
17 know more facts surrounding the divestiture plans.

18                 What do you need and how long would it take you to  
19 come up with a list of what you need for them to give it to  
20 you? I mean, you can't just sit there and say, no, we're  
21 going to go ahead with this hearing because we just heard  
22 about this yesterday. I understand your frustration and  
23 your concern, but let's move on from the fact that you just  
24 heard about it. I've already told you I'm not going to go  
25 into this at the hearing, so you're safe on that point,

1 okay?

2 MR. HASSI: Yes, Your Honor.

3 THE COURT: So now you can just sit back and say,  
4 "Okay, how long, what do I need, and how will that timing  
5 mesh with the hearing?"

6 I have already said I don't think you can do  
7 everything in three weeks. I don't think you can. But if  
8 you made a list and they gave you -- I mean, they really  
9 want to accelerate this, and so it's in their interest to  
10 give accelerated discovery. If you give them a list of what  
11 you need, I think what Mr. Schwed is saying is that he will  
12 do everything to get you the information that you need.  
13 Now, that doesn't mean you can look at the information, get  
14 the commissioners to look at it, do the whole thing. But at  
15 least you could get the information.

16 Can you guys work on that in the three weeks and  
17 give me an idea of timing and how it would mesh with the  
18 hearing? I mean, if you're talking about a timing where  
19 another week or two would make a difference, that is  
20 important for me to know because then we could have a  
21 hearing on the whole thing, or maybe have no hearing at all  
22 is what I am saying.

23 I'm reluctant to put the hearing over because I  
24 have a tight schedule and these are your three days. On the  
25 other hand, I'm also reluctant to have a hearing -- I



1 suppose I could just have the hearing, listen to everything,  
2 not give you a decision, and then you can tell me that it  
3 was a nice three days but we've worked it out. I don't mind  
4 that, but if putting the hearing over, if it were at all  
5 possible -- I'll look at my calendar. What do you think?  
6 How much more time would you need? I understand three weeks  
7 isn't enough, and I understand that two weeks wasn't enough,  
8 but what are we looking at?

9 MR. HASSI: I think the problem is the starting  
10 date, and that is, we need to start from a definitive  
11 agreement, an identified buyer and a contract with that  
12 buyer. There are a ton of questions. You know, I'm tempted  
13 to bring Dan Ducore up. He's the head of our Compliance  
14 Section, and he's the one -- he and his team vet these  
15 things. So if you want to have an extended discussion about  
16 that, I can ask Dan to come up.

17 But there are a lot of unanswered questions here  
18 that can't be answered until we've got a contract. I mean,  
19 the idea that they've got somebody identified to manage the  
20 plants but they don't have a buyer yet, what makes anybody  
21 think that that buyer is going to accept that manager?  
22 Those questions have to be answered first, and then we can  
23 look at the discovery. Whether it is a matter of weeks or  
24 months, I don't know, but we need to have a definitive  
25 agreement to work from. We need to know what it is we're

1 shooting at.

2 THE COURT: Mr. Schwed, what are we dealing with  
3 in terms of a definitive agreement here?

4 MR. SCHWED: We are working diligently to  
5 negotiate. I mean, let me just make this one point. The  
6 management team, or the lead manager -- it's not somebody  
7 we're imposing on the buyer, it's somebody who the buyer  
8 wants to work with and that person wants to work with the  
9 buyer. This isn't just some fantasy.

10 But my understanding is that the FTC fashions  
11 consent decrees all the time where there is -- and  
12 negotiates consent decrees without there being a definitive  
13 agreement. They don't go up to somebody who is considering  
14 divesting some plants and say, "I'm not even going to  
15 consider your divestiture proposal until you have a  
16 definitive agreement," and they're supposed to sign a  
17 definitive agreement and then they hand it over, and then  
18 FTC says, "No, this isn't a good plan. I'd rather have it  
19 be different."

20 They are able to when they want to, when it's in  
21 their interest, they're able to figure out what is good and  
22 bad for competition without a definitive agreement. When  
23 they don't want to, all of a sudden they need a definitive  
24 agreement. So I think it's a little bit of an unfair  
25 standard to say they can't even start thinking about this

1 without a definitive agreement. They know what the plants  
2 are. They can make an assumption that it will be sold to a  
3 well-capitalized buyer who is reputable. And I think the --  
4 the analysis doesn't really change based on which  
5 well-capitalized, reputable person, who is not in the  
6 industry, has no competitive concerns -- it's not  
7 somebody -- it's somebody with industrial experience, but  
8 not somebody who, you know, is in the rigid packaging  
9 industry, owns a can company or anything like that. So they  
10 can assess this --

11 THE COURT: Well, you have already disclosed a lot  
12 about the buyer. You may not have given the name, but you  
13 have already given them a lot to work with.

14 What I am concerned about is -- I will tell you  
15 what -- I mean, obviously, you guys are going back and forth  
16 in what is turning out to be a discovery dispute. I  
17 recognize one when I see it. I think the most I can do at  
18 this point is say we will go ahead with the hearing as  
19 scheduled. It will concern the issues that I understood it  
20 to concern before I came out here today, i.e., we will not  
21 be discussing any divestiture of plants that one side sort  
22 of knows about and the other side doesn't. It's not going  
23 to be fruitful for me to hear any testimony on that.

24 What I would urge you to do, and I'm not sure my  
25 sitting up here and going through this any further today

1 will be a help to you, but what I would urge you to do -- if  
2 necessary, I would -- if there were a way I could order you  
3 to do it, I would -- is to sit down and talk about this in  
4 the coming three weeks. I think the FTC needs to express a  
5 willingness to examine the plans. I think the defendants  
6 need an opportunity to put those plans in as much detail as  
7 they can so that they are presenting something -- I use the  
8 word "definitive" in a sort of sliding scale here -- but  
9 enough for them to be able to do some evaluating of what  
10 you're suggesting. I think it's very important that you  
11 discuss this because you are going to be spending three  
12 days, and you may get a ruling that turns out to be an  
13 advisory opinion because, in fact, this is all going to go  
14 away if you like the divestiture plans.

15 I'm going to leave the hearing as scheduled. If  
16 the FTC hears enough to make them think that a week or two  
17 would help, then you should call my chambers and see what  
18 the alternatives are.

19 I'm trying to be realistic in the fact that you  
20 have witnesses scheduled, many of whom, you know, you have  
21 prepared for these three days. I don't know how flexible  
22 these people are. I realized there is an end line to this  
23 whole thing, but, frankly, it would do you more good than  
24 harm if the end result were that the whole thing went away  
25 and the divestiture plan was approved, and then the January

1 date would be fine. But right now I am going to leave the  
2 hearing date as scheduled, but I made a ruling on what we  
3 are going to hear at the hearing date, and I really urge  
4 counsel to -- I mean, I don't know if I need to set a date  
5 for you both -- both -- everybody else here -- to meet. I  
6 don't think I need to do that. You all know what is at  
7 stake here. I just urge you to get together, talk about the  
8 new plan.

9           Forget about the fact that it was sprung on you at  
10 the last moment, Mr. Hassi. Forget -- I mean, I realize to  
11 a litigator that's a bad thing, but right now you've got  
12 your hearing date and you've got your limited ruling. Now  
13 is the time to switch gears and see if this thing -- if  
14 there is a chance this can go away.

15           If you are working something out, the first call  
16 you need to make is to my chambers so that we don't spend  
17 time on this, okay? But otherwise, I will see you here in a  
18 month, or three weeks, or whatever we've got.

19           Now, housekeeping.

20           MR. HASSI: Housekeeping, and, Your Honor, I  
21 didn't mean to suggest that -- I mean, this was sprung on us  
22 at the last minute. We have had constructive discussions  
23 and we will continue to do that.

24           THE COURT: Okay.

25           MR. HASSI: The way this was approached, we think,

1 was the wrong way to approach it.

2 THE COURT: Okay.

3 MR. HASSI: But housekeeping issues. The first  
4 question I had, Your Honor mentioned concerns before you  
5 came out here this morning, that we have a limited amount of  
6 time before Your Honor. If there are specific issues you  
7 would like us to address -- I mean, it's true we've lined up  
8 certain witnesses to come, and we have our own conception of  
9 what we think is important for you to hear. If there are  
10 specific questions you want answered, or things you want  
11 addressed, we would be happy to try and address those in the  
12 limited time we have before Your Honor.

13 THE COURT: I think you both hit on the issues  
14 that are going to be the important ones, and that's market,  
15 the production market and that geographic market, though I  
16 think one is probably of more concern than the other. I  
17 think it is what -- what effect aluminum cans have on this,  
18 and plastic.

19 MR. HASSI: We thought that might be one of your  
20 questions, your Honor.

21 In terms of the hearing dates themselves, do you  
22 want openings and closings, or do you want to jump right in  
23 with testimony? We didn't know if you had a preference. We  
24 think it would be helpful, before putting a witness on the  
25 stand, to give you sort of an overview of what we're going

1 to try to present over the two-and-a-half days.

2 THE COURT: I think it be would very helpful, but  
3 how much time do you need? Half-hour each, would that do  
4 it?

5 MR. HASSI: Could we say 45 minutes?

6 THE COURT: Forty-five minutes. Well, let me ask  
7 you, could you do that in writing, or do you think it would  
8 be more helpful to -- would you be using demonstratives?

9 MR. HASSI: We would be using demonstratives, and  
10 I think it would be more helpful to walk through some  
11 exhibits.

12 THE COURT: Okay, 45 minutes.

13 MR. HASSI: Forty-five minutes is fine. Thank  
14 you, Your Honor.

15 In terms of closing, sometimes those are done at  
16 the end of the hearing dates, and sometimes they are done  
17 after the findings of fact. Our end, do you have a --

18 THE COURT: Why don't we wait and I'll let you  
19 know. Why don't we wait. First of all, let's see the  
20 timing; and, second of all, it may be useful after I get the  
21 findings of fact to have the closings.

22 MR. HASSI: Okay.

23 THE COURT: All right.

24 MR. HASSI: One of the questions we had was the  
25 courtroom technology. I assume we will be in this courtroom

1 and there's somebody that we can liaise with in your absence  
2 to --

3 THE COURT: You're looking at her right now.

4 MR. HASSI: Okay. We'll be in touch with her.

5 THE COURT: She will help you, and both of you  
6 should make an appointment to come see her and arrange  
7 things.

8 MR. HASSI: We will do that, Your Honor.

9 Confidentiality issues, there -- because this is  
10 dealing with on-going business, customers, contracts,  
11 prices -- there are a lot -- we will try to do as much as we  
12 can to sort of sanitize the presentation so that we're not  
13 discussing that kind of thing, but I'm not certain that we  
14 can remove all of it. Does Your Honor have a preference in  
15 terms of the way you handle information that parties, and in  
16 particular third parties witnesses, care about maintaining  
17 confidentiality over?

18 THE COURT: Well, testimony is a little more  
19 difficult. I don't see a problem with exhibits because you  
20 can use sanitized exhibits here, and then have a separate  
21 set that you give to either the clerk or my law clerk that  
22 you want us to see in chambers. Testimony, we'll have to  
23 play it as it goes. We'll see how we can handle that.

24 MR. HASSI: Yes, Your Honor.

25 THE COURT: I don't know how much testimony there



1 is going to be that really will be touching on this. I  
2 can't tell yet, but you will let me know and we will work it  
3 out.

4 MR. HASSI: Okay, Your Honor. Then, finally, if  
5 Your Honor has a preference in terms of filings, things on  
6 paper, things on three-ring binders, that sort of thing. If  
7 Your Honor wants to let us know, we'll --

8 THE COURT: Three-ring binders is my preference  
9 because I still like paper.

10 MR. HASSI: I do, too, Your Honor.

11 THE COURT: And if you could give us a set each,  
12 you know, plaintiff's set and defendant's set, and I don't  
13 know if the defendants are going to have a joint set.

14 I would assume you will have one set, right?

15 MR. SCHWED: Yes, Your Honor.

16 THE COURT: That really will keep things a lot  
17 more simple. So let's just call it the defendants' set, and  
18 just number yours consecutively, and plaintiff's set. I  
19 think that's probably the easiest way. Just have them for  
20 me and I can flip through them. Or if they're going to be  
21 on here, it may be easier.

22 MR. HASSI: We'll try to do a lot of it  
23 electronically, but if -- I was also thinking of exhibits to  
24 the brief. I know we provided a three-ring binder, but that  
25 was -- we had asked Judge Collyer what she wanted, and I

1 just want to make sure that we are providing what is most  
2 useful to you.

3 THE COURT: Okay.

4 MR. HASSI: Those are all of the questions I had,  
5 your Honor. Unless you have anything else --

6 THE COURT: Did you have any housekeeping matters?

7 MR. SCHWED: Only one quick thing, Your Honor.  
8 I'm just trying to get a -- so we can plan out our  
9 witnesses, just how long is a trial day, just in terms of  
10 what time you start, what time you end?

11 THE COURT: I knew you were going to ask me that.  
12 I'm trying to -- I'm looking at the person on whom it is the  
13 hardest, which is our court reporter.

14 I am perfectly willing to start out -- well, what  
15 time are we starting on Thursday? Is it 2:00?

16 THE DEPUTY CLERK: Yes, Your Honor.

17 THE COURT: So let's go 2:00 to 5:00 on Thursday.  
18 Let's start with 9:00 to 4:30 on Friday. Monday would be, I  
19 guess, 9:00 to 4:30, too. I would like to take an hour and  
20 a-half for lunch, but that's not really necessary. You  
21 know, I will be asking you all how we're doing. We can cut  
22 the lunch hour to an hour. I'm just thinking back to my  
23 trial days. It's easy for me to set up something like, you  
24 know, 9:00 to 5:00 and an hour for lunch and, you know, 15  
25 minutes. You guys are the ones who have to go back and do

1 some work in the evenings, and maybe even need a lunch hour  
2 to talk -- a longer lunch hour to talk to your witnesses and  
3 things. So you tell me, would you prefer an hour and a-half  
4 for lunch?

5 MR. SCHWED: Personally, I think, given that we  
6 are on a very compressed schedule, I would suggest that we  
7 assume an hour, but we can see how the time is going as we  
8 progress.

9 THE COURT: Okay.

10 MR. HASSI: I agree.

11 MR. SCHWED: But this is very helpful, at least,  
12 just to give us -- as Your Honor mentioned, this can be  
13 flexible, but this at least gives us some guideposts for how  
14 much time we have.

15 THE COURT: Yes. I mean, we can stretch from 4:30  
16 to 5:00, and we can -- but let's start out thinking that  
17 we'll end at 4:30. We'll start at 9:00 and we'll have an  
18 hour for lunch.

19 Does that fit? I mean, do you think you can fit  
20 within that? But the first day we will go from 2:00 to 5:00  
21 because we're starting late, okay?

22 MR. HASSI: Yes, Your Honor.

23 THE COURT: Okay. See you back here unless, of  
24 course, you work it all out. Just don't work it out after I  
25 give you a decision and go through all that trouble. Work

1 it out sometime in between, okay?

2 MR. SCHWED: Thank you, Your Honor.

3 MR. HASSI: Thank you, Your Honor.

4 **(Whereupon, the proceedings in the above-entitled**  
5 **matter were concluded at 10:59 a.m.)**

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**CERTIFICATE OF REPORTER**

9 I certify that the foregoing is a correct  
10 transcript from the record of proceedings in the  
11 above-entitled matter.

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Theresa M. Sorensen, CVR-CM

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Official Court Reporter

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<b>1</b>	601 [2] 1/18 2/3 6117 [1] 1/18 6119 [1] 1/23 6127 [1] 2/4	33/4 34/11 34/23 36/13 37/6 39/19 39/20 39/23 40/14 42/4 42/21 43/24 43/25 allocation [1] 6/8 allow [1] 16/14
100 percent [1] 20/8 1000 [1] 2/20 10019 [1] 2/20 10022 [2] 2/8 2/12 1021 [2] 1/3 3/3 10:04 [1] 1/6 10:59 [1] 44/5 110 percent [1] 20/12 11th [5] 13/20 15/4 16/18 18/18 22/20 13 [1] 17/8 13-1021 [2] 1/3 3/3 15 [1] 42/24 1st [1] 11/13	<b>8</b> 801 [1] 2/15 8097 [1] 2/16 8100 [1] 2/16 825 [1] 2/19	along [5] 4/19 5/13 5/20 9/5 29/14 already [11] 6/24 10/12 12/6 19/1 24/25 25/11 30/17 31/24 32/6 35/11 35/13 also [4] 7/7 13/14 32/25 41/23 alternatives [1] 36/18 although [1] 6/9
<b>2</b>	<b>9</b> 9:00 [4] 42/18 42/19 42/24 43/17 9th [2] 11/4 11/6	aluminum [1] 38/17 am [11] 4/6 4/19 6/21 25/16 28/9 29/24 30/7 32/22 35/14 37/1 42/14 ambiance [1] 6/16 amina [1] 2/5 amount [3] 23/5 27/12 38/5 analysis [4] 22/24 22/25 23/6 35/4 and/or [1] 12/2 ANDRINOPOULOS [1] 2/2 ANGELIKE [2] 2/2 3/10 annotating [1] 10/20 announced [1] 25/10 another [1] 32/19 answer [5] 23/16 25/16 27/4 27/24 31/15 answered [3] 33/18 33/22 38/10 anticipate [1] 3/24 anticipated [1] 13/10 antitrust [1] 14/3 any [15] 4/5 4/11 4/17 6/7 8/21 9/8 9/25 11/5 11/24 18/3 25/21 35/21 35/23 35/25 42/6 anybody [2] 9/21 33/20 anymore [1] 12/22 anything [5] 8/21 13/11 25/24 35/9 42/5 anything else [1] 13/11 anyway [2] 9/10 30/16 appeal [1] 26/25 APPEARANCES [2] 1/11 2/1 applies [1] 6/10 appointment [1] 40/6 appreciate [1] 9/19 approach [1] 38/1 approached [1] 37/25 approved [1] 36/25 Arch [7] 15/12 24/1 24/10 24/11 24/15 24/17 24/17 ARDAGH [9] 1/6 2/7 3/4 3/13 14/1 18/15 29/4 29/5 29/9 Ardgh's [2] 13/19 20/12 are [84] arguments [3] 4/9 23/25 24/1 arrange [1] 40/6 arrangement [1] 18/20 as [30] 5/9 5/9 5/9 5/9 7/15 9/16 11/14 12/9 12/9 13/2 13/16 16/17 23/15 26/10 26/13 28/7 28/8 30/5 30/10 31/4 35/18 36/6 36/6 36/15 37/2 40/11 40/11 40/23 43/7 43/12 aside [1] 30/3 ask [13] 5/17 6/4 11/23 14/12 16/11 23/10 25/14 28/22 29/15 31/10 33/16 39/6 42/11 asked [4] 5/22 21/20 21/22 41/25 asking [7] 16/13 16/14 16/16 17/9 17/14 17/18 42/21 assess [1] 35/10 assume [4] 5/11 39/25 41/14 43/7 assumption [1] 35/2 attending [1] 30/13 Avenue [9] 1/13 1/18 1/22 2/3 2/8 2/11 2/15 2/19 2/23
<b>3</b>	<b>A</b> a-half [2] 42/20 43/3 a.m [2] 1/6 44/5 ability [3] 6/4 18/24 23/20 able [6] 6/2 18/21 18/22 34/20 34/21 36/9 about [46] above [2] 44/4 44/11 above-entitled [2] 44/4 44/11 absence [1] 40/1 absolutely [1] 26/2 abundance [1] 20/6 accelerate [1] 32/9 accelerated [1] 32/10 accept [1] 33/21 acceptable [1] 6/6 account [1] 10/12 acquaintance [1] 5/1 Action [1] 3/3 actual [1] 22/20 actually [1] 10/14 add [1] 23/23 address [14] 3/19 9/4 13/14 14/5 14/7 14/8 15/16 15/24 15/25 18/8 18/9 22/23 38/7 38/11 addressed [5] 6/24 15/4 17/22 19/15 38/11 addresses [2] 20/1 20/8 adequate [1] 29/21 admitted [1] 4/4 advance [3] 4/18 4/20 9/4 advice [1] 13/8 advisory [2] 16/24 36/13 affect [2] 22/24 22/25 affects [2] 23/1 23/4 after [12] 6/25 13/23 13/24 13/24 15/22 16/3 16/18 16/25 24/25 39/17 39/20 43/24 afternoon [1] 11/22 again [4] 6/21 15/22 17/6 28/1 against [2] 17/3 26/14 ago [2] 19/16 19/16 agoudiss [1] 2/13 agree [5] 5/4 18/25 20/2 30/22 43/10 agreed [4] 7/3 11/15 20/7 21/11 agreement [14] 15/8 16/8 18/22 20/20 21/5 33/11 33/25 34/3 34/13 34/16 34/17 34/22 34/24 35/1 agreements [2] 21/2 21/4 ahead [5] 21/9 21/10 25/24 31/21 35/18 al [2] 1/6 3/4 ALAN [2] 2/10 3/14 alcohol [1] 19/9 all [36] 4/3 4/13 5/23 7/3 11/15 16/15 16/20 17/2 17/6 17/18 19/5 19/11 21/1 25/14 26/23 27/9 27/19 30/5 30/7 30/8 30/15 30/23 32/21	ambiance [1] 6/16 amina [1] 2/5 amount [3] 23/5 27/12 38/5 analysis [4] 22/24 22/25 23/6 35/4 and/or [1] 12/2 ANDRINOPOULOS [1] 2/2 ANGELIKE [2] 2/2 3/10 annotating [1] 10/20 announced [1] 25/10 another [1] 32/19 answer [5] 23/16 25/16 27/4 27/24 31/15 answered [3] 33/18 33/22 38/10 anticipate [1] 3/24 anticipated [1] 13/10 antitrust [1] 14/3 any [15] 4/5 4/11 4/17 6/7 8/21 9/8 9/25 11/5 11/24 18/3 25/21 35/21 35/23 35/25 42/6 anybody [2] 9/21 33/20 anymore [1] 12/22 anything [5] 8/21 13/11 25/24 35/9 42/5 anything else [1] 13/11 anyway [2] 9/10 30/16 appeal [1] 26/25 APPEARANCES [2] 1/11 2/1 applies [1] 6/10 appointment [1] 40/6 appreciate [1] 9/19 approach [1] 38/1 approached [1] 37/25 approved [1] 36/25 Arch [7] 15/12 24/1 24/10 24/11 24/15 24/17 24/17 ARDAGH [9] 1/6 2/7 3/4 3/13 14/1 18/15 29/4 29/5 29/9 Ardgh's [2] 13/19 20/12 are [84] arguments [3] 4/9 23/25 24/1 arrange [1] 40/6 arrangement [1] 18/20 as [30] 5/9 5/9 5/9 5/9 7/15 9/16 11/14 12/9 12/9 13/2 13/16 16/17 23/15 26/10 26/13 28/7 28/8 30/5 30/10 31/4 35/18 36/6 36/6 36/15 37/2 40/11 40/11 40/23 43/7 43/12 aside [1] 30/3 ask [13] 5/17 6/4 11/23 14/12 16/11 23/10 25/14 28/22 29/15 31/10 33/16 39/6 42/11 asked [4] 5/22 21/20 21/22 41/25 asking [7] 16/13 16/14 16/16 17/9 17/14 17/18 42/21 assess [1] 35/10 assume [4] 5/11 39/25 41/14 43/7 assumption [1] 35/2 attending [1] 30/13 Avenue [9] 1/13 1/18 1/22 2/3 2/8 2/11 2/15 2/19 2/23
<b>4</b>	4000 [2] 2/9 2/12 45 [2] 39/5 39/12 4:30 [4] 42/18 42/19 43/15 43/17	
<b>5</b>	50 [1] 19/15 599 [2] 2/8 2/11 5:00 [4] 42/17 42/24 43/16 43/20	
<b>6</b>	600 [2] 1/13 1/22	

A	C	
aware [1] 8/8 away [6] 12/20 29/7 30/23 36/14 36/24 37/14	CA [1] 1/3 calendar [1] 33/5 call [5] 25/20 26/5 36/17 37/15 41/17 called [1] 10/15 came [3] 14/7 35/20 38/5 can [62] can't [13] 4/4 4/20 21/3 24/4 27/15 28/20 29/24 31/4 31/5 31/20 33/18 34/25 41/2 cans [4] 8/18 19/8 19/18 38/17 capacity [2] 29/7 29/8 capitalized [3] 28/5 35/3 35/5 care [2] 4/12 40/16 carefully [1] 6/12 case [23] 8/4 15/12 15/13 15/15 15/20 16/1 18/19 19/5 19/5 19/6 19/14 19/17 19/19 19/19 19/20 19/21 22/2 22/16 22/24 23/8 24/6 27/9 27/10 cases [5] 15/10 19/11 22/15 23/7 30/12 Catch [1] 8/11 CATHARINE [1] 1/21 Cathy [1] 3/9 caution [2] 4/10 20/6 CCC [1] 27/9 CEO [1] 21/20 CEO's [1] 24/25 certain [2] 38/8 40/13 certainly [1] 26/12 CERTIFICATE [1] 44/8 certify [1] 44/9 cetera [1] 17/24 chairman [1] 21/22 chambers [3] 36/17 37/16 40/22 chance [16] 10/1 14/21 15/6 15/7 15/16 15/16 15/17 15/18 15/24 16/9 17/13 22/2 23/11 25/12 25/13 37/14 change [4] 12/25 13/1 24/4 35/4 changed [1] 15/21 changes [9] 7/2 7/4 7/8 7/14 10/18 11/14 15/14 16/4 16/4 charts [4] 5/20 12/15 12/17 12/22 chess [1] 6/15 choose [1] 7/17 Christmas [1] 27/11 circle [1] 20/23 Circuit [1] 27/1 citation [1] 18/3 cite [3] 15/10 15/20 16/1 cited [2] 22/15 24/20 Civil [1] 3/3 claiming [2] 19/22 29/4 clear [1] 10/14 Clearly [1] 14/16 clerk [5] 4/16 6/17 7/1 40/21 40/21 client's [1] 31/5 clock [1] 26/14 clocks [1] 6/16 close [4] 13/23 25/1 26/5 26/15 closed [2] 18/6 20/24 closing [3] 21/3 21/6 39/15 closings [2] 38/22 39/21 CM [2] 2/22 44/14 cmoscattelli [1] 1/24 Coal [7] 15/12 24/1 24/10 24/11 24/16 24/17 24/18 Collyer [1] 41/25 COLUMBIA [1] 1/1	combined [4] 14/25 19/1 20/11 20/14 come [13] 3/5 15/5 17/5 17/20 18/20 23/12 26/11 30/24 31/7 31/19 33/16 38/8 40/6 comes [4] 13/23 13/23 13/24 16/18 coming [3] 4/20 4/21 36/4 COMMISSION [21] 1/3 1/13 1/17 1/21 2/2 3/4 3/8 6/22 14/2 14/7 15/17 15/18 17/11 17/12 19/23 20/9 23/17 24/3 25/6 25/12 30/22 commissioners [4] 15/18 23/11 25/3 32/14 companies [1] 14/22 companies' [1] 12/2 company [3] 23/20 29/5 35/9 compete [1] 19/7 competition [7] 1/22 2/3 14/24 20/4 23/1 29/22 34/22 competitive [2] 30/9 35/6 competitor [1] 29/8 complaint [1] 16/3 complete [1] 20/23 completed [1] 7/16 Compliance [1] 33/13 compressed [1] 43/6 computer [1] 12/22 conception [1] 38/8 concern [8] 3/23 4/3 9/2 29/21 31/23 35/19 35/20 38/16 concerned [3] 25/16 30/14 35/14 concerns [15] 3/20 6/19 6/23 14/2 14/3 14/5 14/7 20/8 24/23 29/3 30/10 30/19 30/23 35/6 38/4 concluded [1] 44/5 conducting [1] 4/2 CONFERENCE [1] 1/9 confidentiality [2] 40/9 40/17 confuse [1] 4/13 cons [1] 6/2 consecutively [2] 4/15 41/18 consensual [1] 18/20 consent [2] 34/11 34/12 consider [4] 8/14 15/17 28/1 34/15 considering [2] 29/17 34/13 Constitution [1] 2/23 constructive [1] 37/22 contact [1] 27/13 context [2] 22/18 22/21 Continental [1] 19/15 contingent [1] 21/2 continue [2] 11/10 37/23 Continued [1] 2/1 contours [1] 22/11 contract [4] 21/15 21/17 33/11 33/18 contracts [2] 28/6 40/10 cooperate [1] 4/14 copies [1] 10/22 correct [4] 9/15 17/11 20/5 44/9 corrected [1] 11/8 could [15] 4/6 4/15 6/5 9/4 14/9 23/17 28/7 30/12 32/15 32/20 33/1 36/2 39/5 39/7 41/11 counsel [6] 3/5 3/9 3/18 6/20 21/14 37/4 count [1] 9/24 counter [1] 11/3 couple [1] 10/24 course [1] 43/24 court [23] 1/1 2/22 2/23 3/2 12/16 14/11 16/13 16/14 19/15 19/16 19/20 20/18 20/22 24/5 24/10 24/18 24/20 24/20 24/21 27/10 30/25 42/13 44/15
<b>B</b> back [13] 4/21 5/9 8/2 10/24 17/5 20/23 24/14 31/5 32/3 35/15 42/22 42/25 43/23 backing [1] 18/16 bad [2] 34/22 37/11 BARBARA [1] 1/9 based [3] 8/21 30/18 35/4 basically [3] 18/19 26/14 29/8 be [103] because [23] 4/20 5/10 6/3 8/13 12/12 12/16 20/2 20/20 21/3 25/22 26/13 27/20 27/25 31/7 31/21 32/20 32/23 36/11 36/13 40/9 40/19 41/9 43/21 been [11] 9/16 15/11 18/19 18/21 18/22 19/4 20/8 23/7 23/8 25/11 31/1 beer [8] 8/18 19/8 20/10 20/11 20/12 20/14 20/15 29/6 before [28] 1/9 3/2 4/21 4/23 5/1 8/22 9/3 9/14 9/21 14/7 15/11 15/15 15/23 17/10 17/10 20/16 22/9 22/14 22/19 22/22 24/24 27/10 29/6 35/20 38/4 38/6 38/12 38/24 beforehand [1] 10/7 being [9] 6/2 8/16 10/16 14/20 15/3 24/7 24/25 31/4 34/12 believe [7] 6/15 19/12 20/7 25/17 27/21 29/11 29/18 benefit [1] 25/18 best [1] 12/12 better [5] 7/23 8/19 8/23 11/20 26/11 between [3] 22/17 29/12 44/1 bigger [1] 20/16 binder [1] 41/24 binders [2] 41/6 41/8 binding [7] 19/21 21/1 21/4 21/4 21/15 21/16 28/6 bit [3] 26/19 29/1 34/24 black [1] 7/9 bmcnamara [1] 1/20 both [11] 4/10 5/3 7/17 19/17 22/15 29/18 30/2 37/5 37/5 38/13 40/5 bottles [1] 19/7 BRENDAN [2] 1/16 3/9 brief [6] 7/23 10/20 13/19 13/21 18/2 41/24 briefing [5] 7/18 10/19 11/7 11/9 30/11 briefs [6] 9/9 10/2 11/5 13/24 15/10 26/19 bring [5] 7/21 7/25 17/1 17/6 33/13 bringing [1] 8/4 brings [1] 19/10 Brockway [1] 19/17 brought [4] 8/25 9/1 15/12 15/13 bud [1] 9/8 built [1] 7/18 Bureau [2] 1/22 2/3 business [7] 12/1 14/23 15/1 20/14 20/15 29/6 40/10 businesses [1] 8/24 businesspeople [1] 8/20 buy [1] 21/5 buyer [17] 14/19 17/19 17/24 21/7 25/7 28/3 28/14 29/1 33/11 33/12 33/20 33/21 34/7 34/7 34/9 35/3 35/12 buyers [5] 17/21 28/8 28/11 28/17 28/19 buying [1] 31/12		

<p><b>C</b></p> <p>Court's [1] 16/23  courtroom [4] 6/16 28/12 39/25 39/25  courts [1] 19/17  covered [1] 27/6  crack [2] 21/13 30/19  CRAVATH [2] 2/18 3/17  cravath.com [1] 2/21  cross [2] 5/19 9/1  cross-examination [2] 5/19 9/1  cure [1] 29/21  current [1] 23/12  customers [5] 25/9 25/11 27/14 27/14 40/10  cut [1] 42/21  CVR [2] 2/22 44/14  CVR-CM [2] 2/22 44/14  CVs [1] 5/6</p>	<p>directs [1] 5/24  disclosed [1] 35/11  discovery [24] 7/16 13/23 14/9 14/12 14/14  15/6 15/16 15/23 15/25 16/9 16/19 18/6 22/9  25/1 27/10 27/18 27/22 28/20 28/22 28/25  31/16 32/10 33/23 35/16  discuss [1] 36/11  discussed [1] 18/21  discussing [2] 35/21 40/13  discussion [3] 6/25 7/1 33/15  discussions [1] 37/22  dispute [2] 4/5 35/16  DISTRICT [3] 1/1 1/1 1/10  divest [1] 18/25  divesting [1] 34/14  divestiture [8] 25/20 29/2 30/9 31/17 34/15  35/21 36/14 36/25  divestitures [2] 25/5 25/6</p>	<p>entity [2] 19/1 20/14  erols.com [1] 2/25  ESQUIRE [8] 1/12 1/16 1/21 2/2 2/7 2/10  2/14 2/18  essentially [1] 19/6  et [3] 1/6 3/4 17/24  evaluate [5] 14/12 14/13 14/21 15/7 15/19  evaluating [2] 8/1 36/9  even [14] 2/18 3/16 6/5 15/23 20/4 20/5  20/17 21/15 22/9 28/21 29/25 34/14 34/25  43/1  evenings [1] 43/1  everybody [1] 37/5  everything [6] 11/19 13/11 25/18 32/7 32/12  33/1  evidence [5] 15/5 16/18 17/2 18/1 18/3  exact [5] 19/13 19/14 22/11 22/11 24/1  exactly [1] 28/15  examination [2] 5/19 9/1  examine [1] 36/5  example [4] 8/17 8/18 10/15 10/18  exchange [2] 10/21 11/2  exclude [6] 8/5 8/6 9/21 17/2 25/18 25/20  excluded [2] 9/16 17/5  excluding [1] 9/25  exhibit [2] 4/11 10/22  exhibits [13] 4/3 4/5 4/9 4/17 10/22 11/3  11/24 12/14 13/2 39/11 40/19 40/20 41/23  expect [2] 3/25 6/17  expectation [1] 7/25  experience [2] 28/14 35/7  expert [7] 7/16 8/5 8/6 8/9 8/14 9/16 13/24  experts [5] 5/6 8/7 8/17 8/19 12/15  experts' [1] 8/7  explaining [1] 18/17  explore [3] 8/4 23/17 23/21  express [1] 36/4  extended [1] 33/15  extensivelv [2] 21/20 21/23</p>
<p><b>D</b></p> <p>D.C [8] 1/5 1/14 1/19 1/23 2/4 2/15 2/24  26/25  Dan [2] 33/13 33/16  date [13] 20/24 22/16 22/17 22/20 23/19  26/14 26/15 33/10 37/1 37/2 37/3 37/4 37/12  dates [3] 11/8 38/21 39/16  Daubert [8] 7/17 7/19 7/21 7/25 8/2 8/4  10/25 11/5  DAVID [1] 1/12  day [8] 4/21 4/23 6/14 15/22 16/25 26/16  42/9 43/20  days [12] 5/23 5/24 10/24 30/3 30/4 30/13  32/24 33/3 36/12 36/21 39/1 42/23  dead [2] 20/24 23/19  deal [6] 17/23 20/24 24/18 26/15 27/7 30/24  dealing [2] 34/2 40/10  decide [5] 6/3 6/5 17/14 26/20 31/6  decided [7] 14/5 14/6 14/8 18/23 20/25 22/16  26/22  deciding [2] 18/1 24/3  decision [4] 29/17 31/13 33/2 43/25  decrees [2] 34/11 34/12  Defendant [4] 2/7 2/18 3/13 3/17  defendant's [1] 41/12  defendants [2] 36/5 41/13  defendants' [1] 41/17  definition [1] 19/13  definitive [13] 20/20 21/14 28/21 33/10  33/24 34/3 34/12 34/16 34/17 34/22 34/23  35/1 36/8  delay [1] 27/2  demonstrative [1] 12/14  demonstratives [2] 39/8 39/9  depends [1] 17/23  deposed [2] 21/20 21/21  deposition [5] 10/16 10/22 11/3 21/24 24/25  designations [2] 10/23 11/4  detail [3] 22/8 22/10 36/6  detailed [2] 22/3 22/6  did [3] 18/8 25/23 42/6  didn't [3] 10/5 37/21 38/23  difference [2] 24/17 32/19  differences [1] 24/16  different [5] 4/12 23/13 25/15 25/19 34/19  difficult [2] 13/1 40/19  diligently [1] 34/4  diminution [1] 20/3  direct [3] 5/15 5/19 6/5</p>	<p>Division [1] 1/17  do [66]  documents [1] 12/1  does [3] 20/2 40/14 43/19  doesn't [7] 9/16 22/24 22/25 25/22 32/13  35/4 35/22  doing [3] 9/9 27/18 42/21  DOJ [2] 15/21 15/22  dollar [1] 8/24  don't [62]  done [14] 5/7 8/22 18/5 18/24 20/6 21/1  24/19 27/4 27/7 27/8 27/13 28/25 39/15  39/16  down [1] 36/3  drop [2] 20/24 23/19  drop-dead [2] 20/24 23/19  Dropping [1] 24/24  Ducore [1] 33/13  due [3] 10/21 11/11 27/19</p>	<p><b>E</b></p> <p>each [5] 10/14 14/22 22/3 39/3 41/11  easier [2] 6/1 41/21  easiest [1] 41/19  easy [2] 4/16 42/23  Ed [2] 3/7 6/22  EDWARD [1] 1/12  effect [1] 38/17  effectively [1] 20/14  effort [2] 24/22 25/2  ehassi [1] 1/15  eight [2] 22/18 22/21  Eighth [1] 2/19  either [3] 13/16 18/4 40/21  Electric [2] 15/20 15/21  electronically [1] 41/23  elephant [1] 13/18  else [5] 13/11 21/24 30/4 37/5 42/5  emergency [1] 26/25  end [8] 23/8 23/20 36/22 36/24 39/16 39/17  42/10 43/17  ends [1] 22/14  enjoy [1] 30/11  enough [9] 4/14 29/7 29/13 31/7 31/13 33/7  33/7 36/9 36/16  enter [2] 20/19 21/1  entered [1] 14/4  entire [3] 22/16 23/7 27/10  entities [1] 20/16  entitled [2] 44/4 44/11</p>
		<p><b>F</b></p> <p>fact [17] 9/24 11/11 11/12 12/6 13/23 14/9  15/12 16/18 17/8 19/23 31/12 31/23 36/13  36/19 37/9 39/17 39/21  factor [1] 29/17  facts [3] 15/7 24/24 31/17  fair [2] 8/1 29/14  fairly [1] 13/15  faith [4] 24/19 24/22 25/1 25/2  fantasy [1] 34/9  far [2] 5/9 29/13  fashion [3] 14/8 17/13 24/2  fashioned [1] 17/12  fashions [1] 34/10  fast [1] 5/10  faster [1] 5/6  favor [1] 21/8  fax [2] 2/16 2/21  FEDERAL [9] 1/3 1/13 1/17 1/21 2/2 3/3 3/8  6/22 14/1  feel [1] 6/3  fiction [1] 24/5  field [3] 5/6 8/17 8/21  figure [1] 34/21  file [3] 10/9 10/9 12/2  filed [7] 13/20 15/15 15/22 16/3 18/19 22/10  22/17  files [1] 12/2</p>

<p><b>F</b></p> <p>filings [1] 41/5  fill [3] 3/21 4/8 4/9  final [1] 16/1  finally [2] 18/23 41/4  find [1] 5/23  findings [4] 11/11 11/12 39/17 39/21  fine [2] 37/1 39/13  first [11] 4/3 12/23 13/18 15/11 15/15 27/4  33/22 37/15 38/3 39/19 43/20  fit [3] 28/4 43/19 43/19  five [10] 5/24 5/24 22/14 22/17 22/19 22/19  22/21 22/22 39/6 39/13  five-year [1] 22/19  flexible [2] 36/21 43/13  flip [1] 41/20  flounder [1] 12/13  focus [1] 21/24  following [1] 11/12  footnote [2] 18/2 24/21  foregoing [1] 44/9  forever [1] 31/6  Forget [2] 37/9 37/10  form [4] 5/16 9/4 14/23 17/1  forms [1] 19/7  forth [1] 35/15  Forty [2] 39/6 39/13  Forty-five [2] 39/6 39/13  forward [1] 3/5  found [3] 12/12 19/23 24/18  four [19] 13/22 14/22 14/25 16/6 17/19 18/25  20/7 21/5 21/6 21/19 21/21 22/4 22/7 22/12  25/19 27/22 28/4 31/2 31/4  Franklin [2] 15/20 15/21  frankly [7] 15/7 18/1 23/14 23/17 28/25 31/5  36/23  Friday [5] 7/16 10/17 11/11 25/10 42/18  front [2] 14/11 23/12  fruitful [1] 35/23  frustration [1] 31/22  FTC [25] 6/8 15/12 15/15 17/4 17/5 17/10  18/20 19/17 19/22 19/23 21/12 23/14 27/7  28/1 28/11 28/13 29/19 30/10 31/2 31/6  31/14 34/10 34/18 36/4 36/16  FTC's [1] 24/23  ftc.gov [4] 1/15 1/20 1/24 2/5  fully [1] 27/15  fundamental [2] 19/6 19/9  funded [1] 25/7  further [2] 7/1 35/25</p>	<p>30/19 31/13 31/19 32/10 32/10 32/17 33/2  38/25 40/21 41/11 43/12 43/25  give-away [1] 12/20  given [9] 6/19 12/7 14/21 22/8 29/16 29/23  35/12 35/13 43/5  gives [3] 11/19 22/22 43/13  giving [3] 3/24 22/1 29/7  glass [3] 13/22 19/7 19/18  go [24] 5/5 6/20 18/10 20/22 21/9 21/10 25/8  28/7 29/24 30/14 30/16 30/17 30/23 31/8  31/21 31/24 34/13 35/18 36/13 37/14 42/17  42/25 43/20 43/25  Gobain [2] 2/18 3/17  goes [2] 10/25 40/23  going [72]  gone [1] 23/15  good [18] 3/7 3/11 3/12 3/16 3/18 4/24 7/22  11/16 12/4 24/19 24/22 25/1 25/2 30/11 31/1  34/18 34/21 36/23  good-faith [1] 25/2  got [9] 7/9 23/16 28/14 30/4 33/18 33/19  37/11 37/12 37/18  gotten [1] 19/5  GOUDISS [2] 2/10 3/14  grant [1] 17/1  Great [1] 11/23  GROUP [5] 1/6 2/7 3/4 3/14 18/15  guess [2] 27/2 42/19  guideposts [1] 43/13  guys [4] 7/22 32/16 35/15 42/25</p>	<p>27/6 27/16 29/12 30/3 31/21 31/25 32/5  32/18 32/21 32/21 32/23 32/25 33/1 33/4  35/18 36/15 37/2 37/3 37/12 38/21 39/16  hearings [2] 5/15 26/17  hears [1] 36/16  HEATHER [2] 2/14 3/15  held [1] 17/25  help [8] 5/20 9/5 9/18 10/4 10/5 36/1 36/17  40/5  helpful [12] 5/15 5/21 5/22 5/25 12/16 12/18  26/7 38/24 39/2 39/8 39/10 43/11  her [3] 40/3 40/4 40/6  here [34] 5/4 5/13 6/2 7/9 8/16 9/2 10/20  13/21 15/3 15/9 15/19 16/5 16/9 16/21 17/9  17/18 23/18 24/17 26/5 28/1 28/8 29/1 33/17  34/3 35/20 35/25 36/8 37/5 37/7 37/17 38/5  40/20 41/21 43/23  Here's [5] 16/7 16/7 16/8 18/4 18/5  herring [1] 29/1  high [1] 5/9  him [2] 21/20 21/22  his [1] 33/14  hit [1] 38/13  hkafele [1] 2/17  Honor [67]  Honor's [1] 12/5  HONORABLE [1] 1/9  hope [3] 11/25 12/3 12/18  hopes [1] 14/11  hour [15] 13/20 15/4 16/18 18/18 22/20 39/3  42/19 42/22 42/22 42/24 43/1 43/2 43/3 43/7  43/18  hourly [1] 6/14  housekeeping [6] 13/13 18/10 37/19 37/20  38/3 42/6  how [21] 5/3 6/15 14/20 19/3 25/7 27/21 28/3  28/5 31/18 32/4 32/4 32/17 33/6 36/21 39/3  40/23 40/25 42/9 42/21 43/7 43/13  however [1] 7/5</p>
<p><b>G</b></p> <p>gained [2] 25/18 25/24  gambit [1] 18/18  gamesmanship [1] 15/3  gave [1] 32/8  gears [1] 37/13  Gee [2] 8/22 16/5  generation [1] 12/21  geographic [2] 22/25 38/15  geography [2] 26/1 30/8  get [22] 6/1 6/9 11/19 17/23 17/24 18/24  20/24 21/13 24/4 24/5 25/15 27/3 28/8 28/17  30/15 32/12 32/13 32/15 36/12 37/7 39/20  42/8  getting [1] 25/25  give [18] 4/19 6/14 9/12 12/20 14/15 17/2</p>	<p><b>H</b></p> <p>H-374 [1] 1/14  had [26] 7/1 10/1 15/6 15/6 15/15 15/16  15/17 15/18 15/24 16/9 20/16 22/4 22/7  22/10 23/11 23/15 25/12 25/13 26/11 29/6  37/22 38/4 38/23 39/24 41/25 42/4  hadn't [1] 15/23  half [4] 39/1 39/3 42/20 43/3  Half-hour [1] 39/3  hand [4] 7/9 30/5 32/25 34/17  handle [2] 40/15 40/23  happen [2] 10/7 10/17  happened [1] 15/19  happy [2] 30/22 38/11  hard [1] 26/6  hardest [1] 42/13  harm [3] 23/1 23/4 36/24  has [16] 10/12 13/19 14/1 14/2 18/6 19/5  19/23 23/14 25/4 25/5 26/20 28/14 29/5  30/10 35/6 41/5  hasn't [2] 15/19 25/13  HASSI [8] 1/12 3/8 6/22 23/25 24/14 25/17  31/10 37/10  have [106]  haven't [5] 14/19 14/19 14/20 25/12 28/16  having [7] 3/22 11/10 14/13 14/14 14/15 15/5  15/6  he [4] 8/19 15/2 32/11 33/14  he's [2] 33/13 33/14  head [1] 33/13  hear [12] 6/7 8/9 9/9 9/12 9/14 23/22 24/6  24/14 25/21 35/23 37/3 38/9  heard [8] 9/15 16/19 21/14 29/16 30/18 31/3  31/21 31/24  hearing [43] 1/9 3/22 3/23 4/2 4/5 4/23 8/5  9/21 10/15 11/8 12/7 15/4 22/14 22/17 22/20  22/22 25/11 25/25 26/13 26/15 27/3 27/5</p>	<p><b>I</b></p> <p>I'd [2] 6/7 34/18  I'll [5] 9/12 18/9 30/11 33/5 39/18  I'm [38] 3/7 3/8 4/21 4/21 4/25 5/13 6/9 7/8  9/9 9/13 9/18 17/11 19/3 22/6 23/3 23/6 24/5  24/6 25/14 25/22 27/24 30/5 30/11 30/14  31/12 31/24 32/23 32/25 33/12 34/14 35/24  36/15 36/19 40/13 42/8 42/12 42/12 42/22  I've [8] 6/19 7/9 8/22 9/15 12/12 26/13 30/4  31/24  i.e [1] 35/20  idea [6] 3/25 4/19 5/11 7/22 32/17 33/19  ideal [1] 27/2  identified [7] 14/19 14/20 21/25 28/11 28/13  33/11 33/19  identify [1] 3/5  identity [3] 21/18 28/2 29/1  idiosyncrasies [1] 4/1  II [1] 1/17  imagine [1] 4/4  immediately [1] 21/6  important [7] 19/8 26/5 27/25 32/20 36/10  38/9 38/14  imposing [1] 34/7  inaccurate [1] 12/25  include [1] 13/1  indeed [2] 14/3 30/8  indications [1] 10/14</p>



<p><b>I</b></p> <p>industrial [2] 28/14 35/7  industry [2] 35/6 35/9  information [8] 17/6 22/3 22/7 31/16 32/12 32/13 32/15 40/15  instead [5] 10/23 11/3 11/4 11/10 11/13  integral [1] 24/18  intend [1] 18/5  intending [1] 4/8  intention [2] 8/15 14/18  intentions [2] 12/12 14/11  interest [4] 16/23 31/5 32/9 34/21  interesting [2] 30/4 30/10  investigated [1] 29/11  investigatory [1] 14/6  involved [3] 8/11 16/8 24/5  involving [1] 15/21  is [140]  isn't [7] 5/21 14/17 18/18 25/2 33/7 34/9 34/18  issue [4] 19/14 20/22 22/23 26/4  issues [9] 6/23 9/4 25/6 26/20 35/19 38/3 38/6 38/13 40/9  it [117]  it's [36] 4/13 7/21 7/24 8/21 8/22 9/15 10/4 10/6 10/6 12/25 13/4 13/22 14/17 16/4 18/18 21/13 22/18 26/5 27/20 28/2 28/2 29/6 29/7 29/14 31/1 32/9 34/6 34/7 34/20 34/24 35/6 35/7 35/22 36/10 38/7 42/23  its [1] 24/21  itself [2] 19/23 20/13</p>	<p>least [5] 8/19 30/18 32/15 43/11 43/13  leave [2] 36/15 37/1  led [1] 30/5  less [3] 20/15 26/16 29/6  let [19] 4/19 6/3 8/4 11/23 12/11 16/11 16/20 16/20 23/10 23/22 24/14 27/17 29/10 31/10 34/5 39/6 39/18 41/2 41/7  let's [11] 6/11 16/25 18/9 25/18 27/2 31/23 39/19 41/17 42/17 42/18 43/16  Lexington [2] 2/8 2/11  liaise [1] 40/1  Libby [6] 16/1 16/1 16/2 24/20 24/20 24/21  light [3] 8/25 9/1 17/7  like [24] 4/2 4/5 4/17 4/22 5/15 6/7 6/10 6/20 7/5 7/10 12/15 13/10 13/14 16/4 22/13 22/20 25/11 25/22 35/9 36/14 38/7 41/9 42/19 42/23  likely [1] 25/22  limine [1] 16/17  limit [1] 8/16  limited [5] 5/19 9/2 37/12 38/5 38/12  limits [1] 6/18  line [3] 7/9 29/14 36/22  lined [1] 38/7  list [5] 10/10 10/11 31/19 32/8 32/10  listen [1] 33/1  lists [1] 10/22  litigated [1] 15/11  litigation [1] 22/19  litigator [1] 37/11  little [4] 26/16 26/19 34/24 40/18  live [1] 10/15  LLP [3] 2/11 2/14 2/18  long [6] 5/9 22/4 27/21 31/18 32/4 42/9  longer [2] 24/7 43/2  look [12] 4/24 6/20 18/2 26/6 28/24 29/25 30/2 30/20 32/13 32/14 33/5 33/23  looking [3] 33/8 40/3 42/12  loses [1] 26/24  lot [8] 15/1 22/13 33/17 35/11 35/13 40/11 41/16 41/22  love [1] 30/3  lunch [7] 42/20 42/22 42/24 43/1 43/2 43/4 43/18  luxury [2] 23/21 27/1</p>	<p>matters [3] 13/13 18/11 42/6  may [13] 6/5 7/16 10/5 13/17 17/20 17/20 22/13 22/20 23/23 35/12 36/12 39/20 41/21  maybe [4] 18/16 22/18 32/21 43/1  McNAMARA [2] 1/16 3/9  me [53]  mean [21] 10/5 14/17 15/8 15/18 15/23 18/1 30/17 31/20 32/8 32/13 32/18 33/18 34/5 35/15 37/4 37/10 37/21 37/21 38/7 43/15 43/19  meet [1] 37/5  mentioned [4] 11/15 26/13 38/4 43/12  merger [1] 19/19  Mergers [1] 1/17  merits [1] 17/22  mesh [2] 32/5 32/17  methodology [1] 8/21  microphone [1] 28/17  mid [3] 20/24 23/18 23/20  mid-January [3] 20/24 23/18 23/20  might [6] 4/18 8/3 9/5 12/15 23/12 38/19  Mina [2] 2/2 3/10  mind [4] 4/25 6/13 10/8 33/3  minimal [1] 27/12  minors [1] 7/2  minute [2] 13/1 37/22  minutes [5] 39/5 39/6 39/12 39/13 42/25  modified [1] 16/8  moment [1] 37/10  Monday [3] 11/10 11/12 42/18  month [4] 3/22 16/3 16/3 37/18  months [7] 14/1 15/14 22/7 26/16 27/20 27/21 33/24  MOORE [2] 2/18 3/17  moot [2] 16/25 17/4  more [16] 7/25 11/19 20/13 23/23 26/19 27/3 30/21 31/15 31/17 33/6 36/23 38/16 39/8 39/10 40/18 41/17  morning [8] 3/7 3/11 3/12 3/16 3/18 10/12 12/24 38/5  MOSCATELLI [2] 1/21 3/9  Moscatelli's [1] 15/13  most [5] 12/1 19/8 27/9 35/17 42/1  motion [6] 8/5 8/13 9/5 16/17 17/1 17/2  motions [9] 7/17 7/19 7/21 7/25 8/2 9/7 9/14 11/1 11/5  move [1] 31/23  moving [1] 10/24  Mr [3] 25/14 31/10 37/10  Mr. [7] 23/25 24/14 25/17 26/9 28/9 32/11 34/2  Mr. Hassi [3] 23/25 24/14 25/17  Mr. Schwed [4] 26/9 28/9 32/11 34/2  Ms [1] 15/13  much [12] 6/15 11/20 12/9 13/11 14/20 19/3 33/6 36/6 39/3 40/11 40/25 43/14  multimillion [1] 8/24  must [3] 7/20 7/22 26/15  my [23] 3/20 3/20 3/23 4/1 4/3 5/2 6/4 6/17 6/19 12/20 29/12 29/17 29/23 30/2 31/5 33/5 34/10 35/24 36/17 37/16 40/21 41/8 42/22</p>
<p><b>J</b></p> <p>January [4] 20/24 23/18 23/20 36/25  jelled [1] 15/8  Jersey [2] 1/18 2/3  job [1] 24/3  joint [2] 15/22 41/13  JUDGE [2] 1/10 41/25  jump [1] 38/22  just [45]</p>	<p>live [1] 10/15  LLP [3] 2/11 2/14 2/18  long [6] 5/9 22/4 27/21 31/18 32/4 42/9  longer [2] 24/7 43/2  look [12] 4/24 6/20 18/2 26/6 28/24 29/25 30/2 30/20 32/13 32/14 33/5 33/23  looking [3] 33/8 40/3 42/12  loses [1] 26/24  lot [8] 15/1 22/13 33/17 35/11 35/13 40/11 41/16 41/22  love [1] 30/3  lunch [7] 42/20 42/22 42/24 43/1 43/2 43/4 43/18  luxury [2] 23/21 27/1</p>	<p>months [7] 14/1 15/14 22/7 26/16 27/20 27/21 33/24  MOORE [2] 2/18 3/17  moot [2] 16/25 17/4  more [16] 7/25 11/19 20/13 23/23 26/19 27/3 30/21 31/15 31/17 33/6 36/23 38/16 39/8 39/10 40/18 41/17  morning [8] 3/7 3/11 3/12 3/16 3/18 10/12 12/24 38/5  MOSCATELLI [2] 1/21 3/9  Moscatelli's [1] 15/13  most [5] 12/1 19/8 27/9 35/17 42/1  motion [6] 8/5 8/13 9/5 16/17 17/1 17/2  motions [9] 7/17 7/19 7/21 7/25 8/2 9/7 9/14 11/1 11/5  move [1] 31/23  moving [1] 10/24  Mr [3] 25/14 31/10 37/10  Mr. [7] 23/25 24/14 25/17 26/9 28/9 32/11 34/2  Mr. Hassi [3] 23/25 24/14 25/17  Mr. Schwed [4] 26/9 28/9 32/11 34/2  Ms [1] 15/13  much [12] 6/15 11/20 12/9 13/11 14/20 19/3 33/6 36/6 39/3 40/11 40/25 43/14  multimillion [1] 8/24  must [3] 7/20 7/22 26/15  my [23] 3/20 3/20 3/23 4/1 4/3 5/2 6/4 6/17 6/19 12/20 29/12 29/17 29/23 30/2 31/5 33/5 34/10 35/24 36/17 37/16 40/21 41/8 42/22</p>
<p><b>K</b></p> <p>KAFELE [2] 2/14 3/15  keep [5] 4/24 6/13 6/17 10/8 41/16  key [1] 29/2  kind [3] 5/5 5/6 40/13  knew [1] 42/11  know [39] 3/19 3/22 4/7 4/8 5/20 6/15 7/20 7/23 8/23 9/13 13/4 14/25 21/15 23/14 23/16 26/21 30/12 31/17 32/20 33/12 33/24 33/25 35/1 35/8 36/20 36/21 37/4 37/6 38/23 39/19 40/25 41/2 41/7 41/12 41/13 41/24 42/21 42/24 42/24  known [5] 14/1 21/17 21/18 22/3 22/11  knows [2] 8/19 35/22</p>	<p>lunch [7] 42/20 42/22 42/24 43/1 43/2 43/4 43/18  luxury [2] 23/21 27/1</p>	<p>move [1] 31/23  moving [1] 10/24  Mr [3] 25/14 31/10 37/10  Mr. [7] 23/25 24/14 25/17 26/9 28/9 32/11 34/2  Mr. Hassi [3] 23/25 24/14 25/17  Mr. Schwed [4] 26/9 28/9 32/11 34/2  Ms [1] 15/13  much [12] 6/15 11/20 12/9 13/11 14/20 19/3 33/6 36/6 39/3 40/11 40/25 43/14  multimillion [1] 8/24  must [3] 7/20 7/22 26/15  my [23] 3/20 3/20 3/23 4/1 4/3 5/2 6/4 6/17 6/19 12/20 29/12 29/17 29/23 30/2 31/5 33/5 34/10 35/24 36/17 37/16 40/21 41/8 42/22</p>
<p><b>L</b></p> <p>LAMBERG [1] 2/14  last [5] 13/1 13/20 26/16 37/10 37/22  late [1] 43/21  later [2] 9/17 10/1  latest [1] 16/2  law [2] 6/25 40/21  lawsuit [1] 22/9  lawsuits [1] 22/21  lead [2] 6/20 34/6</p>	<p><b>M</b></p> <p>made [9] 6/7 10/19 16/4 16/4 20/11 23/25 24/1 32/8 37/2  main [1] 25/6  maintaining [1] 40/16  make [17] 7/17 8/9 8/13 12/11 12/25 13/1 20/10 20/25 25/7 30/23 32/19 34/5 35/2 36/16 37/16 40/6 42/1  makes [2] 12/22 33/20  manage [2] 28/4 33/19  management [1] 34/6  manager [2] 33/21 34/6  managing [1] 28/11  many [3] 5/3 5/14 36/20  marked [1] 4/4  market [24] 14/24 19/11 19/13 19/14 19/18 19/20 19/21 19/22 19/24 20/2 20/5 20/5 21/9 22/24 22/25 23/7 25/25 26/4 29/3 29/9 30/8 38/14 38/15 38/15  MARY [1] 1/21  matter [7] 3/2 13/4 13/15 13/17 33/23 44/5 44/11</p>	<p><b>N</b></p> <p>N.W [6] 1/13 1/18 1/22 2/3 2/15 2/23  name [2] 28/21 35/12  necessarily [1] 20/21  necessary [3] 17/22 36/2 42/20  need [26] 8/9 12/7 13/11 21/25 26/21 27/4</p>

<p><b>N</b></p> <p>need... [20] 27/22 31/15 31/16 31/16 31/18 31/19 32/4 32/11 32/12 33/6 33/10 33/24 33/25 34/23 36/6 37/4 37/6 37/16 39/3 43/1 needs [5] 27/4 27/6 27/12 28/25 36/4 negotiate [1] 34/5 negotiates [1] 34/12 negotiating [2] 28/10 28/19 negotiations [2] 21/17 29/13 never [1] 23/16 new [7] 1/18 2/3 2/8 2/12 2/20 29/5 37/8 news [2] 13/22 13/22 next [2] 4/23 5/2 nice [1] 33/3 night [3] 4/23 7/23 24/24 nip [1] 9/8 NJ [1] 1/23 no [15] 12/24 12/24 13/5 14/12 18/1 22/6 24/6 27/15 28/10 28/16 28/16 31/20 32/21 34/18 35/6 nobody [1] 12/22 nodding [1] 4/25 not [64] nothing [2] 21/24 30/4 November [1] 11/13 now [21] 4/19 7/7 7/20 8/8 9/6 14/1 14/10 18/9 19/25 21/18 22/13 29/4 29/10 29/12 32/3 32/13 37/1 37/11 37/12 37/19 40/3 number [9] 1/3 3/3 4/11 4/11 4/14 4/15 18/21 22/15 41/18 numbers [1] 4/13 NY [3] 2/8 2/12 2/20</p>	<p>26/21 27/7 27/13 36/2 ordered [1] 11/22 originally [1] 23/15 other [16] 10/14 12/23 17/3 17/11 18/10 19/7 20/13 22/8 23/6 29/14 30/5 30/12 31/3 32/25 35/22 38/16 others [1] 6/6 otherwise [1] 37/17 ought [1] 17/13 our [24] 6/25 7/24 8/15 10/20 12/8 13/24 13/24 14/15 20/3 20/13 20/22 21/20 21/21 23/19 25/4 27/3 27/6 27/12 28/2 33/13 38/8 39/17 42/8 42/13 out [27] 3/20 4/10 5/11 5/14 6/25 10/13 12/1 12/7 16/20 20/6 23/12 28/8 30/24 33/3 34/21 35/16 35/20 36/12 37/15 38/5 41/3 42/8 42/14 43/16 43/24 43/24 44/1 over [7] 17/6 27/11 32/23 33/4 34/17 39/1 40/17 overnight [1] 26/23 overview [1] 38/25 own [5] 19/1 20/14 21/4 24/2 38/8 owns [1] 35/9</p>	<p>plenty [1] 22/22 podium [1] 26/11 point [8] 14/17 14/17 19/11 23/23 29/23 31/25 34/5 35/18 position [3] 9/21 29/18 29/19 possible [3] 12/10 17/19 33/5 possibly [1] 30/6 post [2] 11/7 11/9 potential [1] 7/18 potentially [1] 26/24 power [1] 29/3 pre [3] 1/9 4/4 4/4 pre-admitted [1] 4/4 PRE-HEARING [1] 1/9 pre-marked [1] 4/4 precipitous [1] 29/25 prefer [1] 43/3 preference [4] 38/23 40/14 41/5 41/8 prejudiced [1] 18/7 premature [1] 29/25 prepare [1] 5/15 prepared [4] 3/19 11/19 25/23 36/21 present [3] 29/18 29/20 39/1 presentation [1] 40/12 presenting [1] 36/7 preserve [2] 17/9 17/17 presume [1] 17/5 pretrial [1] 12/9 pretty [2] 7/22 13/11 prevents [1] 21/25 previously [1] 10/19 prices [1] 40/11 primary [1] 21/24 probably [8] 3/21 9/7 12/16 25/15 28/7 30/12 38/16 41/19 probe [1] 27/7 problem [6] 11/24 23/18 30/9 31/1 33/9 40/19 procedures [1] 3/25 proceed [2] 5/18 7/6 proceeding [1] 17/8 proceedings [4] 16/19 17/25 44/4 44/10 process [3] 21/22 22/9 27/13 product [14] 19/11 19/13 19/14 19/18 19/20 19/21 19/22 19/24 20/2 20/5 20/5 22/24 23/7 26/4 production [1] 38/15 progress [1] 43/8 proposal [2] 16/18 34/15 propose [5] 10/21 11/2 11/9 13/21 14/10 proposed [7] 11/14 11/21 15/14 18/17 23/15 24/7 31/2 proposing [2] 14/21 19/25 pros [1] 6/2 provide [1] 10/13 provided [1] 41/24 providing [1] 42/1 public [2] 25/10 28/2 publicly [1] 30/24 published [1] 5/8 purchase [2] 20/20 23/20 purchasing [1] 19/2 pursue [1] 10/6 pushed [1] 11/11 put [8] 5/9 12/22 14/10 18/4 22/2 26/13 32/23 36/6 putting [4] 22/14 27/1 33/4 38/24</p>
<p><b>O</b></p> <p>O-I [1] 19/16 objecting [1] 9/25 objections [1] 11/2 obviously [4] 17/3 21/2 30/23 35/15 October [5] 10/23 11/4 11/4 11/6 11/13 October 2nd [1] 10/23 October 30th [1] 11/13 October 3rd [1] 11/4 October 9th [2] 11/4 11/6 off [4] 6/20 13/22 26/13 27/1 offered [1] 8/16 office [1] 8/2 Official [2] 2/23 44/15 often [2] 12/12 22/21 okay [38] 3/11 6/19 7/8 9/6 9/11 9/22 9/23 10/2 10/7 10/8 11/17 12/11 13/2 13/3 13/7 13/9 16/21 18/8 18/13 23/22 24/12 26/3 26/8 31/9 32/1 32/4 37/17 37/24 38/2 39/12 39/22 40/4 41/4 42/3 43/9 43/21 43/23 44/1 on-going [1] 40/10 one [27] 4/13 5/12 7/16 7/25 8/19 12/11 13/14 15/22 16/2 16/3 17/3 20/1 20/15 22/23 23/23 25/6 26/5 31/3 33/14 34/5 35/17 35/21 38/16 38/19 39/24 41/14 42/7 ones [2] 38/14 42/25 only [7] 4/7 4/13 22/23 22/25 23/2 23/4 42/7 open [1] 28/12 openings [1] 38/22 opinion [4] 11/23 24/21 29/20 36/13 opinions [3] 8/16 16/24 16/24 opportunity [5] 12/8 14/13 14/14 14/15 36/6 oppositions [1] 10/25 order [11] 5/4 7/2 7/4 7/12 8/8 13/17 20/25</p>	<p><b>P</b></p> <p>packaging [2] 19/7 35/8 page [1] 7/15 page 6 [1] 7/15 paper [2] 41/6 41/9 paragraph [5] 7/15 10/18 10/25 11/2 11/7 part [3] 12/1 19/1 28/1 particular [2] 19/8 40/16 parties [14] 7/3 7/17 11/15 11/21 15/10 15/24 16/9 17/16 17/17 24/22 26/7 26/18 40/15 40/16 parties' [1] 12/2 party [1] 25/5 past [1] 20/12 pending [1] 17/10 Pennsylvania [3] 1/13 1/22 2/15 people [3] 8/20 8/23 36/22 percent [2] 20/8 20/12 percentage [2] 13/6 13/6 perfectly [1] 42/14 period [3] 4/7 9/2 15/23 person [4] 6/2 34/8 35/5 42/12 Personally [1] 43/5 pick [1] 4/11 place [1] 3/24 plaintiff [4] 1/4 1/12 2/2 6/9 plaintiff's [2] 41/12 41/18 plan [7] 21/9 23/12 30/17 34/18 36/25 37/8 42/8 planning [2] 21/13 21/19 plans [8] 3/21 14/10 21/21 21/23 31/17 36/5 36/6 36/14 plant [4] 22/8 22/8 22/10 22/10 plants [30] 13/22 14/22 14/25 16/6 17/19 18/22 18/25 20/7 20/10 20/11 21/5 21/6 21/19 21/21 21/23 22/4 22/7 22/12 24/3 28/3 28/4 28/12 28/15 29/3 31/2 31/4 33/20 34/14 35/1 35/21 plastic [1] 38/18 plastics [1] 19/9 play [2] 16/20 40/23 played [1] 15/3 Plaza [1] 2/19 please [2] 3/5 28/17</p>	<p>packaging [2] 19/7 35/8 page [1] 7/15 page 6 [1] 7/15 paper [2] 41/6 41/9 paragraph [5] 7/15 10/18 10/25 11/2 11/7 part [3] 12/1 19/1 28/1 particular [2] 19/8 40/16 parties [14] 7/3 7/17 11/15 11/21 15/10 15/24 16/9 17/16 17/17 24/22 26/7 26/18 40/15 40/16 parties' [1] 12/2 party [1] 25/5 past [1] 20/12 pending [1] 17/10 Pennsylvania [3] 1/13 1/22 2/15 people [3] 8/20 8/23 36/22 percent [2] 20/8 20/12 percentage [2] 13/6 13/6 perfectly [1] 42/14 period [3] 4/7 9/2 15/23 person [4] 6/2 34/8 35/5 42/12 Personally [1] 43/5 pick [1] 4/11 place [1] 3/24 plaintiff [4] 1/4 1/12 2/2 6/9 plaintiff's [2] 41/12 41/18 plan [7] 21/9 23/12 30/17 34/18 36/25 37/8 42/8 planning [2] 21/13 21/19 plans [8] 3/21 14/10 21/21 21/23 31/17 36/5 36/6 36/14 plant [4] 22/8 22/8 22/10 22/10 plants [30] 13/22 14/22 14/25 16/6 17/19 18/22 18/25 20/7 20/10 20/11 21/5 21/6 21/19 21/21 21/23 22/4 22/7 22/12 24/3 28/3 28/4 28/12 28/15 29/3 31/2 31/4 33/20 34/14 35/1 35/21 plastic [1] 38/18 plastics [1] 19/9 play [2] 16/20 40/23 played [1] 15/3 Plaza [1] 2/19 please [2] 3/5 28/17</p>

<p><b>Q</b></p> <p>question [15] 5/2 19/6 19/10 20/1 21/9 23/1 23/21 25/15 27/5 27/25 29/2 29/23 30/2 30/11 38/4</p> <p>questions [12] 5/17 6/4 15/2 17/15 25/3 33/12 33/17 33/22 38/10 38/20 39/24 42/4</p> <p>quick [1] 42/7</p> <p>quite [1] 25/21</p> <p>quo [2] 17/10 17/18</p>	<p>rule [3] 17/3 17/4 21/8</p> <p>rules [1] 20/18</p> <p>ruling [8] 8/9 17/3 20/22 25/25 30/15 36/12 37/2 37/12</p> <p>run [1] 28/3</p> <p>running [4] 8/23 21/22 26/14 28/15</p>	<p>side [9] 4/12 12/23 18/10 26/24 27/17 29/15 29/20 35/21 35/22</p> <p>sides [3] 4/11 5/3 22/15</p> <p>sign [1] 34/16</p> <p>significant [1] 13/15</p> <p>silent [1] 23/15</p> <p>simple [1] 41/17</p> <p>simply [1] 7/5</p>
<p><b>R</b></p> <p>radio [1] 23/15</p> <p>raise [1] 13/16</p> <p>raised [1] 20/8</p> <p>rare [1] 19/19</p> <p>rather [1] 34/18</p> <p>reach [1] 18/22</p> <p>read [6] 5/6 5/10 5/16 9/14 10/2 13/19</p> <p>reading [1] 9/13</p> <p>ready [3] 5/4 6/20 28/7</p> <p>realistic [1] 36/19</p> <p>realize [1] 37/10</p> <p>realized [1] 36/22</p> <p>really [14] 4/14 4/20 5/10 6/10 9/2 12/7 22/23 29/21 32/8 35/4 37/3 41/1 41/16 42/20</p> <p>reason [2] 27/15 27/25</p> <p>reasonable [2] 11/18 28/22</p> <p>reassigned [1] 19/4</p> <p>rebuttal [3] 6/9 6/10 6/11</p> <p>recent [1] 27/10</p> <p>recently [1] 19/4</p> <p>recognize [4] 20/20 26/18 26/23 35/17</p> <p>record [3] 3/6 27/11 44/10</p> <p>red [1] 29/1</p> <p>relevant [2] 19/3 19/19</p> <p>reluctant [2] 32/23 32/25</p> <p>remedies [1] 15/11</p> <p>remedy [9] 13/21 14/13 14/16 17/12 17/13 17/18 17/21 24/2 30/6</p> <p>remove [1] 40/14</p> <p>render [2] 16/24 16/25</p> <p>replaces [1] 29/9</p> <p>reply [3] 10/21 11/5 11/12</p> <p>reporter [5] 2/22 2/23 42/13 44/8 44/15</p> <p>reports [1] 13/24</p> <p>reputable [2] 35/3 35/5</p> <p>require [2] 17/16 17/17</p> <p>reserve [1] 6/12</p> <p>resolve [4] 12/9 24/22 25/2 30/7</p> <p>respect [1] 13/17</p> <p>respond [1] 25/23</p> <p>rest [1] 25/24</p> <p>restore [1] 14/24</p> <p>result [2] 23/13 36/24</p> <p>review [3] 4/18 4/20 9/7</p> <p>revised [4] 7/3 18/17 19/25 20/4</p> <p>RICHARD [3] 2/7 3/12 18/14</p> <p>right [17] 4/13 8/9 9/6 16/20 17/6 19/22 19/24 25/14 28/9 28/9 29/10 37/1 37/11 38/22 39/23 40/3 41/14</p> <p>rigid [1] 35/8</p> <p>ring [3] 41/6 41/8 41/24</p> <p>room [1] 13/18</p> <p>ROTHSTEIN [1] 1/9</p> <p>roughly [1] 26/16</p> <p>rschwed [1] 2/9</p> <p>ruin [1] 6/16</p>	<p><b>S</b></p> <p>S.A [2] 1/6 3/4</p> <p>safe [1] 31/25</p> <p>said [9] 10/12 16/7 19/17 19/21 24/5 24/10 30/25 30/25 32/6</p> <p>Saint [2] 2/18 3/17</p> <p>Saint-Gobain [2] 2/18 3/17</p> <p>sale [3] 15/9 17/19 25/19</p> <p>sales [3] 20/11 20/12 25/19</p> <p>same [6] 4/11 19/13 19/14 19/18 24/1 25/15</p> <p>sanitize [1] 40/12</p> <p>sanitized [1] 40/20</p> <p>satisfied [2] 31/14 31/14</p> <p>satisfies [1] 30/22</p> <p>satisfy [3] 25/5 29/3 30/19</p> <p>say [20] 5/12 8/17 10/5 12/17 12/24 14/23 15/17 16/4 16/25 25/18 27/2 28/12 30/10 31/6 31/20 32/3 34/14 34/25 35/18 39/5</p> <p>saying [10] 8/14 13/5 16/5 16/10 22/1 22/6 23/6 29/5 32/11 32/22</p> <p>says [2] 18/4 34/18</p> <p>scale [1] 36/8</p> <p>scenario [1] 16/21</p> <p>schedule [7] 7/18 7/18 10/20 11/18 12/6 32/24 43/6</p> <p>scheduled [6] 10/17 11/6 35/19 36/15 36/20 37/2</p> <p>scheduling [5] 6/25 7/1 7/2 7/3 7/12</p> <p>school [2] 5/8 5/9</p> <p>SCHWED [8] 2/7 3/13 18/15 25/15 26/9 28/9 32/11 34/2</p> <p>second [1] 39/20</p> <p>section [2] 25/4 33/14</p> <p>see [13] 12/23 29/12 35/17 36/17 37/13 37/17 39/19 40/6 40/19 40/22 40/23 43/7 43/23</p> <p>sell [9] 13/22 14/18 14/22 16/5 20/7 21/3 21/19 21/21 21/23</p> <p>selling [1] 20/13</p> <p>send [3] 7/3 7/5 7/7</p> <p>sense [1] 29/2</p> <p>separate [1] 40/20</p> <p>September [2] 1/6 10/21</p> <p>September 30th [1] 10/21</p> <p>serious [2] 15/1 17/15</p> <p>set [11] 30/3 37/4 40/21 41/11 41/12 41/12 41/13 41/14 41/17 41/18 42/23</p> <p>settlement [1] 23/16</p> <p>seven [1] 22/21</p> <p>severely [1] 18/6</p> <p>she [2] 40/5 41/25</p> <p>SHEARMAN [5] 2/7 2/11 2/14 3/13 3/14</p> <p>shearman.com [3] 2/9 2/13 2/17</p> <p>shooting [1] 34/1</p> <p>shop [1] 15/13</p> <p>short [2] 4/7 20/21</p> <p>should [15] 6/13 6/18 8/25 9/16 13/5 15/4 15/5 16/19 17/16 17/17 17/25 18/1 21/12 36/17 40/6</p> <p>shouldn't [1] 10/6</p> <p>show [2] 5/20 12/22</p> <p>shows [1] 7/9</p>	<p>since [9] 11/9 12/22 12/25 18/6 18/19 19/4 21/19 28/12 31/2</p> <p>single [1] 21/4</p> <p>sit [4] 31/5 31/20 32/3 36/3</p> <p>sitting [1] 35/25</p> <p>situation [2] 21/11 30/7</p> <p>six [4] 22/21 23/8 27/20 27/21</p> <p>sliding [1] 36/8</p> <p>so [54]</p> <p>sold [3] 14/20 24/4 35/2</p> <p>sole [1] 29/23</p> <p>solve [1] 30/9</p> <p>some [27] 3/25 4/23 5/6 6/6 6/12 6/23 6/23 6/24 7/2 8/6 8/7 8/16 9/4 10/18 13/13 13/17 24/16 25/17 26/21 27/3 31/16 34/9 34/14 36/9 39/10 43/1 43/13</p> <p>somebody [10] 18/4 28/14 33/19 34/6 34/7 34/13 35/7 35/7 35/8 40/1</p> <p>someone [1] 8/2</p> <p>something [10] 5/17 6/10 12/21 16/11 18/18 22/19 23/10 36/7 37/15 42/23</p> <p>sometime [1] 44/1</p> <p>sometimes [5] 5/21 5/21 6/4 39/15 39/16</p> <p>soon [1] 28/7</p> <p>SORENSEN [2] 2/22 44/14</p> <p>sorry [2] 7/8 23/3</p> <p>sort [10] 4/1 4/25 10/13 19/10 30/5 35/21 36/8 38/25 40/12 41/6</p> <p>sound [3] 22/13 22/20 25/22</p> <p>sounds [3] 11/16 13/10 30/3</p> <p>Speaking [1] 27/19</p> <p>specific [2] 38/6 38/10</p> <p>speed [3] 4/18 9/5 27/19</p> <p>speeding [1] 5/13</p> <p>spend [2] 26/18 37/16</p> <p>spending [1] 36/11</p> <p>spirits [2] 19/9 29/7</p> <p>split [1] 6/11</p> <p>splitting [1] 6/8</p> <p>spot [1] 26/22</p> <p>sprung [2] 37/9 37/21</p> <p>staff [1] 31/2</p> <p>stage [1] 14/6</p> <p>stake [1] 37/7</p> <p>stand [3] 5/1 18/4 38/25</p> <p>standard [1] 34/25</p> <p>start [14] 3/20 6/24 7/14 7/23 18/16 24/15 27/16 33/10 34/25 42/10 42/14 42/18 43/16 43/17</p> <p>started [1] 15/24</p> <p>starting [5] 17/21 19/10 33/9 42/15 43/21</p> <p>starts [1] 12/7</p> <p>statement [2] 5/16 5/17</p> <p>STATES [4] 1/1 1/3 1/10 3/3</p> <p>status [2] 17/9 17/17</p> <p>staying [2] 5/25 6/18</p> <p>STERLING [5] 2/7 2/11 2/14 3/13 3/14</p> <p>still [9] 8/1 8/12 10/5 21/9 21/10 25/17 28/10 28/18 41/9</p> <p>strategy [1] 18/19</p>

<p><b>S</b></p> <p>stretch [1] 43/15  strongly [2] 6/3 19/12  structure [1] 3/23  sub [1] 22/23  sub-issue [1] 22/23  submit [1] 11/21  submitted [1] 10/16  submitting [1] 14/16 16/19  substantial [1] 17/15  substantive [2] 13/15 13/17  such [1] 17/16  sudden [2] 5/23 34/23  suffices [1] 17/21  sufficient [2] 14/16 31/4  suggest [2] 37/21 43/6  suggest that [1] 37/21  suggesting [1] 36/10  suggestion [2] 12/11 13/20  Suite [3] 1/14 1/18 2/4  suppose [1] 33/1  supposed [1] 34/16  Supreme [2] 19/15 19/20  sure [10] 5/13 6/10 7/11 17/11 19/3 20/25  27/24 30/11 35/24 42/1  surrounding [1] 31/17  SWAINE [2] 2/18 3/17  switch [1] 37/13</p>	<p>24/2 28/20 29/3 29/20 29/20 29/21 30/23  31/7 32/9 34/21  them [27] 4/15 4/20 4/22 5/1 9/15 10/20  11/11 14/8 21/5 21/25 22/2 22/8 22/14 22/22  23/12 28/5 28/16 28/21 29/15 30/19 31/19  32/10 35/13 36/9 36/16 41/19 41/20  themselves [1] 38/21  then [37] 3/21 4/15 5/10 5/16 5/18 5/23 5/24  6/2 6/11 9/17 11/5 11/8 11/12 12/24 17/2  17/4 17/5 18/10 20/22 20/23 21/5 21/19 25/9  26/20 26/24 27/5 28/20 30/15 32/20 33/2  33/22 34/17 34/17 36/17 36/25 40/20 41/4  there [42] 3/24 4/4 4/17 5/2 5/12 5/17 5/19  6/23 8/1 8/16 11/24 13/11 13/13 13/14 14/3  15/1 17/12 17/15 18/23 19/9 20/3 20/10  21/24 23/7 23/11 25/17 25/23 26/2 30/19  31/20 33/12 33/17 34/11 34/12 36/2 36/22  37/14 38/6 38/9 40/9 40/11 40/25  there's [11] 5/17 8/18 13/20 15/8 18/2 18/2  19/19 19/20 27/12 27/14 40/1  THERESA [2] 2/22 44/14  theresams [1] 2/25  these [23] 8/19 8/23 9/4 9/10 10/18 10/19  12/1 14/10 14/20 16/5 16/19 17/25 20/7 22/4  24/24 26/22 28/3 28/3 29/2 32/24 33/14  36/21 36/22  they [75]  they'll [1] 28/8  they're [12] 13/21 14/21 16/5 16/10 17/20  18/3 22/1 24/2 24/2 34/16 34/21 41/20  they've [8] 5/7 5/7 21/17 21/18 22/2 22/4  22/7 33/19  thing [12] 17/4 17/6 26/1 32/14 32/21 36/23  36/24 37/11 37/13 40/13 41/6 42/7  things [13] 4/18 5/13 9/5 12/15 20/22 26/22  33/15 38/10 40/7 41/5 41/6 41/16 43/3  think [69]  thinking [6] 6/11 6/18 34/25 41/23 42/22  43/16  thinks [1] 8/19  third [2] 12/2 40/16  this [100]  thoroughly [1] 29/11  those [23] 5/24 7/4 9/7 9/14 11/14 13/2 13/16  14/5 14/7 14/25 15/12 17/19 20/10 21/6 30/4  30/13 31/2 31/3 33/22 36/6 38/11 39/15 42/4  though [1] 38/15  thought [2] 9/3 38/19  three [25] 5/23 15/10 16/2 20/10 26/16 27/8  27/11 28/19 28/21 29/12 29/19 30/4 30/13  32/7 32/16 32/24 33/3 33/6 36/4 36/11 36/21  37/18 41/6 41/8 41/24  three-ring [3] 41/6 41/8 41/24  through [10] 7/4 23/8 30/7 30/14 30/16  30/17 35/25 39/10 41/20 43/25  throw [2] 5/11 5/14  Thursday [2] 42/15 42/17  tight [1] 32/24  time [39] 4/8 5/25 6/8 6/12 6/12 6/13 6/15  6/17 6/18 9/3 9/7 10/4 11/19 12/24 13/4 13/5  18/23 20/20 20/21 21/1 22/4 22/23 23/21  26/21 26/24 27/3 31/7 33/6 34/11 37/13  37/17 38/6 38/12 39/3 42/10 42/10 42/15  43/7 43/14  timekeeping [2] 9/18 9/20  timely [1] 14/8  times [2] 5/14 11/8  timing [5] 10/6 32/4 32/17 32/18 39/20</p>	<p>today [6] 7/4 28/7 29/16 30/18 35/20 35/25  together [2] 28/4 37/7  told [2] 28/16 31/24  ton [1] 33/12  too [2] 41/10 42/19  took [1] 27/11  touch [1] 40/4  touching [1] 41/1  TRADE [9] 1/3 1/13 1/17 1/21 2/2 3/3 3/8  6/22 14/2  transaction [16] 14/2 14/4 15/14 17/16 18/17  19/25 20/4 20/16 20/23 21/3 21/6 22/11  23/19 24/4 24/6 24/7  transactions [1] 27/22  transcript [2] 1/9 44/10  transferred [1] 21/7  trend [1] 8/18  trial [9] 9/5 11/7 11/9 11/10 14/11 17/10  17/22 42/9 42/23  tried [1] 23/8  trip [1] 4/21  trouble [1] 43/25  true [1] 38/7  try [11] 6/13 6/14 10/13 12/9 22/1 25/5 26/25  38/11 39/1 40/11 41/22  trying [7] 9/18 18/20 24/2 24/2 36/19 42/8  42/12  Tuesday [1] 1/6  turning [1] 35/16  turns [2] 4/10 36/12  two [20] 4/12 14/22 14/22 15/14 16/25 19/1  19/1 20/15 20/16 21/18 22/5 22/12 22/13  28/19 31/1 31/12 32/19 33/7 36/16 39/1  two-and-a-half days [1] 39/1  type [1] 28/13</p>
<p><b>T</b></p> <p>table [1] 3/9  take [14] 3/24 4/24 5/8 14/9 14/14 22/21 24/3  26/21 26/24 26/25 27/20 27/21 31/18 42/19  taken [1] 24/25  takes [2] 5/1 26/6  taking [3] 4/22 10/11 30/19  talk [10] 13/2 13/12 17/21 24/21 27/14 27/17  36/3 37/7 43/2 43/2  talked [2] 12/6 25/9  talking [2] 27/23 32/18  team [2] 33/14 34/6  technology [1] 39/25  teed [1] 27/15  tell [19] 4/6 4/22 5/3 5/3 5/7 7/7 9/6 18/9 25/9  27/19 27/20 28/7 28/8 29/10 31/14 33/2  35/14 41/2 43/3  telling [2] 3/20 21/13  tempted [1] 33/12  terminate [1] 23/19  terms [15] 3/25 4/1 9/17 9/20 10/6 10/9  10/19 23/5 25/3 34/3 38/21 39/15 40/15 41/5  42/9  testable [1] 8/22  testify [2] 9/25 10/15  testimony [11] 8/7 9/15 10/1 10/16 16/14  25/21 35/23 38/23 40/18 40/22 40/25  than [9] 5/7 8/20 8/23 20/13 20/15 29/6  30/22 36/23 38/16  Thank [8] 7/13 18/14 24/8 24/9 24/13 39/13  44/2 44/3  that [257]  that's [27] 5/2 5/20 8/12 9/18 10/16 12/12  12/17 12/20 12/24 13/22 15/3 15/20 17/11  17/18 18/18 19/13 21/11 22/19 24/7 24/9  25/1 27/17 28/22 37/11 38/14 41/19 42/20  the brief [1] 41/24  their [16] 5/6 15/10 18/2 20/5 20/11 22/2</p>	<p>18/3 22/1 24/2 24/2 34/16 34/21 41/20  they've [8] 5/7 5/7 21/17 21/18 22/2 22/4  22/7 33/19  thing [12] 17/4 17/6 26/1 32/14 32/21 36/23  36/24 37/11 37/13 40/13 41/6 42/7  things [13] 4/18 5/13 9/5 12/15 20/22 26/22  33/15 38/10 40/7 41/5 41/6 41/16 43/3  think [69]  thinking [6] 6/11 6/18 34/25 41/23 42/22  43/16  thinks [1] 8/19  third [2] 12/2 40/16  this [100]  thoroughly [1] 29/11  those [23] 5/24 7/4 9/7 9/14 11/14 13/2 13/16  14/5 14/7 14/25 15/12 17/19 20/10 21/6 30/4  30/13 31/2 31/3 33/22 36/6 38/11 39/15 42/4  though [1] 38/15  thought [2] 9/3 38/19  three [25] 5/23 15/10 16/2 20/10 26/16 27/8  27/11 28/19 28/21 29/12 29/19 30/4 30/13  32/7 32/16 32/24 33/3 33/6 36/4 36/11 36/21  37/18 41/6 41/8 41/24  three-ring [3] 41/6 41/8 41/24  through [10] 7/4 23/8 30/7 30/14 30/16  30/17 35/25 39/10 41/20 43/25  throw [2] 5/11 5/14  Thursday [2] 42/15 42/17  tight [1] 32/24  time [39] 4/8 5/25 6/8 6/12 6/12 6/13 6/15  6/17 6/18 9/3 9/7 10/4 11/19 12/24 13/4 13/5  18/23 20/20 20/21 21/1 22/4 22/23 23/21  26/21 26/24 27/3 31/7 33/6 34/11 37/13  37/17 38/6 38/12 39/3 42/10 42/10 42/15  43/7 43/14  timekeeping [2] 9/18 9/20  timely [1] 14/8  times [2] 5/14 11/8  timing [5] 10/6 32/4 32/17 32/18 39/20</p>	<p><b>U</b></p> <p>unanswered [1] 33/17  understand [8] 5/18 8/10 9/1 10/3 12/5 31/22  33/6 33/7  understanding [1] 34/10  understood [2] 14/3 35/19  unfair [1] 34/24  unilaterally [1] 18/24  UNITED [4] 1/1 1/3 1/10 3/3  unless [2] 42/5 43/23  until [7] 7/14 15/3 15/7 22/17 26/15 33/18  34/15  up [17] 7/10 17/20 17/25 18/16 18/20 19/10  22/14 26/14 26/25 27/15 31/19 33/13 33/16  34/13 35/25 38/7 42/23  updated [1] 10/10  upon [1] 21/6  urge [4] 35/24 36/1 37/3 37/7  us [18] 13/22 14/13 14/14 14/15 14/21 15/5  15/6 20/2 21/25 23/15 24/24 37/21 38/7  40/22 41/7 41/11 43/12 43/13  use [4] 4/1 4/12 36/7 40/20  useful [2] 39/20 42/2  using [6] 4/11 12/14 12/17 12/21 39/8 39/9  usually [2] 6/9 12/25</p> <p><b>V</b></p> <p>venture [1] 15/22  versus [2] 3/4 10/15  very [10] 4/15 13/1 15/1 18/12 27/25 30/3  36/10 39/2 43/6 43/11  vet [5] 16/9 25/12 25/13 27/13 33/14</p>

<p><b>V</b></p> <p>view [5] 20/3 27/3 27/6 27/12 31/3  views [1] 14/16  VNA [1] 29/6  vote [1] 15/19</p>	<p>who [19] 6/19 10/14 18/4 21/22 25/7 28/3  28/4 28/8 28/11 28/13 28/14 28/15 28/16  34/7 34/13 35/3 35/5 35/8 42/25  who's [1] 16/8  whoever [1] 9/24  whole [9] 17/4 17/6 22/9 25/4 26/1 32/14  32/21 36/23 36/24  whom [2] 36/20 42/12  whose [1] 4/12  why [7] 3/20 8/3 13/18 30/7 30/19 39/18  39/19  will [61]  willing [3] 4/25 30/24 42/14  willingness [1] 36/5  win [1] 19/12  wish [1] 23/17  within [3] 5/25 6/18 43/20  without [9] 14/13 14/14 14/15 15/5 15/6 22/1  34/12 34/22 35/1  witness [5] 5/1 6/4 10/10 10/11 38/24  witnesses [12] 5/3 5/5 5/12 6/6 9/10 9/13  9/14 36/20 38/8 40/16 42/9 43/2  won't [3] 9/20 27/21 28/12  wonderful [1] 9/9  word [3] 4/10 13/8 36/8  words [4] 17/12 20/13 22/8 23/6  work [13] 5/13 10/13 12/7 32/16 33/25 34/8  34/8 35/13 41/2 43/1 43/24 43/24 43/25  worked [1] 33/3  working [3] 8/2 34/4 37/15  world [1] 27/2  Worldwide [1] 2/19  worthwhile [1] 8/13  would [56]  wouldn't [1] 7/22  writing [2] 5/9 39/7  written [1] 6/5  wrong [3] 4/6 4/6 38/1</p>
<p><b>W</b></p> <p>wait [5] 20/21 24/9 31/6 39/18 39/19  waiting [1] 15/3  walk [2] 7/4 39/10  want [20] 4/7 4/8 6/11 8/13 9/8 9/8 13/5 18/8  22/1 26/12 32/9 33/15 34/20 34/23 38/10  38/10 38/22 38/22 40/22 42/1  wanted [3] 6/24 13/15 41/25  wants [6] 6/19 14/11 28/1 34/8 34/8 41/7  was [31] 3/23 13/20 15/12 15/13 15/15 16/2  16/2 16/3 18/19 18/23 19/14 21/14 21/23  22/9 22/16 22/17 24/1 24/18 24/18 25/10  27/10 27/11 33/3 36/25 37/9 37/21 37/25  38/1 39/24 41/23 41/25  Washington [7] 1/5 1/14 1/19 1/23 2/4 2/15  2/24  wasn't [1] 33/7  waste [1] 13/5  way [9] 5/12 17/3 20/23 31/3 36/2 37/25 38/1  40/15 41/19  we [139]  we'll [10] 12/9 18/10 40/4 40/22 40/23 41/7  41/22 43/17 43/17 43/17  we're [23] 3/22 16/5 16/7 16/16 17/9 17/14  17/18 18/6 19/2 20/13 21/17 26/13 28/18  30/14 30/24 31/6 31/20 33/25 34/7 38/25  40/12 42/21 43/21  we've [18] 7/1 7/15 7/17 11/11 12/6 18/5  18/17 18/19 18/21 21/11 22/8 25/10 30/24  30/25 33/3 33/18 37/18 38/7  website [2] 25/4 28/2  week [5] 10/13 13/20 26/19 32/19 36/16  weeks [25] 18/5 21/18 22/5 22/12 22/13  22/14 22/18 22/19 22/22 22/22 23/9 27/8  27/11 28/21 29/12 29/20 31/1 31/13 32/7  32/16 33/6 33/7 33/23 36/4 37/18  weighty [1] 26/20  well [23] 3/18 8/18 9/12 13/16 14/23 15/22  17/7 18/9 18/12 20/1 20/19 21/16 23/5 28/5  28/6 28/24 30/21 35/3 35/5 35/11 39/6 40/18  42/14  well-capitalized [3] 28/5 35/3 35/5  went [2] 5/8 36/24  were [16] 3/19 10/19 13/24 13/25 14/3 14/6  15/14 18/25 20/13 22/16 24/1 33/4 36/2  36/24 42/11 44/5  what [72]  whatever [6] 17/1 17/1 25/20 27/3 27/6  37/18  whatsoever [1] 14/12  when [12] 10/1 12/7 14/4 14/5 14/7 15/17  16/4 19/19 34/20 34/20 34/22 35/17  where [7] 4/19 5/8 12/12 16/5 19/17 32/18  34/11  Whereupon [1] 44/4  whether [13] 7/20 10/9 14/16 17/18 17/21  17/23 17/23 19/7 29/20 31/3 31/7 31/13  33/23  which [14] 6/24 7/9 15/11 19/10 19/11 20/7  24/1 24/3 24/25 25/21 27/9 31/15 35/4 42/13  whichever [1] 26/24</p>	<p><b>Y</b></p> <p>year [2] 20/12 22/19  years [2] 19/15 19/16  yes [19] 5/12 6/21 8/1 8/10 8/12 16/12 16/16  16/22 23/24 24/11 27/4 28/18 31/11 32/2  40/24 41/15 42/16 43/15 43/22  yesterday [1] 31/22  yet [4] 15/24 21/16 33/20 41/2  yeven [1] 2/21  YONATAN [2] 2/18 3/16  York [3] 2/8 2/12 2/20  you [209]  you'll [1] 30/15  you're [22] 4/8 5/5 5/11 5/23 5/25 6/11 6/20  7/21 8/4 8/8 9/9 9/25 12/17 12/21 12/21 17/1  21/13 21/13 31/25 32/18 36/10 40/3  you've [5] 5/22 6/7 19/4 37/11 37/12  your [88]  yours [2] 30/5 41/18  yourselves [1] 3/6</p>